

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 2206 (Lee) – As Introduced February 15, 2022

SUBJECT: Employee parking

SUMMARY: Requires a lessor that enters into or renews a lease with an employer required to offer a parking cash-out program to either list the amount of parking costs as a separate line item in the lease or provide a list of parking costs to the lessee beginning January 1, 2023.

Specifically, **this bill:**

- 1) Requires a lessor to provide the parking cost amount as a separate line item within 30 days after the lease is entered into or renewed.
- 2) Provides that the requirement to list parking costs does not create a right for an employee to access, review, or challenge a lease, or a proposed lease, entered into between an employer and a lessor.
- 3) Requires an employer, upon the request of an employee, to give to that employee the parking cost information received from the lessor.

EXISTING LAW:

- 1) Defines a “parking cash-out program” as an employer-funded program under which an employer offers to provide a cash allowance to an employee which is equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.
- 2) In nonattainment air basins, requires an employer of 50 or more people who provides a parking subsidy to employees to also offer a parking cash-out program.
- 3) Allows a parking cash-out program to include a requirement that an employee participant certifies that the participant will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that an employee that is not complying with the guidelines will no longer be eligible for the parking cash-out program.
- 4) Authorizes the State Air Resources Board (CARB) to impose a civil penalty for a violation of the parking cash-out law.
- 5) Authorizes a city, county, or air district to adopt, by ordinance or resolution, a penalty or other mechanism to ensure that an employer within its jurisdiction is in compliance with the parking cash-out law.
- 6) Prohibits a city, county, or air district and CARB from both imposing a penalty on parking cash-out. If both impose a penalty, only CARB’s applies.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: Parking cash-out programs can save employees and employers time and money, reduce commute trips and related greenhouse gas emissions. These programs provide an incentive by offering employees the option of “cashing out” their subsidized parking space and taking transit, biking, walking, or carpooling. More than 80% of all firms in the United States provide parking for their workers.¹ In Los Angeles and San Diego, around 90% of employees receive employer-provided parking.²

Parking cash-out can be complex to implement. The state’s current program authorizes cities, counties, and air pollution control districts to issue a penalty or other mechanism to ensure employers comply with the law. A limiting factor in the law’s reach is the criteria that parking must be leased separately from the building. According to city and air district staff interviewed by the non-profit organization SPUR, most business leases have parking bundled in with the commercial space being rented, meaning it is not given a separate line item, making it difficult for employers to calculate the cost of any parking they provide. This condition exempts the majority of businesses from the parking cash-out requirement, reducing the law’s potential impact. If the employer’s savings on leasing fewer spots cannot be calculated and deducted from the lease, the employer is not required to comply with the parking cash-out law.

Parking cash-out is not widely known or utilized. The author introduced this bill to attempt to resolve one of the issues with implementing the parking cash-out program; the problem of bundled commercial real estate leases that make it difficult to calculate the cost of parking spaces and therefore the parking cash-out benefit for eligible employees.

This bill requires commercial buildings with maximum occupancies of 50 or more people, located within an air basin that does not meet the national air quality standard, to list the parking costs as a separate line item in all lease agreements entered or renewed on or after January 1, 2023, if the tenants of the building are provided parking.

There is precedent for expanding parking cash-out to include all types of subsidized employer parking. A newly passed law in Washington, D.C., applies to bundled parking when a current parking lease ends or is up for renewal or extension. The law also applies to employer-owned parking if the parking is purchased after the effective date of the new law.

Amendments: In order to aid implementation, the author wishes to make clarifying amendments in committee that:

- 1) *Revise the definition of “employer” to mean an employer of 50 persons or more in the state who provides a parking subsidy to employees.*
- 2) *Revise the definition of “parking cash-out program” to mean an employer-funded program pursuant to which an employer offers to provide a cash allowance to employees where the cash allowance provided to each eligible employee is equal to or greater than the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.*

¹ Brueckner, J.K., Franco, S.F. “Employer-paid parking, mode choice, and suburbanization.” *J. Urban Econ.*, 104 (2018): 35-46.

² Greenberg, A., Choe, J. Sethi, S. Stoll, C. “Webinar: Transportation Benefits of Parking Cash-Out, Pre-Tax Commuter Benefits, and Parking Surtaxes. TREC Webinar Series (2017).

- 3) *Revise the definition of “parking subsidy” to mean the difference between the price, if any, charged to an employee for the use of a parking space made available by an employer to that employee and either of the following:*
 - a) *The market rate of parking available to an employee, as required to be reflected in a lease*
 - b) *The out-of-pocket amount paid by an employer for onsite or offsite employee parking acquired through the marketplace, with no special rate offered because of a property lease, for an employee parking space not owned by the employer.*
- 4) *Require an employer to offer a parking cash-out program even if the employer’s lease does not comply with the requirements to list the market-rate parking costs as a separate line item in the lease.*
- 5) *Specify parking costs to be listed as a separate line item in the lease be market-rate parking.*
- 6) *Require market-rate parking costs listed to be no less than if the parking were to be obtained by an individual unaffiliated with the property on which parking is provided or the employer through a transaction for the closest publicly available parking within one-half mile of the employee’s workplace.*

According to the author, “The parking cash-out program was approved by this very Legislature three decades ago and is still not being implemented properly, which has detrimental environmental impacts. One reason that parking cash-out is not being implemented is due to the difficult nature of calculating the value of employee parking when it is included with the total cost of office rental space. Many owners of commercial real estate “bundle” the cost of parking with the cost of office space into a single lease price. This practice makes it difficult for employers to separate the cost of parking spaces associated with the commercial space that is being leased. Without that information, employers are unable to offer employees cash in lieu of parking subsidies. [This bill] simply helps facilitate compliance with existing law by requiring parking owners to provide employers subject to parking cash-out with unbundled parking costs.”

In support, Seamless Bay Area writes, “The Parking Cash-out Program was enacted three decades ago in 1992 and requires certain employers who provide subsidized parking for their employees to offer a cash allowance in lieu of a parking space. A 2002 Legislative Analyst’s Office (LAO) report indicated that very few parking spaces are subject to the law, as most employees who drive to work receive free parking in California. LAO indicated that parking cash-out is inexpensive to administer and offers numerous benefits, including easing traffic congestion, improving air quality, reducing greenhouse gas emissions, promoting social equity, and supporting investments in other modes of travel.”

In opposition, the California Business Properties Association writes, “[This bill] inappropriately places the onus onto the property manager of a leased building to put a value on something that is determined by the lessee of the office space and is legally the employer’s responsibility.”

Previous legislation: AB 1186 (Blumenfeld) of 2009 would have required a lessor that enters into or renews a lease with an employer subject to the parking cash-out requirement, on or after January 1, 2011, to list the amount of parking costs as a separate line item in the lease or provide a list of parking costs to the lessee within 30 days after the lease is entered into or renewed. AB 1186 was vetoed by the Governor.

SB 728 (Lowenthal), Chapter 359, Statutes of 2009 authorizes CARB to impose a civil penalty for a violation of the parking cash-out program. The bill also authorizes a city, county, and air

pollution control district or air quality management district to adopt a penalty or other mechanism to ensure compliance. The bill authorizes the imposition of a penalty by the state board or the local agency, but not both.

SB 425 (Simitian) of 2009 would have disallowed a deduction for expenses of specified employers for parking subsidies unless all employees provided with a parking subsidy are offered a parking cash-out program in accordance with a specified statute. SB 425 died in the Assembly Appropriations Committee.

AB 2109 (Katz), Chapter 554, Statutes of 1992 requires many employers to offer employees the option to choose cash in lieu of any parking subsidy offered.

REGISTERED SUPPORT / OPPOSITION:**Support**

Bay Area Air Quality Management District
Seamless Bay Area
SPUR

Opposition

California Business Properties Association

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