

Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1226 (Holden) – As Amended April 8, 2019

**SUBJECT:** State highways: property leases

**SUMMARY:** Requires the California Department of Transportation (Caltrans) to assess the feasibility of constructing facilities above highways that would be made available and leased to agencies for purposes that help address the needs of the state's homeless population.

Specifically, **this bill:**

- 1) Requires Caltrans to assess the feasibility of constructing facilities above highways built below grade in urban areas that would be made available and leased to a city, county, or other political subdivision or another state agency for affordable housing, transitional housing, emergency shelter, feeding program, or wraparound services purposes, or any combination of these purposes.
- 2) Requires Caltrans to submit the assessment to the Governor and the fiscal and policy committees of the Legislature that oversee transportation programs on or before January 1, 2021.
- 3) Defines “wraparound services” as those services provided in addition to emergency shelter that are necessary to meet the individual's needs to successfully transition into permanent housing and to successfully live in the community.
- 4) Sunsets this requirement on January 1, 2022.

**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 several local entities airspace under a freeway or property for emergency shelter or feeding programs 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 authorize 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.

This bill proposes a unique concept for putting state property to use addressing homelessness. While all airspaces for the purposes of emergency shelters and feeding programs to date have been for the space below elevated structures, the author believes there may be potential for building “caps” over below-grade freeways and using that airspace above the right of way for such purposes.

Freeway caps are not a new concept, but they have recently increased in popularity. Freeway caps are typically built for park space and to connect communities divided by major freeways. Two recently completed freeway cap projects include the “Park Over the Highway” in St. Louis, Missouri and “Klyde Warren Park” in Dallas, Texas. Both parks resulted from coordination among many stakeholder groups and partner agencies, along with funding from a variety of private and public sources.

In 2017, Caltrans released a Best Practices Guide for Freeway Caps as a reference for stakeholders interested in cap projects. In the Guide, Caltrans points out that freeway caps provide opportunities to maximize urban real estate through a wide variety of uses. The Guide does not address, however, either the costs associated with construction of caps or whether or not these caps could be utilized specifically for locals to help address their homelessness challenges.

According to the author, “In heavily populated areas like L.A. County, it is especially hard to find places to build emergency shelters, transitional housing, affordable housing, food programs, and green space close to schools and jobs. Though important to our infrastructure, freeways cut through cities, fragment communities, and affect accessibility to economic opportunity. Infill development over freeways has great potential in addressing homelessness, issues with affordable housing, and interconnectivity between communities.”

*Committee comments.* Recently, a number of measures have been introduced by legislators to authorize Caltrans to lease airspace under freeways at below-market rates for the purposes of attempting to address the state’s homelessness needs. In this year’s January budget proposal, Governor Newsom proposed trailer bill language to authorize Caltrans to enter into airspace leases under freeways statewide for the purpose of conducting a temporary emergency shelter or feeding program under certain prescribed circumstances. The Governor’s proposal, if enacted, should provide access to locals of any desired airspace under freeways for these purposes.

The fact is that California’s homelessness crisis is significant, and may call for radical ideas to truly address it. Because they have few other options, homeless people are choosing to camp on the state’s property regardless of the efforts to keep them out. According to Caltrans, its maintenance crews encountered roughly 7,000 homeless camps on state highway rights of way in 2017, with cleanup costs reaching more than \$10 million.

This bill directs Caltrans to conduct this assessment in order to inform the Legislature of the potential to use airspace above our expansive state highway system to help further address the state’s needs. The costs of such proposals may ultimately be too prohibitive to pursue, but it is worth the effort to assess this option given the state’s enormous need.

*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 3061 (Gloria), Chapter 442, Statutes of 2018, authorized Caltrans to lease at a discount airspace under a freeway or other real property to the City of San Diego for emergency shelter or feeding programs.

AB 3139 (Bonta), Chapter 443, Statutes of 2018, authorized Caltrans to lease at a discount 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 airspace under a freeway or other real property to both the City of Los Angeles and City of San Jose for emergency shelter or feeding programs.

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**

None on file.

**Opposition**

None on file.

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