



[AB 3141](#) (Gipson)

Amended: March 21, 2024

Program: Property Taxes

Revenue and Taxation Code 107.15

Effective: Immediately/Upon Signature

Ted Angelo (Division Chief) 916-274-3423

Ronil Dwarka (Analyst) 916-274-3391

Ronil Dwarka (Revenue) 916-274-3391

Analysis Date: May 10, 2024

Summary: This bill would exclude new “nonrevenue-generating environmental improvements” from being included as taxable possessory interests at public seaports beginning in the 2025–26 fiscal year through the 2029–30 fiscal year, inclusive. The bill would provide that there is no independent or exclusive possession or use of land or improvements in certain circumstances and restrictions.

Fiscal Impact Summary: Annual property tax revenue loss is estimated at \$360,000.

Existing Law: Article XIII, section 1, of the California Constitution requires that all property be taxed unless otherwise provided by the California Constitution or the laws of the United States. Under California Constitution Article XIII A, section 2, real property is reassessed upon a change in ownership or completion of new construction.

Revenue and Taxation Code (RTC) section 70(a)(1) defines "new construction" as any addition to real property or any alteration of land or improvement that constitutes a major rehabilitation or converts the property to a different use. RTC section 70(b) provides that any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of new is a major rehabilitation of that improvement or fixture. Certain types of additions are specifically excluded from new construction, such as active solar energy systems, fire extinguishing systems, seismic retrofitting improvements, and disabled access improvements.¹

Although publicly owned property is not taxable, a private party’s right to possess or use publicly owned real property is taxable. This is known as a taxable possessory interest. RTC section 107 sets forth the three essential elements that must exist for the use of publicly owned tax-exempt property to rise to the level of a taxable possessory interest: (1) independence, (2) durability, and (3) exclusivity.

RTC section 107(a)(1) defines "independent" in the possessory interest context as meaning "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency."²

¹ See RTC sections 73 – 74.8.

² California Code of Regulations, Title 18, section (Property Tax Rule) 20. Property Tax Rule 20 specifies that "[t]o be sufficiently autonomous to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property."

Relevant case law³ and Property Tax Rule 20⁴ additionally requires that a possessor derive "private benefit." "Private benefit" means "that the possessor has the opportunity to make a profit, or to use or be provided an amenity, or to pursue a private purpose in conjunction with its use of the possessory interest. The use should be of some private or economic benefit to the possessor that is not shared by the general public."

Proposed Law: This bill would add RTC section 107.15 to state that there is no independent or exclusive possession of the land or improvements, newly constructed on or after January 2025, if that possession or use is part of a "nonrevenue-generating environmental improvement" at a public seaport. It would apply to property tax lien dates for the 2025-26 fiscal year through the 2029-30 fiscal year, inclusive.

Proposed RTC section 107.15 would not apply to personal property, including cargo handling equipment, and no tax benefit is intended to be conferred on the basis of ownership or operation of any personal property, including cargo handling equipment.

This bill states that the new section is not intended to restrict any other existing assessment procedures or requirements pursuant to part 1 of division 1 of the RTC (Property Taxation, General Provisions) for property that is not subject to the payment of a possessory interest tax at the time the construction is completed, or the improvements installed.

The bill states that any possessory interest that qualifies for an exclusion under this section prior to the inoperative date of this section shall continue to be excluded after the 2029–30 fiscal year until there is a subsequent change in ownership of the interest or until the date the nonrevenue-generating environmental improvement is used for the operation of any fully automated cargo handling equipment, whichever is earlier.

Definitions:

- *"Nonrevenue-generating environmental improvement"* is any improvement to real property that meets all of the following:
 - The improvement is necessary to facilitate an improvement in air quality or water quality at the seaport or in the environment impacted by seaport operations.
 - The principal purpose of the improvement does not include producing or otherwise generating revenue for the public seaport.
 - The improvement is on property subject to a possessory interest tax payable by a tenant or lessee of the seaport at the time the construction or installation of the improvement is completed.
- *"Public seaport"* is defined as any local public agency that owns, operates, or manages seaport, intermodal, rail, industrial transportation, or marine terminal assets on granted state

³ See e.g., *Kaiser Co., Inc. v. Reid* (1947) 30 Cal.2d 610, *City of San Jose v. Carlson* (1997) 57 Cal.App.4th 1348, *Korean Air Lines Co., Ltd. v. County of Los Angeles* (2008) 162 Cal.App.4th 552, and *Seibold v. County of Los Angeles* (2015) 240 Cal. App. 4th 674.

⁴ California Code of Regulations, Title 18, section 20 (c)(8)

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.

tidelands or within the boundaries of its harbor district established pursuant to the Harbors and Navigation Code.

- “Fully automated cargo handling equipment” is defined as cargo handling equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control.

In General: In certain instances, a property tax assessment may be levied when a person or entity uses publicly owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly called “taxable possessory interests” or simply “possessory interests”⁵, and can be found where an individual or entity leases, rents, or uses federal, state, or local government facilities and/or land.

RTC section 107 establishes parameters within which County Assessors and judicial authorities determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each case.

Background: According to an [August 2022 Legislative Analyst Office \(LAO\) report](#), California has 12 ports. Eleven ports are publicly owned, and one port is privately owned. These ports process about 40 percent of all containerized imports and 30 percent of all exports in the United States. The Ports of Los Angeles and Long Beach are the largest ports in the United States, as measured by container volume. Several state agencies support these ports, including the California Department of Transportation (Caltrans), the California State Transportation Agency (CalSTA), the California Air Resources Board (CARB), and the Governor’s Office of Business and Economic Development (GO-Biz). California’s ports are eligible to apply for state and federal grants.

According to the LAO, vehicles and equipment at ports are significant sources of air pollution. Ships, trucks, and cargo handling equipment at ports are often fueled by diesel and, therefore, emit air pollutants.

According to the Bill’s Author, the possessory interests held by port tenants on public seaport property generate substantial property taxes. AB 3141 appears to seek to prevent substantial indirect increases in the cost of betterment of the State’s environment that result when higher tax burdens are imposed upon tenants at public seaports when non-independent, non-exclusive improvements are made to the publicly owned infrastructure at such seaports in support of bettering environmental improvements.

Commentary:

1. **Nonrevenue-generating environmental improvement** – Under this bill, a “nonrevenue-generating environmental improvement” would not be subject to property taxation. While the bill provides a description and definition of these improvements, it does not specify who will determine what comprises these improvements and who will determine whether they generate revenue. The bill is also unclear on the role of the County Assessor in such determinations.

⁵ See Assessors Handbook 510, *Assessment of Taxable Possessory Interests*, page 6, footnote 13: “In the realm of property assessment, when someone refers to a “possessory interest,” the person almost always means a taxable possessory interest as that term is defined in Rule 20 and not “possessory interest” in its general legal sense.”

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.

2. **Tenants and possessory interest** – Public ports in California lease space to private entities that engage in the shipping or movement of goods. These tenants generally have a taxable possessory interest equal to the value of the improvements owned by the tenants that are situated on port property. Tenants pay a possessory interest tax based on the fair market value of the improvements.
3. **New construction** - Any improvements added to a port by a government entity that owns the port would be exempt under California Constitution article XIII, section 3, as government-owned property. Any value associated with the improvement would be added to a possessory interest if the improvement is exclusively used by a private individual or entity. Although it does not do so expressly, AB 3141 appears to exclude such an increase from a possessory interest assessment.

However, if a tenant constructs improvements and retains ownership of such improvements, the tenant's interest would not be merely possessory and would, therefore, be subject to direct assessment to the owner by the County Assessor. Under these circumstances, there is no applicable new construction exclusion under chapter 3, *New Construction*, of the Revenue and Taxation Code. It is unclear how this bill addresses new construction owned by the tenant.

Costs: The BOE would incur costs of approximately \$8,000 for FY 2024-25, and no further ongoing costs are expected.

Revenue Impact:

While preparing this analysis, staff did not uncover much available literature, review, discussion, or data that would provide insight into specific nonrevenue-generating environmental improvement expenditures or projects at the State's eleven public seaports. This revenue estimate is based on zero-emissions-related data from two public seaports.

In its five-year (2023-24 to 2027-28) capital expenditure plan, the Port of Los Angeles had *environmental enhancements and zero emissions* investment total of \$22.3 million for a four-year period, giving an average fiscal year spending of \$6 million. In their fiscal year 2024 adopted budget, the Port of Long Beach also had an Environmental Projects section in which total investment for *zero emissions, energy resilient operations program* for FY 2024 was \$6 million.

Assuming that the average \$6 million per fiscal year is reflective of the four large ports in California (Los Angeles, Long Beach, Oakland, Richmond) and factoring in the five years as proposed by this bill (2025-26 to 2029-30), total zero emissions related spending is estimated to be \$120 million ((\$6 million × 5 years) × 4 ports).

In relation to the other seven public ports, staff assumes that half of this (i.e., \$60 million) would be reflective of the seven public ports for the five-year period, hence adding up to an estimated \$180 million (\$120 million + \$60 million).

At the 1% property tax rate, annual property tax revenue loss is estimated to be \$360,000 ((\$180 million × 1%) / 5 years).

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.

Qualifying Remark:

For the estimated revenue impact, staff assumed otherwise taxable possessory interests for new “nonrevenue-generating environmental improvements” are unrelated to fully automated cargo handling equipment. Therefore, without knowing the breadth of what would specifically meet the definition above, this estimate could be interpreted to be conservative.

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.