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SB-211 State highways: leases. (2019-2020)

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Senate Bill No. 211

CHAPTER 343

An act to add and repeal Section 104.30 of the Streets and Highways Code, relating to state highways.

[Approved by Governor September 26, 2019. Filed with Secretary of State September 26, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 211, Beall. State highways: leases.

Existing law vests the Department of Transportation with 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. Existing law also authorizes the department to lease airspace under a freeway, or real property acquired for highway purposes, located in various cities and counties, that is not excess property, to specified entities for certain purposes, including for purposes of an emergency shelter or feeding program, subject to certain conditions.

This bill would authorize the department to offer for lease to a city, county, political subdivision of a city or county, or state agency airspace and real property acquired for highway purposes that meets certain requirements for purposes of a temporary emergency shelter or feeding program. The bill would require the entity that enters into the lease to pay certain costs to the department including \$1 per month for the lease and an annual administrative fee of up to \$5,000, or no more than the department's cost of administering the lease, not to exceed \$15,000. The bill would authorize the lease to be terminated without penalty if the department determines the airspace or real property is needed for departmental purposes, as specified. The bill would require the lease to contain other specified terms and conditions. The bill would repeal these provisions on January 1, 2029.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 104.30 is added to the Streets and Highways Code, to read:

104.30. (a) The department may make available for lease airspace or real property for the purposes described in this section if it determines that the airspace or real property is available for rent and that the airspace or real property has independent site access separate from an access-controlled highway or highway structure. The department may offer the airspace or real property for lease to a local or state agency for the purpose of conducting a temporary emergency shelter or feeding program. As a condition of entering into the lease, the lessee shall agree that, during the period of the lease, the airspace or real property and its improvements shall not be used as childcare facilities and that no playground equipment shall be permitted under the lease. Any existing lease of airspace or real property between the department and a local or state agency may be terminated without penalty

at any time, upon mutual agreement of both the department and the lessee, for the purpose of entering into a new lease pursuant to this section.

(b) The determination of availability and identification of specific parcels of airspace or real property eligible for lease under this section shall be made by the department in its sole discretion.

(c) All structures that are constructed or modified under this section shall be compliant with the minimum standards adopted pursuant to Chapter 7.8 (commencing with Section 8698) of Division 1 of Title 2 of the Government Code or the minimum standards provided in the 2019 California Building Code Appendix O, the 2019 California Residential Code Appendix X, and any future standards adopted by the Department of Housing and Community Development related to emergency housing or emergency housing facilities.

(d) Notwithstanding any other law, for any leases executed pursuant to this section or any other section by the department for the purpose of conducting a temporary emergency shelter or feeding program, the enforcement of applicable building standards adopted pursuant to Chapter 7.8 (commencing with Section 8698) of Division 1 of Title 2 of the Government Code or published in the California Building Code and the California Residential Code, including those relating to fire and panic safety, and any future standards adopted by the Department of Housing and Community Development related to emergency housing or emergency housing facilities, shall be the responsibility of the local authority in which the property subject to the lease is located and that has jurisdiction over the enforcement of building code standards.

(e) Any improvements to the leased property shall meet the following conditions:

(1) No improvements of a permanent nature are allowed, except for appropriate utilities, groundcover, lighting, and fencing to support the temporary emergency shelter or feeding program as approved by the department.

(2) Any improvements of a temporary nature in which people live, eat, recreate, receive services, or otherwise occupy shall not be underneath a transportation structure, and shall not be within 20 horizontal feet from the farthest edge of a transportation structure.

(f) (1) The monthly rent of a lease entered into pursuant to this section shall be one dollar (\$1) per month. The lessee may pay the rental amounts due for the entire term of the lease in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee.

(2) To cover the department's costs, the lease shall require the lessee to pay an annual administrative fee of up to five thousand dollars (\$5,000), unless the department determines that a higher administrative fee is necessary to cover the department's costs, in which case the annual administrative fee shall be no more than the amount of those costs, not to exceed fifteen thousand dollars (\$15,000).

(3) (A) If the department determines at any time after the commencement of the lease that the leased property is needed for departmental purposes, the department may terminate the lease without penalty or reimbursement of prior lease payments made to the department, except that the department shall reimburse any advance lease payments and fees made to the department on a prorated basis.

(B) Notwithstanding any other law, if the department terminates the lease pursuant to subparagraph (A), neither the lessee nor any occupants of the leased property shall be entitled to relocation benefits or reimbursement of relocation expenses payable by the department or the state as result of that termination.

(C) The department shall provide the lessee with no less than 120 days' written notice before the termination of a lease entered into pursuant to this section, except in the case of an emergency.

(4) The lessee shall defend, indemnify, and hold the state, its officers, officials, employees, agents, and volunteers harmless from any and all losses, claims, injuries, damages, suits, obligations, penalties, judgments, awards, and other liabilities including attorney fees, whether caused by, relating to, based upon, arising out of, or in connection with the performance of the lease, the temporary emergency shelter, or the feeding program.

(5) The lessee shall be responsible for all leased area site conditions, including, but not limited to, maintenance, litter and graffiti abatement, security, environmental testing and remediation for purposes of the lease, and other legal and permitting requirements at the leased site, as required by the department.

(g) The Legislature finds and declares that the lease of airspace or real property pursuant to this section serves a public purpose. The Legislature further finds and declares that the rental amount established in subdivision (f) constitutes fair market value for the leased airspace or real property.

(h) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the lessee is the lead agency for any action undertaken pursuant to this section.

(i) (1) Except as provided in subdivision (d), this section does not apply to a lease that a local or state agency enters into with the department pursuant to Section 104.16, 104.17, 104.18, 104.21, 104.24, 104.25, or 104.26.

(2) A local or state agency described in Section 104.16, 104.17, 104.18, 104.21, 104.24, 104.25, or 104.26 may enter into a lease with the department pursuant to this section.

(j) For purposes of this section, "local agency" means a city, county, or political subdivision of a city or county.

(k) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.