

**Sean M. Sherlock**

Partner

714.427.7036

[ssherlock@swlaw.com](mailto:ssherlock@swlaw.com)My [LinkedIn](#) Profile

Follow me on Twitter:

[@seanmsherlock](https://twitter.com/seanmsherlock)

## **Assembly Bill 59 Clears Path for Higher Commercial Property Taxes**

Assembly Bill 59 (Bonta) was introduced January 7, 2013, to amend California Government Code section 50079, in response to the California Court of Appeal decision in *Borikas v. Alameda Unified School District* (Dec. 6, 2012) 211 Cal.App.4<sup>th</sup> 833. If enacted, the bill would permit school districts to impose differing taxes on real property based on zoning, size, or other "rational classifications among . . . types of property within the school district."

California Government Code section 50079 currently authorizes school districts to impose "qualified special taxes" within the district. It requires, however, that "qualified special taxes" be imposed uniformly to all taxpayers or all real property within the school district, subject to certain exemptions for senior citizens and disabled persons.

In June, 2008, Alameda Unified School District voters enacted Measure H, which imposed a parcel tax upon all real property within the district, but at different rates for residential and commercial properties. Measure H taxed residential parcels \$120 per year, commercial and industrial parcels under 2,000 square feet \$120 per year, and commercial and industrial parcels 2,000 square feet or greater \$0.15 per square foot per year, up to a maximum of \$9,500 per year.

In *Borikas v. Alameda Unified School District*, plaintiff sued the school district to have Measure H invalidated as a violation of Government Code section 50079. The trial court



entered judgment in favor of the school district, but the court of appeal reversed.

The court found the statute's requirement that qualified special taxes "apply uniformly to all taxpayers or all real property" was intended to be a constraint on the extent of the taxing authority delegated to school districts. Because Measure H differentiated between properties based on their classification and size, the court concluded that it violated section 50079, and was thus invalid. The court added:

"We are well aware that we are being called on to interpret statutory language enacted in a different economic era and in the wake of two of the most far-reaching tax constraining measures ever passed by the state electorate (Propositions 13 and 62), that the state has since faced crippling economic conditions, and that school districts and other local governmental entities are more dependent than ever on the revenues from special taxes. The courts, however, cannot recalibrate the taxing power statutorily delegated to local entities; any adjustment in that regard must be made by the state Legislature."

Assembly Bill 59 is intended to be just such a fix. It would amend section 50079 by adding the following:

*(c) The provisions in this section requiring uniform application of taxes shall not be construed as limiting a school district from assessing taxes in accordance with rational classifications among taxpayers or types of property within the school district. This subdivision is declaratory of existing law, and shall apply to transactions predating its enactment.*

The bill expressly states that it is the “intent of the Legislature to abrogate the holding in *Borikas v. Alameda Unified School District*. . . to the extent that the court’s holding restricts the right of the Alameda Unified School District to retain any of the qualified special taxes imposed pursuant to Measure H, as approved by the district’s voters on June 3, 2008.”

Thus, AB-59 is intended to save Measure H, and enable other school districts to impose differing taxes on real property based on type, size, or other “rational classifications.”

1/17/13

**Snell & Wilmer L.L.P.**

Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Salt Lake City | Tucson

©2013 All rights reserved. The purpose of this newsletter is to provide our readers with information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The articles and/or information should not be considered legal advice or opinion, because their content may not apply to the specific facts of a particular matter. Please contact a Snell & Wilmer attorney with any questions.

[www.swlaw.com](http://www.swlaw.com)