

Date of Hearing: July 14, 2025

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

SB 445 (Wiener) – As Amended June 30, 2025

SENATE VOTE: 34-1

SUBJECT: High-speed rail: third-party permits and approvals: regulations.

SUMMARY: Requires the California High-Speed Rail Authority (CHSRA) to develop and adopt regulations for governing third-party permits and approvals that are necessary to deliver the project. Specifically, **this bill:**

- 1) Requires CHSRA by January 1, 2026 to develop and adopt regulations for governing third-party permits and approvals that are necessary to deliver the high-speed rail project and ensure that the regulations do all of the following:
 - a) Require early engagement between third parties and CHSRA;
 - b) Identify the circumstances under which CHSRA shall seek to enter into a cooperative agreement with each applicable third party that serves as the framework for all future project interactions and, where relevant, identifies who is responsible for specific utility relocations and the associated costs;
 - c) Require regular meetings with third parties during the planning, design, and construction phases;
 - d) Require the CHSRA to establish cost estimates with conservative contingency budgets for each utility relocation and to not oversimplify the utility costs and potential risks by bundling those costs into a single item;
 - e) Require regular communication and documentation of contracting terms, conditions, and decisions during construction;
 - f) Define options that can govern a third-party review process for permits and approvals;
 - g) Consider ways to reduce permitting and approval delays;
 - h) Establish a binding dispute resolution process;
 - i) Exempt gas corporations and electrical corporations that the Public Utilities Commission (CPUC) regulates from the dispute resolution process;
 - j) Prohibit third-party entities from insisting on exactions or betterments from CHSRA that are unrelated to ensuring that health and safety standards are met, unless otherwise stipulated by a cooperative agreement, as a condition for permits and approvals;
 - k) Consider reimbursement of third-party staff time and third-party time and materials to relocate the utility; and,
 - l) Define the terms “betterment” and “cooperative agreement” for purposes of the regulation.
- 2) Requires CHSRA to consult with all of the following entities when developing the regulations: California Department of Transportation (Caltrans); CPUC; local government stakeholders; local publicly owned utilities, gas corporations, and electrical corporations; water districts; telecommunications companies; passenger and freight railroads; and any other relevant entities with expertise in transportation infrastructure project delivery.

- 3) Requires CHSRA to hold at least two public hearings regarding the proposed regulations before adopting them.
- 4) Requires CHSRA to post a public notice on its website when it adopts the regulations and not enter into a third-party agreement until 30 days after the public notice is posted.
- 5) Prohibits CHSRA from implementing these regulations until it completes the development and implementation of a process to review third-party agreements in a timely manner as recommended by the High-Speed Rail Authority Office of the Inspector General (OIG-HSR) in Recommendation 25-R-02-02.
- 6) Includes a severability clause.

EXISTING LAW:

- 1) Creates CHSRA in the California State Transportation Agency with 11 members: five appointed by the Governor, two appointed by the Senate Committee on Rules, two appointed by the Speaker of the Assembly, and one each ex-officio member appointed by the Senate and Assembly. (Public Utilities Code (PUC) Section 185020)
- 2) Requires CHSRA to direct the development and implementation of an intercity high-speed rail service. (PUC 185030)
- 3) Requires CHSRA to reimburse utilities for relocation costs under specified circumstances. It also requires the utility “to move its facilities as soon as reasonable possible so as not to delay high-speed rail construction” under specified circumstances. (PUC 185505)
- 4) Requires Caltrans to specify for a utility relocation a reasonable time within which the work of relocation shall commence. (Streets and Highways Code (SHC) Section 680)
- 5) Establishes special provisions and requirements for Caltrans when relocating utilities within and outside freeways. (SHC Sections 700 through 707.5)
- 6) Creates the OIG-HSR to initiate an audit or review regarding oversight related to delivery of the project, and the selection and oversight of contractors related to the project. (Public Utilities Code, Section 187000, *et sec.*)

FISCAL EFFECT:

Unknown

COMMENTS:

Utility relocation can be one of the greatest risk factors to the scope, schedule, and cost of transit and rail projects. City streets and other rights-of-way are underlain by a wide variety of privately, publicly, or cooperatively-owned utilities for water, natural gas, fuel, and chemical feeds; stormwater, wastewater, electrical power, telephone, cable/TV/Internet fiber, street lighting, and traffic signaling. Some of these require special care such as fiber optic given the practice of threading the fiber through older, abandoned utilities such as gas lines. Projects with alignments

near federal buildings such as court houses, or near public or law enforcement agencies may encounter communications lines or other infrastructure that are not readily identified. These buildings and their utilities require special handling.

Transit and rail projects often involve modification to existing underground and overhead infrastructure. The need to relocate or remove existing utilities on transit and rail project sets up encounters with known, unknown, unmarked, or abandoned utilities. The design of utility relocations must accommodate track slabs, rail-tie-ballast track roadbed, catenary poles, signal masts, gravity flow stormwater drainage, station platforms, signage, lighting, signaling, communications lines, power lines, bridge abutments and piers, earth retaining walls, noise walls, streetscaping, landscaping, and other new infrastructure. Relocation of utilities under intersections and sidewalks is even more complicated and overhead contact systems must consider the potential for electrical interference between the traction power wires and other overhead, non-transit, high voltage lines.

Pre-construction activities for transportation infrastructure projects—often referred to as early works—generally includes project sponsors negotiating agreements with various third parties, such as utility owners, railroad companies, and local jurisdictions, before initiating construction. Project sponsors must work with various third parties to acquire right of way and relocate utilities located in the system's path, and manage betterments. A betterment is an improvement that occurs to the utility during the relocation process that increases capacity and is not otherwise required in order to successfully relocate the utility as a result of the project.

Utility relocations increase project risk. Utilities may be discovered during construction that were not identified during the design phase, leading to unexpected relocations. Coordinating with multiple utility companies and managing their schedules can be complex, especially when dealing with varying permit processes, easement acquisitions, and communication breakdowns. Adjustments to the project's design during construction can trigger the need for utility relocations, causing further delays.

Utility relocations can cause delays. Utility relocations may not be directly included in the main construction contract, leading to delays in getting the work done and potential disputes over costs and responsibility. A utility conflict occurs when a utility must be relocated, adjusted, protected-in-place, or abandoned because of the project. To relocate the utilities that conflict with the guideway on the extensions, project sponsors have to design plans for the relocation of existing utilities and identify the needed right of way. Acquisition of the needed replacement right of way for relocated utility facilities may become a major obstacle to timely utility relocation. Securing the necessary permits and easements for utility relocation can be a time-consuming process, especially on private property. Delays can also be caused by disagreements over land rights or contract terms, and a lack of staff at the third party. Relocating a utility or business is inherently disruptive for the third party.

Delays increase project schedule, cost, and scope. Project delays typically lead to increased labor costs, material costs, and potential claims for damages. Utility relocations can push projects past their planned completion dates, impacting the overall project schedule. Utility work can disrupt traffic flow, especially in urban areas, causing inconvenience to the public. Relocating utilities, especially underground, can pose safety risks if not handled properly.

Effectively managing utility relocations is crucial for on-time and on-budget project completion. The Federal Transit Administration (FTA) Project Management Oversight Program, Utility

Relocation - Challenges and Proposed Solutions report of March 2022 identified best practices to address inherent utility relocation challenges. These include active, on-going implementation of mitigations such as meetings, tracking, following-up on action items to maintain accountability, schedule workarounds, communication, cost negotiations, enforcement of compliance with federal regulations, and dedicated attention throughout the project.

FTA's six best practices for utility relocations are:

- 1) **Preplanning:** early in a project, all project stakeholders draft and agree to the terms of a Third-Party Utility Relocation Agreement. This agreement serves as the groundwork for all future project interactions between and among the stakeholders and identifies who is responsible for specific utility relocations and the costs associated with those relocations.
- 2) **Meet regularly:** Hold regular (weekly) meetings with utility companies during the planning, design, and construction phases.
- 3) **Cost estimates:** Project Sponsors should establish cost estimates with conservative contingency budgets for each utility relocation and not oversimplify the utility costs and potential risks by “bundling” them into a single item.
- 4) **Partnering sessions:** Define roles and responsibilities of the partners and clarify lines of communication so the decision-making process is understood.
- 5) **Segments:** For above ground transit and rail projects costs, break the project into segments so that as a segment is cleared of existing utilities new construction can begin.
- 6) **Continue regular communication and documentation of contracting terms, conditions, and decisions during construction.**

CHSRA. Chapter 796 of 1996 (SB 1420, Kopp) established the CHSRA to plan and construct a high-speed rail system that would link the state's major population centers. In November 2008, voters approved Proposition 1A, which authorized the state to sell \$10 billion in general obligation bonds to partially fund the system, as well as related projects. Proposition 1A also specified certain criteria and conditions that the system must ultimately achieve. For example, the measure requires that the system be designed to be capable of specified travel times along certain routes, such as nonstop travel from San Francisco to Los Angeles within two hours and forty minutes.

Over the years, the project has faced many challenges largely stemming from a lack of adequate funding to complete even a segment of the project, and delays caused by right of way acquisition and utility relocations. As of May 31, 2025, \$14.4 billion has been spent on the project, mostly on work between Merced and Bakersfield.

SB 198 (Committee on Budget and Fiscal Review), Chapter 71, Statutes of 2022 established the OIG-HSR. Since its inception, it has completed six reviews of the project. In its February 21, 2025 review of “Preconstruction Activities for the Merced to Bakersfield Extensions” the OIG-HSR recommended that the Legislature authorize the HSRA to promulgate regulations governing third-party review and approval timeframes for agreements and designs.

The OIG-HSR found that “...procedures do not fundamentally improve the Authority’s ability to get third parties to engage in what can be a time-consuming process. As a potential result, early works on the Merced and Bakersfield extensions have been hindered by delays in executing utility-owner reimbursement agreements, which are generally necessary for utility owners to review and approve utility relocation designs before the Authority can begin construction. In fact, some negotiations have been ongoing for nearly two years without reaching agreement. The Authority’s often time-consuming internal review process, disagreement over contract terms, and little incentive for utility owners to engage in the process in a timely manner have caused the delays. Consequently, the Authority is currently proceeding with utility relocation designs without owner approval, which could lead to more redesigns later.”

The OIG-HSR also found “During our review, Authority staff described what they believe are some causes of challenges in negotiating timely agreements with third parties. Authority staff responsible for working with third parties and overseeing design of the extensions indicated to us that delays result, in part, from third parties’ lack of incentive to engage in the process, which requires work on their part that they wouldn’t otherwise perform. Further, Authority staff overseeing the Central Valley region of the system explained to us that because utility owners, for example, are not under any particular time pressure, there is a resulting imbalance in these negotiations and the Authority’s other interactions with third parties.

“Additionally, Authority staff explained that, in the past, the Authority sometimes agreed to terms that put it in a disadvantageous position—for example, agreeing to compensate third parties for their attorney costs or agreeing to overly tight timelines for construction related to relocating individual utilities. We saw documentation of this type of issue in the example described in the previous section concerning attorney fee reimbursement. Authority staff also indicated that the lack of uniform agreement terms more generally increases difficulties in efficiently reaching and executing agreements. Authority staff expressed that, although the Authority has learned from and is now trying to avoid past mistakes, the legacy of those older agreements means that some third parties expect to receive the same terms as before, making current negotiations challenging.”

Internal processes at CHSRA can cause delays. In its February 2025 review, the OIG-HSR found that third-party-related delays are partially attributable to CHSRA and its project management procedures being inadequate. The OIG-HSR found that HSRA lacks defined negotiation timeframes, and “communicating those timeframes to third parties, would be helpful in making the process more efficient.” The OIG-HSR recommended that “by May 2025, the third-party agreements branch and the contracts and procurement branch should develop procedures with defined timeframes for their internal review processes. These should include defined timeframes for how long staff at each level should attempt to resolve an issue before escalating it.” OIG-HSR also recommended that CHSRA improve internal tracking tools and hire additional legal staff if needed by May 2025. CHSRA agreed with these recommendations.

At the time this analysis was published, OIG-HSR has not fully implemented these recommendation. It is critical for CHSRA to fully address these recommendations.

Caltrans Freeway Master Contracts. In contrast to the HSRA, Caltrans has extensive documentation to guide its utility relocation process.

Caltrans’ Right of Way Utilities Branch is responsible for the coordination of relocating utilities that are in conflict with proposed highway projects. Following enactment of the Collier-Burns

Act in 1947, which reformed the state's highway financing system and paved the way for the development of its freeway system, the accumulation of disputed right of way and utility relocation claims was of such magnitude as to threaten delay of the newly enacted freeway program. To meet the problem, the Legislature in 1951 enacted legislation which authorizes Caltrans to enter into contracts with utility owners that govern exclusively the apportionment of relocation costs.

Caltrans' Freeway Master Contracts (FMCs) govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions in state law. In other words, under FMCs, the relevant provisions of the Streets and Highways Code and other laws have no application to the rearrangement of the facilities on freeway projects and are replaced by the terms of the FMC. The contracts do not affect relocations on conventional highways.

These contracts define terms for considerations that often come up when needing to relocate utilities to accommodate a new freeway such as "betterment", "wasted work", and "relocation". Caltrans practice is consistent with the Federal Highway Administration (FHWA) finding that by addressing these issues proactively, construction projects can minimize the impact of utility relocations on schedules, costs, and overall success.

According to the author, "California High-Speed Rail is critical for our state's future. The project is already combating climate change, fostering transit-oriented developing, and creating thousands of good-paying union jobs. The project is essential for an abundant, affordable, zero-emission future. It is imperative to help the project cut through permitting and approval-related red tape in order to prevent project cost increases and accelerate project delivery. It shouldn't be this hard to go through design review and approvals or to relocate utilities. There shouldn't be so many veto-points that empower project skeptics or opponents to stall the delivery – particularly after the voters approved funding for the project and design and construction are underway. SB 445 implements a High-Speed Rail inspector general recommendation to cut red tape, streamline the project delivery process, curtail veto-points, and reduce and contain project costs. The bill will result in improved and more cost-effective delivery of California High-Speed Rail, ensuring that public dollars are wisely spent on the project."

Writing in support, the sponsors of this bill, Streets for All states "SB 445 requires the High-Speed Rail Authority to develop and adopt regulations that outline requirements for third party permits and approvals necessary for the project. In doing so, the bill helps the project get built faster and on budget, effectively spending public funds.

"The transportation sector is the largest contributor to greenhouse gas emissions in the state, and the high-speed rail project will drastically reduce these emissions by an estimated 84 to 102 million metric tons of carbon dioxide equivalent over the first 50 years of operation. In order for the project to be built on schedule and on budget, it is imperative that it not be held up by thousands of individual veto points after the decision has been made to fund, design, and construct the project."

Opposition has not been submitted based on the version of this bill in print on July 9, 2025.

Staff comments. HSRA is relatively new to the challenges and risks created by having to engage with third-parties to construct a major infrastructure project. In contrast, Caltrans has had decades to develop a process that works well when constructing new freeways. This bill acknowledges the impacts of utility relocations on the HSR project's schedule, cost, and scope

and gives CHSRA the authority to establish regulations for the third-party relocation process. The regulatory process is intended to give stakeholders an opportunity to inform the regulations that are established.

A very undeveloped version of this bill was passed out of the Senate and only recently this bill was amended with more substantive content, which since then was very significantly amended. This bill is still a work in progress and has not been thoroughly vetted with stakeholders and CHSRA.

Some outstanding issues the author may wish to address are:

- 1) Is HSRA the appropriate entity to develop regulations or should a somewhat more neutral entity, such as the California State Transportation Agency, develop the regulations? A downside to this approach, may be that they lack HSR-project-specific expertise.
- 2) Does the bill need to more clearly define which third-parties and local agencies would be impacted by the bill?
- 3) Does this bill do enough to limit betterments?

In addition, it will be important to address concerns raised by the next two committees that hear this bill—Assembly Local Government and Assembly Utilities and Energy.

Related and prior legislation. AB 377 (Tangipala of 2025) requires the California High-Speed Rail Authority (CHSRA) as part of the business plan due on or before May 1, 2026, to provide a detailed funding plan for the Merced to Bakersfield segment. *This bill is on the Assembly floor.*

SB 960 (Wiener), Chapter 630, Statutes of 2024 included a section requiring Caltrans to implement a specific encroachment permit application, review, and approval process for specified complete streets facilities/projects on the department's right-of-way designed to meet existing statutory timelines for the department's review and approval of such applications.

SB 410 (Becker), Chapter 394, Statutes of 2023 and AB 50 (Wood), Chapter 317, Statutes of 2023 required the CPUC to establish target timelines for energization – or extension of service – activities to customers for the three large Investor-Owned Utilities (IOUs). The CPUC adopted these timelines in September 2024. These timelines apply to energization for all customers – including High-Speed Rail.

SB 198 (Committee on Budget and Fiscal Review), Chapter 71, Statutes of 2022 established the Office of the Inspector General, High-Speed Rail (OIG-HSR) in addition to placing other requirements on HSRA and limiting construction of the project to the Merced to Bakersfield segment, until it is completed.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Bay Area Action
California YIMBY
Streets for All

Opposition

Writing in opposition, as amended on June 30, 2025, not based on the version in print which has been significantly amended.

Association of California Water Agencies
City of Burbank/Burbank Redevelopment Agency
CalBroadband
California Association of Sanitation Agencies
California Municipal Utilities Association
California Special Districts Association
California State Association of Counties
City of Arcata
City of Artesia, California
City of Chino
City of Colton
City of Cypress
City of Downey
City of El Segundo
City of Lakewood
City of LA Palma
City of Laguna Niguel
City of Lakewood CA
City of Los Alamitos
City of Manteca
City of Menifee
City of Merced
City of Moreno Valley
City of Morgan Hill
City of Novato
City of Ontario
City of Palm Desert
City of Rancho Cucamonga
City of San Luis Obispo
City of Stanton
City of Suisun City
City of Thousand Oaks
City of Torrance
City of Vernon
Cucamonga Valley Water District
League of California Cities
Los Angeles County Sanitation Districts
Los Angeles Department of Water and Power
Pacific Gas and Electric Company
Rural County Representatives of California
San Diego Gas and Electric Company
City of San Rafael/Marin County Council of Mayors & Council Members
Sempra Energy and its Affiliates: San Diego Gas & Electric Company and Southern California Gas Company

Southern California Edison
Southern California Gas Company
Town of Mammoth Lakes
US Telecom-The Broadband Association
Urban Counties of California
WaterUse California

Oppose Unless Amended

City of Tustin

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