

Assembly Bill [1977](#) (Bonta)  
Date: January 23, 2020 (Introduced)  
Program: Property Taxes  
Sponsor: Oakland Museum of California  
Revenue and Taxation Code Section 214.14  
Effective: Upon Chaptering

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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 occasionally used for private rentals as a service to the community, 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.<sup>1</sup> Property used for free museums is specifically exempt.<sup>2</sup> Museums that charge admission may qualify for the welfare exemption,<sup>3</sup> if their properties are owned and operated by organizations meeting all the requirements of Revenue and Taxation Code<sup>4</sup> 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.<sup>5</sup>

### **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.

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<sup>1</sup> California Constitution, article XIII, section [1](#).

<sup>2</sup> Section [3](#)(d) of article XIII and section [202](#)(a)(2) of the Revenue and Taxation Code.

<sup>3</sup> Section [4](#)(b) of article XIII of the California Constitution

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

<sup>5</sup> 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 an exception to the exclusive use requirement. Under this exception, the exemption cannot be denied for a museum that is occasionally made available for private rentals as a service to the community 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.
- The property is used exclusively for the charitable purposes of museums.
- The amount of rental fee charged is limited to the amount necessary to reimburse the property owner for its costs in making the rental available.
- Any proceeds from the rental is used exclusively for the charitable purposes of the museum.

**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.<sup>6</sup> 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

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<sup>6</sup> 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.

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 property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.<sup>7</sup> 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 to the accomplishment of the exempt purpose.<sup>8</sup>

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

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 is 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. **Sponsor.** This bill is sponsored by the Oakland Museum of California.
2. **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.
3. **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 a portion of their exemption.
4. **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

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

<sup>8</sup> *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.

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

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.

5. **Technical Suggestion.** This bill adds a definition of museum as new subdivision (a), reletters existing subdivisions (a) and (b) as (b) and (c), and adds new subdivision (d). Because the existing subdivisions are being relettered, we recommend the following technical change:

~~(b)~~(c) For purposes of this section:

(3) ~~Property~~ Except as otherwise provided in subdivision ~~(e)~~ (d), property used exclusively for the charitable purposes of museums shall 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.

**Costs:** The BOE would incur absorbable costs 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 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.