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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair  
2021 - 2022 Regular

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**Bill No:** SB 303  
**Author:** Borgeas  
**Version:** 2/3/21  
**Consultant:** Grinnell

**Hearing Date:** 3/11/21  
**Tax Levy:** Yes  
**Fiscal:** Yes

### ***PROPERTY TAXATION: TRANSFER OF BASE YEAR VALUE: DISASTER RELIEF***

*Extends from five to seven years the time period for a taxpayer affected by a disaster to transfer their base year value to a replacement property.*

#### **Background**

Article XIII of the California Constitution provides that all property is taxable unless explicitly exempted by the Constitution or federal law. Article XIII A of the Constitution limits the maximum amount of any ad valorem tax on real property at 1% of full cash value, and directs assessors to set assessed values at 1975 market value levels and only reappraise property thereafter if there is a change in ownership (Proposition 13, 1978).

**Base year value transfers.** State law implementing Proposition 13 generally sets a property's value as its sales price when purchased or, when there is no sales price, at its fair market value when ownership changes (base year value). Thereafter, the law requires an annual inflation adjustment to that value that cannot exceed 2% (factored base year value).

Base year value transfers allow a taxpayer to continue to pay property taxes at the factored base year value of their previous home (or other property types where the law allows) and not on the value of their newly purchased or constructed home, often resulting in tax savings. For example, a taxpayer who purchased their residence for \$100,000 in 1975 now has a base year value under Proposition 13 that cannot exceed \$245,000 under the 2% cap in annual inflationary growth, regardless of its market value. If that taxpayer sold their residence for \$400,000 and purchased a new one for the same amount, a base year value transfer allows them to continue to pay property taxes based on the \$245,000 value, not \$400,000, which at the 1% rate results in \$1,550 in annual tax savings ( $\$400,000 - \$245,000 = \$155,000 \times 1\% = \$1,550$ ).

In June 1986, voters enacted Proposition 50 to allow a taxpayer to transfer their base year value when their property is damaged by a major misfortune or calamity and located in an area the Governor declared to be in a state of disaster. Revenue and Taxation Code (R&TC) §69 implements Proposition 50 to allow the transfer when:

- The damaged property sustains physical damages amounting to more than 50% of its full cash value immediately prior to the disaster;
- The replacement property is located in the same county as the damaged property and is acquired or newly constructed within five years after the disaster;

- The replacement property is comparable to the damaged property in size, utility, and function. For example, a residential property can be replacement property for a damaged residence, but not for a commercial, agricultural, or industrial property;
- The market value of the replacement property does not exceed 120% of the fair market value of the replaced property in its pre-damaged condition. Property owners can still receive the disaster relief in cases where the value of the replacement property exceeds the 120% limitation, but any amount over this threshold is assessed at full market value and added to the transferred base year value; and,
- The buyer of the replacement property was the owner of the damaged property at the time of damage.

In November 1993, voters additionally allowed taxpayers to transfer base year values to other counties when their property is damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor (Proposition 171). However, Proposition 171 only allowed transfers to other counties for a taxpayer's principal place of residence, and solely when the board of supervisors in the county where the replacement property is located has adopted an ordinance making this benefit available. As of January, 2020, 13 counties have such an ordinance: Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, and Yuba. Additionally, unlike Proposition 50, Proposition 171 explicitly stated that replacement homes must be purchased or newly constructed within three years.

**California wildfires.** The 2020 California wildfire season set new records for destruction. By the end of the year, nearly 10,000 fires had burned over 4.2 million acres, more than 4% of the state's roughly 100 million acres of land, making 2020 the largest wildfire season recorded in California's modern history. The 2020 season was worse than the terrible 2018 wildfire season, which eclipsed 2017 as the most destructive and deadliest year for wildfires in California. The 2018 Mendocino Complex Fire alone burned 459,123 acres to become the largest fire in California history at the time. However, California's August Complex fire in 2020 smashed that record, exceeding 1 million acres burnt. Recent wildfires are not only destructive, but deadly: the Camp Fire in November 2018 caused the deaths of 86 people and destroyed nearly 19,000 structures.

**COVID-19.** The COVID-19 pandemic, also known as the coronavirus pandemic, is an ongoing, widespread outbreak of the disease caused by a strain of the coronavirus. On March 19, 2020, Governor Newsom issued a mandatory "stay-at-home" order to protect the health of Californians. In April 2020, California's unemployment rate rose to a record high 15.5 percent in April as the state's employers lost 2,344,700 nonfarm payroll jobs, according to the Employment Development Department (EDD). According to Federal Reserve Bank Chair Jerome Powell, 40 percent of households earning less than \$40,000 annually lost their jobs in March 2020.

Reconstructing a home or business property destroyed by a disaster such as a wildfire is difficult and time consuming: debris and dead trees must be cleared, building and other permits acquired, contractors and other construction workers hired, materials purchased, and construction completed. Disaster victims unaccustomed to completing these tasks are further frustrated as each seeks to procure labor and materials in the same market, squeezing prices and causing construction delays. Additionally, the COVID-19 pandemic has resulted in lost jobs and closed businesses, plus difficulty finding qualified construction labor, especially in rural areas

disproportionately affected by wildfires where construction labor can be hard to find. Calaveras County Assessor Leslie Davis and the California Assessors' Association want to extend the deadline for taxpayers affected by recent disasters to transfer their base year values by two years.

### **Proposed Law**

Senate Bill 303 extends by two years the time period for a taxpayer affected by a disaster declared by the Governor to transfer their base year value to a new residence if the property meets either of the following conditions:

- The last day to transfer their base year value was on or after March 4, 2020, but on or before the COVID-19 emergency termination date, or
- The property was substantially damaged or destroyed on or after March 4, 2020, but on or before the COVID-19 emergency termination date.

The bill applies the determination of base year values retroactive to the 2015-16 fiscal year, and contains a legislative finding stating that this retroactive treatment does not constitute a gift of public funds for a specific public purpose.

The bill defines two terms, including "COVID-19 emergency termination date" as the date the Governor proclaims the termination of the emergency related to the COVID-19 pandemic that was declared on March 4, 2020, pursuant to the California Emergency Services Act.

### **State Revenue Impact**

Pending.

### **Comments**

1. Purpose of the bill. According to the author, "California has seen an unprecedented number of wildfires over the years that have destroyed many homes throughout the state. This has left countless residents displaced and in a fight against the clock to meet the five year deadline allowed to acquire or construct a replacement property and qualify for a transfer of their base year value. At a time when these displaced residents were beginning to put their lives back together following these devastating wildfires, the COVID-19 pandemic hit bringing critical sectors of the government and economy to a grinding halt. Due to delays as a results of the strains on the system and the COVID-19 pandemic, some residents were not able to meet their deadline. SB 303 would relieve some of the pressure put on these residents by extending the deadline by two years to allow additional time to rebuild or acquire a replacement property."

2. Revenue loss. SB 303 extends the period for taxpayers to transfer their base year values, which would likely reduce valuations for property tax purposes. As a result, the state, cities, counties, and special districts will have to reduce spending or increase taxes to compensate for any foregone revenue resulting from the measure.

3. Flexible deadline. Over time, the Legislature has extended the deadline for taxpayers to purchase or newly construct a replacement property to apply a base year value transfer under Proposition 50, often in response to wildfires. The Legislature initially set it at two years (SB 2535, Ellis, 1986), and then extended it to three years after the Oakland Hills fire (AB 1824,

Lee, 1993). In 2006, the Legislature further extended the deadline from three to five years for disasters occurring on or after July 1, 2003 (AB 1890, Mountjoy). Three years later, the Legislature allowed the San Diego County Board of Supervisors to extend the deadline two additional years for property substantially damaged or destroyed by the 2003 Cedar Fire (AB 157, Anderson). SB 303 provides a statewide extension from five to seven years to account for both California's recent wildfires, as well as the economic distress caused by the COVID-19 pandemic.

4. Proposition 19. Last year, the Legislature placed on the ballot, and voters approved as Proposition 19, the Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act (ACA 11, Mullin). The Act created a new section of the California Constitution to allow base year value transfers for disabled taxpayers and those over the age of 55, as well as a victim of a wildfire or other natural disaster. Proposition 19 allowed taxpayers to transfer base year values to properties of greater value and across county lines regardless of whether the accepting county enacted an ordinance, so long as the replacement property is purchased or constructed within two years of the date the original property is sold, or damaged or destroyed by a disaster. Disagreement exists whether Proposition 19 also "impliedly" repeals other base year value transfer laws, including the one in which SB 303 extends the deadline. A legal analysis from the BOE Chief Counsel (found here: <https://www.boe.ca.gov/meetings/pdf/2021/011421-M1a1-Legal-Analysis.pdf>) states:

"Although there is no explicit language making any aspect of the previous base year value transfer provisions inoperative, Section 2.1, subdivision (b) is made operative on and after April 1, 2021 'notwithstanding any other provision of this Constitution or any other law,' ensuring that no previous constitutional provision or law nullifies any part of Section 2.1, subdivision (b). The previous base year value transfer provisions contain numerous differences with Section 2.1, subdivision (b), some of which are in direct contravention to it. Therefore, in our view, Section 2.1 did not intend the simultaneous operation of the previous base year value transfers related to primary residences. However, because Prop. 19 is clear that its base year value transfer provisions apply only to primary residences, Prop. 19's effect on RTC sections 69 and 69.3 are not entirely clear ... Because Prop. 19's text does not explicitly answer many questions or is ambiguous, a number of the answers here are based on the perceived intent of the Legislature and voters. Therefore, the Legislature should make clear the answer to these and other questions in follow-up legislation."

The effects of implied repeal could be dire for victims of disasters seeking to transfer base year values of homes destroyed by disasters declared by the Governor. Proposition 19 only gives disaster victims two years to purchase or construct a replacement residence, whereas current law allows taxpayers five years to identify a replacement residence, which SB 303 extends to seven. Given the many disasters that have affected California in recent years, as well as the difficulty reconstructing a home destroyed by a disaster within two years, implied repeal would deny eligibility for base year value transfers purchased or newly constructed two years after a disaster, resulting in the new homes being assessed at its fair market value when victims were counting on the five-year period. While the Legislature could state in statute that it intends to maintain these benefits, uncertainty will persist unless and until voters enact a subsequent initiative amending the California Constitution.

5. Gift of public funds. Section Six of Article XVI of the California Constitution prohibits the Legislature from making a gift of public funds. By applying its provisions retroactively to the

2015-16 fiscal year, SB 303 could be construed to constitute a gift of public funds; however, the bill includes provisions stating legislative intent that the bill does not because it serves a public purpose.

6. **Mandate.** The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Since SB 303 extends time periods for disaster-affected taxpayers to claim base year value transfers, Legislative Counsel says that it imposes a new state mandate. The measure provides that the state shall not reimburse local agencies for property tax revenue losses, instead stating that should the Commission on State Mandates determine that the bill imposes a reimbursable mandate, reimbursement must be made pursuant to existing statutory provisions.

**Support and Opposition** (3/8/21)

**Support:** Calaveras County Assessor Leslie K. Davis, Assessors' Association; Howard Jarvis Taxpayers Association.

**Opposition:** None received

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