



Legislative Bill Analysis

[Assembly Bill 2363](#) (Mia Bonta)
Date: April 19, 2022 (Amended)
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 under Revenue and Taxation Code (RTC) section 214.14 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. The bill sunsets these provisions on January 1, 2029, and makes the current version of RTC section 214.14 operative again with respect to lien dates occurring on and after January 1, 2029. The bill additionally requires the State Board of Equalization (BOE) to annually submit reports to the Legislature, commencing by December 1, 2023, until December 1, 2029, with specified data relating to the museum welfare exemption.

Summary of Amendments: The **April 19, 2022**, amendments to RTC section 214.14, make a technical amendment to prevent retroactivity of the bill's provisions by specifying the amendments made by the bill apply to lien dates occurring on and after the effective date of the act and before January 1, 2029. The amendments also specify the current version of RTC section 214.14 shall be operative again on January 1, 2029, and shall apply with respect to lien dates occurring on and after January 1, 2029. The amendments also require the BOE to annually submit a report of specified data to the Legislature commencing by December 1, 2023, and on or before each subsequent December 1 until December 1, 2029. Finally, the amendments add findings and declaration language regarding RTC section 41 relating to goals, purposes, and objectives of the exemption.

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 RTC⁴ 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

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.

*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.*

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.

Sunset Date. The **April 19, 2022**, amendments to RTC section 214.14 specify the expanded museum welfare exemption discussed above, applies to lien dates occurring on and after the effective date of the act and before January 1, 2029, and make the current version of RTC section 214.14 operative again on January 1, 2029, and applies with respect to lien dates occurring on and after January 1, 2029.

Annual Reporting. The **April 19, 2022**, amendments require the BOE to annually submit a report to the Legislature containing the amount of assessed value exempted and the number of museums granted the exemption commencing December 1, 2023, and on or before each December 1 thereafter until December 1, 2029, in compliance with Government Code (GC) section 9795.

No Retroactivity. The **April 19, 2022**, amendments make a technical clarification that the expanded exemption applies with respect to lien dates occurring on and after the effective date of the act and before January 1, 2029.

Findings and Declarations. The **April 19, 2022**, amendments add findings and declarations regarding the importance of museums and states that the property must be exempt from property taxation when their facilities are used to host events that provide access to the museum's exhibitions, collections, and educational offerings. The amendments also state that the exempt activities of museums are central to the museum's exempt purposes and mission thus constituting the exclusive use of that property for a charitable purpose within the meaning of subdivision (b) of section 4 of article XII of the California Constitution.

Section 41. The **April 19, 2022**, amendments add RTC section 41 language relating to the goals, purposes, and objective of the exemption along with performance indicators so the Legislature may determine the efficacy of the expanded welfare exemption.

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.

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 the following are met:

⁵ Section 214.14(b)(3).

- 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 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

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.

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

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 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. **No Basis for BOE Annual Reporting Requirement.** The **April 19, 2022**, amendments to comply with RTC section 41 requirements, would require the BOE to annually submit a report to the Legislature in compliance with GC section 9795, reporting the amount of assessed value exempted to museums and the number of museums granted the exemption, commencing December 1, 2023, and each subsequent December 1 until December 1, 2029.

However, RTC section 41 only applies to taxes imposed under Parts 1, 10 and 11 under Division 2 of the RTC.¹⁰ These code references refer to sales and use taxes, personal income tax, and corporation tax. RTC section 41 does not apply to property tax or the welfare exemption. If the reporting requirement is based on RTC section 41, then there is no basis for imposing a reporting requirement since this section does not apply to property tax.

2. **County Assessor Workload.** The **April 19, 2022**, amendments require the BOE to collect the amount of assessed value of exempted property and the number of museums granted the exemption from County Assessors. Currently, the BOE does not directly request this specific information from County Assessors. County Assessors' offices may not have the staffing, budget, or technology systems to track this type of data and report it separately. This reporting requirement would be an administrative, workload, and budget burden on County Assessors' offices. As a result, the BOE may only be able to submit information of those counties that comply with this provision.
3. **Sunset Date Clarity.** The **April 19, 2022**, amendments authorize the expanded exemption, which includes private rental space, until January 1, 2029, and as of that date repeals the section. The

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.

¹⁰ RTC section [41 \(a\)](#).

bill then makes the original museum welfare exemption under RTC section 214.14 operative on January 1, 2029, and shall apply with respect to lien dates occurring on and after January 1, 2029. In subdivision (f) of section 2 of the bill, the language specifies: "*This section shall remain in effect only until January 1, 2029, and as of that date is repealed.*" The first part of this sentence could be interpreted to mean the expanded exemption is still effective on January 1, 2029, and thus both section 2 and section 3 would be operative at the same time, while the second part of the sentence repeals the section on that date. Does the author intend to have the section operative through January 1, 2029? If not, the author may wish to consider the following amendment:

(f) This section shall ~~remain in effect only until~~ be repealed as of January 1, 2029, ~~and as of that date is repealed.~~

Under the bill's amendments, the expanded museum exemption shall apply to all lien dates occurring on and after the effective date of the act and sunsets before January 1, 2029. Assuming the bill is signed, the first lien date would be January 1, 2023, and the final lien date would be January 1, 2028. The bill would then make the original RTC section 214.14 operative on January 1, 2029, and apply to lien dates occurring on and after January 1, 2029. The original section would become operative on the lien date of January 1, 2029.

4. **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.
5. **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.
6. **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 include 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.
7. **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 if 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.

8. **Reintroduction.** **AB 2363** as introduced on **February 16, 2022**, was 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.

Costs: The BOE estimates costs of approximately \$1,734 and 21 personnel hours to update claim forms, issue a Letter to Assessors alerting County Assessors to the law change and reporting requirement, and Assessors' Handbook Section [267](#), *Welfare, Church, and Religious Exemptions*. The BOE is currently analyzing the agency costs on requesting data from County Assessors and submitting a report to the Legislature.

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.