
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 955 (Quirk) - Highways: encroachment permits: broadband facilities

Version: May 24, 2021

Urgency: No

Hearing Date: July 5, 2021

Policy Vote: TRANS. 14 - 0

Mandate: No

Consultant: Mark McKenzie

Bill Summary: AB 955 would place new requirements on the Department of Transportation (Caltrans) when it reviews an application for an encroachment permit for broadband facilities, including a requirement that Caltrans offer to act as the lead agency for purposes of ensuring compliance with the California Environmental Quality Act (CEQA) in certain circumstances.

Fiscal Impact:

- Unknown Caltrans costs, potentially in the millions annually, for additional staffing necessary when the department acts as the lead agency for purposes of CEQA compliance. Actual costs would depend upon the number and complexity of projects for which Caltrans would be requested to act as the lead agency. Staff notes that Caltrans can recover its administrative costs through agreements with broadband utility providers. (State Highway Account)

Background: Caltrans regulates the use of its rights-of-way through issuance of encroachment permits. An encroachment is defined as any tower, pole, pole line, pipe, pipe line, fence, billboard, stand or building, or any structure, object of any kind, or character not explicitly specified in statute, or a special event, that is in, under, or over any portion of a highway. Existing law encourages Caltrans to expedite encroachment permits by requiring the department to approve or deny a permit application within 60 days of receiving a completed application, as specified, and establishes an appeals process for denied applications. An application is complete when all other statutory requirements, including CEQA, have been complied with. Current law requires Caltrans to provide an applicant with a detailed explanation of reasons for denying a permit, and also specifies that a permit application is automatically approved if Caltrans fails to notify an applicant within 60 days whether a permit application is deemed complete.

Existing law makes requirements of Caltrans specific to deployment of broadband infrastructure. For example, Caltrans, in certain circumstances, must notify internet service providers (ISPs) and organizations seeking broadband deployment of anticipated construction projects to encourage collaboration for the installation of broadband conduit as part of a project. Caltrans has also developed guidelines to facilitate the installation of broadband conduit on state highway rights-of-way. In addition, Caltrans publishes an online "Broadband Partnership Opportunity Map" that provides notification of publicly-funded highway projects to help determine where there may be opportunities to install broadband conduits. Caltrans employs a broadband facilities coordinator to serve as the main contact for ISPs and other organizations seeking the deployment of broadband.

Caltrans reports it has experienced an increase in broadband permits in recent years, with annual applications for broadband encroachment permits increasing from 1,527 permits in 2016 to 3,804 permits in 2019. 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%.

Proposed Law: AB 955 would place new requirements on Caltrans when it reviews an application for an encroachment permit for broadband facilities. Specifically, this bill would do the following, notwithstanding other provisions and procedures specified in the Utility Encroachment Permit Application Guide:

- Require Caltrans to provide public notice in writing of all utility encroachment permit criteria, and prohibit the department from imposing any new or different application criteria to a broadband encroachment permit after it was initially submitted.
- Require Caltrans to notify a permit applicant within 30 days after an application is submitted whether the application is deemed complete, and specify that failure to notify an applicant within that timeframe constitutes approval of the permit.
- Require Caltrans to do the following if a permit application is deemed incomplete:
 - Provide written notice to the applicant indicating why the application is incomplete, and specifying the information necessary for completion.
 - Provide a written description that identifies all supplemental information necessary to complete the application.
 - Meet with the applicant within 14 days of an applicant's request to discuss any outstanding supplemental information necessary to complete the application.
 - Provide at least 30 days to resubmit an application with supplemental information identified by Caltrans in the written notice.
- Require Caltrans to approve or deny an application that is resubmitted with supplemental information within 30 days after receiving that information, and specify that failure to notify an applicant within that timeframe constitutes approval of the permit.
- Require Caltrans to offer to act as the lead agency for purposes of ensuring CEQA compliance if a proposed broadband facility does not require any additional approvals from a city or county.

Related Legislation: AB 41 (Wood), which is currently pending in the Senate Energy, Utilities, and Commerce Committee, would, among other things, require Caltrans to install a broadband conduit capable of supporting technology-neutral telecommunications cables whenever Caltrans has project located in a priority area or an area that connects broadband infrastructure to a priority area, as specified.

AB 1549 (Wood), Chap. 505/2016, required Caltrans, during the planning phase of specified highway construction projects, to notify broadband deployment companies and organizations of transportation projects that involve construction methods suitable for broadband installations, as specified.

Staff Comments: This bill is intended to expedite the deployment of broadband facilities by requiring Caltrans to notify encroachment permit applicants within 30 days of receiving an application related to broadband facilities whether the application is complete, or if further information is required before the department can act on the

application. Caltrans has not identified additional administrative costs associated with this increased level of service, but the department would incur additional costs for new staff to the extent it would act as the lead agency for purposes of ensuing compliance with CEQA. These costs are unknown and would depend on the number of projects for which Caltrans would be requested to serve as the lead agency, and the specific characteristics of those projects. Caltrans indicates that these staffing costs could potentially be in the millions of dollars annually, but also notes that costs can be recovered through agreements with broadband utility providers.

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