By:  Eckhardt S.B. No. 1838

(In the Senate - Filed March 12, 2021; March 26, 2021, read first time and referred to Committee on Transportation; April 23, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; April 23, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Nichols           X

Seliger           X

Alvarado          X

Blanco            X

Hancock           X

Hinojosa          X

Kolkhorst                  X

Perry             X

West              X

COMMITTEE SUBSTITUTE FOR S.B. No. 1838 By:  West

A BILL TO BE ENTITLED

AN ACT

relating to the grant of a 99-year lease of certain state property and certain easements to the Capital Metropolitan Transportation Authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sections 2B(a) and (b), Chapter 34 (H.B. 215), General Laws, Acts of the 33rd Legislature, Regular Session, 1913, are amended to read as follows:

(a)  The leasehold interest granted by the state under Sections 2 and 2A(a)(2) of this Act shall be limited to only the surface of the property described in Sections 1 and 2A(a)(2) of this Act and shall be subject and subordinate to those rights and interests granted to the Capital Metropolitan Transportation Authority pursuant to Section 3 of this Act, provided however that the Capital Metropolitan Transportation Authority shall exercise those rights and interests so as to reasonably accommodate the public park uses authorized by Sections 2 and 2A of this Act. The state 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.

(b)  In the event, however, the City of Austin should fail to use the property described in Section 1 or 2A(a)(1) or (2) of this Act for the purpose or purposes designated, that property shall revert to the State as upon breach of condition subsequent, provided, however, that if the exercise of the rights and interests granted to the Capital Metropolitan Transportation Authority 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 shall not be a breach of conditions.

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

Sec. 3.  (a) Notwithstanding any other provision of this Act, the State of Texas hereby cedes and grants to the Capital Metropolitan Transportation Authority 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)  The Capital Metropolitan Transportation Authority may 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. In any location and at any depth below the surface of the property described in Subsection (a) of this section, the Capital Metropolitan Transportation Authority may 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)  Notwithstanding any other provision of this Act, the State of Texas hereby cedes and grants to the Capital Metropolitan Transportation Authority 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 the Capital Metropolitan Transportation Authority 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 the Capital Metropolitan Transportation Authority 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:

(i)  including overhead and underground transmission lines, poles, anchors, conduits, support structures, cables, distribution and interconnection facilities, and related utility facilities, infrastructure, and equipment; and

(ii)  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 the Capital Metropolitan Transportation Authority 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 the Capital Metropolitan Transportation Authority 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:

(i)  maintain, repair, replace, or remove a surface ancillary amenity listed in Paragraph (A) of this subdivision; and

(ii)  construct or install fences, landscaping, trash receptacles, and surface ancillary amenities that are wayfinding in nature, including aboveground signage, booths, and awnings.

(d)  The Capital Metropolitan Transportation Authority shall, in exercising the Capital Metropolitan Transportation Authority's rights and interests on the surface of the property:

(1)  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

(2)  use best efforts to preserve and protect any existing trees that are 24 caliper inches or larger.

(e)  Each easement granted to the Capital Metropolitan Transportation Authority under Subsection (c) of this section shall be appurtenant to the leasehold interest granted to the Capital Metropolitan Transportation Authority under Subsection (a) of this section, shall run with the property described in Subsections (a) and (c) of this section, and shall inure to the benefit of the Capital Metropolitan Transportation Authority. 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 the Capital Metropolitan Transportation Authority at any time or from time to time.

(f)  The state acknowledges and agrees that the Capital Metropolitan Transportation Authority 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 the Capital Metropolitan Transportation Authority may convey or remove the same at any time or from time to time. 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)  The Capital Metropolitan Transportation Authority shall 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 the Capital Metropolitan Transportation Authority 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. Moreover, the Capital Metropolitan Transportation Authority is hereby authorized to grant such subleases, easements, and licenses over, across, through, or under the property described in Subsections (a) and (c) of this section as the Capital Metropolitan Transportation Authority 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)  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.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

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