

Date of Hearing: April 23, 2018

**ASSEMBLY COMMITTEE ON TRANSPORTATION**

Jim Frazier, Chair

AB 1898 (Mathis) – As Amended April 17, 2018

**FOR VOTE ONLY**

**SUBJECT:** State highways: property leases

**SUMMARY:** Authorizes the California Department of Transportation (Caltrans) to lease at a discount to a city or county any airspace under a freeway or other real property in a disadvantaged community for various purposes, under specific terms and conditions. Specifically, **this bill:**

- 1) Authorizes Caltrans to lease for \$1 per month any airspace or real property in a disadvantaged community for emergency shelter or feeding programs.
- 2) Authorizes Caltrans to lease for 30% of fair market lease value, up to 10 parcels to each city or unincorporated county, any airspace or real property in a disadvantaged community for park, recreational, or open-space purposes.
- 3) Declares that a lease let under this authority serves a public purpose.
- 4) Requires Caltrans to include in a lease let under this authority an administrative fee not to exceed \$500 per year unless Caltrans determines a higher fee is necessary.
- 5) Authorizes the lessee to pay the lease amount in advance in order to reduce the administrative costs associated with the payment of a monthly rental fee.
- 6) In the case of a lease for park, recreational, or open-space purposes, requires the lessee to fund and construct associated infrastructure, to accept full liability related to the infrastructure, and to fund all maintenance costs associated with the use.
- 7) Requires the lease to authorize the lessee to subsidize its associated maintenance costs by generating revenue under a "limited revenue generation model" so long as at least half of any excess revenue is shared with Caltrans.
- 8) Defines "disadvantaged community" as a community with an annual median household income that is less than 80% of the statewide annual median household income through reference to the definition included in a 2002 California Ballot Proposition for water bonds.

**EXISTING LAW:**

- 1) Grants Caltrans broad authority to acquire by eminent domain any property necessary for state highway purposes.
- 2) Authorizes Caltrans to lease to public agencies or private entities the use of areas above or below state highways. Generally, leases to private entities have to be made on the basis of competitive bids and at fair market value.

- 3) Authorizes Caltrans to make land or airspace available, with or without charge, to a public entity to accommodate needed passenger, commuter, or high-speed rail, magnetic levitation systems, and highway and non-highway mass transit facilities.
- 4) Authorizes Caltrans to lease to a local agency for park purposes all or any portion of land outside the boundary of a highway system when such use will preserve its view, appearance, light, air, and usefulness.
- 5) Authorizes Caltrans to lease to San Francisco, or a political subdivision, any airspace under a freeway or property for an emergency shelter or feeding program at a rate of \$1 per month.
- 6) Directs Caltrans to lease to San Francisco, or a political subdivision, up to 10 parcels of airspace under a freeway or property at 30% of fair market lease value for park, recreational, or open-space purposes.
- 7) Authorizes Caltrans to lease non-operating right-of-way areas to municipalities or other local agencies for public purposes, and allows Caltrans to contribute toward the cost of developing local parks and other recreational facilities on such areas. The lease may provide that the municipality or other local agency can offset the cost of the lease by providing maintenance or landscaping that would otherwise be the responsibility of the state.
- 8) Requires the California Environmental Protection Agency to identify disadvantaged communities based on geographic, socioeconomic, public health, and environmental hazard criteria including, but not limited to, the following:
  - a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.
  - b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

**FISCAL EFFECT:** Unknown

**COMMENTS:** The authority for Caltrans to enter into airspace leases is in existing law, but Caltrans is generally obligated to secure fair market value lease rates for airspace under freeways or other available parcels, based on the estimated highest and best use of the property. Notable exceptions to the fair market value requirement authorizes Caltrans to lease unused parcels of land below market rates to various cities and counties for the purposes of emergency shelters and feeding programs. In each of these exceptions, the Legislature has found that submarket rate leases for these particular uses serves a public purpose.

The author introduced this bill because he believes Caltrans owns numerous unused parcels of land, many of which are located in disadvantaged communities. These communities often lack the financial resources to provide homeless services, food assistance, and parks for their residents. Furthermore, the author states that these communities are likely to be home to larger numbers of homeless populations per capita.

*Committee Comments:*

- 1) This bill failed passage on April 16, 2018, due to concerns related to the wasteful requirement in the bill for Caltrans to identify all parcels within disadvantaged communities throughout the state and actively contact cities and counties about their interest in leasing those parcels for the stated reasons. Since that hearing, the author has worked with the committee to amend the Caltrans requirement from a “shall” to a “may,” which will effectively accomplish the aim of the bill without forcing Caltrans to waste significant amounts of resources. In addition, cities and counties are now limited to 10 parcels for parks or open space under this bill, further reducing the costs of the bill.
- 2) This bill is not without precedence. Existing law provides a number of examples wherein Caltrans is authorized to lease airspace at below market rate, and there are a number of instances where these leases exist. In the instances where Caltrans has entered into below market rate leases for emergency shelters, feeding programs, or other public purposes, statute authorizing them to do so has led Caltrans to provide the designated airspace lease to the local community. While this bill may provide much needed emergency housing or space for feeding programs in disadvantaged communities, it may result in some lost state revenue. It is worth noting that the revenue generated by airspace leases currently flows to the General Fund, and therefore this bill could result in reducing resources for programs that currently benefit the very communities the bill aims to help.
- 3) This bill’s definition of disadvantaged community is problematic for a number of reasons. First, while annual median income is one indicator of disadvantage, the state has refined its definition since 2002 and takes into account a number of other environmental factors when it considers whether a community is disadvantaged. Reverting back to this simplified definition may not capture the Legislature’s contemporary perspective on which communities are “disadvantaged” and therefore not reflect this Legislature’s current expectations.

Second, this bill is ambiguous concerning what constitutes a “community” and therefore it is unclear how Caltrans might implement this bill. As currently written, Caltrans is to offer the lease to a city or county in which the disadvantaged community is located, but it is not clear if the community is to be measured at the census tract level, by zip code, the city- or county-wide level, or in some other definable jurisdiction. This ambiguity will make implementation of this bill difficult.

*Related Legislation:* AB 2629 (Eggman), eliminates the renewal conditions of Caltrans’ airspace lease to the City of Stockton for emergency shelter or feeding program purposes. AB 2629 passed out of this committee on April 16, 2018.

AB 3139 (Bonta), authorizes Caltrans to lease airspace under a freeway or other real property to the City of Oakland for emergency shelter or feeding programs. AB 3139 passed out of this committee on April 16, 2018.

*Prior Legislation:* AB 857 (Ting), Chapter 822, Statutes of 2017, directs Caltrans to lease to San Francisco up to 10 parcels of airspace under a freeway at 30% of fair market lease value for park, recreational, or open-space purposes.

SB 535 (de León), Chapter 830, Statutes of 2012, requires the California Environmental Protection Agency to identify disadvantaged communities based on geographic, socioeconomic, public health, and environmental hazard criteria.

SB 120 (Kopp), Chapter 750, Statutes of 1993, authorizes Caltrans to lease to San Francisco any airspace under a freeway or property for an emergency shelter or feeding program at a rate of \$1 per month.

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file

**Opposition**

None on file

**Analysis Prepared by:** Eric Thronson / TRANS. / (916) 319-2093