

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, 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 application has been submitted.
- 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 offer to act as the lead agency for purposes of ensuring compliance with the California Environmental Quality Act (CEQA) if the permit does not require additional approval from a city or county, and authorizes the California Public Utilities Commission (CPUC) to act as lead agency.

EXISTING LAW:

- 1) Requires Caltrans to approve or deny an application for an encroachment permit within 60 days of receiving a completed application, as determined by the department and establishes an appeals process for denied applications. (Streets & Highways Code § 671.5)

- 2) Defines encroachment as any tower, pole, pole line, pipe, pipe line, fence, billboard, stand or building, or any structure, object of any kind or character not particularly mentioned in this section, or special event, which is in, under, or over any portion of the highway. “Special event” means any street festival, sidewalk sale, community-sponsored activity, or community-approved activity. (Streets & Highways Code § 660 (b))
- 3) Requires Caltrans, under certain conditions, to notify companies or organizations, as defined, of anticipated construction projects for the purpose of encouraging collaborative broadband installations and for those entities to collaborate for the installation of broadband conduit as part of a project. (Government Code § 14051)
- 4) Requires Caltrans, by January 1, 2018, to develop guidelines to facilitate the installation of broadband conduit on state highway rights of way. (Government Code § 14051)
- 5) Restricts state or local legal requirements that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service but permits a state or locality to impose, on a competitively neutral basis requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. (47 U.S.C. § 253)

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

Encroachment Permit – This is a type of contract between Caltrans and an encroachment permit holder, (permittee), that describes the terms and conditions under which they are granted permissive authority to enter onto state right-of-way to perform an activity. It grants permission to the permittee or their agent (a contractor) to perform specified acts within the state’s right-of-way, and assignment to another party is prohibited.

An encroachment permit is not a property right, such as an easement, nor does it confer a property right. It cannot be transferred with the sale of real personal property.

Caltrans states that encroachment permits are necessary for the department to:

- Ensure the safety of the traveling public, highway workers and permittees;
- Protect, maintain, and enhance the quality of the state highway system during and after permitted work;
- Ensure that the proposed encroachment is compatible with the primary uses of the state highway system;
- Protect the state’s and public’s investment in the highway facility; and,
- Ensure that temporary uses of state highway right-of-way for special events, filming, etc. are conducted safely and with minimum inconvenience to the traveling public.

Broadband Action Plan – California Broadband for All was released in December 2020 by the Broadband Council. The Plan was developed in response to an executive order from the Governor which requested the plan, and directed that it include “a roadmap to accelerate the deployment and adoption of broadband by state agencies and to support such deployment and adoption by local governments. The plan specifically called on Caltrans to continue “improving state encroachment permitting processes and rights-of-way management to accelerate broadband deployment projects that will serve un- and under-connected communities.”

COMMENTS:

- 1) Author's Statement. 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 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 for establishing broadband infrastructure.

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.

- 2) Encroachment Permit Delays. The author and 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.

This measure requires 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 and permits the CPUC to do so. These explicit additions to the Caltrans encroachment permitting process are intended to make the deployment of broadband infrastructure more efficient

- 3) Double Referral. This bill was heard by the Assembly Transportation Committee on April 13th and passed unanimously.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Cable & Telecommunications Association (sponsor)
Calcom Association

Opposition

None on file.

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