
SENATE COMMITTEE ON TRANSPORTATION

Senator Lena Gonzalez, Chair

2021 - 2022 Regular

Bill No: AB 955

Hearing Date: 6/24/2021

Author: Quirk

Version: 5/24/2021

Urgency: No

Fiscal: Yes

Consultant: Randy Chinn

SUBJECT: Highways: encroachment permits: broadband facilities

DIGEST: This bill establishes additional procedures for the Department of Transportation (Caltrans) in its review of an application for an encroachment permit for a broadband facility.

ANALYSIS:

Existing law:

- 1) Requires Caltrans to approve or deny an application for an encroachment permit within 60 days of receiving a completed application, as determined by the department and establishes an appeals process for denied applications. (Streets & Highways Code § 671.5)
 - a) An application for encroachment permit is complete when all other statutory requirements, including CEQA, have been complied.
 - b) Caltrans' failure to notify the applicant within 60-days that the permit is deemed complete will constitute approval of the permit
 - c) If Caltrans denies an application for an encroachment permit, at the time of denial it shall furnish the applicant with a detailed explanation of the reason for the denial.
 - d) Sets up an appeals process for denied applications.
- 2) Defines encroachment as any tower, pole, pole line, pipe, pipe line, fence, billboard, stand or building, or any structure, object of any kind or character not particularly mentioned in this section, or special event, which is in, under, or over any portion of the highway. (Streets & Highways Code § 660 (b))
- 3) Requires Caltrans, under certain conditions, to notify companies or organizations, as defined, of anticipated construction projects for the purpose of

encouraging collaborative broadband installations and for those entities to collaborate for the installation of broadband conduit as part of a project. (Government Code § 14051)

- 4) Requires Caltrans, by January 1, 2018, to develop guidelines to facilitate the installation of broadband conduit on state highway rights of way. (Government Code § 14051)

This bill:

- 1) Requires Caltrans to provide public notice in writing of all utility encroachment permit criteria.
- 2) Restricts Caltrans from imposing new or different permit application criteria after an application has been submitted.
- 3) Requires Caltrans to notify the applicant within 30 days after application submission if the application is deemed complete.
- 4) Requires Caltrans, if it deems an application incomplete, to (a) provide a written notice to the applicant explaining why the application is incomplete and describing the information necessary to complete the application; (b) meet with the applicant within 14 days to discuss any outstanding supplemental information necessary to complete the application, if such a meeting is requested by the applicant; (c) provide the applicant with at least 30 days to resubmit its application with the supplemental information that Caltrans identified in the notice; and (d) approve or deny the permit application within 30 days of receiving supplemental information.
- 5) Provides that permits will be deemed approved if Caltrans fails to notify an applicant of its status within the 30-day period, regardless of whether Caltrans considers the application complete or incomplete.
- 6) Requires Caltrans to offer to act as the lead agency for purposes of ensuring compliance with the California Environmental Quality Act (CEQA).

COMMENTS:

- 1) *Author's Statement.* There has never been more pressure to address the Digital Divide than during the COVID-19 pandemic. As part of a comprehensive broadband solution to get more Californians internet access, AB 955 makes significant but reasonable improvements to the current Caltrans 60-day encroachment permit process that help expedite broadband deployment. This

bill simply requires Caltrans to notify encroachment permit applicants of all application requirements, sets a 30-day milestone for Caltrans to verify whether that application is complete, and clarifies that Caltrans will act as the lead agency for the CEQA process in the event that no other local agency takes that role.

- 2) *Divided Digitally.* The lack of access to high speed digital telecommunications services by some individuals and geographic areas is known as the “digital divide”. California has been trying to bridge this digital divide since the 1990s. One of the many unfortunate byproducts of the COVID epidemic is that it exposed how widespread the digital divide remains and how much of a disadvantage it creates for those without good digital access.
- 3) Freeways and highways physically connect our cities and towns, making them potentially convenient avenues for placing digital infrastructure such as fiber optic cable and cell towers. Over the years there have been several efforts to make Caltrans an enthusiastic partner in this endeavor. The lack of success of some of those efforts are behind this bill.
- 4) *Micromanaging?* Placing any structure or performing any construction within the highway right of way is obviously fraught with safety and operational considerations. Closing off a part of a freeway for construction is both hazardous and inconvenient for drivers. Under current law Caltrans is already required to respond to a request to place equipment in its right of way within 60 days. But according to the author, there are loopholes in the law which in effect allow Caltrans to take much longer. In an effort to get Caltrans to make decisions more quickly, and thereby speed construction of the telecommunications network, this bill provides specific timeframes and specific actions that Caltrans must take.
- 5) Some may contend that such specific directives amount to micromanaging Caltrans’ process. But the author believes such specificity is warranted based on specific instances of Caltrans inaction. The Committee reached out to Caltrans but they were unable to provide any specific response. Note that there is precedent for this level of Legislative involvement. In the 1990’s frustration with the slow and inconsistent processes of the California Public Utilities Commission caused Legislators to revamp that process and impose strict timeframes.

- 6) *Not Bad*. Caltrans has established a goal of approving or denying encroachment permits within 30 days 95% of the time. In the first half of 2020 they reached 89%.
- 7) *Opposition*. Opponents are concerned that the bill will facilitate the deployment of wireless communications services, which they view as dangerous.

RELATED LEGISLATION:

AB 14 (Aguiar-Curry, 2021)— Requires state strategies and engagement regarding broadband deployment for schools of local governments, among other provisions. *This bill is currently pending referral in the Senate.*

SB 743 (Bradford, 2021)— Requires the Department of Housing and Community Development (HCD) to establish a grant program to fund broadband adoption, digital literacy, and computer equipment for low and very low income communities. *This bill is currently pending in the Assembly Communications and Conveyance Committee.*

AB 1560 (Daly, 2021)— Requires the Superintendent of Public Instruction to survey the impact of distance learning on pupils and the Department of Technology to work with local schools on broadband deployment. *This bill is currently pending referral in the Senate.*

SB 4 (Gonzalez, 2021)— Authorizes the California Public Utilities Commission (CPUC) to leverage monies from the California Advanced Services Fund (CASF) with other federal and state sources for broadband deployment. *This bill is currently pending in the Assembly Communications and Conveyance Committee.*

AB 1557 (Santiago, 2021)— Establishes a streamlined notification system between public utilities and cable corporations with regards to pole attachments. *This bill is currently pending in Assembly Communications and Conveyance.*

AB 1549 (Wood Chapter 505, Statutes, 2016)— Requires that Caltrans, during the planning phase of specified Caltrans-led highway construction projects, notify broadband deployment companies and organizations on its Internet Web site of transportation projects that involve construction methods suitable for the installation of broadband.

SB 1563 (Padilla Chapter 674, Statutes, 2002)— Requires the State Public Utilities Commission to conduct a proceeding to identify reasons why advanced

communications technologies are not commonly available and to develop strategies for more widespread deployment of such technologies.

AB 617 (Richter Chapter 796, Statutes, 1993) — Establishes a procedure for appeals relative to denial of encroachment permits and conditions for subdivision by the Department of Transportation. It provides for an appeal to the director in writing and a final written determination by the director within 60 calendar days.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

From the Assembly Appropriations Committee: Annual cost to Caltrans of an unknown amount, but potentially in the millions of dollars, for augmented staffing to allow Caltrans to serve as the lead CEQA agency on a greater number of broadband projects (special fund). Actual costs will depend on the effectiveness of this bill in facilitating a greater number of broadband deployment projects. Eventually, Caltrans will be able to recover these costs from fees on broadband utility providers.

POSITIONS: (Communicated to the committee before noon on Friday, June 18, 2021.)

SUPPORT:

Calcom Association
California Cable & Telecommunications Association

OPPOSITION:

Physicians for Safe Technology
Santa Barbara Green Sisters
Towards an Internet of Living Beings

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