

1-1 By: Eckhardt S.B. No. 1838
 1-2 (In the Senate - Filed March 12, 2021; March 26, 2021, read
 1-3 first time and referred to Committee on Transportation;
 1-4 April 23, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 23, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1838 By: West

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the grant of a 99-year lease of certain state property
 1-22 and certain easements to the Capital Metropolitan Transportation
 1-23 Authority.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Sections 2B(a) and (b), Chapter 34 (H.B. 215),
 1-26 General Laws, Acts of the 33rd Legislature, Regular Session, 1913,
 1-27 are amended to read as follows:

1-28 (a) The leasehold interest granted by the state under
 1-29 Sections 2 and 2A(a)(2) of this Act shall be limited to only the
 1-30 surface of the property described in Sections 1 and 2A(a)(2) of this
 1-31 Act and shall be subject and subordinate to those rights and
 1-32 interests granted to the Capital Metropolitan Transportation
 1-33 Authority pursuant to Section 3 of this Act, provided however that
 1-34 the Capital Metropolitan Transportation Authority shall exercise
 1-35 those rights and interests so as to reasonably accommodate the
 1-36 public park uses authorized by Sections 2 and 2A of this Act. The
 1-37 state does not by this Act part with any title, color of title or
 1-38 interest which it now owns in the property described in this Act,
 1-39 except as granted herein.

1-40 (b) In the event, however, the City of Austin should fail to
 1-41 use the property described in Section 1 or 2A(a)(1) or (2) of this
 1-42 Act for the purpose or purposes designated, that property shall
 1-43 revert to the State as upon breach of condition subsequent,
 1-44 provided, however, that if the exercise of the rights and interests
 1-45 granted to the Capital Metropolitan Transportation Authority under
 1-46 Section 3 of this Act prevents the use of the property for a purpose
 1-47 designated for any period of time during the lease, such failure
 1-48 shall not be a breach of conditions.

1-49 SECTION 2. Chapter 34 (H.B. 215), General Laws, Acts of the
 1-50 33rd Legislature, Regular Session, 1913, is amended by adding
 1-51 Section 3 to read as follows:

1-52 Sec. 3. (a) Notwithstanding any other provision of this
 1-53 Act, the State of Texas hereby cedes and grants to the Capital
 1-54 Metropolitan Transportation Authority for a period of 99 years
 1-55 beginning on the effective date of this Act a lease of all of the
 1-56 subsurface strata below the surface of the property described only
 1-57 in Sections 1 and 2A(a)(2) of this Act and the streets abutting such
 1-58 property to the center of such streets.

1-59 (b) The Capital Metropolitan Transportation Authority may
 1-60 use the subsurface of the property described in Subsection (a) of

2-1 this section only for public transportation, a subway or
2-2 underground railway station, tunnel, or terminal, and
2-3 transportation facilities, including any related retail,
2-4 commercial, public performance and exhibition, and public amenity
2-5 purposes. In any location and at any depth below the surface of the
2-6 property described in Subsection (a) of this section, the Capital
2-7 Metropolitan Transportation Authority may construct, operate,
2-8 repair, maintain, replace, and remove the following transportation
2-9 facilities:

2-10 (1) public transportation facilities, including
2-11 subway and railway tunnels, stations, tracks, and related
2-12 improvements;

2-13 (2) common areas and facilities designated for the
2-14 general use and convenience of any subtenants, passengers,
2-15 visitors, and occupants of the transportation facilities,
2-16 including concourses, tunnels, piers, boarding areas, stages,
2-17 exhibition and performance areas, seating areas, elevators, moving
2-18 walkways, sidewalks, stairways, escalators, pedestrian entrances,
2-19 station portals, air intakes or exits, loading zones, landscaping,
2-20 and any related facilities or improvements;

2-21 (3) shops, stores, booths, stands, spaces, and related
2-22 facilities used for any commercial, retail, market, or restaurant
2-23 uses;

2-24 (4) billboards and any advertising or promotional
2-25 signs or displays; and

2-26 (5) improvements, utilities, and related
2-27 infrastructure and public amenities related to the provision and
2-28 development of services and facilities described by Subdivisions
2-29 (1), (2), (3), and (4) of this subsection.

2-30 (c) Notwithstanding any other provision of this Act, the
2-31 State of Texas hereby cedes and grants to the Capital Metropolitan
2-32 Transportation Authority for a period of 99 years beginning on the
2-33 effective date of this Act the following easements on the surface of
2-34 the property described only in Sections 1 and 2A(a)(2) of this Act
2-35 and the streets abutting such property to the center of such
2-36 streets:

2-37 (1) a temporary nonexclusive construction easement to
2-38 use the minimum amount of the surface of the property as the Capital
2-39 Metropolitan Transportation Authority may reasonably consider
2-40 necessary:

2-41 (A) for a period not to exceed five years from the
2-42 commencement of construction in connection with the installation of
2-43 the transportation facilities described by Subsection (b) of this
2-44 section or the surface ancillary amenities described by Subdivision
2-45 (5) of this subsection; and

2-46 (B) from time to time after the period described
2-47 by Paragraph (A) of this subdivision for the purpose of renovating,
2-48 maintaining, repairing, replacing, relocating, or removing all or
2-49 any part of the transportation facilities described by Subsection
2-50 (b) of this section or the surface ancillary amenities described by
2-51 Subdivision (5) of this subsection;

2-52 (2) a nonexclusive access easement for maintenance
2-53 vehicle and pedestrian ingress, egress, and access to and from the
2-54 transportation facilities described by Subsection (b) of this
2-55 section on, over, and across the surface of the property, whether on
2-56 existing roadways, sidewalks, or walkways located on the property
2-57 or otherwise over the surface ancillary amenities described by
2-58 Subdivision (5) of this subsection as the Capital Metropolitan
2-59 Transportation Authority may install from time to time;

2-60 (3) a nonexclusive easement over the property for
2-61 audio, visual, view, reflective light, shadow flicker, glimmer,
2-62 noise, shadow, glare, and any other effects attributable to the
2-63 transportation facilities described by Subsection (b) of this
2-64 section located under or on the property and on property adjacent to
2-65 that property;

2-66 (4) a nonexclusive easement over the surface of the
2-67 property for the purpose of installing, maintaining, repairing,
2-68 replacing, relocating, or removing from time to time any:

2-69 (A) power transmission lines:

3-1 (i) including overhead and underground
3-2 transmission lines, poles, anchors, conduits, support structures,
3-3 cables, distribution and interconnection facilities, and related
3-4 utility facilities, infrastructure, and equipment; and
3-5 (ii) excluding any substation;
3-6 (B) telecommunication and data lines, including
3-7 overhead and underground transmission lines, poles, anchors,
3-8 conduits, support structures, cables, and related utility
3-9 facilities, infrastructure, and equipment;
3-10 (C) water, drainage, waste and sewer lines,
3-11 conduits, support structures, and related utility facilities,
3-12 infrastructure, and equipment; and
3-13 (D) other utility facilities, infrastructure,
3-14 and equipment as the Capital Metropolitan Transportation Authority
3-15 may consider necessary or desirable in connection with the
3-16 development, operation, and maintenance of the transportation
3-17 facilities described by Subsection (b) of this section or the
3-18 surface ancillary amenities described by Subdivision (5) of this
3-19 subsection; and
3-20 (5) an encroachment easement for the Capital
3-21 Metropolitan Transportation Authority to install over the surface
3-22 of the property, for the purpose of providing access to the
3-23 transportation facilities described by Subsection (b) of this
3-24 section, surface ancillary amenities compatible with public park
3-25 uses as follows:
3-26 (A) for a period not to exceed five years from the
3-27 commencement of construction in connection with the installation of
3-28 the transportation facilities described by Subsection (b) of this
3-29 section, the right to construct and install aboveground signage,
3-30 booths, walkways, sidewalks, elevators, stairwells, escalators,
3-31 awnings, entryways, exits, fences, landscaping, air intakes or
3-32 exits, trash receptacles, and other public amenities; and
3-33 (B) from time to time after the period described
3-34 by Paragraph (A) of this subdivision, the right to:
3-35 (i) maintain, repair, replace, or remove a
3-36 surface ancillary amenity listed in Paragraph (A) of this
3-37 subdivision; and
3-38 (ii) construct or install fences,
3-39 landscaping, trash receptacles, and surface ancillary amenities
3-40 that are wayfinding in nature, including aboveground signage,
3-41 booths, and awnings.
3-42 (d) The Capital Metropolitan Transportation Authority
3-43 shall, in exercising the Capital Metropolitan Transportation
3-44 Authority's rights and interests on the surface of the property:
3-45 (1) to mitigate and minimize harm to the public park
3-46 uses, take measures that, at a minimum, comply with 49 U.S.C.
3-47 Section 303 and 23 U.S.C. Section 138; and
3-48 (2) use best efforts to preserve and protect any
3-49 existing trees that are 24 caliper inches or larger.
3-50 (e) Each easement granted to the Capital Metropolitan
3-51 Transportation Authority under Subsection (c) of this section shall
3-52 be appurtenant to the leasehold interest granted to the Capital
3-53 Metropolitan Transportation Authority under Subsection (a) of this
3-54 section, shall run with the property described in Subsections (a)
3-55 and (c) of this section, and shall inure to the benefit of the
3-56 Capital Metropolitan Transportation Authority. Nonuse of an
3-57 easement or right granted under Subsection (c) of this section does
3-58 not constitute abandonment or surrender and does not preclude the
3-59 use of the entire scope of the easement or right by the Capital
3-60 Metropolitan Transportation Authority at any time or from time to
3-61 time.
3-62 (f) The state acknowledges and agrees that the Capital
3-63 Metropolitan Transportation Authority shall be the sole and
3-64 exclusive owner of all transportation facilities described by
3-65 Subsection (b) of this section and surface ancillary amenities
3-66 described by Subsection (c)(5) of this section installed under this
3-67 section, and the Capital Metropolitan Transportation Authority may
3-68 convey or remove the same at any time or from time to time. The
3-69 state hereby waives any lien rights, whether statutory or

4-1 otherwise, the state has or may have to the transportation
4-2 facilities described by Subsection (b) of this section or the
4-3 surface ancillary amenities described by Subsection (c)(5) of this
4-4 section.

4-5 (g) The Capital Metropolitan Transportation Authority shall
4-6 have the right at any time and from time to time to assign,
4-7 encumber, hypothecate, mortgage, or pledge any right, title, or
4-8 interest granted to the Capital Metropolitan Transportation
4-9 Authority under this section, including, without limitation, any of
4-10 its right, title, or interest in and to the transportation
4-11 facilities described by Subsection (b) of this section or the
4-12 surface ancillary amenities described by Subsection (c)(5) of this
4-13 section. Moreover, the Capital Metropolitan Transportation
4-14 Authority is hereby authorized to grant such subleases, easements,
4-15 and licenses over, across, through, or under the property described
4-16 in Subsections (a) and (c) of this section as the Capital
4-17 Metropolitan Transportation Authority may consider necessary or
4-18 desirable in connection with the development, operation, or
4-19 maintenance of the transportation facilities described by
4-20 Subsection (b) of this section or the surface ancillary amenities
4-21 described by Subsection (c)(5) of this section.

4-22 (h) The State of Texas does not by this Act part with any
4-23 title, color of title, or interest which it now owns in the property
4-24 described in this section, except as granted in this section.

4-25 SECTION 3. This Act takes effect immediately if it receives
4-26 a vote of two-thirds of all the members elected to each house, as
4-27 provided by Section 39, Article III, Texas Constitution. If this
4-28 Act does not receive the vote necessary for immediate effect, this
4-29 Act takes effect September 1, 2021.

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