

Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 3139 (Bonta) – As Amended April 9, 2018

SUBJECT: State highways: property leases

SUMMARY: Authorizes the California Department of Transportation (Caltrans) to lease at a discount any airspace under a freeway or other real property to the City of Oakland for emergency shelter or feeding programs, under specific terms and conditions. Specifically, **this bill:**

- 1) Authorizes Caltrans to lease for \$1 per month any airspace or real property to the City of Oakland, or a political subdivision of the city, for emergency shelter or feeding programs.
- 2) Declares that a lease let under this authority serves a public purpose.
- 3) 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.
- 4) 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.

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 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.
- 5) Authorizes Caltrans to lease to San Joaquin County, Santa Barbara County, or a political subdivision of either, airspace under specified freeways for an emergency shelter or feeding program at a rate of \$1 per month.

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.

According to the author, Oakland is facing a homelessness crisis. Oakland's homeless population is estimated to be 2,761, and only 859 of these individuals are able to take advantage of existing shelter space. Most of the homeless have chronic health problems; some of these individuals are fully employed but can no longer afford the cost of housing in the Bay Area. The author believes that this bill will enable the City of Oakland to have the ability to address some of its homelessness concerns by being able to lease space affordably for emergency shelter and feeding programs.

Committee Comment: 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 Oakland, 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.

Related Legislation: AB 1898 (Mathis), requires 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. AB 1898 is set to be heard by this committee on April 16, 2018.

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 is set to be heard by 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 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

City of Oakland (Sponsor)

Opposition

None on file

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