



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Draft

Date Amended:	04/17/07	Bill No:	SB 111/SCA 4
Tax:	Property	Author:	Ashburn and Migden
Related Bills:		Position:	Support

BILL SUMMARY

These bills would, for purposes of the two seismic safety new construction exclusions, eliminate any distinction between the exclusions thereby deleting the 15 year time limit that applies to unreinforced masonry buildings.

SUMMARY OF AMENDMENTS

The amendments add Senator Migden as a co-author and specify that SCA 4 is the companion constitutional measure.

ANALYSIS

CURRENT LAW

Two constitutional amendments, Proposition 23 in 1984 and Proposition 127 in 1990, provide a new construction exclusion for certain improvements made for seismic safety purposes.

- Proposition 23 amended Section 2(a) of Article XIII A of the California Constitution and Section 70(d) of the Revenue and Taxation Code is the implementing statute.
- Proposition 127 amended Section 2(c)(4) of Article XIII A of the California Constitution and Section 74.5 of the Revenue and Taxation Code is the implementing statute.

Section 70(d) applies only to buildings with “unreinforced masonry bearing walls.” These are walls that are built with bricks, cement blocks, or other types of masonry material, which do not have steel reinforcing bars. This section only applies if the building must be improved to comply with a local ordinance, such as a county or city mandatory strengthening program. This exclusion applies to qualifying construction completed on or after January 1, 1984 and is limited to the first 15 years after the work is completed.

Section 74.5 applies to any qualifying construction other than work that would fall under the 15 year new construction exemption for unreinforced masonry structures provided under Section 70(d). Qualifying construction includes (1) seismic retrofitting improvements, as defined, and (2) improvements utilizing earthquake hazard mitigation technologies, as defined. Unlike Section 70(d), it is not necessary that the qualifying construction be mandated by a local government. In addition, this exclusion applies to qualifying construction completed on or after January 1, 1991 and the exclusion is not subject to any time limit.

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Comparison of Seismic Safety Exclusions

	PROPOSITION 23	PROPOSITION 127
Year Approved	1984	1990
Constitutional Amendment	Art. XIII A, Sec. 2(a)	Article XIII A, Sec. 2(c)(4)
Revenue & Taxation Code	Section 70(d)	Section 74.5
Time Limit	15 years (unless there is a change in ownership before 15 years)	None (until there is a change in ownership)
Building Type	Unreinforced masonry	Any - except a masonry building qualifying under §70(d)
Mandated Improvements	Yes	No
Qualifying Improvements	Those necessary to comply with local ordinance	Seismic retrofitting improvements Improvements utilizing earthquake hazard mitigation technologies (Applies to buildings identified by local government as unsafe in an earthquake)
Assessor Assistance in Identifying	Certificate of Compliance from local government requiring improvements	Building Department reports value
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Board Prescribed Claim Form	No	Yes
Claiming	Certificate of compliance from local entity within 6 months of completion	Property Owner notify intent to claim within 30 days of completion Six months to provide all documentation

PROPOSED LAW

Senate Constitutional Amendment. Senate Constitutional Amendment (SCA) 4 proposes to delete the current provisions of Section 2(a) and Section 2(c)(4) of Article XIII A of the California Constitution and instead provide in new Section 2(a) that the term “newly constructed” does not include that portion of an existing structure that

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consists of the construction or reconstruction of **seismic retrofitting components**, as defined by the Legislature.

Companion Implementing Statutory Amendments to the Revenue and Taxation Code. If SCA 4 is approved by voters then the provisions of SB 111 would become operative. This bill would delete from Section 70 the provisions related to the seismic safety new construction exclusion for unreinforced masonry buildings. Instead it would amend Section 74.5 to allow its provisions to apply to unreinforced masonry buildings. Subdivision (e) of Section 74.5, which this bill would delete, provides that Section 74.5 is not applicable to any property that qualifies for the exclusion under Section 70.

The practical effect of these amendments is to eliminate the 15 year time limit on the exclusion for unreinforced masonry buildings and provide an exclusion that parallels the one currently provided to all other property types under the provisions of Section 74.5. The table below summarizes the proposed changes.

Changes to Exclusion for Unreinforced Masonry Buildings

	CURRENT LAW	PROPOSED LAW
Time Limit	15 years	Removed
Mandated Improvements	Yes	Requirement Deleted
Qualifying Improvements	That necessary to comply with the local ordinance	New Definitions “Seismic Retrofitting Components” <ul style="list-style-type: none"> • Seismic retrofitting improvements • Improvements utilizing earthquake hazard mitigation technologies
Assessor assistance in identifying	Certificate of Compliance from local government requiring improvements	Building Department (after certification from property owner)
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Claiming	File certificate of compliance within 6 months of completion	Reduced from six months to within 30 days of completion with six months to provide all documentation

This bill would also amend Section 74.5 to provide a more precise definition of qualifying improvements. That definition is “that portion or an existing structure that consists of the construction or reconstruction of **seismic retrofitting components**, as defined in this section.”

The statutory definition for the new phrase “seismic safety components” used in the constitution would be based on the existing definitions of the phrases “seismic retrofitting improvements” and “improvements utilizing earthquake hazard mitigation technologies.” This bill would make corresponding amendments to substitute the

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phrase “seismic retrofitting components” for “seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies” throughout the text of the section.

In addition, it would clarify that the Building Department reports the costs, rather than the value, of these components to the assessor.

The changes to Section 74.5 are summarized in the table below.

Changes to Exclusion Under Section 74.5

	CURRENT LAW	PROPOSED LAW
Qualifying Improvements	<p>“Improvements” Seismic Retrofitting Improvements Improvements utilizing earthquake hazard mitigation technologies</p>	Specific portion of construction or reconstruction of “seismic retrofitting components”
<p>Definition of Qualifying Improvements Seismic Retrofitting Improvements Improvements utilizing earthquake hazard mitigation technologies</p>	No Change	No Change
Property Owner Certifies to Building Department	Those portions of the project that are “qualifying improvements”	Those portions of the project that are “seismic retrofitting components”
Building Department Reports To Assessor	“Value” of those portions of the project that are qualifying improvements.	“Costs” of the portions of the project that are seismic retrofitting components

Legislative Declarations. Subdivision (e) is added to Section 74.5 to expressly specify that buildings currently receiving the 15 year exclusion under Section 70(d) will not be reassessed after the 15 year time period expires and that they will continue to receive the exclusion beyond the 15 year period, unless the property changes ownership.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable, at the same percentage of “fair market value,” unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines “fair market value” as the assessor’s opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the “base year value.” Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2 percent or the rate of inflation, whichever is less. Article XIII A, Section 2 of the California Constitution provides for certain exclusions from the meaning of “change in ownership” and “newly constructed” as approved by voters via constitutional amendments.

New Construction. The California Constitution does not define the term “new construction.” Revenue and Taxation Section 70 defines it, in part, to mean:

Any addition to real property, whether land or improvements (including fixtures), since the last lien date.

Any alteration of land or improvements (including fixtures) since the lien date that constitutes a “major rehabilitation” or that converts the property to a different use. A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as “new construction” and is added to the property’s existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property’s existing base year value. (Section 71)

New Construction Exclusions. Over the years, Article XIII A, Section 2 of the California Constitution has been amended to specifically exclude certain types of construction activity from assessment as “new construction.” Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Year	Subject	Code	Time Limit
8	1978	Disaster Reconstruction	§70(c)	No
7	1980	Active Solar Energy Systems	§73	No
23	1984	Seismic Safety (Unreinforced Masonry)	§70(d)	Yes
31	1984	Fire Safety Systems	§74	No
110	1990	Disabled Access Improvements (Homes)	§74.3	No
127	1990	Seismic Safety Retrofitting & Hazard Mitigation	§74.5	No
177	1994	Disabled Access Improvements (All Properties)	§74.6	No
1	1998	Environmental Contamination Reconstruction	§74.7	No

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Seismic Safety New Construction Exclusions. Section 70(d) implements Proposition 23, approved by voters in 1984, and Section 74.5 implements Proposition 127, approved by voters in 1990. These propositions amended Section 2 of Article XIII A of the California Constitution to provide a new construction exclusion for certain seismic safety improvements.

BACKGROUND

These bills are similar to SB 1633 (Ashburn) and SCA 28 (Ashburn) of 2006 which passed the Senate but were not heard in the Assembly.

COMMENTS

1. **Sponsor and Purpose.** The California Assessors' Association is sponsoring this bill to delete the 15 year time limitation for qualified improvements made to unreinforced masonry buildings.
2. **The April 17 amendments** add Senator Migden as a co-author and identify SCA 4 as the companion constitutional measure.
3. **This bill would ensure equal treatment of property owners who incorporate seismic safety improvements when they remodel an existing building regardless of the type of building.** Currently, two property owners that install the same types of seismic safety improvements would be treated differently for property tax purposes depending upon whether or not the building is a masonry structure. One receives a permanent exclusion from reassessment, and the other, the owner of an un-reinforced masonry building, which is most likely an older, potentially historic building, would only receive a 15-year temporary exclusion.
4. **Except for the provisions for unreinforced masonry buildings, all other new construction exclusions remain in effect until the property changes ownership.** Generally, new construction exclusions remain in effect until the property changes ownership, at which point the entire property, including the portion of the property (or additional value) previously excluded from taxation via the new construction exclusion, is subject to reassessment to current market value pursuant to the change in ownership provisions of Proposition 13.
5. **Why the 15 year time limit?** Supporters note that there is no sound policy reason to limit the exclusion to 15 years for unreinforced masonry buildings given the unlimited exclusion for other types of seismic safety improvements. Proposition 23 was one of the very first new construction exclusions ever enacted after Proposition 13. No other constitutional amendment since then has ever imposed a time limit on the exclusion. Removing the time limit would make these provisions consistent with all other exclusions.
6. **In practical application, few masonry buildings are reassessed after the 15 year period expires.** The 15-year time limit creates a 15 year administrative burden for taxing officials. Based on responses to a Board survey on new construction issues, many counties do not track 15-year new construction exclusion claims. Additionally, several counties do not assign a value to seismic retrofits, and many treat retrofit as a maintenance item which is not assessable as new construction.

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Furthermore, in some cases the property changes ownership before the 15 year limit has been reached, thus requiring a full reassessment of the property.

7. **Masonry buildings currently in the 15 year time window.** Buildings currently receiving a 15 year exclusion would continue to receive the exclusion as provided in Section 74.5(e) pursuant to the Legislative findings and declarations.

COST ESTIMATE

The Board would incur minor absorbable costs related to informing and advising local county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

This measure would have a negligible revenue impact as few, if any, non-reinforced masonry buildings have been reassessed after the 15 year time period has elapsed in practical application.

Analysis prepared by: Rose Marie Kinnee (916) 445-6777 06/11/2007

Contact: Margaret S. Shedd (916) 322-2376

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