

Date of Hearing: June 11, 2018

**ASSEMBLY COMMITTEE ON TRANSPORTATION**

Jim Frazier, Chair

SB 760 (Wiener) – As Amended June 4, 2018

**SENATE VOTE:** vote not relevant

**SUBJECT:** State highways: permits: improvements

**SUMMARY:** Restricts the Department of Transportation (Caltrans) from denying an application for a permit for work within the state highway right-of-way solely because the work will not be performed in accordance with Caltrans approved plans and specifications if the improvement would not affect the operation of the state highway and is instead performed in accordance with local agency plans and specifications.

**EXISTING LAW:**

- 1) Provides that Caltrans has full possession and control over the highways of the state and all property and rights in property acquired for state highway purposes.
- 2) Defines “highway” as all, or any part, of the entire width of right-of-way of a state highway, whether or not the entire area is actually used for highway purposes.
- 3) Defines “encroachment” as any tower, pole, pole line, pipe, pipeline, fence, billboard, stand or building, or any structure, object of any kind, or a special event, which is in, under, or over any portion of the highway.
- 4) Authorizes Caltrans to issue a written permit authorizing the permittee to do a variety of things, as defined, in the state highway right-of-way.
- 5) Authorizes Caltrans to issue a permit to the owner or developer of property adjacent to or near a state highway to construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access, if the improvements are required as part of the development of a property and are accepted by Caltrans.
- 6) Requires that a permit only be used if the work within the highway right-of-way is to be performed in accordance with plans and specifications approved by Caltrans and Caltrans reserves the right to inspect and accept the work as complying with the plans and specifications.
- 7) Requires Caltrans to either approve or deny an application for an encroachment permit within 60 days of receiving completed application, as determined by the Caltrans. Also requires all environmental review and other statutory requirements be complete prior a permit application being submitted. Requires Caltrans to notify the applicant of any permit denial with an explanation of the reason for the denial.
- 8) Defines “public works” as all the roads, bridges, street lighting, or installation of signal work performed with the permit for acceptance into the state highway system, except work

performed solely to allow private encroachments onto the state highway or for utility or drainage encroachments within the state highway.

**FISCAL EFFECT:** Unknown

**COMMENTS:** California has a large network of highways and local streets and roads, consisting of almost 400,000 lane-miles of pavement and over 25,000 bridges. The state highway system, owned and managed by Caltrans, is made up of 51,000 lane miles, including both federal and state highways. Whenever anyone, such as a local government, developer, utility company, or a private citizen wants to do work on any portion of the state's right-of-way, they must obtain an encroachment permit from Caltrans. Current law defines right-of-way for the state highways as, "all, or any part, of the entire width of right-of-way of a state highway, whether or not the entire area is actually used for highway purposes." This includes any airspace over and under state highways as well. In instances where there is an onramp to a state highway, the right-of-way also includes the ramps and any signals. Caltrans has permissive authority to grant encroachment permits for the permittee to enter state highway right-of-way to construct, alter, repair, improve facilities, or conduct specified activities. For examples, encroachment permits are issued for the installation, maintenance, or removal of utilities; landscaping and hardscaping; commercial filming activities; special events; surveys; temporary traffic control; and modifications and improvements to the highway infrastructure.

Caltrans must either approve or deny an encroachment permit application within 60 calendar days, upon determination that the application is complete. However, the actual time of the total permit process can take much longer based upon the scope and complexity of the proposed work and the completeness of all necessary environmental and other statutory requirements prior to official submittal of the application. In practice, Caltrans, usually through one of the districts, works directly with the entity applying for the permit. As mentioned, in most instances the length of time for the development of the project and the application for the permit depends on the complexity of the proposed activity. Generally, if a project request is under \$1 million in cost, the permit would be issued or denied within the 60 day time period. If a project is over \$1 million, it would likely constitute a more complex oversight project, which would bring Caltrans into the project process earlier, such as assisting with design and environmental review, which can cause the permit process to take much longer.

Caltrans also inspects all work done in the state highway right-of-way, sometimes during the project, and always after any work is completed. Essentially, Caltrans "accepts" the final work and the inspectors officially sign off that the work is to state standards and specifications. Any work done in the state right-of-way is considered "owned" by the state, meaning Caltrans is liable for any of the work done. Effectively, Caltrans has liability due to ownership, control, and maintenance of the state highway asset. Sometimes, Caltrans will develop maintenance agreements with other entities to maintain the asset and therefore take on some of the liability; however, Caltrans retains ownership and control so they are also liable.

Currently, any work conducted on the state highway right-of-way must meet the state's adopted plans and specification, or design standards. Caltrans follows the Highway Design Manual (HMD), which is informed by the Geometric Design of Highways and Streets, otherwise known as the Green Book, compiled by the American Association of State Highway and Transportation

Officials (AASHTO). The Green Book contains the current design research and practices for highway and street geometric design. The Federal Highway Administration contributes to the development of these standards through the AASHTO process for design of the National Highway System. HMD is required to be used for the design of all state highway projects. The manual is updated regularly and changes to it can be submitted. Additionally, as noted by Caltrans in the HMD, “a ‘one-size-fits-all’ design philosophy is not Departmental policy...” Further, “this guidance allows for flexibility in applying design standards and approving design exceptions that take the context of the project location into consideration; which enables the designer to tailor the design, as appropriate, for the specific circumstances while maintaining safety.”

This bill would require Caltrans “not deny” a permit solely because the work is not performed in accordance with plans and specification approved by the department for an improvement in the state highway right-of-way if the improvement would not affect the operation of the state highway and the associated work would be performed in accordance with local agency plans and specifications.

According to the author, “Right now, there are some edge cases where Caltrans owns a right-of-way that overlaps with a locally owned street. In these cases, Caltrans has to sign off on local street improvements – even if it doesn’t affect the operation of the actual state highway close by. This policy would clarify that if the improvement does not affect the operation of the state highway, then Caltrans can’t hold up the permit for the design improvement in the right of way. The lack of clarity under current law has created a burdensome bureaucratic back-and-forth that hinders quick deployment of these infrastructure upgrades (safe pedestrian crossings, bike lanes, etc.).”

The California Bicycle Coalition, sponsors of the bill, state that, “SB 760 would clarify when a local authority has design control on local roads that fall into the Department of Transportation’s (Caltrans’) right-of-way. Such a seemingly minor distinction in the law would bring about substantial savings for local jurisdictions in both time and money by eliminating unnecessary processes and delays to projects on local roads.”

As the state and regions continue to work toward the goal of reducing greenhouse gas (GHG) emissions, as well as cutting other forms of air pollution, increasing the mode shift from single occupant car trips to other forms of transportation, such as bicycling, is an important element for success. To that end, the Caltrans Strategic Management Plan includes a goal to increase non-auto modes, including tripling bicycle trips and doubling pedestrian and transit use by 2020. Additionally, in June 2017, Caltrans released *Toward an Active California: State Bicycle + Pedestrian Plan*. The plan outlines how Caltrans will work with local and regional agencies to achieve the Strategic Management Plan’s goals of doubling walking, tripling bicycling, and doubling transit use between 2010 and 2020; reducing bicycle and pedestrian fatalities by 10% each year; and increase the number of complete streets projects by 20%.

Additionally, the state is making investments in bicycling and pedestrian infrastructure, and safety education and training through the Active Transportation Program (ATP). The state and local jurisdictions are also putting local dollars into building “complete streets” with bikeways and pedestrian facilities. In fact, with the passage of SB 1 (Beall), Chapter 5, Statutes of 2017,

funding for the ATP program nearly doubled, as has funding for local streets and roads and state highways, with complete street elements eligible for all funds. These types of investments will improve the safety of the roadways for drivers and bicyclists by helping to clearly designate space on the road for use by cyclists, such as dedicated bike lanes.

The author and sponsors of the bill state their intent is to encourage more biking and walking by implementing safe and accessible bicycle and pedestrian facilities. The California Bicycle Coalition states that local jurisdictions should have the authority to turn to the best design standards, with design practices that sometimes deviate from what is traditionally built per Caltrans' HDM. Further, they state that the authority does not extend to local roads in Caltrans' right-of-way even where the local road is merely an overpass or underpass whose operation does not affect the state highway.

A previous version of this bill authorized a state entity responsible for the planning and construction of roadways, as well as a city, county, regional or other local agency responsible for the development or operation of bikeways or roadways where bicycles are permitted, to consider additional street design guides, including, but not limited to, the National Association of City Transportation Officials' (NACTO)'s *Urban Street Design Guide*. NACTO is a 501(c) (3) non-profit association whose mission is "To build cities as places for people with safe, sustainable, accessible, and equitable transportation choices that support a strong economy and vibrant quality of life." NACTO is made up of 53 cities, including Long Beach, Los Angeles, Oakland, Palo Alto, San Diego, San Francisco, San Jose, San Luis Obispo, Santa Monica, Ventura, and West Hollywood; eight transit agencies, including LA Metro; and four international members.

NACTO has published several resources for urban planners that promote its vision for complete streets, including the *Urban Street Design Guide*, the *Urban Bikeway Design Guide*, and the *Transit Street Design Guide*. Caltrans formally endorsed the NACTO *Urban Street Design Guide* in 2014 as a manual that can be used by California transportation planners, alongside the HDM and the Manual of Uniform Traffic Control Devices, as an appropriate reference for street design work. Caltrans has also incorporated specific design standards for "cycle tracks" (bicycle facilities that are physically separated from motor traffic and distinct from a sidewalk) from NACTO's *Urban Bikeway Design Guide* into the HDM.

Currently, Caltrans has policies in place to incorporate complete streets into state highway projects and support complete street design standards. In fact, SB 1 required Caltrans to include complete streets design concepts into the HDM by January 1, 2018. Additionally, Caltrans Deputy Directive 64-R2 (an internal department policy), first signed in October 2008 and renewed in October 2014, directs Caltrans to implement complete streets. The Complete Streets Implementation Action Plan 2.0, released in November 2014, includes 109 additional action items to further integrate complete streets into all Caltrans functions and processes. Finally, according to Caltrans there are only a few specific items that are currently not included in the HDM that are part of the NACTO guide.

Overall design concerns were also raised by the California Coalition for the Blind, writing in opposition unless amended, stating concerns that, "Quite frequently both Caltrans and local entities fail to consider and comply with federal ADA and state accessibility regulatory requirements in designing streets and roadways. This failure often negatively impacts both the

safety and ability to travel for pedestrians, especially those with disabilities, including those with vision impairments.”

*Committee Concerns:*

*Is Permitting the Real Problem?:* The current version of this bill appears to be trying to resolve the perceived lack of complete streets design criteria in the HDM that Caltrans must follow for the state highway system and must use as the basis for granting any encroachment permit for work in the state highway right-of-way. The author provided examples of the types of projects where the Caltrans right-of-way overlaps with a locally owned street and the local agency includes future projects in their plans to try to improve travel for bicycles. For example, the author describes a location in the City of Newport Beach on the southbound ramp of State Route (SR) 73 and Newport Coast Drive, stating that, “Here is a location where the bicycle lanes are tentative at best when traveling through a Caltrans interchange. Newport Coast Drive is a high-speed roadway serving 4-6 lanes of traffic at the interchange with SR 73. The city has shown interest in their Bicycle Master Plan to improve the function with the high speed ramps, including removal of one of the Northbound loop on-ramp lanes to allow for easier merge/cross function between motorists & bicyclists.”

Specifically, the City of Newport Bicycle Master Plan lists the described \$70,000 project at #20 in their list of recommended bicycle facilities and programs, stating, “Coordinate with Caltrans to modify crossing between motorists and bicyclists from junction with freeway on ramp. Consider speed reduction signs and transverse audible warning lines on onramp, and pavement improvements to better accommodate bicycle travel. Long-term consideration may include realignment of ramp (cost to be determined).” It is unclear whether the city has had any issues with obtaining permits from Caltrans in the past for projects in the state right-of-way. It is also unclear whether they have discussed this particular project with Caltrans and have encountered any push back or concerns. The project is included in their list of possible future projects, with a full understating and acknowledgement that the area is Caltrans right-of-way and they would be “coordinating” with Caltrans.

Additionally, the author provided an example of a project in the City of Oakland for the stripping of lanes on Chetwood Street. According to the author, “the City of Oakland planned for six-foot bike lanes to allow sufficient operating space where bicyclists are immediately adjacent to the crash barriers on the Chetwood Street overpass. Following the NACTO *Urban Street Design Guide* recommendations that 10 foot travel lanes are appropriate on streets that are not designated truck or bus routes, the City of Oakland was going to maintain consistent 10 foot travel lanes on the length of Chetwood Street from MacArther Blvd. to Santa Clara Ave.” Quoting from the HDM, the author notes that, “Where a local facility with the State right-of-way crosses over or under a freeway or expressway but has no connection with the state facility, the minimum design standards for the cross section of the local facility within the state's right of way shall be those found in AASHTO. If the local agency has standards that exceed AASHTO standards, then the local agency standards should apply.” Further, the author notes that Caltrans required wider travel lanes and narrower bike lanes, therefore delaying the permit by almost a year.

Overall, the examples provided did not contain specific instances where an encroachment permit was denied and a project was unable to proceed for a local agency wanting to improve a local street to their plans and specifications that did not meet the state plans and specifications.

However, the length of time it takes to get a permit finalized by Caltrans can be an issue for local public works agencies. Even though the law requires 60 days, Caltrans' practice for participation in the permit application process and the review and approval is based on the complexity and cost of a project. If this is a concern, local agencies could work with Caltrans through the existing Transportation Co-op Committee, which consists of local, state, and federal transportation agencies, and is tasked with working out issues between jurisdictions. Additionally, the Legislature could look at setting timing benchmarks for the issuance of permits for the different levels of complexity of a project.

Additionally, design standards and engineering of roads continue to be major part of state and local strategies to reduce death and injuries and make the roads safer for pedestrians and bicyclists. To that end, AB 2363 (Friedman) of 2018, creates a Vision Zero Task Force administered by the Secretary of Transportation. The group is tasked with studying how things such as speed limits and road engineering can help to increase vehicular, pedestrian, and bicycle safety. AB 2363 was approved by the Senate Committee on Transportation and Housing on June 19, 2018, and is pending in the Senate Appropriations Committee.

*Not Just Complete Streets:* The sponsors of the bill state that, "Cities and counties across California are investing millions of dollars into planning, designing, and implementing safe and accessible bicycle and pedestrian facilities." As previously mentioned, they go on to state that local jurisdictions should have the design flexibility they need on local roads, even in the Caltrans right-of-way. However, the bill does not limit the scope of the permits to complete streets projects. The language of the bill simply does not allow Caltrans to deny a permit for work in the state right-of-way solely because the work is not performed in accordance with state plans and specifications but is performed in accordance with local plans and specifications and it does not affect the operation of the state highway. As detailed above, Caltrans issues permits for a wide variety of projects and activities, including commercial development activities, signage and landscaping, tunneling and drainage, onsite filming, the installation or movement of utilities, traffic control devices, and special events to name a few. It is unclear, depending on what local plans and specifications are referred to in a permit application, how the bill might affect the ability of Caltrans to deny a permit for any of these and other activities.

Additionally, there are a number of terms included in this bill that could cause ambiguity and possible unintended consequences. As mentioned, the bill is not limited to only complete streets projects by local public works agencies. In fact, the section of statute the bill is amending authorizes Caltrans to issue permits to the owner or developer of property adjacent to or near a state highway. The "owner" clearly can mean a city or county, but the bill does not clarify who can apply for the permits that Caltrans cannot deny under the special circumstances of the bill. Therefore, it could be interpreted that anyone who applies for a permit from Caltrans in which their project does not affect the operations of the state highway and follows local plans and specifications, in lieu of state plans and specifications, could be deemed approved.

There is also no legal definition for the “operation of the state highway.” It is unclear how this would be interpreted. Caltrans could simply interpret any permit application invoking this section as affecting the operation of the state highway, or the department could apply strict interpretation of this to mean only the actual blocking of traffic flow of the highway.

Finally, the term “local plans and specifications” is not defined. Although it is clear the author and sponsors of the bill intend this to mean local design such as recommended in the NACTO guidelines, which may differ from the HDM, the bill does not specify this. Therefore, it could be interpreted to be any plan or specification adopted by any local agency. Additionally, what if the state highway serves as the barrier between two local jurisdictions? Would the project have to meet both local agencies plans and specifications or only the lead agency on the project? What if the local agency has no plans or specifications in the area relating to the permit request? The language could be interpreted to mean that if local plans and specifications exist, they must be followed, but if none exist what would be done? Would this bill not apply or would the permit be deemed approved?

*Caltrans Assumes Liability:* As described above, both during and at the completion of any work in the state right-of-way, Caltrans inspects the project and signs off on it for safety among other factors. The bill changes what is currently a permissive authority for Caltrans to approve encroachment permits to a mandate to approve the permit under the conditions specified. If the project was approved to move forward based upon the circumstances of this bill, Caltrans would still be liable for that work into the future. Liability arises out of owning, controlling and/or maintaining the facility and Caltrans always maintains ownership and control of the state highway right-of-way.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Bicycle Coalition (Sponsor)  
Safe Routes to School National Partnership

### **Opposition**

California Council for the Blind (oppose unless amended)

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