STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/17/11**	Bill No:	**Assembly Bill 703**
Tax Program:	**Property**	Author:	**Gordon**
Sponsor:	**Author**	Code Sections:	**RTC 214.02**
Related Bills:		Effective Date:	**Upon enactment**

BILL SUMMARY

This bill would delete the January 1, 2013 sunset date of the property tax welfare exemption for property in its natural state.

ANALYSIS

CURRENT LAW

Revenue and Taxation Code Section 214.02 establishes the property tax exemption for property in its natural state as part of the constitutionally based welfare exemption. These are properties that are used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, provided that properties are open to the general public, subject to reasonable restrictions.

The exemption does not apply to property reserved for future development. Additionally, it does not apply to a nonprofit organization that owns more than 30,000 acres in a single county if is not fully independent, as specified, of the owner of adjacent taxable lands.

To qualify, the property must be owned and operated by a scientific or charitable organization with the primary interest of preserving those natural areas and meeting all the requirements of Section 214. The exemption is scheduled to sunset on January 1, 2013.

PROPOSED LAW

This bill would delete the January 1, 2013 sunset date, thereby permanently establishing the property tax welfare exemption for property in its natural state.

IN GENERAL

Welfare Exemption. Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemptio*n, was first adopted by voters as a constitutional amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes.

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.

When the Legislature enacted Revenue and Taxation Code Section 214 to implement the Constitutional provision in 1945, a fourth purpose, *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

The Constitution and statutes impose a number of requirements that must be met before property is eligible for exemption. In general:

- The property must be irrevocably dedicated to religious, hospital, scientific, or charitable purposes.
- The owner must not be organized or operated for profit and must be qualified as an exempt organization, under a specific federal or state statute, by the Internal Revenue Service or the Franchise Tax Board.
- No part of the net earnings of the owner may inure to the benefit of any private shareholder or individual.
- The property must be used for the actual operation of the exempt activity.

BACKGROUND

Natural State Properties. Section 214.02 was added during the 1971 special session of the Legislature. This provision had been included in bills heard during the 1971 regular session (AB 1264, Biddle and AB 185, Bagley), and was the product of a 1970 Assembly Revenue and Taxation Committee interim hearing on the subject of natural lands preservation. In 1970, the Committee held hearings and conducted studies to investigate alternative tax policies that would have a positive environmental influence on the future of the state. The staff report to the committee concluded that, due to an over reliance on property tax revenues, local governments were reluctant to preserve open space areas, recreational areas, and ecologically valuable areas. Hence, land was becoming a vanishing resource subject to irreparable damage. (Source: The Fiscal Implications of Environmental Control; an Appendix to Final Report of the Assembly Committee on Revenue and Taxation, Interim Activities (1970) pp. 90-92.)

Sunset Date History. The intent of the original legislation enacting Section 214.01 was to assist nonprofit organizations that purchased open-space and similar lands, held the lands temporarily, and then sold or donated the lands to public agencies for permanent use as park facilities. A sunset date was included in the original legislation as a result of a Senate Revenue and Taxation Committee hearing, to ensure that the charitable organizations sold or donated the lands rather than hold them indefinitely. Since that time, it appears that in some cases charitable organizations may be the permanent owners of lands due, in part, to the limited ability of public agencies to acquire additional lands. The sunset date has been continuously extended as noted in the following table.

Bill	Author	Years Extended	Sunset Year
AB 971 (Ch. 67, Stats. 1982)	Bergeson	1	1982
AB 2308 (Ch. 1485, Stats. 1982)	Bates	5	1987
AB 2890 (Ch. 1457, Stats. 1986)	Hannigan	5	1992
AB 2442 (Ch. 786, Stats. 1992)	Baker	10	2002
SB 198 (Ch. 533, Stats 2001)	Chesbro	10	2012

When the extension of the welfare exemption was discussed in 1982, concern was expressed that the exemption primarily benefited the former owner of 42,000 acres of land on Santa Catalina Island, who at that time was the sole owner of large landholdings in the middle of the exempt property. It was argued that this situation gave the owner the benefits of a large estate without having to pay tax on the entire property. Thus, limited provisions were added to prevent the operation of the exempt property from inuring to the benefit of the adjacent land owner. Today, many organizations throughout the state benefit from the exemption, and it is no longer viewed as primarily benefiting one particular property.

The constitutionality of Section 214.02 was questioned and upheld in *Santa Catalina Island Conservancy* v. *County of Los Angeles* 126 Cal.App.3d 221(1981) on the basis that preservation of natural environments and open space recreational opportunities for the benefit of the general public is a "charitable" purpose.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to provide the same long-term property tax assurances to important open-space lands that are currently afforded to schools, hospitals, and churches operated by nonprofit organizations.
2. **Issue.** Without this bill, these properties will become subject to property tax in 2012. This bill would give nonprofit organizations certainty in their financial planning related to property tax matters. Supporters note that failure to extend the exemption would be disruptive, likely resulting in some organizational insolvency.
3. **The exemption has been in place nearly 40 years.** The exemption has been continuously available since 1972 as its sunset provisions have been extended five times.
4. **What property is currently exempt under this section?** Properties exempt pursuant to this section include qualified properties owned by nonprofit organizations such as: The Nature Conservancy, The Trust for Public Land, Anza-Borrego Foundation, Big Sur Land Trust, Peninsula Open Space Trust, Napa County Land Trust, Save the Redwoods League, Santa Catalina Island Conservancy, and Mountains Restoration Trust.

COST ESTIMATE

The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Hundreds of properties throughout the State are estimated to be currently exempt from property tax pursuant to Section 214.02. These properties would continue to receive the welfare exemption under this bill. The total current exempt value for these properties does not exceed an estimated $1 billion.

REVENUE SUMMARY

It is difficult to determine the annual revenue loss from extending this exemption, but it is estimated to be less than $10 million annually. ($1 billion x 1%)

Qualifying Remarks. The number of properties exempt under Section 214.02 varies from year to year as (1) additional property acquisitions are made, and (2) properties are transferred to public agencies and then are not subject to property tax under those provisions of law for government-owned property. Additionally, it is likely that the revenue loss will grow slightly over time due to the Proposition 13 inflation factor.

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