



Legislative Bill Analysis

[Assembly Bill 2363](#) (Mia Bonta)
Date: February 16, 2022 (Introduced)
Program: Property Taxes
Revenue and Taxation Code Section 214.14
Effective: Immediately

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Summary: This bill adds a definition of "museum" for purposes of the property tax welfare exemption and expands the exemption to museums that are used for special events, including private rental events for its individual or corporate members, if certain conditions are met.

Fiscal Impact Summary: The revenue loss is indeterminable.

Existing Law: Under the California Constitution, all property is taxable, unless otherwise provided for.¹ Property used for free museums is specifically exempt.² Museums that charge admission may qualify for the welfare exemption,³ if their properties are owned and operated by organizations meeting all the requirements of Revenue and Taxation Code⁴ section [214](#).

Section 214 generally exempts from taxation, subject to certain conditions and qualifications, property that is (1) owned by nonprofit organizations organized and operated for charitable purposes, and (2) used exclusively for those purposes.

Section [214.14](#) provides generally that property used exclusively for the charitable purposes of museums, and owned and operated by a qualifying religious, hospital, scientific, or charitable fund, foundation, or corporation, shall be deemed to be within the exemption authorized by section 214. Section 214.14(b) clarifies what "used exclusively" means and provides that this term does not include property used for activities and facilities not related to the primary charitable purposes of museums and not reasonably necessary or incidental to those purposes.⁵

Proposed Law: Museum Definition. For purposes of the property tax welfare exemption, this bill defines "museum" as a public or private nonprofit entity or institution organized on a permanent basis for essentially educational or aesthetic purposes and that utilizes a professional staff, owns or utilizes tangible objects, cares for tangible objects, and exhibits those tangible objects to the public on a regular basis. This definition specifies that the term includes, but is not limited to, museums that have both tangible and digital collections, aquariums, arboretums, botanical gardens, art museums, children's museums, general museums, historic houses and sites, history museums, nature centers, natural history and anthropology museums, planetariums, science and technology centers, specialized museums, and zoological parks.

No Reimbursement. The bill states that no appropriation is made and the state shall not reimburse any local agency for any property tax revenues lost pursuant to the exemption.

¹ California Constitution, Article XIII, section [1](#).

² Section [3](#)(d) of Article XIII and section [202](#)(a)(2) of the Revenue and Taxation Code.

³ Section [4](#)(b) of Article XIII of the California Constitution

⁴ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

⁵ Section 214.14(b)(3).

*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.*

Exclusive Use. This bill adds detail to the exclusive use requirement. It states that the exemption cannot be denied for a museum that is made available for special events, including private rental events for its individual or corporate members or for other charitable or government purposes, if all of the following are met:

- The property is owned and operated by a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation, which meets all the requirements of the welfare exemption under section 214 (a).
- The property is used exclusively for the charitable purposes of museums.

In General: Under section 4(b) of Article XIII of the California Constitution, the Legislature is authorized to exempt from taxation, in whole or in part:

Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operated for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

In exercising the above constitutional authorization, the Legislature enacted section 214, which reiterates the constitutional authorization and outlines numerous conditions and qualifications for receiving the exemption. Section 214 provides that property used exclusively for charitable purposes owned and operated by corporations organized and operated for charitable purposes is exempt from taxation if the owner is not organized and operated for profit and the property is used for the actual operation of the exempt activity.

Charitable Purposes. 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. The courts have broadly construed *charitable* to include some educational purposes and activities.⁶ These court decisions have been codified in section 214(j), which provides that charitable purposes include certain educational purposes and activities, subject to the following requirements:

- The educational purposes and activities must benefit the community as a whole or an unascertainable and indefinite portion thereof.
- The educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

Section 214(j) expressly precludes exemption to educational purposes and activities primarily for the benefit of the organization's shareholders.

Exclusive Use. The Revenue and Taxation Code does not specifically define the term *used exclusively*; however, the courts have done so in a series of decisions. The California Supreme Court has stated that the phrase "exclusively used" may not be given a literal interpretation so as to mean that the property exempted must be used solely for the purposes stated to the total exclusion of any other use. The Supreme Court held that *used exclusively* for exempt purposes includes any use which is incidental to and

⁶ See *Lundberg v. County of Alameda* (1956) 46 Cal.2d 644, 653; *Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768, 778-779.

reasonably necessary for the accomplishment of the exempt purpose.⁷ Courts have applied this precedent to mean that a qualified organization's primary use of its property must be for exempt purposes and any other uses of property must be related to and reasonably necessary for the accomplishment of the exempt purpose.⁸

In discussing the exclusive use requirement, the State Board of Equalization (BOE) used the following example of a nonqualifying use:⁹

A qualified organization uses its property for the primary exempt purpose of providing a museum to the public while regularly leasing portions of the property to private firms for their business activities. The portions of the property leased to non-qualifying entities would be disqualified from exemption because:

- The organization's leases of the property to non-qualifying entities are not incidental to and reasonably necessary for the accomplishment of the exempt purpose, except as a method of generating rental income, and
- The use of the property by non-qualifying entities is not reasonably necessary for or in furtherance of the primary exempt purpose but rather, is in furtherance of non-exempt business purposes.

Commentary:

1. **Reintroduction. AB 2363** is a reintroduction of **SB 257** as it was amended on **April 22, 2021**. **SB 257** was held on the Senate Appropriations Committee suspense file on May 20, 2021. **AB 2363** contains the same definition of museum as **AB 1977** (Bonta, 2020). **AB 1977** was referred to the Assembly Revenue and Taxation Committee and did not receive a hearing.
2. **Retroactive.** The subdivision that is currently numbered as subdivision (c) is being renumbered as Subdivision (d) in the proposed amended statute. That subdivision states that amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005. This subdivision was added by Chapter 354 of the Statutes of 2004 and refers to the statute as written at that time. However, readers may not know which act added that subdivision, especially after it is renumbered. This causes confusion as to whether the bill's changes, regarding what constitutes a museum and what activities are exempt, are retroactive to the 2005 lien date. Such confusion could lead to large local property tax revenue losses and an administrative conundrum among County Assessors. Given this possible confusion, the author may wish to add the following amendments:

(d) The amendments made by Chapter 354 of the Statutes of 2004 ~~the act adding this subdivision~~ shall apply with respect to lien dates occurring on and after January 1, 2005.

⁷ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

⁸ *Honeywell Information Systems, Inc. v. County of Sonoma* (1974) 44 Cal.App.3d 23; *YMCA v. County of Los Angeles* (1950) 35 Cal.2d 760; *St. Germain Foundation v. County of Siskiyou* (1963) 212 Cal.App. 911; *Greek Theatre Association v. County of Los Angeles* (1978) 76 Cal.App.3d 768.

⁹ Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*, pages 46-47.

(e) The amendments made by the act adding subdivision (a) regarding the definition of "museum" and subdivision (c)(5) regarding exclusive use for special events shall apply with respect to lien dates occurring on and after the effective date of the act.

3. **Museum Definition.** This bill defines a "museum" as " a public or private nonprofit entity or institution organized on a permanent basis for essentially educational or aesthetic purposes ...". Does the author intend that a museum be a nonprofit entity or *property owned by* a nonprofit entity or institution? What is meant by a "public" nonprofit entity? This may cause confusion as "public" museums are owned by a government entity and generally would be exempt as government-owned property, not under the welfare exemption.
4. **Types of Museums.** This bill provides that the term "museum" includes other types of properties such as aquariums, arboretums, botanical gardens, historic houses and sites, nature centers, planetariums, science and technology centers, and zoological parks. Under this bill, all these different types of properties will be able to rent out their facilities without losing all or a portion of their exemption.
5. **Charitable Purpose.** Section 214 generally exempts from taxation, subject to certain conditions and qualifications, property that is (1) owned by nonprofit organizations organized and operated for charitable purposes, and (2) used exclusively for those purposes. Section 214(j) provides that charitable purposes includes certain educational purposes and activities. This bill provides that the exemption applies to a public or private nonprofit entity or institution organized on a permanent basis for "essentially educational or aesthetic purposes." The terms "essentially" and "aesthetic" may be read to expand the charitable purpose. Further, it is unclear what "essentially" and "aesthetic" mean.
6. **Special Events.** This bill provides that property used exclusively for the charitable purposes of museums shall include property that a museum makes available for special events, including private rental events for its individual or corporate members, and must meet all the requirements of section 214(a). However, it is unclear what "special events" means, such as the frequency of the event or type of occasion. Section 214(a)(3) requires that the property be used for the "actual operation of the exempt activity," and states that in making that determination, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:
 - (i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.
 - (ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

Thus, the phrase “special events” could refer to the frequency of the events held at the museum, such that the events are required to be “occasional” for the museum, or to the type of occasion, such that the events may occur regularly or frequently at the museum as long as they are “special” occasions for the event facility users. The meaning of the phrase may affect its compatibility with section 214(a)(3). The author may wish to clarify its meaning.

Costs: The BOE estimates costs of approximately \$1,734 and 21 personnel hours to update claim forms and Assessors' Handbook Section [267](#), *Welfare, Church, and Religious Exemptions*.

Revenue Impact: Estimating the revenue impact of this bill is difficult. Staff cannot estimate the number of properties that would qualify as museums under this bill. Staff also does not know the location and value of those properties. Revenue impact depends on (1) the number of properties that would qualify as museums under this bill, (2) the area rented by those museums, and (3) the taxable value of the rented area. At this time, based on these unknown factors, the revenue loss is indeterminable.