

BILL ANALYSIS

Senate Research Center
87R19599 BEE-F

C.S.S.B. 1838
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Transportation
4/21/2021
Committee Report (Substituted)

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. C.S.S.B. 1838 would grant a lease to Capital Metro for subsurface and access rights to Republic and Brush Squares. 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

C.S.S.B. 1838 amends current law relating to the grant of a 99-year lease of certain state property and certain easements to the Capital Metropolitan Transportation Authority.

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 Sections 2B(a) and (b), Chapter 34 (H.B. 215), General Laws, Acts of the 33rd Legislature, Regular Session, 1913, as follows:

(a) Requires that the leasehold interest granted by the state under Sections 2 and 2A(a)(2) of this Act be limited to only the surface of the property described in Sections 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 of this Act, provided however that Capital Metro is required to exercise those rights and interests so as to reasonably accommodate the public park uses authorized by Sections 2 and 2A of this Act.

(b) Requires that the property described in Section 1 or 2A(a)(1) or (2) of this Act, in the event the City of Austin should fail to use the property for the purpose or purposes designated, revert to the State as upon breach of condition subsequent, provided, however, that if the exercise of the rights and interests granted to Capital Metro under Section 3 of this Act prevents the use of the property for a purpose designated for any period of time during the lease, such failure is prohibited from being a breach of conditions.

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 this Act a lease of all of the subsurface strata below the surface of the property described only 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 Subsection (a) of this section only for public transportation, a subway or underground railway station, tunnel, or terminal, and transportation facilities, including any related retail, commercial, public performance and exhibition, and public amenity purposes. Authorizes Capital Metro, in any location and at any depth below the surface of the property described in Subsection (a) of this section, to construct, operate, repair, maintain, replace, and remove the following transportation facilities:

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

(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, exhibition and performance areas, seating areas, elevators, moving walkways, sidewalks, stairways, escalators, pedestrian entrances, station portals, air intakes or exits, loading zones, landscaping, and any related facilities or improvements;

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

(4) billboards and any advertising or promotional signs or displays; and

(5) improvements, utilities, and related infrastructure and public amenities related to the provision and development of services and facilities described by Subdivisions (1), (2), (3), and (4) of this subsection.

(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 this Act the following easements on the surface of the property described only 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 nonexclusive construction easement to use the minimum amount of the surface of the property as Capital Metro may reasonably consider necessary:

(A) for a period not to exceed five years from the commencement of construction in connection with the installation of the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subdivision (5) of this subsection; and

(B) from time to time after the period described by Paragraph (A) of this subdivision for the purpose of renovating, maintaining, repairing, replacing, relocating, or removing all or any part of the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subdivision (5) of this subsection;

(2) a nonexclusive access easement for maintenance vehicle and pedestrian ingress, egress, and access to and from the transportation facilities described by Subsection (b) of this section on, over, and across the surface of the property, whether on existing roadways, sidewalks, or walkways located on the property or otherwise over the surface ancillary amenities described by Subdivision (5) of this subsection as Capital Metro may install from time to time;

(3) a nonexclusive easement over the property for audio, visual, view, reflective light, shadow flicker, glimmer, noise, shadow, glare, and any other effects attributable to the transportation facilities described by Subsection (b) of this section located under or on the property and on property adjacent to that property;

(4) a nonexclusive easement over the surface of the property for the purpose of installing, maintaining, repairing, replacing, relocating, or removing from time to time any:

(A) 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, and excluding any substation;

(B) telecommunication and data lines, including overhead and underground transmission lines, poles, anchors, conduits, support structures, cables, and related utility facilities, infrastructure, and equipment;

(C) water, drainage, waste and sewer lines, conduits, support structures, and related utility facilities, infrastructure, and equipment; and

(D) other utility facilities, infrastructure, and equipment as Capital Metro may consider necessary or desirable in connection with the development, operation, and maintenance of the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subdivision (5) of this subsection; and

(5) an encroachment easement for Capital Metro to install over the surface of the property, for the purpose of providing access to the transportation facilities described by Subsection (b) of this section, surface ancillary amenities compatible with public park uses as follows:

(A) for a period not to exceed five years from the commencement of construction in connection with the installation of the transportation facilities described by Subsection (b) of this section, the right to construct and install aboveground signage, booths, walkways, sidewalks, elevators, stairwells, escalators, awnings, entryways, exits, fences, landscaping, air intakes or exits, trash receptacles, and other public amenities; and

(B) from time to time after the period described by Paragraph (A) of this subdivision, the right to maintain, repair, replace, or remove a surface ancillary amenity listed in Paragraph (A) of this subdivision, and the right to construct or install fences, landscaping, trash receptacles, and surface ancillary amenities that

are wayfinding in nature, including aboveground signage, booths, and awnings.

(d) Requires Capital Metro, in exercising Capital Metro's rights and interests on the surface of the property, to mitigate and minimize harm to the public park uses, take measures that, at a minimum, comply with 49 U.S.C. Section 303 and 23 U.S.C. Section 138, and to use best efforts to preserve and protect any existing trees that are 24 caliper inches or larger.

(e) Requires that each easement granted to Capital Metro under Subsection (c) of this section be appurtenant to the leasehold interest granted to Capital Metro under Subsection (a) of this section, to run with the property described in Subsections (a) and (c) of this section, and to inure to the benefit of Capital Metro. Provides that nonuse of an easement or right granted under Subsection (c) of this section does not constitute abandonment or surrender and does not preclude the use of the entire scope of the easement or right by Capital Metro at any time or from time to time.

(f) Provides that the state acknowledges and agrees that Capital Metro shall be the sole and exclusive owner of all transportation facilities described by Subsection (b) of this section and surface ancillary amenities described by Subsection (c)(5) of this section installed under this section, and authorizes Capital Metro to convey or remove the same at any time or from time to time. Provides that the state hereby waives any lien rights, whether statutory or otherwise, the state has or may have to the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subsection (c)(5) of this section.

(g) Requires that Capital Metro have the right at any time and from time to time to assign, encumber, hypothecate, mortgage, or pledge any right, title, or interest granted to Capital Metro under this section, including, without limitation, any of its right, title, or interest in and to the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subsection (c)(5) of this section. Authorizes Capital Metro to grant such subleases, easements, and licenses over, across, through, or under the property described in Subsections (a) and (c) of this section as Capital Metro may consider necessary or desirable in connection with the development, operation, or maintenance of the transportation facilities described by Subsection (b) of this section or the surface ancillary amenities described by Subsection (c)(5) of this section.

(h) 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 section, except as granted in this section.

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