

Assembly Bill No. 1386

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 8, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14528.5 and 14528.55 of, to amend, repeal, and add Section 14528.6 of, and to add Sections 14528.56 and 14528.65 to, the Government Code, and to amend Sections 392, 485, and 538 of the Streets and Highways Code, relating to transportation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1386, Hayashi. State highways.

Existing law authorizes a city or county in which a planned transportation facility was to be located on State Highway Route 238 in Alameda County to develop and file with the California Transportation Commission a local alternative transportation improvement program that addresses transportation problems and opportunities, and provides for the use of revenues from the sales of excess properties acquired for the planned state facility in order to fund the local alternative transportation improvement program, but limits the use of revenues from excess property sales to state highway purposes. Existing law provides that the commission may not approve a local alternative transportation improvement program under these provisions after July 1, 2010. Similar provisions apply to State Highway Route 84 in the Cities of Fremont and Union City, except that the use of revenues from excess property sales in that corridor are limited to state highway purposes or projects in the local voter-approved transportation sales tax measure.

This bill would modify the restriction limiting use of revenues from excess property sales to state highway purposes applicable to State Highway Route 238 by authorizing those revenues to be used for any highway purpose. This bill would require revenues from excess property sales for State Highway Route 238 and State Highway Route 84 to be deposited into separate accounts in the Special Deposit Fund, a continuously appropriated fund, to be available for expenditure by local agencies for purposes of an approved local alternative transportation improvement program for the applicable corridor route. The bill would thereby make an appropriation.

This bill would also authorize local agencies to advance projects in the local alternative transportation improvement program with local funds, to be repaid when revenues from excess property sales become available, as specified. This bill would require the California Transportation Commission to adopt guidelines in that regard.

Existing law requires a local alternative transportation improvement program for State Highway Route 238 to provide, among other things, relocation assistance and replacement housing units for persons displaced as a result of the sale of excess properties to fund the local alternative transportation improvement program.

This bill would make these provisions inoperative, and would enact new provisions to become operative, on the date on which the superior court issues the final approval order for the settlement agreement related to the disposition of excess properties acquired for the State Route 238 Hayward Bypass Project signed by the department, the City of Hayward, and representatives for members of the class of residents, or on January 1, 2010, whichever comes later. The new provisions would, among other things, require monetary assistance to eligible tenant households and provision of 237 additional new low-income housing units. The new provisions would also require the department to offer the direct sale of eligible excess single-family residences on an as-is, fair market value basis, to current tenants meeting specified requirements and would enact other related provisions in that regard. The bill would authorize proceeds from the sale of excess properties to be used for the cost of selling the properties and various administrative, commercial, or legal costs, including program administration costs to develop and administer the home purchase program and an administrative hearing process for tenants.

Existing law provides for state highways to be constructed, as determined by the California Transportation Commission, on routes authorized by law. Existing law provides for relinquishment by the commission of state highways to local agencies under certain conditions.

This bill would authorize the commission to relinquish portions of State Highway Routes 92, 185, and 238 in the City of Hayward to that city subject to various conditions.

Appropriation: yes.

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

SECTION 1. Section 14528.5 of the Government Code is amended to read:

14528.5. (a) To resolve local transportation problems resulting from the infeasibility of planned state transportation facilities on State Highway Route 238 in the City of Hayward and Alameda County, the city or county in which the planned facilities were to be located, acting jointly with the transportation planning agency having jurisdiction over the city or county, may develop and file with the commission a local alternative transportation improvement program that addresses transportation problems and opportunities in the county which were to be served by the planned facilities. Priorities for funding in the local alternative program shall go to projects in the local voter-approved transportation sales tax measure.

(b) The commission shall have the final authority regarding the content and approval of the local alternative transportation improvement program. The commission shall not approve any local alternative transportation improvement program submitted under this section after July 1, 2010.

(c) All proceeds from the sale of the excess properties, less any reimbursements due to the federal government and all costs incurred in the sale of those excess properties, shall be allocated by the commission to fund the approved local alternative transportation improvement program and shall not be subject to Sections 188 and 188.8 of the Streets and Highways Code. Except as provided in Section 14528.6, the proceeds shall be used only for highway purposes.

(d) "Excess properties" means those properties acquired to construct a new alignment for a freeway or expressway bypass to State Highway Route 238 in the City of Hayward and in the County of Alameda, which project is no longer planned to be constructed.

SEC. 2. Section 14528.55 of the Government Code is amended to read:

14528.55. (a) To resolve local transportation problems resulting from the infeasibility of planned state transportation facilities on State Highway Route 84 in the Cities of Fremont and Union City, the cities or the county in which the planned facilities were to be located, acting jointly with the transportation planning

agency having jurisdiction over the cities or county, may develop and file with the commission a local alternative transportation improvement program that addresses transportation problems and opportunities in the county that were to be served by the planned facilities. Priorities for funding in the local alternative program shall go to projects in the local voter-approved transportation sales tax measure.

(b) The commission shall have the final authority regarding the content and approval of the local alternative transportation improvement program. The commission shall not approve any local alternative transportation improvement program submitted under this section after July 1, 2010.

(c) All proceeds from the sale of the excess properties, less any reimbursements due to the federal government and all costs incurred in the sale of those excess properties, shall be allocated by the commission to fund the approved local alternative transportation improvement program and shall not be subject to Sections 188 and 188.8 of the Streets and Highways Code. The proceeds shall be used only for state highway purposes or for projects in the local alternative transportation improvement program that are also in the local voter-approved transportation sales tax measure, subject to approval by the department.

(d) “Excess properties” means those properties acquired to construct a new alignment for State Highway Route 84 in the Cities of Fremont and Union City, a portion of which project is no longer planned to be constructed.

SEC. 3. Section 14528.56 is added to the Government Code, to read:

14528.56. The following shall pertain to local alternative transportation improvement programs developed and approved pursuant to Sections 14528.5 and 14528.55:

(a) The department shall maintain a separate account in the state’s Special Deposit Fund for each approved local alternative transportation improvement program into which it will deposit the funds derived from the sale of the respective excess properties pursuant to subdivision (c) of Section 14528.5 and subdivision (c) of Section 14528.55. All proceeds received by the department from the sale of those excess properties that are available pursuant to those subdivisions for the respective local alternative transportation improvement programs, less reimbursement for costs incurred by

the department for administration of each account, shall be deposited in each respective account, along with all interest earnings generated by the funds in the respective account.

(b) Funds in each account shall be available for expenditure by the local agencies for projects designated in the respective local alternative transportation improvement program approved by the commission pursuant to Section 14528.5 or 14528.55.

(c) This section applies only to State Highway Routes 84 and 238, and to the local alternative transportation programs approved pursuant to Section 14528.5 or 14528.55.

(d) Section 14528.8 does not apply to projects undertaken pursuant to Section 14528.5 or 14528.55.

(e) A local jurisdiction may, with the concurrence of the appropriate transportation planning agency, the commission, and the department, advance a project included in the local alternative transportation improvement programs prior to the availability of sufficient funds from the sale of respective excess properties, through the use of its own funds. A project advanced in this manner shall be deliverable by the state, or by the local jurisdiction pursuant to agreement, when proposed by the local jurisdiction. Advancement of a project or projects shall not change the priority for funding and delivery of all projects within each respective approved local alternative transportation improvement program.

(f) A local agency may enter into an agreement with the appropriate transportation planning agency, the department, and the commission to use its own funds to develop, purchase right-of-way for, and construct a transportation project within its jurisdiction if the project is one that is included in the respective local alternative transportation improvement program and is funded by the individual account established in the Special Deposit Fund pursuant to subdivision (a), and meets all of the following requirements:

(1) Pursuant to the agreement, and from funds allocated by the commission for the project when scheduled in the local alternative transportation improvement program, the department shall reimburse the local agency for the actual cost of constructing the project, including the acquisition of right-of-way. Interest or other debt service costs incurred by local agencies to finance right-of-way acquisition or construction for the project are not reimbursable. Reimbursement made to a local agency pursuant to this subdivision

shall be made from the respective account established in the Special Deposit Fund.

(2) The amount actually reimbursed to the local agency under paragraph (1) shall be the amount expended by the local agency for right-of-way and construction. If the expenditure of local funds does not result in the completion of an operable segment of a transportation project, reimbursement shall be limited to the actual amount expended by the local agency for right-of-way or partial construction, with no escalation factor.

(3) Pursuant to the agreement, and from funds allocated by the commission for the project when it was scheduled in the local respective alternative transportation improvement program, the department shall reimburse the local agency for the actual cost of developing the project with local funds pursuant to this subdivision. Reimbursement of project development costs shall not exceed 20 percent of estimated construction costs. In no case shall this reimbursement exceed any lesser amount mutually agreed to by the department, commission, and local agency.

(4) Reimbursements made to local agencies pursuant to this section for expenditures of local voter-approved sales and use tax revenues shall be used for the same purposes for which the imposition of the sales and use tax is authorized.

(5) The commission, in consultation with the department and local transportation officials, shall develop and adopt guidelines to implement this subdivision.

(g) At the time of its approval of the respective local alternative transportation improvement program, the commission, in consultation with the department and representatives from regional and local agencies, shall also incorporate, into the state transportation improvement program guidelines, additional guidelines specific to the local alternative transportation improvement program. The additional guidelines shall include, but need not be limited to, criteria for project applications, estimation of costs, assessment of capability to complete the project, allocation of funds to project phases, timely expenditure of funds, management of changes to cost, scope, and schedules, assessment of progress in implementing projects, and audit requirements.

SEC. 4. Section 14528.6 of the Government Code is amended to read:

14528.6. A local alternative transportation improvement program, approved pursuant to Section 14528.5, shall include all of the following:

(a) A program to provide relocation assistance for residents eligible for relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of this code and guidelines adopted pursuant to Section 50460 of the Health and Safety Code.

(b) A program to provide relocation assistance for all lower income households, regardless of their eligibility for assistance pursuant to subdivision (a), who will be displaced from their residences because of actions taken to finance or implement the local alternative improvement transportation program, including sale or removal of their residences. To be eligible for assistance, lower income households shall have occupied their residence on the date that the local alternative transportation improvement program was approved by the commission. The program shall comply with the requirements, except eligibility requirements, of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of this code and with guidelines adopted pursuant to Section 50460 of the Health and Safety Code.

(c) A program to provide all persons or families who are not otherwise eligible for assistance pursuant to subdivisions (a) and (b), with relocation advice and moving expenses, as defined in Section 7261 and subdivisions (a) and (b) of Section 7262.

(d) A program to provide replacement housing units for persons and families of low or moderate income at an affordable housing cost. At a minimum, the program shall provide that the total number of new units for persons or families of low or moderate income to be provided shall be equal to or greater than the number of units occupied by persons or families of low or moderate income displaced by the local alternative transportation improvement program, and that the total number of new housing units to be provided for lower income households shall be equal to or greater than the number of units occupied by lower income households displaced by the local alternative transportation improvement program. The number of units so provided shall be determined at least one year prior to the date the commission approves the local alternative transportation improvement program. If it is not feasible to replace the total number of units required on surplus public

property, other types of property shall be used in order to provide the replacement units. Replacement of the units shall be completed utilizing funds other than those derived from the sale of excess properties and shall be completed within four years of the date the persons or families are displaced or, if unoccupied, from the date of demolition or removal. Unoccupied units shall be replaced in the same ratio as units occupied by persons and families of low and moderate income in the right-of-way. It shall be an objective of the program that, where financially feasible, the number of new housing units of persons and families of low or moderate income shall be not less than 20 percent of all new housing units developed on the aggregate surplus public property.

(e) For purposes of this section, the terms “affordable housing cost,” “lower income households,” and “persons and families of low or moderate income” shall be defined as provided in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(f) Unless specifically stated, this section shall in no way reduce or limit any requirements for the provision of housing for persons or families of low or moderate income as contained in any other provision of law.

(g) No state highway account funds shall be expended for planning or implementing the housing provisions of the local alternative transportation improvement program which are required to be carried out pursuant to subdivisions (b) to (d), inclusive.

(h) Neither the excess property nor the proceeds from the sale of the excess property shall be used for housing purposes. The excess property may be used for housing purposes after sale by the department.

(i) This section shall become inoperative on the date on which the superior court issues the final approval order for the settlement agreement related to the disposition of excess properties acquired for the State Route 238 Hayward Bypass Project signed by the department, the City of Hayward, and representatives for members of the class of residents, or on January 1, 2010, whichever comes later. This section shall be repealed on January 1 of the year following the year in which it becomes inoperative.

SEC. 5. Section 14528.6 is added to the Government Code, to read:

14528.6. (a) A local alternative transportation improvement program, approved pursuant to Section 14528.5, and pursuant to the terms and conditions of the applicable court-approved settlement agreement related to the disposition of excess properties acquired for the State Route 238 Hayward Bypass Project signed by the department, the City of Hayward, and representatives for members of the class of residents, shall include all of the following:

(1) A program to provide monetary assistance for eligible tenant households occupying a corridor property on or before December 31, 2009.

(2) A program to provide 237 additional new low-income housing units in the corridor.

(3) A program to provide home purchase assistance to eligible tenant households in single-family residences.

(b) For the purpose of funding a local alternative transportation improvement program, approved pursuant to Section 14528.5, neither the excess property nor the proceeds from the sale of the excess property shall be used for housing or housing-related programs, including, but not limited to, any direct monetary assistance to tenants, development of any new low-income housing units, or providing any direct home purchase assistance to occupants of the excess properties. The excess property may be used for housing purposes after sale by the department.

(c) Notwithstanding subdivision (b), proceeds from the sale of the excess properties may be used for the cost of selling the properties, including all of the following:

(1) All necessary surveys of tenants occupying excess properties.

(2) Appraisal costs, including review appraisals.

(3) Program administration costs to develop and administer the home purchase program.

(4) Program administration costs to develop and provide an administrative hearing process for excess property tenants related to any housing programs or program assistance offered to those excess property tenants.

(5) Other administrative, commercial, or legal costs necessary for selling the excess properties.

(d) Any person or persons commencing initial occupancy of or entering into a new rental or lease agreement for a property located on the State Route 238 Hayward Bypass Project on or after January 1, 2010, and before the sale of the properties by the department or

its authorized agent, shall not be eligible for any additional relocation assistance under any provision of state law, including Section 50460 of the Health and Safety Code, and shall be notified prior to occupying the property that such occupancy, rental, or lease is temporary regardless of length of occupancy.

(e) For purposes of this section, “eligible tenant household” shall mean a household comprised of a tenant or group of tenants in good standing, pursuant to a valid, written rental agreement with the department as of the date on which the superior court preliminarily approves the settlement agreement described in subdivision (a), and who are members of the class covered by that settlement.

(f) This section shall become operative on the date on which the superior court issues the final approval order for the settlement agreement related to the disposition of excess properties acquired for the State Route 238 Hayward Bypass Project signed by the department, the City of Hayward, and representatives for members of the class of residents, or on January 1, 2010, whichever comes later.

SEC. 6. Section 14528.65 is added to the Government Code, to read:

14528.65. (a) All of the following shall apply to the sale or other disposition of excess property to fund the local alternative transportation improvement program approved pursuant to Section 14528.5:

(1) At the time the commission rescinds the freeway adoption previously approved for the State Route 238 Hayward Bypass Project, and the commission approves the local alternative transportation improvement program, the commission shall authorize the department to sell, on an “as is” basis at fair market value, the excess properties acquired for the State Route 238 Hayward Bypass Project. However, any properties required for the implementation of the local alternative transportation improvement program shall not be sold.

(2) Article 8.5 (commencing with Section 54235) of Chapter 5 of Part 1 of Division 2 of Title 5 does not apply to the sale of excess property pursuant to this section.

(3) The disposition of excess property pursuant to this section shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of

Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. “Disposition” means the sale, exchange, sale combined with exchange, or transfer of a parcel of excess property.

(4) The department shall offer the direct sale, “as is” at fair market value, of an eligible excess single-family residence located on the State Route 238 Hayward Bypass Project properties, to the residential tenant of that residence if the tenant is in good standing in the residence and has a tenure of two years or more, with all rent obligations current and paid in full. For purposes of this section, “eligible excess single-family residence” means an excess single-family residence determined to be eligible for sale to single-family residential tenants pursuant to the settlement agreement described in subdivision (a) of Section 14528.6. The commission is hereby authorized and directed to approve any such sale transaction provided the commission determines the sale to be “as is” at fair market value.

(5) If a residential tenant in single-family residence qualifies for the direct sale as provided for in paragraph (4), and the residential tenant is unable to purchase the single-family residence occupied by the tenant because that single-family residence is ineligible for direct sale, the department declines to allow the direct sale of that single-family residence, the tenant does not qualify for financing for that single-family residence, the condition of the subject single-family residence does not allow financing, or the tenant needs a larger or smaller single-family residence, the department shall offer to the residential tenant the direct sale, “as is” at fair market value, of other available eligible excess single-family residences located on the State Route 238 Hayward Bypass Project properties. The commission is hereby authorized and directed to approve any such sale transaction provided the commission determines the sale to be “as is” at fair market value.

(6) The department may hire, or cause to be hired, an appraiser to determine the “as is” fair market value of any single-family residence for which a direct sale to a residential tenant is contemplated as provided for in paragraph (4) or (5). The appraiser

shall, at a minimum, be in good standing, be designated a Senior Residential Appraiser by the Appraisal Institute, possess a certified residential license, and have knowledge of the City of Hayward and County of Alameda single-family residence residential housing market. The department, at its sole election, may undertake an appraisal review. The commission is hereby authorized and directed to approve an appraisal review as provided in this section. However, the commission retains the authority to determine that the appraisal or appraisal review accurately determined the “as is” fair market value according to the processes and procedures identified or referenced in this section. For the purposes of this section, “fair market value” has the meaning set forth in Section 1263.320 of the Code of Civil Procedure.

(b) This section shall become operative on the date on which the superior court issues the final approval order for the settlement agreement related to the disposition of excess properties acquired for the State Route 238 Hayward Bypass Project signed by the department, the City of Hayward, and representatives for members of the class of residents, or on January 1, 2010, whichever comes later.

SEC. 7. Section 392 of the Streets and Highways Code is amended to read:

392. (a) Route 92 is from:

(1) Route 1 near Half Moon Bay to Route 280.

(2) Route 280 to Route 580 near Castro Valley and Hayward.

(b) (1) The commission may relinquish to the City of Hayward the portion of Route 92 located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately after the county recorder’s recordation of the relinquishment resolution containing the commission’s approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 92 relinquished shall cease to be a state highway.

(B) The portion of Route 92 relinquished shall be ineligible for future adoption under Section 81.

(4) For relinquished portions of Route 92, the City of Hayward shall maintain signs within its jurisdiction directing motorists to the continuation of Route 92 or to the state highway system, as applicable.

SEC. 8. Section 485 of the Streets and Highways Code is amended to read:

485. (a) Route 185 is from Route 92 in Hayward to Route 77 in Oakland.

(b) (1) The commission may relinquish to the City of Hayward the portion of Route 185 located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately after the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 185 relinquished shall cease to be a state highway.

(B) The portion of Route 185 relinquished shall be ineligible for future adoption under Section 81.

(4) For relinquished portions of Route 185, the City of Hayward shall maintain signs within its jurisdiction directing motorists to the continuation of Route 185 or to the state highway system, as applicable.

SEC. 9. Section 538 of the Streets and Highways Code is amended to read:

538. (a) Route 238 is from Route 680 in Fremont to Route 61 near San Lorenzo via Hayward.

(b) (1) The commission may relinquish to the City of Hayward the portion of Route 238 located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately after the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 238 relinquished shall cease to be a state highway.

(B) The portion of Route 238 relinquished shall be ineligible for future adoption under Section 81.

(4) For relinquished portions of Route 238, the City of Hayward shall maintain signs within its jurisdiction directing motorists to the continuation of Route 238 or to the state highway system, as applicable.

Approved _____, 2009

Governor