

[Assembly Bill 1251](#) (Gomez)

Date: 09/04/15

Program: Property

Sponsor: Author

Revenue and Taxation Code Section 402.1

Effective: January 1, 2016

Michele Pielsticker (Chief) 916.322.2376

Rose Marie Kinnee (Analyst) 916.445.6777

***This analysis only addresses the provisions that impact the Board of Equalization (BOE).***

**Summary:** Requires assessors to consider the impact upon the value of land subject to a recorded greenway easement, which the bill creates as the Greenway Development and Sustainment Act.

**Summary of Amendments:** The amendments since the previous analysis double joint this bill to AB 668, which also proposes amendments to RTC Section 402.1.

**Purpose:** To provide an assessment reduction if a proposed easement reduces property value.

**Fiscal Impact Summary:** Indeterminable.

**Existing Law:** When determining a property's fair market value, property tax law<sup>1</sup> requires the assessor to consider the effect of legally enforced restrictions on a property's use, such as zoning or environmental constraints. Similarly, when determining land value, the law requires the assessor to consider the effect of any *government-imposed* restrictions on land use.<sup>2</sup> Except for conservation, trail, or scenic easements granted to specified nonprofit organizations,<sup>3</sup> the law does not allow the assessor to consider the effect of an agreement with a nonprofit organization that may negatively impact value.<sup>4</sup>

**Proposed Law:** This bill amends the law to explicitly require the assessor to consider any negative value impact resulting from recorded greenway easements granted in favor of a public agency, or in favor of a nonprofit corporation with a primary purpose to develop and preserve greenways. Although not explicitly stated, the law already requires this consideration for any public agency easements, so the bill extends this consideration to a nonprofit corporation greenway easement.

To the extent that existing law for nonprofit organizations related to conservation, trail, or scenic easements would not apply to these particular easements, this bill corrects that deficiency by expressly including greenway easements.

**In General:** The BOE has generally held that the creation of an easement is not a change ownership of the property subject to the easement, and the easement remains taxable to the property owner. Specifically, Assessors' Handbook Section 501 "Basic Appraisal" on Page 50, Part I, reads:

There are no change in ownership statutes or rules dealing specifically with the private grant of an easement or right of way from one landowner to another. Although an easement or right of way generally does not constitute "a transfer of value substantially equivalent to the fee" to the benefited person, as discussed in Chapter 3, courts have determined that a recorded permanent transfer of a present beneficial property right from one parcel to another can be a reassessable event. (*Mitsui Fudosan, Inc. v. Los Angeles County*, 219 Cal.App.3d 525.). Where the agreement between the property owners documents a recorded permanent grant of an appurtenant easement that includes present beneficial interests in that property described that are in fact substantially equivalent to the value of the fee, it qualifies as a change in ownership of the easement transferred, per section 60. Most easements do not meet the change in ownership test

<sup>1</sup> Revenue and Taxation Code (RTC) [Section 110\(a\)](#)

<sup>2</sup> RTC Section [402.1\(a\)](#)

<sup>3</sup> RTC Section 402.1(a)(8)

<sup>4</sup> *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004

in section 60 and therefore remain taxable to the property owner; however, they may need to be considered when determining the legally permissible highest and best use for appraisal purposes.

Relevant to this bill regarding conservation easements, Assessors' Handbook 521 "Assessment of Agricultural and Open-Space Properties" on Page 17, Part I reads:

Despite a conservation easement's legal status as an interest in real property, the conveyance of such an interest does not generally constitute a change in ownership of the property subject to the easement, where the primary purpose of the easement is the mere right to enforce *restrictions* (i.e., negative covenants) against the grantor. This is because, in such a case, with respect to the property subject to the easement, the conveyance would constitute neither a transfer of the beneficial use nor a transfer of an interest with a value substantially equivalent to that of the fee. Revenue and Taxation Code section 60 requires that a conveyance satisfy both conditions in order for a change in ownership to occur.

**Background:** Assembly Bill 99 (Stats. 1993, Ch. 1002, Andal) amended RTC Section 402.1 to require the assessor to consider the effect of a recorded conservation, trail, or scenic easement, as described in Civil Code Section 815.1, on the assessment of land. These easements must be granted to a public agency, or to a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code. These nonprofit corporations must have as their primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open space condition or use. The California Parks and Recreation Society, Inc. sponsored this provision to encourage private property owners to grant easements to public parks agencies trying to create continuous scenic trail systems accessible to the public. In 1993, Civil Code Section 815.10 already required that any conservation easements granted under Chapter 4 (commencing with Civil Code Section 815) be considered enforceable restrictions under Revenue and Taxation Code Section 402.1. Thus, while AB 99 was declaratory of existing law, it provided a useful cross reference to the property tax provisions included in the Civil Code that were lacking in the Revenue and Taxation Code.

### Commentary:

1. **The September 4, 2015 amendments** double joint this bill to [AB 668](#) (Gomez), related to nonprofit corporation imposed restrictions on affordable housing, to prevent chaptering out issues.
2. **Greenway easements.** This bill authorizes certain entities to acquire easements for the purpose of developing greenways along urban waterways. The bill defines a greenway as a separate path for bikes and pedestrians that must be located within 400 yards of an urban waterway where access to the property has been granted through some sort of agreement with the property owner. An urban waterway is a creek, stream, or river that crosses developed property or open space where the relevant local agency's planning document designates the land as residential, commercial or industrial.
3. **Granting an easement does not guarantee a property tax reduction.** The creation of the easement may or may not result in a property tax reduction.
4. **An easement is an interest in real property.** While an easement is an interest in real property, it is not always separately assessable to the person who holds that one particular interest apart from the remainder of the bundle of rights held by another person.
5. **If the easement triggers a change in ownership, it becomes separately assessable.** If the granting of the easement meets the change in ownership definition (a transfer of value substantially equivalent to the fee), then the easement becomes subject to separate assessment. This requires two actions:

**Create New Assessment.** First, the assessor must establish a new base year value for the easement and assess it to the new owner. For a public agency, the property interest automatically becomes tax exempt as government owned property. For a nonprofit

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.

corporation, the property interest becomes eligible for a property tax exemption under the welfare exemption.

**Reduce Existing Assessment.** Second, the assessor must reduce the granting property owner's land base year value. Generally, the assessor would proportionately reduce the value according to the method initially established.

6. **If the easement doesn't trigger a change in ownership, the property value will only be reduced if the easement negatively impacts the property's value below its Proposition 13 protected value.** If the test isn't met, the easement remains taxable to the property owner. In this case, the assessor must consider whether the easement added to, subtracted from, or did not affect the property's value. If after granting the easement the property's market value falls below its Proposition 13 base year value, then the property's assessed value can be reduced. This process must be repeated each year as noted below.
7. **Annual Assessment: Lower of Two Values.** Properties with a greenway easement that can't be separately assessed will be assessed at the lower of two values as of each lien date:
  - Current fair market value as impacted by the easement (RTC §§110 and 402.1)
  - Factored base year value (RTC §110.1)

As a practical matter, the greenway easement must have a significant negative impact on property value for a property owner to receive a property tax reduction. The reason is that the property's value must fall below the Proposition 13 protected value before the easement's value impact can be considered in the assessment.

**Administrative Costs:** The BOE's costs to update its documents, website materials, and provide guidance to assessors are absorbable.

**Revenue Impact:** It is not possible to determine the revenue impact of this measure with any degree of certainty due to the number of variables. Each assessor must exercise his or her judgment to determine whether the granting of the easement is a change in ownership of this real property interest. For those easements that are not changes in ownership, any revenue loss is likely to be minimal since the easement must be voluntary. It seems unlikely that a property owner would grant an easement that so negatively impacted the property's value that it dips below its Proposition 13 assessed value. In addition, the revenue implications must be limited to easements granted to a nonprofit corporation, since existing law already extends to those granted to a public agency.