

1998

## Property Taxes: Contaminated Property.

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## Property Taxes: Contaminated Property. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

### PROPERTY TAXES: CONTAMINATED PROPERTY. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Directs Legislature to allow repair or replacement of environmentally contaminated property or structures, as defined, without increasing the tax valuation of the original or replacement property.
- For tax purposes, property value is the assessed valuation for 1975–76 unless the property is reappraised upon purchase, new construction, or change in ownership. For property rendered unusable by environmental contamination, this measure allows either: transfer of the base-year valuation to a replacement property if the contaminated property is transferred; or exclusion of repair or replacement of damaged structures from the definition of “new construction.”

#### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Property tax revenue losses probably less than \$1 million annually in the near term to schools, counties, cities, and special districts.
- School revenue losses (about half of total) would be made up by the state.

#### Final Votes Cast by the Legislature on ACA 22 (Proposition 1)

Assembly: Ayes 76  
Noes 0

Senate: Ayes 30  
Noes 3

#### Analysis by the Legislative Analyst

##### Background

Local property taxes are based on each property's assessed value. As long as a property has the same owner, its assessed value generally cannot increase by more than 2 percent each year—even if the property's market value is increasing at a faster rate. As a result, the market value of many properties is higher than the assessed value. Whenever a property is sold or transferred, it is reappraised and its assessed value generally increases to reflect the current market value. In such cases, the property taxes for that piece of property also increase.

Current law allows for some exceptions to this general rule. For instance, homeowners over the age of 55 generally can transfer their current assessed value to a replacement home within their county and in some cases to other counties. Therefore, these homeowners do not experience an increase in property taxes when they purchase a replacement home.

##### Proposal

This constitutional amendment allows property owners to transfer their current assessed value to a replacement property within their county if the original property was environmentally contaminated. This contamination could be caused, for example, by the presence of toxic or hazardous materials. The replacement property could involve either (1) the repair or reconstruction of a damaged structure on the contaminated site or (2) purchase of a similar structure on a different site.

In order to qualify for this special treatment, *all* of the following conditions would need to be met:

- A residential property (for example, a house or condominium) is made uninhabitable or a nonresidential property (for example, a store or business) is made unusable by an environmental problem.

- The current owner did not know of the environmental problem when the property was purchased or built.
- A state or federal government agency designates the property as a toxic hazard, environmental hazard, or environmental cleanup site.
- A property is substantially damaged or destroyed by the environmental cleanup efforts.
- A lead government agency stipulates that the property was not made uninhabitable or unusable by an act or omission of the current owner.

The measure applies only to replacement property acquired, constructed, or repaired (1) after January 1, 1995 and (2) within five years after ownership of the contaminated property is sold or transferred. A county would be given the authority to extend this exemption to property owners moving from *other* counties and replacing environmentally contaminated property.

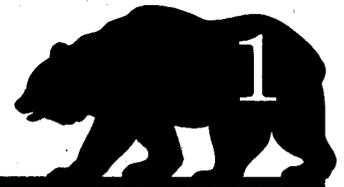
##### Fiscal Effect

By exempting these replacement properties from appraisal at market value, this measure could reduce property tax revenues to local governments. Currently, there appear to be relatively few properties that would qualify for this special treatment. As a result, the annual property tax revenue loss would likely be less than \$1 million in the next few years. However, changes in environmental laws or the discovery of new environmental contaminations could significantly increase the number of eligible properties in the future.

Counties, cities, and special districts would bear about one-half of any annual revenue loss. The remainder of the loss would affect schools and community colleges, which also receive property tax revenue. Under existing law, these losses to schools and community colleges would be made up by the state.

For the text of Proposition 1 see page 82

# Property Taxes: Contaminated Property. Legislative Constitutional Amendment.



## Argument in Favor of Proposition 1

Proposition 1 will provide property tax relief for innocent homeowners who are victims of environmental disasters. Specifically, if a family's home is destroyed as part of an environmental clean-up, Proposition 1 will enable those families to buy a similarly-valued home or rebuild their home once the area has been cleaned of the hazard.

Families have been protected from excessive property tax increases for 25 years because of Proposition 13. Taxes have remained low and predictable. Unfortunately, when homeowners, through no fault of their own, have their homes declared toxic waste sites, Proposition 13 protections no longer exist.

As we have become more aware of the existence and dangers of toxic waste, we have discovered previously undetected areas where toxic materials were dumped many years ago. Unfortunately, in some of these areas, residential neighborhoods have been built right on top of these toxic sites. Unsuspecting home buyers bought these home without any knowledge of the terrible dangers on their property.

When these toxic sites have been discovered, some families have been forced to abandon their homes. Many times these homes are subsequently destroyed by order of government agencies as part of the necessary clean-up of this toxic waste.

In addition to the shock of being forced out of their home, these homeowners are also faced with potentially huge property tax increases in their new homes. The protection they enjoyed under the property tax limitations of Proposition 13 is lost. The new higher property taxes are preventing these people from obtaining another home of the same value and quality

that they previously enjoyed. This is simply wrong and tragically unfair to innocent victims.

That is why I introduced in the Legislature ACA 22, which is now on your ballot as Proposition 1. The Legislature voted unanimously to put Proposition 1 on the ballot for your approval. It is only fair to allow people who have lost their home to be able to maintain their existing level of property taxes.

Under the current law, we already protect innocent homeowners who lose their home to natural disasters. If an earthquake, fire or flood destroys your home, you are allowed to rebuild or buy a new home without losing your existing Proposition 13 tax protection. This same degree of fairness should be extended to those people whose property is destroyed by health and life-threatening toxic waste buried on their residential property.

The last thing the victims of this type of catastrophe need is a tax increase. Proposition 1 will guarantee these people are treated fairly and not forced into paying higher taxes because of their misfortune.

One of my highest priorities in the Legislature has been to protect taxpayers against unnecessary and unwarranted taxes. Forcing people who have faced a major disaster to also pay higher property taxes is flat out wrong. That is why taxpayer associations, homeowner organizations and environmental groups have all come together to support Proposition 1.

Please join with us and vote for fairness. Vote YES on Proposition 1.

**ASSEMBLYMAN CURT PRINGLE**  
*Former Speaker, California State Assembly*

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**Argument against was not submitted**

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# Text of the Proposed Laws

## Proposition 1: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 22 (Statutes of 1998, Resolution Chapter 60) expressly amends the California Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT TO SECTION 2 OF ARTICLE XIII A

SEC. 2. (a) The ~~full cash value~~ *“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 ~~which 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” ~~shall 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.

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 ~~which 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), 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 of the sale of the original property. 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. This paragraph shall apply to any replacement dwelling ~~which that~~ was purchased or newly constructed on or after November 5, 1986.

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 ~~which that~~ receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling ~~which 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 not apply to any replacement dwelling ~~which that~~ was purchased or newly constructed before November 9, 1988.

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 the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term “newly constructed” ~~shall does~~ not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, ~~which that~~ is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a ~~single or multiple family single- or multiple-family~~ dwelling ~~which that~~ is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, ~~which that~~ are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements ~~which that~~ qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term “change in ownership” ~~shall does~~ not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action ~~which that~~ has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property ~~which that~~ occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property ~~which that~~ is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985-86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, "affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991-92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse which that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) (1) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first ~~\$1,000,000~~ one million dollars (\$1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and

their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar (\$1,000,000) full cash value limit specified in paragraph (1).

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term "new construction" does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, "qualified contaminated property" means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is "uninhabitable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is "unusable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

## Text of Proposed Laws—Continued

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership ~~which~~ that occur, and new construction ~~which~~ that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership ~~which~~ that occur, and new construction ~~which~~ that is completed, on or after the effective date of the amendment.

## Proposition 2: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 30 (Statutes of 1998, Resolution Chapter 77) expressly amends the California Constitution by repealing and adding a section thereof, and by adding an article thereto; existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT OF ARTICLE XIX AND PROPOSED ADDITION OF ARTICLE XIX A

First—That Section 6 of Article XIX thereof is repealed.

~~SEC. 6. This article shall not prevent the designated tax revenues from being temporarily loaned to the State General Fund upon condition that amounts loaned be repaid to the funds from which they were borrowed.~~

Second—That Section 6 is added to Article XIX thereof, to read:

SEC. 6. *The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:*

(a) *That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.*

(b) *That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:*

(1) *The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.*

(2) *The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.*

(c) *Nothing in this section prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this*

*article. Any loan authorized as described by this subdivision shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it was borrowed, not later than four years after the date on which the loan was made.*

Third—That Article XIX A is added thereto, to read:

### ARTICLE XIX A LOANS FROM THE PUBLIC TRANSPORTATION ACCOUNT OR LOCAL TRANSPORTATION FUNDS

SECTION 1. *The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:*

(a) *That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.*

(b) *That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:*

(1) *The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.*

(2) *The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.*

SEC. 2. (a) *As used in this section, a "local transportation fund" is a fund created under Section 29530 of the Government Code, or any successor to that statute.*

(b) *All local transportation funds are hereby designated trust funds.*

(c) *A local transportation fund that has been created pursuant to law may not be abolished.*

(d) *Money in a local transportation fund shall be allocated only for the purposes authorized under Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code and Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code, as*