

Date of Hearing: January 11, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1549 (Wood) – As Amended January 4, 2016

SUBJECT: State Highway Rights-of-Way: fiber-optic communications

SUMMARY: Requires the California Department of Transportation (Caltrans) to maintain an inventory of all conduits for fiber-optic cables within state highway rights-of-way and to make the information available to the public upon request.

EXISTING LAW:

- 1) Makes legislative findings and declarations setting forth policies related to telecommunications in California that strive for ubiquitous availability to high-quality telecommunications services in California.
- 2) As set forth in a 2006 Governor's Executive Order (S-23-06), created the California Broadband Task Force to facilitate widespread deployment of state-of-the-art telecommunications technology. The Executive Order specifically required, in part:
 - a) The Business, Transportation, and Housing (BTH) Agency to establish a database of current and prospective projects for deploying broadband. The database was to be available for use by broadband providers, state entities, and municipalities;
 - b) State agencies to place broadband conduit in their infrastructure projects for use by multiple government entities and broadband providers; and
 - c) State agencies to expedite permitting for broadband providers' requests for access to rights-of-way.
- 3) Generally authorizes Caltrans to lease to public agencies or private entities the use of areas above or below state highways, subject to any reservations, restrictions, and conditions that the department deems necessary to ensure adequate protection to the safety and the adequacy of highway facilities.

FISCAL EFFECT: Unknown

COMMENTS: Long-standing federal and state policies encourage wide-scale deployment of advanced telecommunication capabilities. However, according to a report issued in February 2015 by the Federal Communications Commission (FCC), broadband deployment in the United States – especially in rural areas – is failing to keep pace with today's advanced, high-quality voice, data, graphics, and video offerings. According to the FCC, 17% of all Americans lack access to high-speed telecommunication services. In rural areas, that number grows to 53%.

Strategies for facilitating rapid broadband deployment typically include providing easy, quick access to public rights-of-way, particularly longitudinal rights of way such as streets and roads. However, according to the FCC, the largest cost of deploying broadband is burying fiber optic cables and conduit underground. In fact, the Federal Highway Administration indicates that 90% of the cost of deploying broadband is due to the cost of roadway excavation. As a result,

President Obama recently issued an executive order directing his transportation department to facilitate expeditious access to highway rights-of-way at minimal cost to telecommunications providers.

Caltrans, as a part of the California Broadband Initiative developed in response to Governor Schwarzenegger's Executive Order in 2006, instituted a policy to encourage broadband co-location within the state highway rights-of-way. For seven years, the department announced each upcoming highway project and invited telecommunications providers to lay conduit as a part of the project. In the end, not one provider participated in the project, and the effort was disbanded.

Telecommunications providers can still access Caltrans' rights-of-way to install conduit via the department's encroachment permit process, however. Furthermore, on the wireless side of the telecommunications industry, Caltrans has an active program to facilitate the build-out and co-location of public and private wireless telecommunication systems. The department participates in the state's central data base of state-owned, non-highway properties available for use by telecommunications providers, and it has policies and procedures in place to streamline the necessary encroachment permits.

Caltrans issues approximately 12,000 encroachment permits annually, about 4,000 to 5,000 of which are telecommunications related and may involve broadband installations. The department does not keep a complete inventory of all existing conduits within its right-of-way, due in part to its inability to adequately secure as-built documents from utilities when they do work within the right-of-way. Furthermore, the department does not update encroachment permit data over time. For instance, it does not track changes in ownership of a particular installation nor does it keep track of whether the installation is still active or has been abandoned.

Committee concerns and author's proposed amendments:

- 1) It is unclear that a lack of access to state highways is a major impediment to wide-scale deployment of high-speed internet access, particularly in light of Caltrans' experience in the California Broadband Initiative.
- 2) Even if Caltrans were to have the inventory required by this bill, there is no assurance that it would be useful, in part because the data would not necessarily be current.
- 3) In at least one case, a provider seeking an encroachment permit asked Caltrans to keep confidential the location of the telecommunication installation for fear of vandalism. Presumably, wide-scale public availability of information related to specific telecommunications facilities in state highway rights-of-way could evoke similar concerns from other providers.
- 4) Overall, it is doubtful that the resources required by Caltrans to keep an inventory current would be commensurate with the benefits in terms of increasing access to telecommunications.

In response to these concerns, the author has indicated his intent to take amendments in committee that would limit the required inventory to conduits owned by Caltrans that are installed after 2016. These amendments will reduce the burden on Caltrans to comply with the

requirements of the bill and offer a reasonable chance that the inventory may facilitate co-location of additional broadband installations.

Pending legislation: Federal legislation (HR 3805, Eschoo) is pending that would enact the Broadband Conduit Deployment Act to expand high-speed internet access. The bill would require federal-aid highway projects to include broadband conduit beneath paved surfaces if an evaluation determines that there will be a need to install conduit sometime within the next 15 years. Similar legislation has been introduced twice before but was unsuccessful in securing passage.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file

Opposition

None on file

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