

**Initial Statement of Reasons for
Proposed Amendments to
California Code of Regulations, Title 18, Section 370,
*Random Selection of Counties for Representative Sampling
and Language for New Property Tax Rule*
California Code of Regulations, Title 18, Section 370.5
*Random Selection of Counties For Survey or Representative Sampling for
Calendar Years 2016 Through 2020***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

County government has the primary responsibility for local property tax assessment; the State has both a public policy and financial interest in promoting fair and equitable assessments throughout California. The public policy interest arises from the impact of property taxes on taxpayers and the inherently subjective nature of the assessment process. The financial interest derives from state law that guarantees California schools a minimum amount of funding on an annual basis. To the extent that property tax revenues fall short of providing this minimum amount of funding, the state must make up the difference from the general fund.

The Assessment Practices Survey Program is one of the state's major efforts to address these interests and to promote uniformity, fairness, equity, and integrity in the property tax assessment process. Under this program, the State Board of Equalization (Board) periodically reviews the practices and procedures of every county assessor's office (called the survey program).

In 1947, the Legislature had initiated a survey program which required the Board to conduct a study of each county's assessment practices. The findings of each survey were to be reported to the assessors, the board of supervisors, and the Legislature. One round of surveys was completed during the five-year period ending in 1952. No further surveys were made until the 1966 Property Tax Assessment Reform Law (Assembly Bill 80) was enacted. Assembly Bill 80 (Stats. 1966, ch. 147, First Extraordinary Session), changed the Board's assessment practices survey program, by expanding the timing, scope and content of the surveys.¹

In 1957 to help fulfill its constitutional mandate to bring county assessment levels into conformity and to help achieve an equitable distribution of aid to school districts, the Board sought to fulfill the objective of intercounty equalization (bringing about uniform assessment levels between counties). The Board conducted independent appraisals of a sampling of each county's assessments and compared the results to the county's appraisals. The ratio of county to Board total value was calculated, and each county's ratio was compared with the statewide ratio. Assessed values were adjusted accordingly for purposes of adjusting the amount of aid to each of

¹ Publication 216, *The First 100 Years* (https://www.boe.ca.gov/info/pub216/property_tax_reform.html)

the county's school districts. This was called the sampling program. The survey and sampling programs operated independently until after Proposition 13 passed in 1978. After Proposition 13, those ratios are not used to equalize assessment levels between counties, but to judge whether a county is in compliance with the laws requiring full value assessments. Effective January 1, 1997, Senate Bill 1827 (Stats. 1996, ch. 1087) scaled back the sampling part of the program.

Under Government Code (GC) sections 15640 and 15643, the Board must perform a survey to determine the adequacy of the assessment procedures and practices employed by the county assessor and/or a sampling of the assessments from the local assessment roll in selected counties and cities and counties. GC section 15643 specifies the frequency of surveys and the manner in which the Board is required to select the counties or cities and counties it will survey each year.

GC section 15643 was previously amended in 1996 (Stats. 1996, ch. 1087, section 5 [Senate Bill 1827], emphasis added) to provide as follows:

- (a) The board shall proceed with the surveys of the assessment procedures and practices in the several counties and cities and counties as rapidly as feasible, and shall repeat or supplement each survey at least once in five years.
- (b) The surveys of the 10 largest counties and cities and counties shall include a sampling of assessments on the local assessment rolls as described in Section 15640. *In addition, the board shall each year, in accordance with procedures established by the board by regulation, select at random at least three of the remaining counties or cities and counties, and conduct a sample of assessments on the local assessment roll in those counties. If the board finds that a county or city and county has "significant assessment problems," as provided in Section 75.60 of the Revenue and Taxation Code, a sample of assessments will be conducted in that county or city and county in lieu of a county or city and county selected at random.* The 10 largest counties and cities and counties shall be determined based upon the total value of locally assessed property located in the counties and cities and counties on the lien date that falls within the calendar year of 1995 and every fifth calendar year thereafter.
- (c) The statewide surveys which are limited in scope to specific topics, issues, or problems may be conducted whenever the board determines that a need exists to conduct a survey.
- (d) When requested by the legislative body or the assessor of any county or city and county to perform a survey not otherwise scheduled, the board may enter into a contract with the requesting local agency to conduct that survey. The contract may provide for a board sampling of assessments on the local roll. The amount of the contracts shall not be less than the cost to the board, and shall be subject to regulations approved by the Director of General Services

In 1997, the Board adopted Property Tax Rule 370, *Random Selection of Counties for Representative Sampling*, pursuant to the authority in GC section 15606, subdivision (c), in order to implement, interpret, and make specific GC section 15643 (as amended in 1996) and Revenue and Taxation Code (RTC) section 75.60. Property Tax Rule 370 established a five-year rotation or "survey cycle" and prescribed the procedures for selecting, at random, at least three counties and cities and counties, other than the 10 largest counties and cities and counties, in which to

perform a representative sampling of assessments, in each year during each five-year survey cycle. Property Tax Rule 370 also clarified how a county or city and county with significant assessment problems would be surveyed in lieu of a county or city and county selected at random and clarified that the Board is not prohibited from conducting additional surveys, samples, or other investigations of any county assessor's office.

As relevant here, Assembly Bill (AB) 681 (Stats. 2015, ch. 404) amended subdivision (b) of GC section 15643, effective on January 1, 2016. AB 681 added new GC section 15643, which contains identical provisions to GC section 15643, subdivisions (a) through (d) quoted above, except for the calendar year in subdivision (b). AB 681 also provided for amended GC section 15643 to be repealed and new GC section 15643 to become operative January 1, 2021. As a result, this law change modifies the number of county assessment practices surveys and assessment sampling for calendar years 2016 through 2020. Specifically, this law change requires the Board to:

- Continue to survey and conduct the assessment sampling of the ten counties or cities and counties with the largest value of locally-assessed property.
- Survey the assessment practices in one county or city and county and conduct a sample of the assessments on the local assessment roll in another county or city and county, both selected at random from the 11th to 20th largest counties and cities and counties (amended GC section 15643, subdivision (b)(1));
- Survey the assessment practices in three counties or cities and counties and conduct a sample of the assessments on the local assessment roll in two counties or cities and counties. The counties to be surveyed or sampled are selected at random from the 21st to 58th largest counties (amended GC section 15643, subdivision (b)(2)); and
- Conduct a sample of assessments on the local assessment roll in a county or city or county that has significant assessment problems (amended GC section 15643, subdivision (b)(3)).

After calendar year 2020, the statutory requirements for the Board to select the counties or cities and counties it will survey each year will revert to the requirements provided by GC section 15643 prior to the January 1, 2016 amendments, which are currently codified in new GC section 15643 (that becomes operative January 1, 2021).

Proposed Amendments

Board staff determined that Property Tax Rule 370 is still necessary because after calendar year 2020, the statutory requirements for the Board to select the counties or cities and counties it will survey each year will revert to the requirements provided by GC section 15643 prior to the January 1, 2016 amendments, which are currently codified in new GC section 15643 (that becomes operative January 1, 2021).

Thus, the Board proposes to amend Property Tax Rule 370 to clarify that its provision apply to surveys for calendar years *other than* 2016 through 2020. The Board also proposes to add new Property Tax Rule 370.5, *Random Selection of Counties for Survey or Representative Sampling for Calendar Years 2016 Through 2020*, to accommodate the survey cycle for years 2016 through 2020.

The proposed amendments to Property Tax Rule 370 include:

1. Changing the title of Property Tax Rule 370 to add "for Calendar Years Other than 2016 Through 2020."
2. Adding an introductory phrase to the beginning of subdivision (a) to clarify that the rule applies to calendar years other than 2016 through 2020.
3. Capitalizing the word "Board" when referring to the State Board of Equalization in subdivisions (b)(1) and (c) for consistency.
4. Changing "regulation" to "rule" in subdivision (d) because GC section 15606 authorizes the Board to prescribe "*rules* and regulations" (italics added) governing county assessors when assessing and local boards of equalization when equalizing for property tax purposes, and the regulations the Board has adopted to implement, interpret, and make specific the property tax laws are commonly referred to as a "Property Tax Rules" or "Rules." (See, e.g., the Property Tax Rules published in the Board's *Property Taxes Law Guide*).
5. Adding a sentence to subdivision (d) clarifying the procedure when the Board is requested to perform a survey that is not otherwise scheduled, consistent with new GC section 15643, subdivision (d).

Proposed new Property Tax Rule 370.5 is similar to Property Tax Rule 370 in structure. Subdivisions (a) and (b) prescribe the new procedures for the random selection of counties and cities and counties from the pools of the 11th to 20th largest counties and cities and counties and the 21st to 58th largest counties and cities and counties for survey or representative sampling for calendar years 2016 through 2020. Subdivision (c) incorporates the requirement that the Board conduct a sample of assessments on the local assessment roll in a county or city and county that has significant assessment problems for calendar years 2016 through 2020. And, subdivision (d) specifies the procedure when the Board is requested to perform a survey that is not otherwise scheduled, consistent with amended GC section 15643, subdivision (d).

Board staff worked with the California Assessors' Association in creating the amendments to Property Tax Rule 370 and the language for Property Tax Rule 370.5. Subsequently, interested parties were provided with Board staff's draft of the proposed amendments to Property Tax Rule 370 and the language of proposed new Property Tax Rule 370.5 on December 22, 2016 (see Letter to Assessors [2016/061](#), available on the Board's website), and invited to participate in the rulemaking effort. The only comment received regarding the draft of the proposed amendments was from the Los Angeles County Assessor's Office in support of the amendments and language of the proposed new rule as written. Both of these documents are available on the Board's website at <http://www.boe.ca.gov/proptaxes/prop370-proposed-rev-and-adoption.htm>.

Board staff subsequently prepared Formal Issue Paper 17-002 and submitted it to the Board Members for consideration at the Board's June 20, 2017, Property Tax Committee meeting. In the formal issue paper, Board staff recommended that the Board propose to adopt staff's draft amendments to Property Tax Rule 370 and the language for proposed new Rule 370.5.

At the conclusion of the June 20, 2017, Property Tax Committee meeting, the Board agreed with staff's recommendations and the Board Members unanimously voted to propose the adoption of

staff's recommended amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5. The Board determined that the proposed amendments and language for the new rule are reasonably necessary for the specific purpose of addressing the issue of a temporary five-year change in the survey cycle.

The adoption of the proposed amendments to Property Tax Rule 370 and new language of Rule 370.5 is not mandated by federal law or regulations. There are no previously adopted or amended federal regulations that are identical to Property Tax Rules 370 or 370.5 or the proposed amendments to Property Tax Rule 370.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 17-002, the attachment to the issue paper, and the comments made during the Board's discussion of the issue paper during its June 20, 2017, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 370 and new language for Property Tax Rule 370.5 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 370 and new language for Property Tax Rule 370.5 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments and new Property Tax Rule at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 370 and language for new Property Tax Rule 370.5 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purpose of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5), ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b), AND DETERMINATIONS AND ESTIMATE REQUIRED BY GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(5), (6), AND (8)

As explained in more detail above, Property Tax Rule 370 established a five-year rotation or "survey cycle" and prescribed the procedures for selecting, at random, at least three counties and cities and counties, other than the 10 largest counties and cities and counties, in which to perform a representative sampling of assessments, in each year during each five-year survey cycle. Property Tax Rule 370 also clarified how a county or city and county with significant assessment problems would be surveyed in lieu of a county or city and county selected at random and

clarified that the Board is not prohibited from conducting additional surveys, samples, or other investigations of any county assessor's office. The proposed amendments to Property Tax Rule Property Tax Rule 370 and new Property Tax Rule 370.5 clarify the temporary five-year change in the survey cycle.

As a result, the proposed amendments and new rule will not mandate that individuals or businesses or state or local government do anything that is not already required by Property Tax Rule 370 or the GC, and there is nothing in the proposed amendments or new rule that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that would have a significant effect on the state's economy or that would impact the state's revenue. Therefore, Board staff determined that the proposed amendments and new rule will not impact property tax revenue. The proposed amendments and new rule will not impose new compliance costs on businesses and individuals and will not provide a monetary benefit to businesses and individuals. And, Board staff estimated that the proposed amendments and new rule will result in an absorbable \$396 one-time cost for the Board to update its website after the amendments and new rule are completed assuming that average hourly compensation costs are \$49.48 per hour² and that it will take approximately eight hours ($49.48 \times 8 = \$395.84$, rounded to \$396), but will not have any other fiscal impact on local or state government.

Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 370 and new language for Property Tax Rule 370.5 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and the Board estimates that the adoption of the proposed amendment to Property Tax Rule 370 and new language for Property Tax Rule 370.5 will result in an absorbable \$396 one-time cost to the Board, but no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

In addition, the Board has made an initial determination that the proposed amendments to Property Tax Rule 370 and new language for Property Tax Rule 370.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, and the Board has determined that the proposed amendments to Property Tax Rule 370 and new language for Property Tax Rule 370.5 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

² Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Workers, adjusted for the Pacific Region. *Employer Costs for Employee Compensation – March 2016*, June 9, 2016 press release; also: Series Title: *State and Local Government Total Compensation for All Occupations; Cost per Hour Worked*, <http://www.bls.gov/>

Further, based upon these facts and all of the information in the rulemaking file, the Board also determined that the adoption of the proposed amendments to Property Tax Rule 370 and new Property Tax Rule 370.5 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business within the State of California.

Furthermore, Property Tax Rules 370 and 370.5 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 370 and new Property Tax Rule 370.5 will not affect the benefits of Property Tax Rules 370 and 370.5 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 370 and new Property Tax Rule 370.5 will not have a significant adverse economic impact on business.