

# BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Corbett</b>	<b>SB 1285</b>

## SUBJECT

Charitable Contributions/Conservation Lands Acquired By The State/FTB Use State-Approved Appraisal Value Or Value Of An Appraisal By Qualified Member of Appraisal Foundation To Calculate Appropriate Value of Contribution Claimed By Seller

## SUMMARY

This bill would require the Franchise Tax Board (FTB) to establish appraisal standards and requirements for the purpose of substantiating the amount of charitable contributions claimed by a seller for conservation land acquired using state funds.

## PURPOSE OF BILL

The purpose of this bill is to improve the appraisal process used by the public agencies for acquiring conservation lands.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and would apply as of that date.

## ANALYSIS

### FEDERAL/STATE LAW

Federal and state laws allow a charitable deduction both for personal income taxpayers and for corporate taxpayers for a qualified conservation contribution. A deduction for such a contribution is subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organizations.

Federal and state laws generally apply the rule that the deduction for gifts of property other than money is based on the fair market value of the property at the time of contribution. More specifically, fair market value is the starting point from which the deductible amount is determined after application of the various limitations.

Federal law contains reporting and substantiation requirements for the allowance of the deductions for noncash charitable contributions. For certain charitable contributions by individuals, corporations, partnerships or S corporations, federal law requires certain substantiation requirements for deductions that exceed, in the aggregate, \$5,000. The donor must obtain a "qualified appraisal" and attach an appraisal summary to the federal return on which the deduction is first claimed.

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The Pension Protection Act of 2006 (PPA) amended the Internal Revenue Code (IRC) by defining the term “qualified appraisal” as the following:

1. An appraisal that is treated as a “qualified appraisal” under regulations or other guidance prescribed by the Secretary, and
2. An appraisal conducted by a “qualified appraiser” in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

The PPA also amended the IRC to provide that the term “qualified appraiser” is the following:

1. An individual who has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
2. An individual who regularly performs appraisals for which the individual receives compensation, and
3. An individual who meets requirements as may be prescribed by the Secretary in regulations or other guidance.

The IRC further provides that an individual will not be treated as a “qualified appraiser” unless the individual has satisfied the following:

1. The individual demonstrates verifiable education,
2. The individual has experience in valuing the type of property subject to the appraisal, and
3. The individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the three-year period ending on the date of the appraisal.

Federal law requires that taxpayers substantiate contributions of \$250 or more by a contemporaneous written acknowledgement of the contributions by the donee organizations.

California conforms to the federal rules relating to “qualified appraisals” and other documentations for certain contributions as of a specified date of January 1, 2005. California has not conformed to any of the provisions added by the PPA.

### THIS BILL

This bill would require a seller to attach a copy of an appraisal to the seller’s California personal income tax (PIT) return.

This bill would require that the appraisal attached to the California PIT return shall be prepared by an appraiser licensed by the Office of Real Estate Appraisers.

This bill would provide that for purposes of substantiating the amount of contribution for California income and franchise tax purposes, the appraisal attached to the return shall comply with the applicable requirements of the Revenue and Taxation Code and the IRC.

## **LEGISLATIVE HISTORY**

AB 2455 (Laird) would also enact provisions related to appraisals for conservation acquisitions and add the Department of Parks and Recreation to the definition of “acquisition agency.” AB 2455 does not contain the provisions relating to the Franchise Tax Board’s authority to establish appraisal standards and requirements for the purpose of substantiating the amount of charitable contributions claimed by a seller for conservation land acquired using state funds. AB 2455 passed the Appropriation Committee with amendments and referred to the Assembly for concurrence.

## **OTHER STATES’ INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Review of *Florida* and *Illinois* laws found no comparable record keeping and substantiation requirements for charitable contributions.

*Massachusetts, Michigan, Minnesota, and New York* laws follow the federal rules relating to record keeping and substantiation of charitable contributions.

## **FISCAL IMPACT**

This bill would not significantly impact the department’s costs.

## **ECONOMIC IMPACT**

This bill would not impact the state’s income tax revenue.

## **Appointments**

None.

## **Support/Opposition**

Support:

According to the most recent policy committee analyses issued by the Senate Rules Committee on Water Parks and Wildlife, this bill is supported by The Nature Conservancy, The California Council of Land Trusts, The East Bay Regional Park District, The Planning and Conservation League, and The Trust for Public Land.

Opposition:

None on file.

## **VOTES**

Assembly Floor – Ayes: 51, Noes: 24

Senate Floor – Ayes: 24, Noes: 11

Concurrence – Ayes: 24, Noes: 10

## **LEGISLATIVE STAFF CONTACT**

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