

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

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 to also authorize leases of property for park, recreational, or open-space purposes, subject to certain additional terms and conditions. These park, recreational, and

open-space leases would be subject to a requirement for the department to lease property located within a priority development area, as defined, to the city and county on a right of first refusal basis and, for up to 10 parcels, at a specified below market value 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
- 5 (AB 32) by requiring each of the state’s 18 metropolitan areas to
- 6 reduce greenhouse gas emissions from cars and light trucks. SB
- 7 375 calls on each metropolitan area to develop a sustainable
- 8 communities strategy (SCS) to accommodate future population
- 9 growth and 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.

1 (e) There is a direct relationship between development planning
2 for population growth in PDAs and the provision of open space
3 and other amenities in these areas that will be required to support
4 projected growth. San Francisco, like most cities, aims to provide
5 adequate quality open space for the broader public health and
6 quality of life of its citizens and workforce. As new development
7 occurs, it serves additional residents and employees, who, in turn,
8 require new, or expanded and enhanced, open space.

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

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

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

36 (i) San Francisco has already demonstrated the viability of
37 open-space uses under Caltrans freeways through various
38 completed and successful projects. In the Mission Bay Area, San
39 Francisco operates several recreational uses under Interstate 280,
40 including volleyball and basketball courts, as well as pedestrian

1 walkways. In the SoMa West area under the Route 101 Central
2 Freeway, San Francisco leased two Caltrans parcels and built a
3 very popular dog park and skatepark. The leases for these projects,
4 which San Francisco negotiated carefully in partnership with
5 Caltrans, could serve as models for a framework of more financially
6 feasible open-space projects.

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

16 SEC. 2. Section 104.16 of the Streets and Highways Code is
17 amended to read:

18 104.16. (a) (1) Any airspace under a freeway, or real property
19 acquired for highway purposes, in the City and County of San
20 Francisco, that is not excess property, may be leased by the
21 department to the city and county or a political subdivision of the
22 city and county or a state agency for purposes of an emergency
23 shelter or feeding program.

24 (2) Any airspace under or adjacent to a freeway, or other real
25 property acquired for highway purposes, in the City and County
26 of San Francisco, which is not excess property and is within a
27 priority development area, shall be leased on a first right of refusal
28 basis by the department to the city and county, a political
29 subdivision of the city and county, or a state agency for park,
30 recreational, or open-space purposes.

31 (b) (1) The lease amount for emergency shelter or feeding
32 programs shall be for one dollar (\$1) per month.

33 (2) For up to 10 parcels, the lease amount for park, recreational,
34 or open-space purposes shall be 10 percent or less of the average
35 fair market lease value of the applicable ~~parcel, demonstrated~~
36 ~~through documented lease examples determined through either~~
37 ~~the average of fair market leases for the applicable parcel over the~~
38 ~~previous five years, or, in the absence of these recent fair market~~
39 ~~rate examples for the applicable parcel, an average of the fair~~

1 market leases over the previous five years for the three department
2 parcels in closest proximity to the applicable parcel: *parcel*.

3 (3) With respect to a lease for an emergency shelter or feeding
4 program or for park, recreational, or open-space purposes, the lease
5 amount may be paid in advance of the term covered in order to
6 reduce the administrative costs associated with the payment of the
7 monthly rental fee. The lease shall require the payment of an
8 administrative fee not to exceed five hundred dollars (\$500) per
9 year, unless the department determines that a higher administrative
10 fee is necessary, for the department's cost of administering the
11 lease.

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

27 (d) As used in this section, "priority development area" means
28 a neighborhood within walking distance of frequent transit service
29 that offers a wide variety of housing options and that features
30 various amenities, including grocery stores, community centers,
31 open space, and restaurants.

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