

Date of Hearing: July 8, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

SB 211 (Beall) – As Amended March 19, 2019

SENATE VOTE: 38-0

SUBJECT: State highways: 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 for purposes of an emergency shelter or feeding program, under specific terms and conditions. Specifically, **this bill:**

- 1) Authorizes Caltrans to lease for \$1 per month, on a right of first refusal, up to 10 parcels of airspace or real property in any city or county 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.
- 5) Declares that this authorization does not affect any other lease or lease authorization for purposes of an emergency shelter or feeding program already in existing law.

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 many specified municipalities, including San Francisco, San Jose, Oakland, and Los Angeles, 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.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown future loss of Caltrans lease revenues, potentially in the high hundreds of thousands to low millions of dollars annually. Actual lease revenue losses would depend upon the number of lease agreements entered into, the fair market lease value of the specific properties in question, and lease terms. Appropriation staff notes that these revenue losses would be a General Fund impact because lease revenues are currently used to partially offset General Fund payments for transportation-related debt service.

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, “Caltrans currently has authority in a handful of jurisdictions throughout the state to lease property for homeless shelter programs at below market rate. This authority gives these cities and counties a helpful tool to address California’s significant homelessness crisis. California has made it clear that addressing homelessness is a top priority. The time is now to allow for this solution statewide. SB 211 will allow Caltrans to lease real property to cities and counties statewide for the purposes of establishing an emergency shelter or feeding program, for \$1 per month. It caps administrative fees at \$500. This will give these local jurisdictions the ability to leverage state and local assets to take bold and aggressive actions to address the state’s homelessness crisis. SB 211 also protects the existing authority granted to jurisdictions in the past, allowing them to continue serving their communities without new administrative burdens.”

Writing in support, California State Association of Counties states that “By allowing Caltrans to lease its property to local jurisdictions at below market rate statewide, SB 211 will make it more feasible for counties to access Caltrans property, and provides counties with an important tool to address the homelessness crisis.”

Committee comments. 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 across the state, 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.

In addition, when signing a number of these specific authorizations in 2018, Governor Brown issued the following signing message: “These bills authorize the Department of Transportation to lease properties in different cities for one dollar a month, if they are used to provide homeless services. It is important to remember that these properties were never meant to be places for people to live and are generally not suitable for those purposes. The cities outlined in these bills wish to erect temporary shelters on these properties, as emergency measures. Accordingly, I am directing the Department of Transportation, the Department of Housing and Community Development, and the Office of the State Fire Marshal to work in collaboration with these local governments to ensure, through lease agreements, that emergency housing for the homeless is safe, that fire and life safety standards are met, and that such habitations are temporary, not permanent.”

To the Governor’s point, it is critical that these leases serve an immediate, emergency purpose and do not become an acceptable place to simply sweep away the state’s homelessness problem.

Related legislation. AB 246 (Mathis, 2019) authorizes 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. This bill is pending in this committee.

Previous legislation. AB 1898 (Mathis, 2018) would have required 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 was held on Suspense in the Assembly Appropriations Committee.

AB 2629 (Eggman), Chapter 436, Statutes of 2018, eliminated the renewal restrictions for an existing airspace lease between Caltrans and the City of Stockton in San Joaquin County under the interchange of State Route 4 and Interstate 5 for an emergency shelter or feeding program.

AB 3139 (Bonta), Chapter 443, Statutes of 2018, authorized Caltrans to lease at a discount up to 10 parcels of airspace under a freeway or other real property to the City of Oakland for emergency shelter or feeding programs.

SB 519 (Beall), Chapter 444, Statutes of 2018, authorized Caltrans to lease at a discount up to 10 parcels of airspace under a freeway or other real property to the City of Los Angeles and the City of San Jose for emergency shelter or feeding programs.

AB 857 (Ting), Chapter 822, Statutes of 2017, directed 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, authorized 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

Alameda County Transportation Commission
California State Association of Counties
City of Sacramento
Silicon Valley @ Home
Working Partnerships USA

Opposition

None on file

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