

Date of Hearing: March 20, 2023

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
AB 752 (Blanca Rubio) – As Amended March 14, 2023

SUBJECT: State highways: worker safety

SUMMARY: Requires the California Department of Transportation (Caltrans) to use positive protection, as defined, in specified conditions, in order to ensure worker safety. Specifically, **this bill:**

- 1) Defines “covered activity” as all construction, utility work, maintenance, and repair activities performed on a state highway right of way.
- 2) Defines “positive protection” as barriers or other devices placed between workers and motorized traffic that contain or redirect vehicles and meet applicable crashworthy criteria.
- 3) Requires Caltrans to use positive protection for a covered activity if any of the following conditions are present:
 - a) The work zone will be in place more than two weeks and result in substantial worker exposure to motorized traffic.
 - b) The covered activity is on a roadway with anticipated operating speeds exceeding 45 miles per hour and average daily traffic volumes exceeding 20,000 vehicles per day.
 - c) The covered activity will place workers within one lane-width of travel lanes open to traffic.
 - d) The work zone for the covered activity will have significant roadside hazards, such as dropoffs or unfinished bridge decks, in place for more than 24 hours.
 - e) The work zone for the covered activity provides workers no means of escape from external motorized traffic intruding into the workspace.
 - f) Caltrans determines that positive protection is appropriate for worker safety.
- 4) The use of positive protection is not required for a covered activity if Caltrans determines that all of the following criteria are met:
 - a) The covered activity is outside an urban area, as defined.
 - b) The covered activity is on a highway with an average daily traffic volume of fewer than 100 vehicles per hour.
 - c) The entity performing the covered activity provides a written analysis, acceptable to the department, supporting the conclusion that positive protection is not needed to ensure worker safety.

- 5) If Caltrans determines that positive protection is not required, then this bill requires Caltrans to require the entity performing the covered activity to implement alternative methods to protect workers from vehicular intrusions into work areas.

EXISTING LAW:

- 1) Establishes Caltrans and provides that it has full possession and control of all state highways and property and rights in property acquired for state highway purposes. (Streets and Highways Code (SHC) 90)
- 2) Implements and maintains a state highway system which supports the goals and priorities determined through the transportation planning process, which is in conformity with comprehensive statewide and regional transportation plans, and which is compatible with statewide and regional socioeconomic and environmental goals, priorities and available resources.(Government (GOV) Code 14000.5)
- 3) Authorizes Caltrans to verify that all construction projects performed under its jurisdiction meet or exceed all standards and specifications included in the projects. (GOV Code 14105)
- 4) Authorizes Caltrans to erect, on any highway, traffic control signals or official traffic control devices restricting the use of specified lanes or portions of the highway. (Vehicle Code (VEH) 21352)
- 5) Authorizes Caltrans or its duly authorized representatives, to, while engaged in the construction of a state highway, restrict the movement of traffic at or near the construction project whenever such work interferes with or endangers the safe movement of traffic through the work. (VEH 21370)
- 6) Requires Caltrans to, after consulting with local agencies and holding public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices in the California Manual on Uniform traffic Control Devices (CA MUTCD). (VEH 21400)
- 7) Requires the California Department of Industrial Relations to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to develop and enforce of occupational safety and health standards. (Labor Code Section 50-50.7)

FISCAL EFFECT: Unknown

COMMENTS: According to the Bureau of Labor Statistics, California employs the third highest highway maintenance workforce in the country, at 7,940 jobs. Since 1921, 191 Caltrans employees, have been killed on the job. One of the biggest hazards faced by highway workers is inattentive, or distracted, motorists.

Construction workers engaged in work along roadways and highways face risks not found at traditional jobsites. These are risks inherent to being exposed to vehicular traffic. Advances in personal electronic technology, such as cell phones, have led to an unprecedented increase in

roadway construction site vehicular intrusions. Drivers now have the ability to access social media, streaming services, and other distracting apps or programs on their cellular phones while driving 70 miles per hour (or more) on California roads.

The three largest causes of fatal accidents are lane departure, speed management, and impaired driving. In 2020, over 102,000 work zone crashes were estimated to have occurred resulting in over 45,000 injuries and 857 fatalities nationwide.

In a 2022 survey, most highway contractors (64%) reported crashes into their work zones. In an earlier survey, 89% of highway contractors think positive protection would help improve safety and prevent these horrific crashes.

Commitment to worker safety. The state and federal government are committed to worker safety on the roads. Caltrans' mission, vision, and goals, places safety high among its commitments. Caltrans' Division of Construction is committed to providing safe and efficient work zones, both for the traveling public and employees working on the state highway system. To accomplish this goal, divisions within Caltrans work with industry and federal and local agencies to enhance and strengthen safety policies and best practice guidelines. Specific construction safety goals include: reducing employee lost time accidents, reducing accidents in construction zones, identifying and implementing proven work zone safety measures, and updating and distributing the construction code of safe practices.

Caltrans and the construction industry partnered to create the Caltrans Construction Safety Award Program (CCSAP) as an annual recognition of projects that emphasize safety for both the travelling public and workers by implementing best safe practices and continually working to improve the safety of the project. The main purpose is to recognize all contract stakeholders (contractors, subcontractors, and Caltrans project staff) who exemplify best safe practices and go above the minimum safety requirements of a contract. In addition, this is an opportunity to acknowledge projects with innovative technology, work methods, use of products and materials moving towards safety improvements within construction work zones.

Under current law, standards, guidance, and specifications dealing with safety during road construction and maintenance are contained in documents and specifications maintained by Caltrans and, to some extent, local authorities. These include the California Uniform Traffic Control Devices (CA MUTCD) Manual, which contains statewide standards and specifications for traffic control devices; standard specifications, which contain requirements for contractors; and the construction and maintenance manuals, which provide guidance to Caltrans staff on how to manage the construction or maintenance phase of projects.

Positive protection is here. A physical barrier provides one of the best possible protection solutions for workers exposed to the flow of traffic. Positive protection may include highly mobile barriers, movable and temporary steel barriers, movable concrete barriers, traditional concrete barriers, associated cushions, and other strategies to avoid traffic accidents in work zones including full road closure.

Mobile and other movable barriers enable field crews to quickly create work spaces that are physically separated from moving traffic and quickly removed from the roadway once the work is completed.

Existing law requires Caltrans to update guidance by July 1, 2021, to specify the appropriate use of positive protection measures with the goal of isolating workers or work zones from traffic. Existing law also requires Caltrans to submit a report to the Legislature by January 1, 2024, that includes findings and recommendations on the use of positive protection measures used pursuant to these provisions.

On June 25, 2021, Caltrans issued a design information bulletin memo (DIB 91), which updates the “Guidelines on the Use of Positive Work zone Protection (PWP) & Mitigation Measures,” within the division of design. The memo reads, “the intent is to use approved PWP devices or mitigation measures in public works projects on the State Highway System to reduce preventable injuries and deaths to workers and drivers. Projects, where project development efforts have started, shall comply with Highway Design Manual.”

Federal law and American National Standards Institute (ANSI) standards identify types of projects that need Positive Protection. For such projects, a “separate pay item” for positive protection is required under federal law and regulations. The Infrastructure Investment and Jobs Act of 2021 (IIJA) amends the Highway Safety Improvement Program (HSIP) to increase funding and protection for “Vulnerable Road Users”, which includes “highway workers on foot.”

DIB 91 provides guidance to apply PWP and mitigation measures to projects on the State Highway System based on state and federal requirements. Positive protection has been defined by the FHWA as “devices that contain and/or redirect vehicles and meet the crashworthiness evaluation criteria...” Under the new FHWA policy, states can directly purchase and reclaim mobile barriers and other safety and construction equipment for use by their crews and contractors.

Amendment considerations. This bill requires the use of positive protection in specific instances, and requires CalOSHA, in consultation with Caltrans, to promulgate rules and regulations for the administration and enforcement of the use of positive protection. This may be preemptive, and the author may wish to provide flexibility in the bill to allow Caltrans to incorporate findings and recommendations from its report on the use of positive protection measures that is forthcoming in January 1, 2024.

According to the author, “Between 2013 and 2020, highway construction work zone fatalities increased over 45%. Through the use of “positive protection,” which will place a physical barrier between the workers and the flow of traffic, this bill will bring an additional layer of safety to highway construction work zones, preventing further intrusion from vehicles into the construction sites. This bill is a common-sense and cost-effective way for safety reform that will prevent death and injuries of workers on roads and highways.”

In support, the State Building and Construction Trades Council writes, “AB 752 seeks to bring an important layer of safety to highway construction work to prevent vehicular intrusions into construction sites. One of the best ways to protect workers in highway work zones is the use of positive protection. Positive protection is a measure or device placed between workers and motorized traffic that contains and/or redirects vehicles. Positive protection reduces the risk of vehicle intrusion in the workspace; and is covered up to 90 percent by Highway Safety Improvement Program (HSIP) and other federal funds.”

Prior legislation: AB 759 (Bigelow) Chapter 617, Statutes of 2019 requires Caltrans to update guidance by July 1, 2021, to specify the appropriate use of positive protection measures, and to submit a report to the Legislature by January 1, 2024, that includes findings and recommendations on the positive protection measures.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Council of Laborers
International Union of Operating Engineers, Cal-Nevada Conference
Professional Engineers in California Government
State Building and Construction Trades Council of California

Opposition

None on file

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