

Date of Hearing: April 12, 2021

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 955 (Quirk) – As Amended April 6, 2021

**SUBJECT:** Highways: encroachment permits: broadband facilities

**SUMMARY:** Establishes additional procedures for the Department of Transportation (Caltrans) to review an application for an encroachment permit for a broadband facility. Specifically, **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 applicant has submitted an application.
- 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.
  - 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 act as the lead agency for purposes of ensuring compliance with the California Environmental Quality Act (CEQA), of an encroachment permit but does not require any additional approval from a city or county. Additionally authorizes the California Public Utilities Commission (CPUC) to act as lead agency.

**EXISTING LAW:**

- 1) Requires Caltrans to approve or deny an application for encroachment permit within 60 days of receiving a completed application, as determined by the department.

- 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-day permit 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, furnish the applicant with a detailed explanation of the reason for the denial.
  - d. Sets up an appeals process for denied applications.
- 2) 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:** Broadband development is a priority for local, state, and federal governments as exemplified by various state and federal Executive Orders (EO) that have been issued. In 2006, Governor Schwarzenegger issued EO S-23-06: Twenty-First Century Government, which created the California Broadband Task Force (of which Caltrans is a member) to bring together public and private stakeholders to better facilitate broadband installation, identify opportunities for increased broadband adoption, and enable access to and deployment of new advanced communication technologies. In 2013, President Obama issued EO 13616: Progress on Accelerating Broadband Infrastructure Deployment, which studied the challenges to deploying wired and wireless broadband including; barriers to deploying broadband for communities and the issuance of government permits, created the Broadband Deployment on Federal Property Working Group, required each department which sits on the working group to develop a broadband strategy for efficient deployment of broadband, and required the U.S. department of Transportation to review and implement "dig once requirements."

Broadband accelerates improvements in infrastructure, public safety, the economy, and makes for an engaged citizenry. The COVID-19 pandemic and the increased need for people to distance from one another has demonstrated a greater need for reliable broadband for work, health, and school. Over 2 million Californians lack access to broadband service, including 50% of rural housing units. As of December 2018, 23% of California's 8.4 million residents do not have broadband subscriptions. Approximately 674,000 households in the state lack high capacity broadband, with about 305,000 located in urban areas and 369,000 located in rural areas.

Broadband deployment continues to be a challenge. Urban California covers about 8,200 square miles and contains just under 95% of the population, while rural California is home to 5% of the population spread across more than 147,000 square miles. Access to broadband correlates with higher education and income levels, disability status, age, and race and ethnicity. Lack of broadband deployment has been attributed to: increased need for high-performance broadband, network resiliency, and redundancy. There are varying needs for broadband across California, from no broadband to poor quality broadband to decent broadband service. The cost of deployment is also a challenge, for example delivering Gigabit Service to unserved and

underserved Californians is estimated to require at least \$6.8 billion in new private, federal and state investments

*Utility Encroachment Permits in Caltrans' Right-of-Way:* Caltrans' right-of-way along state highways can serve as the foundation for a high-capacity broadband cable network. Broadband providers must apply for utility encroachment permits in order to access Caltrans' right-of-way and be granted permission to place broadband infrastructure in or over any portion of the state highway system. These utility encroachment permits must be approved or denied by Caltrans within 60 days of receiving a completed application. A completed application, as determined by the department, includes all relevant information including a completed CEQA review. Utility encroachment permits are processed at the Caltrans district level, with support from Caltrans headquarters.

The scope, complexity, and size of a proposed broadband project within Caltrans' right of way determines how long it takes for an application to be deemed complete. For example, the project location can require documentation regarding a coastal zone or endangered habitat, lesser or greater pavement intrusion, or ancestral burial grounds. Identifying and providing necessary supporting documents associated with utility encroachment permits can result in significant delays in permit application completion. According to Caltrans, it processed an average of 2,500 utility encroachment permits a year during the period of 2016-2019. Caltrans aims to process permit applications within 30 days, and according to Caltrans its average time to process utility encroachments permits is 18 days.

Broadband providers report that the amount of time it takes Caltrans to approve a utility encroachment permit varies by Caltrans district. (Caltrans has 12 districts across the state organized by county region, which attend to state transportation needs within each district's region. Caltrans districts report to Caltrans headquarters.) According to broadband providers, the time of submittal of an application to approval ranges from 21-70 days in Southern California to 90-120 days in Northern California. Broadband providers report that Caltrans often requests permit application resubmittals, as many as four or five times, and that a resubmittal does not guarantee approval, and permit approval does not guarantee project completion. Broadband providers report that Caltrans has approved utility encroachment permits, only to realize the broadband project would compromise structural integrity of the site.

*Permit streamlining for broadband:* In 2020, Governor Newsom issued EO N-73-20: Broadband Action Plan 2020: California Broadband for All, which directs state agencies to take necessary actions to accelerate the deployment of broadband. EO N-73-20 directs the California Broadband Council to create a new State Broadband Action Plan by December 31, 2020, and review the plan annually. The plan must include: a roadmap to accelerate the deployment and adoption of broadband by state agencies, publically accessible information on all state and federal funding opportunities and eligibility requirements, and provisions to maximize the inclusion of tribal lands in all broadband access and adoption opportunities. EO N-73-20 also directs the CPUC to lead aggregation and mapping efforts in collaboration with the California State Transportation Agency (CalSTA) to address broadband access, public and private broadband infrastructure, state-owned infrastructure and rights-of-way, middle and last-mile network components and digital equity plans. Lastly, EO N-73-20 directs CalSTA, Caltrans, and the California Transportation Commission to identify and incorporate the installation of conduit and/or fiber into appropriate and feasible transportation projects along strategic corridors.

Consistent with AB 1549 (Wood) Chapter 505, Statutes of 2016, Caltrans' Broadband Partnership Opportunity Map provides notification of publicly-funded highway projects to help determine where there may be opportunities to install broadband conduit. Companies or organizations working on broadband deployment may choose to collaborate with Caltrans to install broadband conduit as part of the state-sponsored project.

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.

*Is the timeframe for permitting an issue?* Caltrans acknowledges that the process for utility encroachment permits varies by region, and that each permit application is processed in context. Certain Caltrans districts take longer to process permits, and generally broadband providers have experienced longer permitting delays in more rural communities. Utility encroachment permits within Caltrans' right-of-way account for a very small percentage of broadband providers' total applications to deploy broadband (~3%). While this bill may help to address Caltrans' permitting delays, it appears that more work needs to be done to accomplish the state's goal of delivering broadband to the communities in California who need it most.

This bill does not change the requirement that Caltrans approve or deny an encroachment permit within 60 days of a complete application. However, this bill requires Caltrans to identify in advance all criteria needed for approval and requires that Caltrans not impose any new or different application criteria after the initial application is submitted. In addition, Caltrans, upon an applicant's request, must meet with the applicant. These measures may improve communication between Caltrans and broadband providers and thereby accelerate the permitting process, but Caltrans' permitting process is not the only barrier to broadband deployment statewide.

Broadband projects are more likely to be in the urban parts of the state and can therefore rely on the right-of-way associated with state highways to install infrastructure needed for broadband deployment. However, in more rural regions where broadband is lacking, state highways may not exist. If the state is to achieve its goal of "broadband for all", in certain parts of the state, broadband providers will need to deploy strategies that do not necessarily exclusively rely on Caltrans' right-of-way. However, there are other challenges because these are often the most expensive connections to make, the cost of connection is often not profitable for the broadband providers, and there can also be community resistance to the installation of broadband-related infrastructure.

*According to the author,* "While the deployment of broadband has always been an industry priority, there has never been more pressure to get Californians connected to the internet than seen 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. AB 955 would simply require Caltrans to notify encroachment permit applicants of all application requirements, set a 30-day milestone to verify whether that application is complete, and clarify that Caltrans will act as the lead agency for the CEQA process in the event that no other local agency takes that role. These improvements to the Caltrans encroachment permitting process will make the deployment of broadband infrastructure more efficient and help to address the broader Digital Divide."

*In support*, the California Cable and Telecommunications Association writes, “CCTA supports Assembly Bill 955, which would expedite encroachment permits for the deployment of broadband facilities within Department of Transportation (“Caltrans”) rights-of-way. With the onset of the COVID-19 pandemic, there has never been a greater urgency to deploy broadband to unserved communities. Utilizing Caltrans rights-of-way is one of the fastest means to deploy broadband to unserved communities.”

*Related and previous legislation:* AB 14 (Aguiar-Curry) of 2021 requires state strategies and engagement regarding broadband deployment for schools of local governments, among other provisions. *This bill is currently pending in Assembly Communications and Conveyance.*

SB 743 (Bradford) of 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 Senate Housing Committee.*

AB 1560 (Daly) of 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 in Assembly Education Committee.*

SB 4 (Gonzalez) of 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 Senate Energy, Utilities and Communications Committee.*

AB 1557 (Santiago) of 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 of 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 of 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.

SB 1462 (Padilla) Chapter 338, Statutes of 2010 establishes a nine-member California Broadband Council (Council) to promote broadband deployment and adoption throughout the state, and requires the Council to ensure that state agencies are coordinating efforts and resources to promote broadband deployment and adoption

AB 617 (Richter) Chapter 796, Statutes of 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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Cable and Telecommunications Association (Sponsor)

**Opposition**

None on file.

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