Senate Bill 378 /Senate Constitutional Amendment 9 (Beall)
Date: 01/14/16 and 08/18/15
Program: Property Taxes
Sponsor: California Association of Realtors
California Constitution Article XIII A, Section 2
Revenue and Taxation Code Section 69.5
Effective: If approved by voters.

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Summary: Subject to voter approval, allows homeowners 55 and older to transfer a base year value to a home of greater value.

Summary of Amendments: The amendments since the last analysis (1) restate the value comparison test provisions in cases where the replacement property is purchased before the sale of the original property in a declining real estate market and (2) delete the new construction exclusion provisions for a replacement property of greater value.

Purpose: To allow partial benefits if a replacement home is not of equal or lesser value.

Fiscal Impact Summary: Annual revenue loss of $7,000,000.

Existing Law: For property tax purposes, the law requires the assessor to reassess real property from its Proposition 13 protected value (called the "base year value") to its current market value whenever a change in ownership occurs.[1] However, subject to many conditions, the law allows homeowners 55 years and older or qualified disabled persons to sell their home, and buy or build a new one, and transfer their base year value to the new home.[2] This benefit gives homeowners property tax relief by allowing property taxes to remain essentially the same[3] after the move, provided they purchase a home of equal or lesser value that is located in the same county.[4] The replacement home must be purchased within 2 years, before or after, of the original home's sale.

Relevant to this bill, to qualify for this benefit, the replacement property's market value as of the date of purchase must be equal to or less than the original property's market value on the date of its sale. If the replacement home does not satisfy the "equal or lesser value" test, then no benefit is available. The meaning of "equal or lesser value" depends on when the replacement property is purchased. In general, equal or lesser value means:

- 100% or less of the market value of the original property if a replacement property was purchased or newly constructed *before* the sale of the original property, or
- 105% or less of the market value of the original property if a replacement property was purchased or newly constructed *within the first year* after the sale of the original property, or
- 110% or less of the market value of the original property if a replacement property was purchased or newly constructed *within the second year* after the sale of the original property.

[1] California Constitution Article XIII A, Sec. 2.
[2] California Constitution Article XIII A, Sec. 2 (a), Revenue and Taxation Code (RTC) Section 69.5.
[3] The property tax payment will not be exactly the same because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) typically vary by location.
[4] In addition, ten counties offer this property tax benefit to new county residents. Each county has the discretion to accept intercounty transfers. Counties with active enabling ordinances include: Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Proposed Law:

Homes of Greater Value. If voter-approved, SCA 9 authorizes the Legislature to allow a partial benefit for a replacement home that is of greater value. The replacement property's base year value would be calculated by adding the difference between the original property's market value and the replacement dwelling's market value to the original property's base year value. The bill provides the necessary implementing provisions. *RTC §69.5(a)(1)(B)*

Value Comparison. SB 378 modifies the value comparison test when the market value of the replacement property has decreased and the replacement property is purchased before the original property is sold. In this situation, to determine whether the "equal or lesser" value requirement is met the assessor looks to the market value of replacement property on the date the original property sells. *RTC §69.5(g)(6)(A)*

Contingent Enactment. SB 378 becomes operative only if voters approve SCA 9.

In General:

Property Tax System. In 1978, voters changed California's property tax system by the approval of Proposition 13. Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, a property's sales price sets the property's assessed value, and annual increases thereafter are limited to the rate of inflation up to 2%.

Base Year Values. At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to 2% per year. This value is described as the "factored base year value." The Proposition 13 system can result in substantial property tax savings for long-term property owners.

Base Year Value Transfers. Voters have approved three constitutional amendments permitting persons to "transfer" their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 60[5] amended the constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county.
- **Intercounty.** In 1988, Proposition 90[6] amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, ten counties accept transfers from homes located in another county.
- **Disabled Persons**. In 1990, Proposition 110[7] amended the constitution to extend these provisions to any severely and permanently disabled person regardless of age.

RTC Section 69.5 implements all three propositions.

Legislative Background: Similar legislation to allow a partial benefit for replacement homes of greater value include:

- SCA 11/SB 274 (2009, Dutton). This bill also expanded the purchase window from within two years to three years of the original property's sale date.
- SCA 24/SB 1610 (2008, Dutton).

Neither bill passed out of Senate Revenue and Taxation Committee.

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[5] Proposition 60, approved November 4, 1986.
[6] Proposition 90, approved November 8, 1988.
[7] Proposition 110, approved June 5, 1990.

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Commentary:

1. **The January 14, 2016 amendments** restate the value comparison test provisions where the replacement property is purchased before the sale of the original property in a declining market as discussed in Comment 7. These amendments were suggested in the BOE's prior analysis because the August 17, 2015 version used incorrect terminology. (Specifically, after a property's base year value has been set, a subsequent market value decline does not change its underlying base year value. While a property's assessed value may be temporarily reduced to reflect a market value decline, its base year value does not change.) The January 14, 2016 amendments also delete provisions to extend the base year value transferred from the original property to include the added value of new construction performed on homes of greater value. These amendments were also suggested in the BOE's prior analysis. Existing law grandfathers in certain new construction when a replacement home of equal or lesser value is purchased. The August 17, 2015 bill version unnecessarily proposed similar treatment for replacement homes of greater value. (See Section 69.5(h)(4)(B).) If SCA 9 is approved by voters, homes of greater value will receive the full property tax benefit of a base year value transfer on a market value basis. To include the value of any new construction on a replacement home of greater value completed within two years of the sale of the original property under the umbrella of the prior base year value transfer, and without any conditions, may have inappropriately extended the scope of the base year value transfer exclusion. As such, these provisions were stricken.

2. **Base year value transfers allow homeowners to keep their Proposition 13 tax savings if they move to a home of equal or lesser value.** A "base year value transfer" allow eligible homeowners to keep their prior home's Proposition 13 protected value by transferring it to a new home of equal or lesser value. With the transfer, homeowners pay essentially the same amount of property tax if they move within the county or to one of ten other participating counties.

3. **Base year value transfers are not permitted if a person moves to a home that costs more.** Some persons may choose not to purchase a new home because of the resulting increase in property taxes. Generally, the property taxes on the new home would be 1% of its current market value. With this constitutional amendment, if a qualified person buys a new home that is worth $75,000 more than the home they sold, then they would pay an additional $750 ($75,000 x 1% tax rate) over the amount of property taxes they paid for the original home.

4. **This bill allows homeowners to keep their Proposition 13 tax savings if they move to a home of greater value by allowing a partial benefit.** Homeowners over the age of 55 and qualifying disabled persons would only pay additional property taxes based on the difference in market value between the two homes.

5. **How would the new base year value be set when a home of greater value is purchased?** The replacement dwelling's base year value would be calculated by adding the original home's base year value to the difference in market value of each home as of the date each was sold. Thus, the new "combined" base year value would be:

   Replacement dwelling's base year value = Original property's base year value + (Replacement dwelling's market value on date purchased - Original property's market value on date sold)

6. **The possible tax savings depends on a number of variables that are specific to the facts of each case.** The following table shows the variable tax savings if a person sells a home for $500,000 and buys a new home for $600,000. Without a base year value transfer, the taxes on the new home at the basic 1% tax rate would be $6,000.

Original Property's Assessed Value	Market Value Difference Between Homes	Replacement Dwelling's Assessed Value with Partial Transfer	Taxes Under Current Law	Taxes Under Proposed Law	Tax Savings
$100,000	$100,000	$200,000	$6,000	$2,000	$4,000
$200,000	$100,000	$300,000	$6,000	$3,000	$3,000
$300,000	$100,000	$400,000	$6,000	$4,000	$2,000
$400,000	$100,000	$500,000	$6,000	$5,000	$1,000

7. **The value comparison test is problematic when a homeowner purchases the replacement property before selling the original property and real estate values are declining.** This bill addresses a situation where there is a downturn in the housing market in the period between the acquisition of a replacement home and the subsequent sale of the original home. The original property may be of greater value than the replacement property on any given day (as is currently required for a base year value transfer), but the comparison value test uses different valuation dates for each home: the date of purchase for the replacement home and the date of sale for the original property. Because of this, in a declining market, by the time the original home is sold (up to two years later) the value of the replacement home may be greater than the value of the original property on the date of sale and the homeowner cannot qualify for a base year value transfer. The bill allows a same day fair market value to fair market value comparison, but only if the homeowner purchased the replacement property before selling the original property and the factored base year value of the replacement property is greater than its current fair market value on the day the homeowner finally sells his or her original home.

8. **Changes in the value comparison test require assessors to make an additional appraisal of the replacement property.** Under the current value comparison test, assessors must already appraise property to determine market value for date of sale or date of purchase for change in ownership purposes. This is necessary to evaluate whether the purchase price reflects market value. Additionally, for decline in value purposes, the assessor may also appraise the replacement property to determine market value as of January 1. This bill requires assessors also to appraise the replacement property on the date the original property is sold. This additional appraisal will require staffing resources.

9. **The value comparison test change in a declining market, which does not require a constitutional amendment, will not become operative if voters don't approve SCA 9.** Section 4 of the bill provides that the provisions of SB 378 will become operative only if the voters approve SCA 9. While SB 378 is a tax levy, effective immediately, Section 4 of the bill specifies an operative date related to voter approval of SCA 9.

10. **SCA 9 is not based on the current statutory language in the Constitution**. The bill is drafted using language that does not include the 2010 amendments to the Constitution (Proposition 13, SCA 4 (2008)) related to the 15-year new construction exclusion for seismic safety improvements and other minor stylistic changes.

11. **It is recommended that both SB 378 and SCA 9 be amended to become operative as soon as the constitutional amendment takes effect, consistent with the other base year value transfer related propositions.** The effective date authorizing the Legislature to permit a base year value transfer to homes of greater value would be the day after the proposition passes, but the companion measure, SB 378, will control the operative date. Article XVIII, Section 4 of the Constitution provides that the effective date of the constitutional changes is the day after the election unless the measure provides otherwise, as in SB 378. Propositions 60, 90, and 110 were effective the date after voters approved

the measure.

The operative date amendments will resolve several issues in both measures. Because these measures have become two-year bills, if the operative date is not changed from January 1, 2016 to January 1, 2017, both bills become retroactive. Conversely, if the operative date is changed to January 1, 2017, and voters pass the Proposition at the June 7, 2016 primary election, or the November 8, 2016 general election, the provisions won't become operative until January 1, 2017, and could complicate home sales. Taxpayers that would potentially benefit from the measures would be unwilling to consider purchasing a home or close escrow on any home of greater value until after the operative date. Further, amendments to the operative date will protect homebuyers from a costly mistake if he or she is aware that the Proposition passed but is unaware of its *delayed* operative date. For these reasons it is recommended that both bills become operative commencing with the effective date of the Proposition (i.e., the day after the election).

12. **The beginning date a homeowner can buy a replacement dwelling of greater value needs clarification.** SCA 9 uses the phrase "within two years," which runs both prior and subsequent to the sale of the original property. This could be interpreted to allow retroactive base year value transfers for homes previously purchased that were of greater value. In addition, the reference to lien dates and fiscal years in both bills will unnecessarily confuse the start date. The lien date is January 1, but the fiscal year for that lien date is the following July 1. This could be interpreted to disallow base year value transfers until the next fiscal year begins. For change in ownership issues, such as base year value transfers, there is no reason to reference the lien date or fiscal year. It unnecessarily confuses both taxpayers and tax administrators. Because of supplemental assessments, the date of the change in ownership will be the controlling date. Further, the supplemental roll will ensure that property taxes will be appropriately adjusted for each fiscal year impacted.

13. **Suggested Amendments.** The following amendments address comments 10, 11, and 12.

Article XIII A. Sec. 2 (a)(1) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. ~~Also, the term "newly constructed" does not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.~~ For purposes of this section, the term "newly constructed" does not include that portion of an existing structure that consists of the construction or reconstruction of seismic retrofitting components, as defined by the Legislature.[8]

(2) However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), in both of the following circumstances:

(A) To any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years

[8] Updated to reflect the current law. SCA 9 drafted without Proposition 13's 2010 constitutional changes.

of the sale of the original property. This paragraph[9] applies to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.[10]

(B) ~~Commencing with the lien date for the 2016–17 fiscal year, to~~[11] To any replacement dwelling of greater value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.[12.] The base year value of the replacement dwelling shall be calculated by adding the difference between the full cash value of the original property and the full cash value of the replacement dwelling to the base year value of the original property.

~~(3) For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings.~~ [13] ~~This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.~~[14]

(3~~4~~) In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph ~~shall apply~~ applies[15] to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but ~~shall~~ does[16] not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

(4~~5~~) The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after June 6, 1990.[17.] ~~the effective date of this paragraph.~~

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couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. [18]

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[9] Should "paragraph" be "subparagraph"?
[10] The addition of paragraph and subparagraph designations requires that Proposition 60's effective date be relocated for logical flow.
[11] The reference to lien dates and fiscal years unnecessarily confuses the start date.
[12] Clarifies the start date and prohibits retroactive application. Also, should "paragraph" be "subparagraph"?
[13] These definitions apply to all of subdivision (a)(2) but are located in the middle, they are relocated to the end for better structural flow.
[14] Proposition 60's effective date is relocated to a more logical location.
[15] Updated to current law.
[16] Updated to current law.
[17] Replace with actual effective date to update the constitution.
[18] These definitions were previously located in the middle of this subdivision (a)(2), they are relocated to the end for better structural flow.

Administrative Costs: If enacted, the BOE would incur absorbable costs to update its publications and website and address ongoing implementation issues that will result from these new provisions.

Revenue Impact:

Background, Methodology, and Assumptions. BOE property tax statistics indicate 5,200 base year value transfer claims are granted on average each year. BOE historical claims data also suggests that as real estate values increase, the number of claimants increase. While determining the immediate impact of this bill is difficult, based on the recovering housing market and a growing senior population, staff assumes a 100% increase in the number of base year value transfers granted, or 5,200 additional claims granted annually. The number of additional claims that will be filed is an assumption as data is unavailable. This estimate of 5,200 claims assumes that the existing number of base year value transfers granted annually will double, as the equal or lesser requirement is a significant limiting condition that this bill removes.

According to the California Association of Realtors, the median home price in November 2015 was $475,000. The 2014-15 average assessed value of a property receiving the homeowners' exemption was about $340,000. Therefore, where the transfer is granted, the estimated amount of assessed value difference per home is about $135,000.

The total revenue loss is computed by multiplying the estimated number of qualified transfers by the assessed value difference at the basic 1% property tax rate:

5,200 qualified transfers x $135,000 x 1% = $7 million

Summary. This bill would reduce property tax revenues at the basic 1% tax rate by $7 million annually.

Qualifying remarks. Generally, for a claimant to be eligible for the property tax relief described a previous transfer of the original property, i.e. a change in ownership subjecting the original property to reappraisal at its current fair market value, must have occurred. In addition, the revenue impact may be greater to the extent that market values return to previous peak levels.

This bill also provides relief for a claimant's purchase of a replacement dwelling before selling the original property where the claimant no longer qualifies for a base year value transfer due to a subsequent decline of real estate market values. Staff estimates these limited cases would have a minor revenue impact (given that real estate values are not currently declining). However, each claim granted in these limited cases is calculated at $1,350 ($135,000 x 1%) per qualified transfer.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.