

BILL ANALYSIS

Senate Research Center

S.B. 1838
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Transportation
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In November 2020, Austin voters approved funding for Capital Metro's Project Connect Initial Investment, which includes two light rail lines that would operate underground in the Central Business District. Underground service would separate automobile and pedestrian traffic from subsurface uses and provide safety and operational benefits for rail and roadway users. Capital Metropolitan Transportation Authority (Capital Metro) is the special district metropolitan transportation authority for the Central Texas region.

In 1913, the Texas Legislature granted the City of Austin a 99-year lease on several properties throughout the city for use as a park including at Republic and Brush Squares. This lease was extended by an additional 99 years beginning in 2016. Neither the 1913 grant nor the 2016 extension explicitly grant access or subsurface rights to the squares.

Subsurface and access rights are critical to ensuring proper ventilation and access to an underground station for the public. The lease for subsurface and access rights would be in addition to and separate from the existing lease to operate a public park on the surface of the property.

As proposed, S.B. 1838 amends current law relating to the modification of a 99-year lease of certain state property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 34 (H.B. 215), General Laws, Acts of the 33rd Legislature, Regular Session, 1913, by deleting Section 2B.(a) in its entirety and in lieu thereof substituting the following:

Sec. 2B. (a) Requires that the leasehold interest granted by the State of Texas pursuant to Sections 2 and Section 2A of this Act be limited to only the surface of the property described in Sections 1, 2A(a)1, and 2A(a)2) of this Act, and be subject and subordinate to those rights and interests granted to the Capital Metropolitan Transportation Authority (Capital Metro) pursuant to Section 3 hereof. Provides that the State of Texas does not by this Act part with any title, color of title or interest which it now owns in the property described in this Act, except as granted herein.

SECTION 2. Amends Chapter 34 (H.B. 215), General Laws, Acts of the 33rd Legislature, Regular Session, 1913, by adding Section 3, as follows:

Sec. 3. (a) Provides that, notwithstanding any other provision of this Act, the State of Texas hereby cedes and grants to Capital Metro for a period of 99 years beginning on the effective date of passage, a lease of all of the subsurface strata below the surface of the property described in Sections 1 and 2A.(a)2) of this Act, and the streets abutting such property to the center of such streets.

(b) Authorizes Capital Metro to use the subsurface of the property described in Section 3(a) of this Act for public transportation, subway and/or underground railway station, tunnel and/or terminal, and any retail, commercial, public performances and exhibitions, and public amenity purposes. Authorizes Capital Metro, in any location and at any depth below the surface of the property described in Section 3(a) of this Act, to construct, operate, repair, maintain, replace and remove (collectively, the "Transportation Facilities"):

(1) public transportation facilities, including, subway and railway tunnels, stations, tracks, and improvements related thereto;

(2) common areas and facilities designated for the general use and convenience of any subtenants, passengers, visitors and occupants of the Transportation Facilities, including concourses, tunnels, piers, boarding areas, stages, exhibitions and performance areas, seating areas, elevators, moving walkways, sidewalks, stairways, escalators, pedestrian entrances, station portals, air intakes/exits, loading zones, landscaping and any facilities and improvements related thereto;

(3) shops, stores, booths, stands, spaces and related facilities used for any commercial, retail, market and restaurant uses;

(4) billboards, and any advertising and/or promotional signs and/or displays, and,

(5) improvements, utilities and related infrastructure and public amenities related to the provision and development of all of the foregoing.

(c) Provides that, notwithstanding any other provision of this Act, the State of Texas hereby cedes and grants to Capital Metro for a period of 99 years beginning on the effective date of passage, the following easements on the surface of the property described in Sections 1 and 2A.(a)(2) of this Act, and the streets abutting such property to the center of such streets:

(1) a temporary non-exclusive construction easement to use as much of the surface of the property described in Section 3(c) of this Act as capital metro may deem necessary from time to time for the purpose of constructing, maintaining, repairing, replacing, relocating and removing all or any part of the Transportation Facilities or the Surface Ancillary Amenities (as defined in Section 3(c)(5) below);

(2) a non-exclusive access easement for vehicular and pedestrian ingress, egress, and access to and from the Transportation Facilities on, over and across the surface of the property described in Section 3(c) of this Act, whether on roadways, sidewalks or walkways located thereon if existing, or otherwise over such Surface Ancillary Amenities as Capital Metro may install from time to time;

(3) a non-exclusive easement over the property described in Section 3(c) of this Act for audio, visual, view, reflective light, shadow flicker, glimmer, noise, shadow, glare and any other effects attributable to the Transportation Facilities located under or on the property described in Section 3(c) of this Act and/or on property adjacent thereto;

(4) a non-exclusive easement over the surface of the property described in Section 3(c) of this Act, for the purpose of installing, maintaining, repairing, replacing, relocating, and removing from time to time any (i) power transmission lines, including overhead and underground transmission lines, poles, anchors, conduits, support structures, cables,

distribution and interconnection facilities, and related utility facilities, infrastructure, and equipment, (ii) telecommunication and data lines, including overhead and underground transmission lines, poles, anchors, conduits, support structures, cables, and related utility facilities, infrastructure, and equipment, (iii) water, drainage, waste and sewer lines, conduits, support structures, and related utility facilities, infrastructure, and equipment, and (iv) any other utility facilities, infrastructure and equipment as Capital Metro may deem necessary or desirable in connection with the development, operation and maintenance of the Transportation Facilities and the Surface Ancillary Amenities; and,

(5) an encroachment easement and right to construct, maintain, repair, replace, relocate and remove such above-ground signage, booths, walkways, sidewalks, elevators, stairwells, escalators, awnings, entryways, exits, fences, landscaping, air intakes/exits, trash receptacles and other public amenities (collectively, the "Surface Ancillary Amenities") as Capital Metro may deem necessary or desirable to install over the surface of the property described in Section 3(c) of this Act.

(d) Requires that each easement granted to Capital Metro pursuant to Section 3(c)(1) - (5) of this Act be appurtenant to the leasehold interest granted to Capital Metro pursuant to Section 3(a) of this Act, to run with the property described in Sections 3(a) and 3(c) of this Act, and to inure to the benefit of Capital Metro. Prohibits nonuse of the easements or rights granted pursuant to Section 3(c) of this Act from constituting abandonment or surrender, nor is it required for it preclude the use of the entire scope thereof by Capital Metro at any time from time to time.

(e) Provides that the State acknowledges and agrees that Capital Metro is required to be the sole and exclusive owner of any Transportation Facilities and Surface Ancillary Amenities installed pursuant to Section 3 of this Act, and Capital Metro is authorized to remove the same at any time from time to time. Provides that the State hereby waives any lien rights, whether statutory or otherwise, the State has or is authorized to have to the Transportation Facilities and Surface Ancillary Amenities.

(f) Requires Capital Metro to have the right at any time and from time to time to assign, encumber, hypothecate, mortgage or pledge any of its right, title, or interest granted to Capital Metro pursuant to Section 3 of this Act, including, without limitation, any of its right, title and interest in and to the Transportation Facilities and the Surface Ancillary Amenities. Provides that, moreover, Capital Metro is hereby authorized to grant such subleases, easements, and/or licenses over, across, through or under the property described in Sections 3(a) and 3(c) of this Act as Capital Metro may deem necessary or desirable in connection with the development, operation and maintenance of the Transportation Facilities and the Surface Ancillary Amenities.

(g) Provides that the State of Texas does not by this Act part with any title, color of title or interest which it now owns in the property described in Section 3 of this Act, except as granted herein.

SECTION 3. Effective date: upon passage or September 1, 2021.