

Date of Hearing: June 7, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cottie Petrie-Norris, Chair

SB 387 (Dodd) – As Amended May 3, 2023

**SENATE VOTE:** 35-0

**SUBJECT:** State property: lease at less than fair market value for broadband development

**SUMMARY:** This bill authorizes the Department of General Services (DGS) to enter into long-term leases of state real property, at an amount less than fair market value, in support of broadband development.

Specifically, **this bill:**

- 1) Authorizes DGS to lease any real property under the jurisdiction of a state agency, department, or district agricultural association in support of broadband development in the state, at an amount less than fair market value, if the California Department of Technology (CDT) consents and the affected state agency, department or agricultural association consents.
- 2) Makes this authority to lease at less than fair market value applicable to any state real property, including land under the jurisdiction of specified agencies that current law generally exempts from DGS leasing authority, including the State Lands Commission, State Coastal Conservancy, Department of Transportation (CalTrans), Department of Parks and Recreation, and Department of Fish and Wildlife.

**EXISTING LAW:**

- 1) Authorizes DGS to lease real property under the jurisdiction of a state agency, department, or district agricultural association if DGS determines that the real property is of no immediate need to the state. (Gov. Code Sec. 11011.2(a))
- 2) Requires the lease of real property under these provisions to be set at the amount of fair market value, as determined by DGS. (Gov. Code Sec. 11011.2(a)(3))
- 3) Authorizes DGS to determine the length of terms or a use of the lease under these provisions and specify any other terms and conditions that are determined to be in the best interest of the state. (Gov. Code Sec. 11011.2(a)(3))
- 4) Prohibits DGS from leasing specified real property under these provisions, including lands under the jurisdiction of the State Lands Commission, State Coastal Conservancy or another state conservancy, CalTrans, California State University (CSU) and University of California (UC) systems, Department of Parks and Recreation, and Department of Fish and Wildlife. (Gov. Code Sec. 11011.2(a)(2))
- 5) Authorizes DGS to lease any state property for less than fair market value for affordable housing (Gov. Code Sec. 14671.2), with all of the following requirements:
  - a) Consent of the state agency concerned.

- b) DGS determines that the lease serves a “beneficial public purpose” related to housing.
  - c) Each lease has at least 20% of the housing units for lower income households, with at least 10% for very low income households, or alternative percentages as prescribed by the director of Housing and Community Development (HCD).
  - d) DGS gives preference to projects that provide for the greatest number of housing units affordable to lower and very low income households.
  - e) HCD recommends to DGS a lease amount that will enable the provision of housing for lower income households.
  - f) The State Public Works Board reviews all proposed leases.
- 6) Authorizes DGS to lease any state real property, for a period not to exceed five years, and at less than fair market rental, to any public agency for use as nonprofit, self-help community vegetable gardens and related supporting activities, subject to a limit of five acres per parcel and reporting requirements including justification for leasing at less than fair market value. (Gov. Code Sec. 14670)
- 7) Requires CDT, with \$3.25 billion in federal funds, to develop, construct, maintain and operate a statewide open-access middle-mile broadband network, with a priority for middle-mile network locations that will enable last-mile connection of “unserved” locations lacking high-speed internet access. (Gov. Code Sec. 11549.52)
- 8) Authorizes any lease of public property for purposes of the statewide open-access middle-mile broadband network to be for less than fair market value. (Gov. Code Sec. 11549.56(d))
- 9) Requires the California Public Utilities Commission (CPUC) to administer programs, with billions of dollars in state and federal funds, to fund last-mile broadband deployment projects to connect “unserved” locations in the state. (Pub. Util. Code Sec. 281 and 281.2)

**FISCAL EFFECT:** The Legislative Counsel has keyed this bill as Fiscal.

**COMMENTS:**

- 1) *Author’s Purpose.* According to the author’s office:  
“[W]e all know how important it is to have fast and reliable broadband. You need it to survive in today’s economy. Unfortunately, broadband isn’t yet deployed adequately or equitably in many areas of our state. My bill will ensure the state can effectively partner with internet service providers to lease state properties for deployment of broadband infrastructure. With this bill, the state can use its property to generate revenue while enticing providers to expand their offerings. It will fill in unserved zones and help get high-speed data to those who need it for work, school, and home life.”
- 2) *Connecting the “Unserved” is State Priority.* Expanding broadband access to all locations that lack high-speed internet service is a top federal and state priority, backed up by historic

public investment to connect the “unserved” in the coming years. SB 156 (Committee on Budget and Fiscal Review) Chapter 112, Statutes of 2021, authorized \$6 billion for Governor Newsom’s “Broadband for All” initiative, with \$3.25 billion for CDT to lead construction of a statewide open access middle-mile broadband network that will enable connections to “unserved” locations in the state, and \$2.75 billion for the CPUC to fund last-mile broadband infrastructure projects to connect “unserved” locations. SB 4 (Gonzalez), Chapter 671, Statutes of 2021, and AB 14 (Aguilar-Curry), Chapter 658, Statutes of 2021, authorized the CPUC to collect an additional \$1.5 billion over 10 years to fund broadband projects. In addition, California is expecting an estimated \$1 billion or more in federal infrastructure funds that will be available for broadband projects in “unserved” and “underserved” areas approved by the CPUC. These public funds are intended to enable broadband infrastructure deployment where, absent a subsidy, there is no business case to invest, especially in high-cost remote rural areas with sparse population.

- 3) *Using State Property to Achieve Broadband Goals.* Since at least 2003, using state property is another strategy California has identified to reduce costs to connect unserved areas. AB 855 (Firebaugh), Chapter 820, Statutes of 2003, required DGS to develop an inventory of state-owned real property that wireless telecommunications providers could lease for their facilities. Five years later in 2008, the “Final Report of the California Broadband Task Force” described AB 855 as “a pioneering California law with a great deal of potential to help unserved and underserved communities participate in the digital revolution.” The Report stated that the legislation “has not reached its potential because it has not been fully implemented” and recommended improvements in developing the inventory and making providers aware of the opportunity to use state property for wireless broadband deployment.<sup>1</sup>

In 2010, the National Broadband Plan (NBP) issued by the Federal Communications Commission made many recommendations to close the digital divide nationwide, including that lease of government property at less than fair market value can help reduce costs to spur broadband expansion in high-cost unserved areas. Observing that existing law generally requires fair market value for leasing government land, the NBP stated:

“To facilitate the development of broadband networks, Congress should consider allowing all agencies to set the fees for access to rights-of-way for broadband services on the basis of a direct cost recovery approach, especially in markets currently underserved or unserved by any broadband service provider.”<sup>2</sup>

In August 2020, Governor Newsom’s Executive Order N-73-20 (EO) to promote connecting all Californians included the following directive:

“DGS is directed to provide an inventory of state property for possible use for broadband infrastructure based on such criteria as may be provided by the CPUC, Caltrans, and other relevant agencies, to accelerate broadband deployment.”<sup>3</sup>

California’s State Broadband Action Plan, required by the EO and adopted in December 2020, includes the following action item with responsible agencies designated:

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<sup>1</sup> [2008 CBC TaskForce Final Report.pdf \(cetfund.org\)](#) at 56.

<sup>2</sup> [national-broadband-plan.pdf \(fcc.gov\)](#) at 115.

<sup>3</sup> [8.14.20 EO N 73 20 \(ca.gov\)](#) Order #9.

“7. Identify state property for possible use for broadband infrastructure, based on specific criteria identified by the CPUC, Caltrans and other relevant agencies, to accelerate broadband deployment.

Key Parties: California Public Utilities Commission, Department of General Services, California State Transportation Agency, California Department of Technology”<sup>4</sup>

It was reported at the January 2023 meeting of the California Broadband Council that this action item is complete, at least for purposes of the middle-mile network, according to DGS. This bill seeks to build on the strategy of using state property to help connect the unserved by authorizing DGS to lease state property for less than fair market value. The DGS web site has telecommunications lease rates for state facilities and properties.<sup>5</sup>

- 4) *DGS Authority to Lease State Property.* As the lead agency for managing real property owned by the state, DGS is authorized to lease state property that DGS determines is not of immediate use to the state. However, this DGS authority does not extend to all state real property. Existing law prohibits DGS from leasing real property under the jurisdiction of the State Lands Commission, State Coastal Conservancy or another state conservancy, CalTrans, CSU and UC systems, Department of Parks and Recreation, and Department of Fish and Wildlife. This bill authorizes DGS to lease state property of these agencies (except the CSU and UC systems) for broadband deployment.
- 5) *Fair Market Value is General Rule.* Existing law generally requires that any lease of state property that DGS enters into be at fair market value. This ensures that the state generates market rate revenue from state property and also is necessary to comply with the California Constitution’s prohibition against a “gift of public funds.”<sup>6</sup> Not charging someone the market rate to lease state property could be viewed as giving away an asset of the state without compensation. Court decisions generally hold that sale or lease of state property at less than fair market value is not a prohibited gift of public funds if for a public purpose. Accordingly, the Legislature has enacted statutes that authorize lease of state property for less than fair market value for specified public purposes, such as to help make available affordable housing and community gardens.
- 6) *Guardrails Required If Less Than Fair Market Value.* Affordable housing legislation enacted in recent years is an example of a statute that authorizes lease of state property for less than fair market value with guardrails to ensure a public benefit. Each lease for less than fair market value must have a specified minimum number of housing units for lower and very low-income households, with a preference for projects that provide the greatest number of units for low-income households. DGS is required to make a determination that each lease serves a “beneficial public purpose” related to affordable housing. HCD is required to recommend to DGS a lease amount, and the State Public Works Board is required to review each proposed lease.

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<sup>4</sup> [Broadband for All Cvr Letter and Action Plan 2020 \(ca.gov\)](#) at 26.

<sup>5</sup> [Telecom Lease Rate Guideline \(ca.gov\)](#).

<sup>6</sup> Cal. Const. Art. XVI, Sec. 6.

Another statute authorizes DGS to lease any state property, for a period not to exceed five years at less than fair market rental to any public agency for use as nonprofit, self-help community vegetable gardens and related supporting activities, subject to a limit of five acres per parcel and reporting requirements including written justification for leasing at less than fair market value.

The author states that this bill will help achieve the state goal to connect all locations that lack high-speed internet service. For example, leasing state property for less than fair market value could reduce costs for a provider to deploy infrastructure in unserved areas where it has historically been uneconomic to provide service. Such expansion of broadband service in areas that currently lack it would further a public purpose. However, this bill authorizes DGS to lease state property at less than fair market value in support of any “broadband development,” which could result in the state giving a financial benefit to any entity involved in broadband deployment anywhere in the state, even in areas already served. ***Thus, to align with state broadband goals and thereby ensure a public purpose, the committee may wish to consider amending this bill to authorize DGS to lease state property at less than fair market value in support of broadband deployment in “unserved” and “underserved” areas of the state.***

- 7) *Why Consent from CDT?* This bill requires DGS, when leasing state property for less than fair market value, to get the consent of CDT as well as the state agency with jurisdiction over the impacted property. CDT has authority over the state middle-mile broadband network, and SB 156 already authorized “the lease of public property for the statewide open-access middle-mile broadband network to be for less than fair market value.” According to DGS, that authority is limited because it does not apply to land under the jurisdiction of CalTrans and the other agencies not normally within DGS’s leasing authority and it does not provide an express exception from the general requirement that a lease of state property be no longer than five years. Thus, depending on the property in question, this bill may expand existing authority to lease state property for less than fair market value for the state middle-mile network.

For last-mile broadband projects in areas lacking service, the CPUC would be the relevant agency for giving consent. The CPUC administers last-mile broadband infrastructure programs and manages the state broadband map that designates each location in the state that lacks service. The CPUC reviews the financial viability of last-mile projects to connect “unserved” locations. The State Broadband Action Plan assigns the CPUC the duty to designate criteria for identifying state property that could be used for broadband. Therefore, the CPUC, not CDT, appears to be in the best position to know if a lease of state property at less than fair market value would help achieve the public purpose of connecting the unserved for last-mile projects. ***Thus, the committee may wish to consider amending this bill to require the consent of CDT for a lease of state property at less than fair market value for any segment of the state middle-mile network and the consent of the CPUC for any lease of state property for less than fair market value in a last-mile broadband project, with each agency making a written finding of the public benefit for each lease.***

- 8) *Technical Amendments.* For clarity, ***the committee may wish to consider amending this bill to make the following technical amendments:***

- a) Conforming change to the annual report requirement to reflect leases at less than fair market value authorized by this bill.
  - b) Change of “broadband development” to “broadband infrastructure deployment” to conform to related provisions of law.
- 9) *Arguments in Support.* A joint letter from CalBroadband|The California Broadband & Video Association, US Telecom|The Broadband Association, and CTIA-the Wireless Association, states the following:

“*Executive Order N-73-20* required the creation of the Broadband Action Plan to promote digital equity throughout California. Part of the Plan called for DGS to identify state property for possible use for the accelerated deployment of broadband services. This was included because development on those properties could support economic development and digital equity among underserved communities. DGS, though, has existing leasing authority limitations. This includes limiting the entities on whose behalf DGS may lease properties and requiring fair market value for each lease. This bill resolves those issues, allowing for effective utilization of those properties.”

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

CalBroadband|The California Broadband & Video Association

CTIA-the Wireless Association

United States Telecom|The Broadband Association

##### **Opposition**

None on file

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