

Date of Hearing: April 18, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 2428 (Ting) – As Amended April 7, 2016

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 or adjacent to a freeway or other real property acquired for highway purposes that is within a priority development area, as defined, for park, recreational, or open-space purposes. Specifically, **this bill:**

- 1) Makes legislative findings and declarations:
 - a) Regarding the San Francisco Bay Area's sustainable communities strategies, entitled "Plan Bay Area," that was adopted in 2013 and that provides a strategy for meeting 80% of the area's future housing needs in priority development areas (PDAs).
 - b) Describing the relationship between planning for population growth in PDAs and the provision of open space and other amenities that are required to support the growth and provide greater public health and quality of life benefits for citizens and the workforce. Further describes open space to include such amenities as baseball diamonds, soccer fields, parks, playgrounds, tennis courts, flower gardens, and greenways.
 - c) Asserting that many parcels and rights-of-way beneath and adjacent to the freeways are within PDAs and could be used for open space purposes except that that cost of leasing these parcels from Caltrans is prohibitively expensive.
 - d) Proposing a strategy to support greenhouse gas emission reduction goals by decreasing the cost of providing open space in PDAs via low-cost leases between Caltrans and San Francisco for areas under freeways.
 - e) Citing examples where this strategy has already been deployed in leases between San Francisco and Caltrans.
- 2) Directs Caltrans to offer first right of refusal to lease air space or other property to San Francisco, a political subdivision of the city and county, or a state agency for park, recreational, or open-space purposes.
- 3) Sets the lease amount for park, recreational, or open-space purposes at 10% or less of the average fair market lease value; prescribes how this value is to be calculated.
- 4) Requires the lessee to fund associated infrastructure, to accept full liability for non-highway uses of the infrastructure, and to fund all non-highway-related maintenance costs associated with the uses.
- 5) Directs 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 any excess revenue is shared 50/50 with Caltrans.

- 6) Defines "priority development area" to mean a neighborhood within walking distance of frequent transit service that offers a wide variety of housing options and that features various amenities, including grocery stores, community centers, open space, and restaurants.

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. 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 AB 2428 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. Specifically, the author seeks to ensure San Francisco has first right of refusal to lease state-owned space at 10% of the current market rate.

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 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.

AB 2428 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.

REGISTERED SUPPORT / OPPOSITION:

Support

City and County of San Francisco (Sponsor)

Opposition

None on file

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