

AMENDED IN ASSEMBLY APRIL 7, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2428

Introduced by Assembly Member Ting

February 19, 2016

An act to amend Section 104.16 of the Streets and Highways Code, relating to state highways.

LEGISLATIVE COUNSEL'S DIGEST

AB 2428, as amended, Ting. State highways: property leases.

Existing law provides that the Department of Transportation has full possession and control of the state highway system, including associated property. Existing law authorizes the department to lease certain property, including the area above or below a state highway, and certain property held for future highway purposes, to public agencies under specified terms and conditions, including specific provisions governing leases of airspace and other property in the City and County of San Francisco for purposes of an emergency shelter or feeding program, at a lease cost of \$1 per month and payment of an administrative fee not to exceed \$500 per year.

This bill would revise the provisions governing leases of department property in the City and County of San Francisco ~~under these financial terms~~ to also authorize leases of property for park, recreational, or open-space purposes, subject to certain additional terms and conditions, including *a requirement for the department to lease property located within a priority development area, as defined, on a right of first refusal basis and at a specified lease amount, and a requirement for the lessee*

to be responsible for all associated *nonhighway* maintenance costs. The bill would provide for the lease to authorize the lessee to subsidize its maintenance costs through a limited revenue generation model, with any revenues generated above the maintenance costs to be shared with the state, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
 2 *following:*
- 3 (a) *Chapter 728 of the Statutes of 2008 (SB 375) supports the*
 4 *goals of the California Global Warming Solutions Act of 2006 (AB*
 5 *32) by requiring each of the state’s 18 metropolitan areas to reduce*
 6 *greenhouse gas emissions from cars and light trucks. SB 375 calls*
 7 *on each metropolitan area to develop a sustainable communities*
 8 *strategy (SCS) to accommodate future population growth and*
 9 *reduce greenhouse gas emissions.*
- 10 (b) *One of the major components of SB 375 is to coordinate the*
 11 *regional housing needs allocation process with the regional*
 12 *transportation process while maintaining local authority over land*
 13 *use decisions. Thus, local officials are key decisionmakers in how*
 14 *the provisions of SB 375 are ultimately implemented.*
- 15 (c) *The nine-county Bay Area metropolitan area SCS, Plan Bay*
 16 *Area, was adopted in 2013 through a cooperative effort of the*
 17 *Metropolitan Transportation Commission (MTC) and the*
 18 *Association of Bay Area Governments (ABAG). The Bay Area is*
 19 *expected to grow by 2,000,000 people over the next 25 years.*
- 20 (d) *Plan Bay Area provides a strategy for meeting 80 percent*
 21 *of the region’s future housing needs in priority development areas*
 22 *(PDAs). These are neighborhoods within walking distance of*
 23 *frequent transit service, offering a wide variety of housing options,*
 24 *and featuring amenities such as grocery stores, community centers,*
 25 *open space, and restaurants.*
- 26 (e) *There is a direct relationship between development planning*
 27 *for population growth in PDAs and the provision of open space*
 28 *and other amenities in these areas that will be required to support*
 29 *projected growth. San Francisco, like most cities, aims to provide*
 30 *adequate quality open space for the broader public health and*

1 *quality of life of its citizens and workforce. As new development*
2 *occurs, it serves additional residents and employees, who, in turn,*
3 *require new, or expanded and enhanced, open space.*

4 *(f) A 2014 San Francisco Citywide Nexus Analysis documents*
5 *this direct relationship between projected population growth and*
6 *the cost of new open-space infrastructure to support growth.*
7 *Providing recreation and open space, such as baseball diamonds,*
8 *soccer fields, parks, playgrounds, tennis courts, flower gardens,*
9 *community gardens, and greenways, is a capital intensive*
10 *undertaking, especially in San Francisco where land availability*
11 *is low and land prices are high.*

12 *(g) To meet the goals of SB 375, more of the future development*
13 *is planned to be walkable and bikeable and close to public transit,*
14 *jobs, schools, shopping, parks, recreation, and other amenities.*
15 *Many of San Francisco's PDAs are located in areas of San*
16 *Francisco that both lack open space and are home to most of the*
17 *city's freeways. There are many parcels and right-of-ways beneath*
18 *and adjacent to these freeways and within PDAs that could be*
19 *used for open-space purposes, yet currently the cost of leasing*
20 *those lands from the Department of Transportation (Caltrans) is*
21 *prohibitively high.*

22 *(h) Thus, one strategy for supporting statewide SB 375 goals*
23 *is to decrease the cost of providing additional open space by*
24 *decreasing the cost of land. An innovative intergovernmental*
25 *partnership would engage Caltrans in low-cost leases with San*
26 *Francisco for areas under the freeways that overlap with PDAs*
27 *and San Francisco would, in turn, take on the cost of building and*
28 *maintaining much-needed new open space on those lands to*
29 *support and accommodate future population growth and reduce*
30 *greenhouse gas emissions.*

31 *(i) San Francisco has already demonstrated the viability of*
32 *open-space uses under Caltrans freeways through various*
33 *completed and successful projects. In the Mission Bay Area, San*
34 *Francisco operates several recreational uses under Interstate 280,*
35 *including volleyball and basketball courts, as well as pedestrian*
36 *walkways. In the SoMa West area under the Route 101 Central*
37 *Freeway, San Francisco leased two Caltrans parcels and built a*
38 *very popular dog park and skatepark. The leases for these projects,*
39 *which San Francisco negotiated carefully in partnership with*

1 *Caltrans, could serve as models for a framework of more*
2 *financially feasible open-space projects.*

3 (j) *With an under-freeway open-space framework in place, San*
4 *Francisco could more readily meet its SB 375 goals. If this lower*
5 *land cost opportunity was established, the under-freeway*
6 *open-space projects could become financially feasible and San*
7 *Francisco would be able to localize the decisionmaking process*
8 *for these new open-space uses. This would allow San Francisco*
9 *the flexibility to coordinate and plan locally and to more*
10 *comprehensively plan to accommodate future population growth*
11 *and reduce greenhouse gas emissions.*

12 **SECTION 1.**

13 **SEC. 2.** Section 104.16 of the Streets and Highways Code is
14 amended to read:

15 104.16. (a) Any airspace under a freeway, or real property
16 acquired for highway purposes, in the City and County of San
17 Francisco, that is not excess property, may be leased by the
18 department to the city and county or ~~another~~ a political subdivision
19 of the city and county or a state agency for purposes of an
20 emergency shelter or feeding ~~program, or for park, recreational,~~
21 ~~or open-space purposes.~~ *program. Any airspace under or adjacent*
22 *to a freeway, or other real property acquired for highway purposes,*
23 *in the City and County of San Francisco, which is not excess*
24 *property and is within a priority development area, shall be leased*
25 *on a first right of refusal basis by the department to the city and*
26 *county, a political subdivision of the city and county, or a state*
27 *agency for park, recreational, or open-space purposes.*

28 (b) *The lease amount for emergency shelter or feeding programs*
29 *shall be for one dollar (\$1) per month. The lease amount for park,*
30 *recreational, or open-space purposes shall be 10 percent or less*
31 *of the average fair market lease value of the applicable parcel,*
32 *demonstrated through documented lease examples determined*
33 *through either the average of fair market leases for the applicable*
34 *parcel over the previous five years, or, in the absence of these*
35 *recent fair market rate examples for the applicable parcel, an*
36 *average of the fair market leases over the previous five years for*
37 *the three department parcels in closest proximity to the applicable*
38 *parcel. The lease amount may be paid in advance of the term*
39 *covered in order to reduce the administrative costs associated with*
40 *the payment of the monthly rental fee. The lease shall require the*

1 payment of an administrative fee not to exceed five hundred dollars
2 (\$500) per year, unless the department determines that a higher
3 administrative fee is necessary, for the department's cost of
4 administering the lease.

5 (c) In the case of a lease for park, recreational, or open-space
6 purposes, the lease shall require the lessee to fund and construct
7 ~~all~~ associated infrastructure, and to accept full responsibility for
8 ~~liability-related~~ *associated to those uses; the uses, except as*
9 *otherwise provided in the lease.* The lease shall require the lessee
10 to be responsible for all *nonhighway-related* maintenance costs
11 associated with those uses, except as otherwise provided in the
12 lease. The lease shall authorize the ~~lessee~~ *lessee, at its discretion,*
13 to subsidize its associated maintenance costs through generation
14 of revenue under a limited revenue generation model, such as from
15 limited parking facilities *or retail use* located on *or contiguous to*
16 the leased property, if any revenues generated that exceed the
17 associated maintenance costs are shared with the state, at a rate
18 not less than 50 percent of those excess revenues, with that amount
19 to be deposited in the State Highway Account.

20 (d) *As used in this section, "priority development area" means*
21 *a neighborhood within walking distance of frequent transit service*
22 *that offers a wide variety of housing options and that features*
23 *various amenities, including grocery stores, community centers,*
24 *open space, and restaurants.*

25 ~~(d)~~

26 (e) The Legislature finds and declares that the lease of real
27 property pursuant to this section serves a public purpose.