SENATE RULES COMMITTEE SB 378
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 378
Author: Gonzalez (D), et al.
Amended: 5/4/21
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 4/8/21
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE ENERGY, U. & C. COMMITTEE: 13-0, 4/26/21
AYES: Hueso, Dahle, Becker, Borgeas, Bradford, Dodd, Eggman, Gonzalez, Grove, Hertzberg, McGuire, Min, Rubio
NO VOTE RECORDED: Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Local government: broadband infrastructure development project permit processing: microtrenching permit processing ordinance

SOURCE: Crown Castle

DIGEST: This bill requires local governments to allow fiber installers to use microtrenching as a method for installing fiber unless the local government makes a specified finding that permitting microtrenching would adversely impact public health and safety.

ANALYSIS:

Existing law:

1) Allows, under the California Constitution, a city or county to make and enforce within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

2) Provides that local governments can exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

3) Establishes liability requirements for any individual who damages or destroys telegraph, telephone, electrical, or gas corporation equipment.

4) Establishes, under the Dig Safe Act of 2016, safety requirements for excavations around buried utility infrastructure. Specifically, the act:

   a) Establishes the "Dig Safe Board."
   b) Establishes requirements for excavations.
   c) Creates notification requirements prior to the start of excavations.
   d) Establishes penalties for violating excavation statutes and rules.
   e) Specifies that no permit issued by a state or local agency for excavations is valid unless the permit applicant has obtained a ticket from a regional notification center.

This bill:

1) Requires a local agency to allow microtrenching as a method for installing undergrounded fiber unless the local agency makes a specified finding that permitting microtrenching for fiber would have a specific, adverse impact on public health and safety.

2) Requires a local agency to adopt or amend ordinances, codes, or construction rules to permit microtrenching under this bill.

3) Allows local governments to charge reasonable fees for reviewing and processing applications for a microtrenching permit.

4) Defines "fiber" as fiber optic cables, and related ancillary equipment such as conduit, ancillary cables, hand holes, vaults and terminals.

5) Defines a "microtrench" as a narrow open excavation trench that is four inches or less in width and between 12 and 26 inches in depth created for installing a subsurface pipe or conduit.

6) Allows, upon mutual agreement between a local government and an applicant, for a microtrench to be excavated shallower than 12 inches in depth in areas that are not beneath a paved roadway.

7) Provides that nothing in the bill supersede, nullify, or otherwise alter the requirements to comply with safety standards, including, but not limited to, the following:

   a) The Dig Safe Act of 2016.

b) Public Utility Commission standards for constructing underground electrical or telecommunications infrastructure, or a successor standard.

Background

Modern broadband service, whether furnished through a wired connection or wirelessly over mobile devices, requires the installation of fiber optic cables to convey data signals across a network. Companies that want to install the fiber optic infrastructure required to serve new areas or expand capacity in existing areas must apply to cities and counties for permits to install fiber in the public right of way.

Traditionally, telecommunications wires have been installed aerially through attachments to utility poles or through the digging of open trenches. As an alternative to traditional trenching or boring to install fiber underground, some fiber installation companies have turned to "microtrenching." Microtrenching is a process whereby specialized machinery cuts a narrow slice out of the roadway at a depth of approximately 1-2 feet. Conduit containing fiber optic cables is laid in the small trench created, and then material is backfilled over and the trench is sealed. Microtrenching requires significantly less excavation and can be performed more quickly than open trenching, saving costs for installers.

Comments

1) *Purpose of the bill.* According to the author, "SB 378 is measure that is designed to help close the digital divide now and in the future. The COVID-19 pandemic has made it clear that Californians need broadband connection as quickly as possible. Laying fiber is a critical component to support broadband connection and to bring advanced, fast and reliable internet services, whether to the home, community or somewhere in between. Further, the cost of laying fiber is still the most expensive part of bringing broadband to new places. By lowering installation costs and speeding up deployment of fiber hundreds of thousands of Californians will be able to access the internet to complete their school work, access telehealth services, work remotely, and much more. This is a critical measure that can help our communities close the digital divide in a quick and cost effective way."

2) *Who gets to choose?* The California Constitution charges cities and counties with the responsibility and authority to look out for their residents' health, safety, and welfare. In doing so, local officials must often balance competing considerations. In the context of the installation of broadband infrastructure in the public right of way, local agencies weigh the need for affordable, reliable

broadband against other concerns that can include: uses of the public right of way by other users, including residents as well as utilities such as electric, gas, and water; whether one type of installation method ensures a longer useful life for infrastructure; and the timing of other improvements to the right of way, such as repaving. Fiber installers, on the other hand, are most concerned with providing only a single service and have a profit motive that encourages them to deploy infrastructure as inexpensively as possible. SB 378 requires local governments to allow microtrenching, even where local officials determine that another method would best serve all of the needs of the community. Supporters argue that empowering providers to use microtrenching will result in faster, cheaper broadband deployment, while critics argue that nothing in SB 378 requires deployment in underserved areas or otherwise improve access to broadband. Does the promise of better broadband service through SB 378 merit the restrictions on local governments to ensure the welfare of their communities?

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/19/21)

Crown Castle (source)
Bay Area Council
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Medical Association
California Retailers Association
California School Boards Association
California Wireless Association
Chula Vista Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Sacramento Economic Council
Harbor Association of Industry & Commerce
Los Angeles County Business Federation
Sacramento Regional Builders Exchange
San Francisco Chamber of Commerce
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
Verizon Communications, Inc. and its Affiliates
Wireless Infrastructure Association

OPPOSITION: (Verified 5/19/21)

City of Beverly Hills
City of San Jose
City of Thousand Oaks
Keep Cell Antennas Away
Safe Technology for Santa Rosa
Santa Barbara Green Sisters

Prepared by: Anton Favorini-Csorba / GOV. & F. / (916) 651-4119
5/19/21 16:28:02

****** END ******