

AMENDED IN SENATE AUGUST 1, 2016

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,

1 and featuring amenities such as grocery stores, community centers,
2 open space, and restaurants.

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

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

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

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

38 (i) San Francisco has already demonstrated the viability of
39 open-space uses under Caltrans freeways through various
40 completed and successful projects. In the Mission Bay Area, San

1 Francisco operates several recreational uses under Interstate 280,
 2 including volleyball and basketball courts, as well as pedestrian
 3 walkways. In the SoMa West area under the Route 101 Central
 4 Freeway, San Francisco leased two Caltrans parcels and built a
 5 very popular dog park and skatepark. The leases for these projects,
 6 which San Francisco negotiated carefully in partnership with
 7 Caltrans, could serve as models for a framework of more financially
 8 feasible open-space projects.

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

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

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

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

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

35 (2) For up to 10 parcels, the lease amount for park, recreational,
 36 or open-space purposes shall be 10 percent or less of the average
 37 fair market lease value of the applicable parcel.

38 (3) With respect to a lease for an emergency shelter or feeding
 39 program or for park, recreational, or open-space purposes, the lease
 40 amount may be paid in advance of the term covered in order to

1 reduce the administrative costs associated with the payment of the
2 monthly rental fee. The lease shall require the payment of an
3 administrative fee not to exceed five hundred dollars (\$500) per
4 year, unless the department determines that a higher administrative
5 fee is necessary, for the department's cost of administering the
6 lease.

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

21 (d) As used in this section, "priority development area" means
22 ~~a neighborhood within walking distance of frequent transit service~~
23 ~~that offers a wide variety of housing options and that features~~
24 ~~various amenities, including grocery stores, community centers,~~
25 ~~open space, and restaurants.~~ *an area identified in a sustainable*
26 *communities strategy developed pursuant to Section 65080 of the*
27 *Government Code.*

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