

- SUBJECT:** Granting a 99-year lease to subsurface rights of certain state property
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Deshotel, Leman, Biedermann, Burrows, Romero, Rosenthal, Spiller, Thierry
- 1 nay — Craddick
- WITNESSES:** For — Wade Cooper, Capital Metropolitan Transportation Authority; (*Registered, but did not testify:* Dewitt Peart, Downtown Austin Alliance; Ray Sullivan, HNTB; Geoffrey Tahuahua, Real Estate Council of Austin; Dana Harris, The Greater Austin Chamber of Commerce; Susana Carranza; Idona Griffith; Linda Guy; Vanessa MacDougal; Gregg Vunderink)
- Against — None
- On — (*Registered, but did not testify:* Peter Mullan, Capital Metro; Brian Buchanan, HDR, Inc)
- BACKGROUND:** In 1913, the Texas Legislature granted the City of Austin a 99-year lease on several properties, which was extended for another 99 years beginning in 2016.
- It has been noted that the lease does not explicitly grant subsurface rights to these properties, which would be critical to ensuring proper ventilation and access to an underground station planned for the light rail program under the Capital Metropolitan Transportation Authority recently authorized by Austin voters.
- DIGEST:** CSHB 3893 would cede and grant to the Capital Metropolitan Transportation Authority (Cap Metro) for a period of 99 years a lease of all the subsurface strata below the surface of certain property, including Republic and Brush squares, and the streets abutting such property to the center of the streets. Cap Metro could use the subsurface of such property

for public transportation, a subway or underground railway station, tunnel, terminal, and other transportation facilities, including for commercial and public amenity purposes. The bill would authorize Cap Metro to build, operate, and maintain transportation facilities for the specified purposes in any location and at any depth below the surface of the property.

The bill also would grant to Cap Metro specified easements for 99 years on the surface of the property related to the construction of transportation facilities and surface public amenities, light and noise regulations, and the installation and maintenance of utility infrastructure. Non-use of an easement or other right would not constitute abandonment or surrender and would not preclude the use of the easement or right by Cap Metro at any time.

Cap Metro would be the sole and exclusive owner of, and the state would waive any lien rights to, all facilities and amenities built or installed under the bill's provisions. Cap Metro would have the right at any time or at various times to assign, encumber, hypothecate, mortgage, or pledge any right, title, or interest granted to it under the bill, and would be able to grant subleases, easements and licenses related to the property related to the development, operation, and maintenance of the relevant facilities or surface amenities.

The state's current lease of the property to the City of Austin would be explicitly limited by the bill to the property's surface, and would be subject and subordinate to the rights and interests granted to Cap Metro by the bill provided that such rights and interests were exercised so as to reasonably accommodate the public uses authorized by the lease to the city. The bill also would specify that the state would not part with any title, color of title, or interest which it currently owns, except as granted by the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.