

Date of Hearing: April 2, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 754 (Grayson) – As Introduced February 19, 2019

SUBJECT: Department of Technology: GIS data: regional notification centers

SUMMARY: This bill would require the California Department of Technology (CDT) to provide Geographic Information Systems (GIS) service to a regional notification center (RNC), to help improve the RNC's accuracy in performing its functions for purposes of California's "Call Before You Dig" law, and would provide some authority for CDT to collect payment for such services, as specified. Specifically, **this bill would:**

- 1) Require CDT, upon request by an RNC, to provide access to GIS services for the purpose of making a determination as to whether the GIS services can improve the RNC's accuracy in performing its functions under specified California law governing RNCs.
- 2) Authorize an RNC to enter into a contract with CDT to receive GIS services, if the RNC, upon review of the GIS services, determines that the GIS services can improve the RNC's accuracy in performing its functions.
- 3) Authorize CDT to collect payment from an RNC for providing GIS services pursuant to the above provision, to be deposited into the Technology Services Revolving Fund (hereinafter "TSRF," or "Fund").

EXISTING LAW:

- 1) Establishes the CDT within the Government Operations Agency in state government. (Gov. Code Sec. 11545(a)(1).)
- 2) Enumerates the duties of the Director of Technology, which includes, among other things, performing enterprise information technology (IT) functions and services, including, but not limited to, implementing GIS, shared services, applications, and program and project management activities in partnership with the owning agency or department. (Gov. Code Sec. 11545(b)(8).)
- 3) Establishes the Office of Technology Services (OTech) within CDT, under a separate chapter of the Government Code, to improve and coordinate the use of technology and to coordinate and cooperate with all public agencies in the state in order to eliminate duplications and to bring about economies that could not otherwise be obtained. (Gov. Code Sec. 11534(a)-(c).)
- 4) Establishes the TSRF within the State Treasury, to be administered by the Director of Technology to receive all revenues from the sale of technology or technology services provided for in the chapter governing OTech, for other services rendered by CDT, and all other moneys properly credited to CDT from any other source, to pay, upon appropriation by the Legislature, all costs arising from the chapter governing OTech and rendering of services to state and other public agencies, including, but not limited to, employment and compensation of necessary personnel and expenses, such as operating and other expenses of the Department of Technology, and costs associated with approved information technology

projects, and to establish reserves. At the discretion of the Director of Technology, segregated, dedicated accounts within the fund may be established. (Gov. Code Sec. 11544(a).)

- 5) Requires, under the “Call Before You Dig” law, that every operator of a subsurface installation, except the Department of Transportation, become a member of, participate in, and share in the costs of, an RNC. (Gov. Code Sec. 4216.1.)
- 6) Requires, except in an emergency, any person planning to conduct an excavation to contact the appropriate RNC at least two working days, but not more than 14 calendar days, prior to commencing the excavation, as specified. (Gov. Code Sec. 4216.2(b).)
- 7) Defines various terms for these purposes, including:
 - “Regional notification center” to mean a nonprofit association or other organization of operators of subsurface installations that provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair. (Gov. Code Sec. 4216(q).)
 - “Subsurface installation” to mean any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines. (Gov. Code Sec. 4216(s).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill is intended to require CDT to provide GIS services to RNCs in furtherance of California’s “Call Before You Dig” laws in order to prevent damage to subsurface installations, which can lead to service interruption, property damage, and personal injury to workers and bystanders, if not death. This bill is sponsored by the Underground Service Alert of Northern California and Nevada (USA North 811).
- 2) **Author’s statement:** According to the author:

The 811 contact centers, like 911 contact centers, need the most current and correct map data available so dig site locations can be accurately and precisely found on the map and the appropriate facility owners can be notified. County and state GIS departments have the most current, accurate, and authoritative GIS map data, including addresses, roads, property boundaries, aerial photography, etc.

The 811 centers need this data to fulfill their statutorily-mandated responsibility to help protect California’s infrastructure by notifying facility owners about nearby excavation.

AB 754 will require the Department of Technology Services to share relevant GIS map data with the 811 notification centers. This will benefit all stakeholders in damage prevention efforts by increasing efficiency in locating dig sites in the field and delivering information about digging projects to excavators through 811 centers.

AB 754 will protect the public from potential damage to underground lines with the most current, accurate mapping data available.

- 3) **“Call Before You Dig” law background:** In 1986, a Southern California excavating crew incorrectly assumed that no subsurface infrastructure existed at their construction site and as a result, a gas main was struck and exploded, killing a 23-year old crew member. That incident, together with others like it across the country, led to the adoption of California’s “Call Before You Dig” law in 1989. (Gov. Code Sec. 4216 et seq.) This law generally requires individuals to contact an RNC prior to planned excavations, and requires any utility or other operator with subsurface installations in the vicinity of a planned excavation to go to the site and clearly identify and mark all underground infrastructure, except as otherwise specified. An RNC provides advance warning of excavations or other work close to existing subsurface installations to protect those installations from damage and, ultimately, to prevent injury as a result of those excavations. In other words, RNCs facilitate safe excavations around subsurface installations.
- 4) **Dig Safe Act of 2016:** SB 661 (Hill, Ch. 809, Stats. 2016) enacted the Dig Safe Act of 2016, amending the “Call Before You Dig” law in response to a series of fatal incidents, including a dig-in incident (an industry term for when construction workers accidentally hit gas lines) in Fresno where an excavator punctured a 10-inch natural gas pipeline while operating heavy equipment at a road construction site, killing one person and injuring 12 others and temporarily closing down Highway 99. SB 661, among other things, required a person planning to conduct an excavation to contact the appropriate RNC prior to commencing that excavation regardless of whether the excavation would be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. It further prohibited an excavator, except in an emergency, from beginning excavation until receiving a response from all operators of known subsurface installations within the delineated boundaries of the proposed area of excavation, and also created the California Underground Facilities Safe Excavation Board under the Office of the State Fire Marshall, which would investigate alleged violations of specified laws relating to the protection of underground infrastructure and develop standards relevant to safety practices in excavating around subsurface installations.
- 5) **CDT GIS services:** According to CDT’s website, GIS services provide organizations and individuals the ability to analyze, visualize, manage, disseminate and interpret geographic data, and the complex geographic relationship between them. Specifically, according to its website, CDT’s offered GIS services currently include map services, geocoding services, GIS application hosting services, and GIS consulting services, as described further below:
 - Map services provides the ability to take geographic information currently managed in databases and spreadsheets, and displays the data in a visual context on the Internet or on an organization’s intranet. The infrastructure for this service is completely maintained, secured, patched, and managed by CDT.
 - Geocoding is the process of finding associated geographic coordinates (e.g., latitude and longitude) from data, such as street addresses, ZIP codes, or place names. The geocoding service provides unlimited transactions from the commercial grade geocoder to provide notifications, or manage large location-based datasets.

- GIS application hosting services means hosting of GIS web-based application(s) on CDT's infrastructure.
- GIS consulting services allows organizations that lack the internal expertise to develop and maintain GIS applications to work directly with CDT staff to extend existing GIS capabilities, or develop new capabilities to realize cost savings, increase operational efficiency, and deliver more relevant services to both internal and external customers. (See CDT Geographic Information Services available at <<https://cdt.ca.gov/services/gis/>> [as of March 18, 2018].)

As explained by the author, CDT currently restricts full access of data to government agencies. Under this bill, CDT would be required to provide GIS services to an RNC, so that the RNC can make a determination as to whether the GIS services can improve the RNC's accuracy in performing its functions under the "Call Before You Dig" law. If the RNC determines that GIS services can indeed improve its accuracy in performing its functions, the RNC may then enter into contract with CDT to receive GIS services. Providing these GIS services to the RNCs, and specifically sharing GIS data with the RNCs, will arguably help prevent property damage and potentially even avoidable injuries or deaths. That being said, it is unclear as to whether obtaining this benefit necessitates that CDT provide RNCs the range of its GIS services (which include GIS consulting services and GIS application hosting services, for example), as opposed to GIS data, only. (See Comment 7, for author's amendment to address this issue.)

The sponsor of this bill, USA North 811, writes that, "[t]o fulfill their statutorily-mandated responsibility to notify the appropriate utility owners about excavation activity near their underground facilities, the 811 centers must be able to accurately and precisely identify the dig site location as described by the excavator. This often includes areas of recent construction in which roads and addresses are new. In fact, the 811 centers will be contacted multiple times as excavation takes place to build the new roads, homes, etc. [...] Requiring the State to share its data via codification ensures a long-term partnership will be created, as opposed to a relationship based on internal CDT policy that may change in the future."

- 6) **Important difference from AB 2163 (Grayson), which was vetoed last year:** Last year, this Committee heard and approved a similar bill to AB 754, by the same author. That bill, AB 2163, required CDT to provide the same GIS data it currently provides to state agencies to RNCs, for purposes of California's "Call Before You Dig" law, in accordance with how CDT provides such data to state agencies under existing law. AB 2163 was ultimately vetoed by Governor Brown with the following message:

The Department does not own this data and must pay a subscription for its access. Unfortunately this bill does not allow for the Department to recoup its costs from the Centers. I recommend the author work with the Department and make the necessary changes in future legislation.

This bill, AB 754, is fundamentally different from AB 2163 in that it specifically authorizes CDT to collect at least some payment from an RNC for providing GIS services. (See Comment 7, for more on the issue of partial payment.) Under this bill, those payments are to be placed in the Technology Services Revolving Fund ("TSRF" or "Fund"), which exists under current law to receive all revenues from the sale of technology or technology services,

for other services rendered by CDT, and all other moneys property credited to CDT from any other source. Those revenues are to then be used to pay for operating and other expenses of CDT and costs associated with approved IT projects, and to establish reserves. CDT is also authorized to collect payments from public agencies for providing services to client agencies for purposes of the TSRF. (*See* Gov. Code Sec. 11544.) As such, this bill appears to authorize payment from RNCs to CDT for these GIS services that CDT provides to the RNCs, in a manner consistent with the purpose of the existing Fund.

- 7) **Clarifying amendments:** Another important distinction between AB 2163 and this bill is that AB 2163 only required CDT to provide “GIS data” to the RNC “as provided to a state agency.” The importance of this distinction is two-fold.

First, in contrast to the introduced version of this bill, AB 2163 as approved by this Committee, limited the responsibility of CDT to providing “GIS data”, as opposed to “GIS services” (which includes GIS application hosting services and GIS consulting services, among other things). (*See* Comment 5 for more.) Second, by stating that CDT had to provide GIS data to an RNC for purposes of the “Call Before You Dig” law, “as provided to a state agency” in accordance with existing law, AB 2163 reflected an understanding that CDT was not required to procure any *new* GIS data. The author has accepted an amendment to incorporate those important elements of AB 2163 into this bill. This appropriately recognizes that CDT’s GIS services should arguably be prioritized for state (*i.e.*, public) entities given CDT’s purpose and responsibilities, that RNCs primarily require GIS data for these purposes, and that limiting CDT’s responsibility to providing the same GIS data as provided to state agencies is less costly and burdensome than if it had to procure new data.

Author’s amendment:

On page 2, line 4, after “the department shall provide access to” strike “GIS services” and insert “*GIS data, as provided to a state agency in accordance with this chapter,*”

To the extent that this bill (as amended by the author’s amendments above) would require CDT to provide RNCs access to the GIS data “for the purpose of making a determination as to whether the GIS [data] can improve the RNC’s accuracy in performing its functions”, the author has also accepted the following amendment to provide absolute clarity that the responsibility to make the required determination regarding the helpfulness of the GIS data, lies with the RNC, and not CDT.

Author’s amendment:

On page 2, lines 4-5, strike “for the purpose of making a determination” and insert “*for the purpose of enabling the regional notification center to make a determination*”

- 8) **Cost recovery does not cover all GIS data provided by CDT:** Perhaps inadvertently, the cost recovery provision in this bill, as drafted, is limited to contract scenarios whereas CDT’s statutory obligation to provide GIS data (consistent with narrowing amendments in Comment 7, above) exists prior to CDT entering into any contract with an RNC. First, the bill requires that CDT provide GIS data to RNCs so that a determination can be made as to whether these services would assist RNCs in performing its functions under the “Call Before You Dig” law. (Proposed subdivision (a).) Only then, “upon review” of the data and making a determination that it would be helpful to performing its functions, does the bill authorize the

RNC to enter into a contract with CDT to receive GIS data. (Proposed subdivision (b).) At that point, CDT may collect payment for providing GIS data “pursuant to subdivision (b)”, to be deposited into the TSRF. In other words, under the current drafting of this bill, RNCs could potentially get access to CDT’s GIS services free-of-charge, as long as they do not enter into contract, because CDT may only demand payment for its services provided pursuant to contract.

As such, and to fully address the veto message, the author has accepted the following amendment to clarify that CDT may seek payment for all GIS data it provides – including for the data it provides for purposes of making the initial determination.

Author’s amendment:

On page 2, lines 15-16, strike “pursuant to subdivision (b)” and insert “pursuant to this section”

9) **Prior legislation:** AB 2163 (Grayson, 2018), *See* Comments 6 and 7.

REGISTERED SUPPORT / OPPOSITION:

Support

USA North 811 (sponsor)

Opposition

None on file

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