

Date of Hearing: July 10, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
SB 389 (Roth) – As Amended July 3, 2017

SENATE VOTE: 40-0

SUBJECT: Department of Transportation: testing and inspection services

SUMMARY: Authorizes the California Department of Transportation (Caltrans) to develop a fee-for-service program for specific services related to concrete and asphalt plant inspection and testing. Specifically, **this bill:**

- 1) Sets forth the intent of the bill is to improve project delivery and workload management related to the department's inspection and testing activities.
- 2) Authorizes Caltrans to charge a fee for providing the following services:
 - a) Job mix formula verifications;
 - b) Material quality plant program inspections;
 - c) Annual aggregate source verifications; and,
 - d) Independent assurance of accreditation of laboratories and qualification testers.
- 3) Limits the revenue Caltrans can collect in fees for these services to its costs to provide the services.
- 4) Directs revenue from the fees to be deposited in the State Highway Account and allocated to the department upon legislative appropriation.
- 5) Authorizes Caltrans to adopt regulations to specify the following:
 - a) The fee schedule;
 - b) The services the department will provide;
 - c) The terms and conditions for providing these services; and,
 - d) The entities that can seek these services.

EXISTING LAW:

- 1) Grants Caltrans broad powers to acquire, construct, and control all state highways.
- 2) As set forth in federal regulations, requires each state transportation department to develop a quality assurance program which will assure that the materials and workmanship incorporated into each federal-aid highway construction project on the national highway system conform to the requirements of approved plans and specifications.

FISCAL EFFECT: According to the Senate Appropriations Committee analysis:

- 1) Unknown costs to Caltrans for testing and inspection costs, fully offset by fee revenues. Caltrans indicates that the bill would not result in additional staffing needs but would result in the charging of testing and inspection services to a new non-distributive project identification number rather than a specific project, representing a shift in the funding source for existing staff time.
- 2) Unknown fee revenue gains. The amount of new revenues would depend upon participation in the voluntary testing and inspection program, and fee levels would be set to fully offset Caltrans' staffing costs associated with the program.
- 3) Likely minor Caltrans costs to adopt regulations establishing a fee structure.

COMMENTS: The genesis of this bill is Caltrans' recent transition to a primarily zero-based budget system where costs associated with personnel and expenses for capital outlay and support are to be assigned to a particular project. Zero-based budgeting allows Caltrans project managers to accurately monitor and report on expenditures throughout a project and helps to ensure Caltrans is accountable to stakeholders.

As a result of zero-based budgeting, Caltrans is reducing and/or eliminating many overhead charging practices. While this move will improve project accountability, it limits the department's flexibility to perform work unless the work can be attributed directly to a project. As an example, prior to zero-based budgeting, Caltrans routinely carried out certain concrete and asphalt plant and material inspection and testing functions during the winter, outside of the construction season. This practice allowed Caltrans to better manage the workload associated with these inspection and testing services, and also allowed plants and suppliers to be up, running, and certified at the beginning of construction season. Caltrans halted these pre-certification activities, however, when it went to zero-based budgeting. Now, the necessary inspections and testing do not begin until a project has been awarded. This allows Caltrans to assign the cost and personnel resources to a specific project, rather than characterize them as overhead.

This re-designed business practice is resulting in project delays. Where contractors used to be able to commence work using pre-certified concrete and asphalt plants soon after a project was awarded, Caltrans' new zero-based budgeting process effectively prohibits this. Plant and materials certification cannot begin until a project is awarded and a specific concrete or asphalt plant and mix design are chosen. The process of testing materials takes over 30 days to complete. (The actual testing process cannot be condensed because it requires, for example, concrete to set up a specified number of days/weeks before certain tests can be completed.) As a result, contractors are idled while the certification and testing are completed.

This new process is primarily affecting projects initiated early in the construction season, when many plants need certification and testing at about the same time. (Once completed, certifications are generally valid for a year, allowing future projects using the same mix designs from already-certified plants to proceed after only minimal project-specific testing.) Consequently, the backlog causes further increases delays in Caltrans being able to conduct the

necessary inspection and testing work. This backlog, along with the fixed length of time it takes to complete the actual testing, is delaying projects by about 50 days.

Caltrans and the construction industry worked for six years to address the issues caused by the new zero-based budget process and this bill is the result of that work. This bill effectively allows Caltrans to return to its previous practice of pre-certifying plants and mix designs in the off season, for those plant operators that choose to participate in the program, thereby enabling plants to be up and running at the beginning of the construction season. According to industry representatives, the price of the fee to be pre-certified is more than offset by the certainty that projects will not be delayed for lack of inspection and testing.

Suggested amendments:

- 1) This bill authorizes Caltrans to identify services that it will provide under the fee-for-service program. These services, however, are already specifically authorized in the bill. Caltrans indicates that this provision is intended to fully detail all the specific tests and inspections that it would perform within the program. The detailed list of specific services offered would depend on the needs for the materials involved and the type and size of plants and laboratory equipment. For example, the department would need to specify services for large hot mix asphalt plants differently than services for a small field hot mix batch plant operation.

The author may want to amend the bill to clarify that the department may adopt regulations to specify *tasks*, rather than *services*, to avoid confusion or the possibility of adding additional functions to the fee-for-services program beyond those addressed in the bill.

- 2) This bill allows Caltrans to determine, via regulations, which entities may apply to participate in the fee-for-service program. According to Caltrans, this provision is intended to allow the department to restrict these services to entities working or attempting to work on Caltrans jobs and to other public agencies dependent on the state for certain services because of federal funding requirements. The department would expect to limit this work under this program to potential contractors, materials producers, contracted laboratories, and public agencies and to prioritize work, as needed, on active Caltrans contracts before work intended for future contracts.

The bill should be amended to better reflect the intent of this provision and to ensure the program reflects fair and equal treatment of all program participants.

REGISTERED SUPPORT / OPPOSITION:

Support

Bender Read Mix
California Asphalt Pavement Association
California Construction and Industrial Materials Association
CalPortland Company
DeSilva Gates Construction
George Reed, Inc.
Granite Construction
Holliday Rock Companies, Incorporated
Lehigh Hanson, Incorporated

Robertson's
Teichert Materials
United Contractors
Vulcan Materials Company, Western Division
Western Aggregates

Opposition

None on file

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