



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	02/07/08	Bill No:	<a href="#">ACA 13/ AB 1886</a>
Tax:	Property	Author:	DeVore
Related Bills:	ACA 9 (2007)		

## BILL SUMMARY

This bill would place a constitutional amendment before voters to provide that property owned by the California Department of Transportation (Caltrans), that has not been used for a transportation purpose during specified time periods following the effective date of the amendment, would become subject to property tax.

## ANALYSIS

### CURRENT LAW

**State Owned Property.** Section 1 of Article XIII of the California Constitution provides that, unless otherwise provided by the Constitution or the laws of the United States, all property is taxable. Section 3(a) thereof exempts all property owned by the State of California from the property tax.

**Taxable Possessory Interests.** In certain instances, a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as “taxable possessory interests” and are typically found where an individual or entity leases, rents or uses federal, state or local government property. Thus, some property owned by Caltrans may be subject to property tax as a taxable possessory interest to the person who rents or uses the land for his or her own private benefit. However, in some instances, Caltrans pays the possessory interest taxes on behalf of the person renting or leasing the property.

**Caltrans Pays Possessory Interest Property Taxes on Behalf of Lessee.** With respect to certain excess lands owned by Caltrans leased to private parties, Section 104.13 of the Streets and Highway Code requires Caltrans to pay the possessory interest taxes on behalf of the lessee. Caltrans must provide an annual list of such property to the assessor of each county. The assessor then provides the possessory interest tax bill for each property directly to Caltrans, which is responsible for the payment of the tax. Caltrans must note in its lease a provision stating that it will pay all possessory interest taxes and that the rent charged by Caltrans reflects the cost of this provision.

**Other Taxable Possessory Interests Not Paid by Caltrans.** In addition to the specific real property referenced in Section 104.13, Caltrans may own other real property in which a taxable possessory interest may exist. Taxable possessory interests in this real property are subject to the provisions of Revenue and Taxation Code Section 107.6 and Section 480.6 (i.e., the requirement that a public entity file an annual real property usage report with the local assessor that describes the taxable possessory interests created by the public entity).

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**PROPOSED LAW**

**Assembly Constitutional Amendment.** This bill, if approved by voters, would amend subdivision (a) of Section 3 of Article XIII of the California Constitution to provide that the property tax exemption for property owned by the state does not apply to real property owned by Caltrans, or any successor to that department, that is determined by a county assessor as not having been used for a transportation purpose by Caltrans or its successor during specified periods, as noted below, beginning on or after the operative date of the proposed amendment to the constitution.

<b>Taxability Commences</b>	<b>Total Years of Caltrans Ownership</b>
2 Years After Enactment	30 Years
3 Years After Enactment	10 Years
5 Years After Enactment	5 Years

- **Date Property Becomes Taxable.** If a Caltrans property becomes taxable, it would become taxable commencing with the next lien date (January 1) following a determination by a county assessor that the property has not been used for a transportation purpose by the department during the specified time period.
- **Valuation Standard.** The property would be assessed at its “fair market value,” as determined by the assessor, as of the date the assessor determines it has not been used for a transportation purpose within the specified time periods as noted above.
- **Differential Tax Rate-Bonded Indebtedness.** The tax rate is not to exceed 1 percent of the fair market value of the real property. Additional rates for bonded indebtedness would not apply to these properties.
- **Taxability Status Reversible.** If a Caltrans property becomes taxable pursuant to these provisions, the property may regain its exemption from the property tax once the property is put to a transportation purpose commencing with the next lien date.
- **Pending Litigation.** Any Caltrans property where the title, possession, or use of the real property is the subject of litigation would not be subject to this taxation provision.

**Companion Implementing Statutory Amendments.** AB 1886 is a companion measure that would add Section 202.1 to the Revenue and Taxation Code.

- **Transportation Purpose.** This bill defines “used for a transportation purpose” to mean real property by Caltrans or its successor used for the purpose of the improvement, maintenance, construction, or expansion of transportation projects, including, but not limited to, streets, roads, highways, interstates, bridges, overpasses, and underpasses.
- **Appeals.** This bill specifies that the Board of Equalization would have the authority over any appeals filed by Caltrans regarding the assessment of these properties.

## IN GENERAL

**Taxable Local Government-Owned Property – Section 11 Properties.** Property owned by a local government is generally exempt from property taxation. However, some government-owned property is subject to property tax and is assessed by the county assessor of the county where the property is located. Specifically, Article XIII, Section 11 of the California Constitution generally provides that real property owned by a local government that is located outside its boundaries is taxable if it was taxable when it was acquired, and specifically prescribes a method for the valuation of taxable government-owned lands. Property owned by the state is not assessable as Section 11 property since no property is outside the boundaries of California.

**Appeals of Taxable Government-Owned Property.** Section 1840 provides that if the governmental entity that owns the taxable property disagrees with the assessed value of the property determined by the local county assessor, it may file an appeal with the Board to review the assessment. These appeals of locally assessed property to the Board are commonly referred to as “Section 11 appeals.” In all other instances, property tax appeals of locally assessed property are filed with the local assessment appeals board in the county where the property is located.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to give Caltrans a greater incentive to sell unused property by subjecting these properties to property tax.
2. **This bill would set a precedent of subjecting government owned property to the property tax.** Generally, government-owned property is taxable only if the property is located outside of its jurisdictional boundaries. These are commonly referred to as Section 11 properties. Once this precedent is set, it may encourage the taxation of other “unused” exempt government properties, such as excess land owned by public schools or universities, or city-owned land for a park, library, or other planned public facility, for which no funds are available to commence construction or for those held for future needs and growth.

## COST ESTIMATE

The Board would incur costs to hear appeals between Caltrans and the counties. Those costs would depend on the number of appeals filed by Caltrans, if any, either with respect to the issue of the taxability of the property or the value of the property established by the assessor.

## REVENUE ESTIMATE

### BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Existing law exempts from taxation property owned by the State. As of 2005, staff estimates that Caltrans owns real property in 54 of 58 counties, totaling over 4,000 parcels and over 12,000 acres statewide, that could be affected under this bill.

According to the 2006 California Statistical Abstract, there are approximately 100 million acres of land in California, 10 million acres of which are located in National and State Parks, Historical Parks, Reserves and Recreational Areas not subject to property tax. The 2007-08 statewide locally assessed real property land value totaled \$1.88 trillion. The value of each individual parcel of Caltrans-owned real property throughout the state

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is unknown. We estimated the assessed value of Caltrans-owned real property using a per-acre average. The statewide assessed value per acre can then be calculated as: \$1.88 trillion / 90 million acres, or \$20,889 in assessed value per acre. Staff then estimated the assessed value of Caltrans-owned real property to be: \$20,889 x 12,000, or \$250.7 million.

**REVENUE SUMMARY**

The annual revenue statewide increase to counties at the basic 1% property tax rate can be calculated as follows:

\$250.7 million x 1%, or \$2.5 million.

**Qualifying Remarks.** This bill does not, in itself, result in any revenue impact as it would become operative only if voters approved the constitutional amendment.

This estimate assumes all Caltrans-owned land would be subject to property tax under this bill. Some Caltrans land may not qualify as having been unused in the two years following the operative date of this bill.

In November 2006, the director of Caltrans announced plans to sell or dispose of 640 parcels by the end of 2007, and an additional 500 parcels by the end of 2008. Assuming Caltrans follows through with these plans, staff estimates a property tax increase to counties going forward by as much as \$70,000 annually, reducing the impact of this proposal.

In January 2008, Caltrans announced a plan to partner with the California Department of Housing and Community Development, allowing for the purchase of surplus State properties for affordable housing projects. Assuming the possibility of a quicker rate of disposal of Caltrans real properties, the property tax increase to counties could be even higher in future years, further reducing the revenue impact of this bill.

No adjustments were made in this estimate for taxable possessory interests. There would be no revenue impact if the property is already assessed for a taxable possessory interest.

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