

Date of Hearing: March 20, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 857 (Ting) – As Introduced February 16, 2017

**SUBJECT:** State highways: property leases

**SUMMARY:** Directs the California Department of Transportation (Caltrans) to lease to the City and County of San Francisco (San Francisco) any airspace under a freeway or other real property for park, recreational, or open-space purposes, under specific terms and conditions. Specifically, **this bill:**

- 1) Adds parks, recreational, or open-space purposes to the authority already granted to Caltrans to lease airspace to San Francisco (or other political subdivision or state agency) for \$1 per month for emergency shelter or feeding programs.
- 2) 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.
- 3) Requires the lease to authorize the lessee, at its discretion, 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.

**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.
- 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) Specifically 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) 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.

**FISCAL EFFECT:** Unknown

**COMMENTS:** The author introduced this bill to encourage San Francisco to leverage existing Caltrans property so San Francisco can implement its sustainable community strategies by providing green spaces and recreational opportunities for the people of San Francisco.

San Francisco is sponsoring this bill. As one of the nation's most densely populated cities, San Francisco lacks the open space needed to provide opportunities to implement its sustainable communities strategies, required by the California Sustainable Communities and Climate Protection Act of 2008, [SB 375, (Steinberg), Chapter 728, Statutes of 2008], including its robust housing development plan of which open spaces are a critical component. San Francisco is looking to leverage unused right-of-way and airspace below and adjacent to state freeways in order to develop green spaces, parks, and recreational facilities.

While the authority to enter into these leases is already in existing law, the challenge, apparently, is that Caltrans is generally obligated to secure fair market value lease rates for these parcels, based on the estimated highest and best use of the property. Not only is this rate too expensive for new open space development, it reportedly tends to attract commercial activities not particularly conducive to San Francisco's plans for its priority development areas, such as parking lots.

This bill is not without precedence. Existing law provides a number of examples wherein Caltrans is directed to lease or sell at well below market rate, for example:

- 1) For emergency shelters or feeding program in San Francisco, at a lease rate of \$1 per month.
- 2) For emergency shelter, feeding program, or day care center in San Diego, for \$1 per month.
- 3) For feeding programs in San Joaquin County for \$1 per month

*Committee comments:* Although this bill would likely result in lost revenue for Caltrans, it could improve San Francisco's ability to successfully implement its greenhouse gas emission-reducing strategies and provide much needed housing for the area.

*Previous legislation:* Last session, the author introduced a similar measure, AB 2428 (Ting), which passed out of this committee on a vote of 10-5 but was ultimately held on the suspense file in the Senate Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

None on file

**Analysis Prepared by:** Janet Dawson / TRANS. /