

Date of Hearing: June 9, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 378 (Gonzalez) – As Amended May 4, 2021

SENATE VOTE: 35-0

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

SUMMARY: Enacts the Broadband Deployment Acceleration Best Practices Act of 2021 and requires local governments to allow microtrenching for the installation of underground fiber optic equipment. Specifically, **this bill:**

- 1) Requires the local agency with jurisdiction to approve excavations to allow microtrenching for the installation of underground fiber if the installation in the microtrench is limited to fiber, unless the local agency makes a written finding that allowing microtrenching for a fiber installation would have a specific, adverse impact on the public health or safety.
- 2) Allows, upon mutual agreement, a microtrench to be placed shallower than 12 inches in depth in areas that are not beneath a paved roadway.
- 3) Requires, to the extent necessary, a local agency with jurisdiction to approve excavations to adopt or amend existing ordinances, codes, or construction rules to allow for microtrenching pursuant to this bill.
- 4) Specifies that nothing in this bill shall supersede, nullify, or otherwise alter the requirements to comply with safety standards, including, but not limited to, the following:
 - a) Provisions of law governing the “Dig Safe Board” and requirements for excavations, as specified.
 - b) Public Utility Commission (PUC) standards for constructing underground electrical or telecommunications infrastructure, as specified.
- 5) Requires an application for a permit to install fiber to include payment of a reasonable fee set by the local agency to cover the cost of processing the application.
- 6) Provides the following definitions for the purposes of the above provisions:
 - a) “Fiber” means fiber optic cables, and related ancillary equipment such as conduit, ancillary cables, hand holes, vaults, and terminals.
 - b) “Local agency” means a city, county, city and county, charter city, special district, or publicly owned utility (POU).

- c) "Microtrench" means a narrow open excavation trench that is less than or equal to 4 inches in width and not less than 12 inches in depth and not more than 26 inches in depth and that is created for the purpose of installing a subsurface pipe or conduit.
 - d) "Microtrenching" means excavation of a microtrench.
- 7) Finds and declares that installation of fiber is critical to the deployment of broadband services and other utility services, is a matter of statewide concern, and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the provisions above apply to all cities, including charter cities.
- 8) Allows a local agency to impose on an applicant a reasonable fee for costs associated with the submission of, and the expedited review, processing, and approval of, an application, including, but not limited to, personnel costs as necessary, if the applicant elects for the expedited review and processing and agrees to pay that fee.
- 9) Provides, for purposes of 8), above, the following definitions:
- a) "Applicant" means a person or entity who submits an application.
 - b) "Application" means an application for a permit to install fiber.
 - c) "Local agency" means a city, county, city and county, charter city, special district, or POU.
 - d) "Personnel costs" includes the costs of hiring or employing temporary or permanent local agency employees, consultants, or contractors.
- 10) Provides that 8) and 9), above, do not amend or alter the civil service laws of this state or any local agency.
- 11) Makes a number of findings and declarations regarding the need to improve access to high-speed internet service and deploy more fiber backhaul infrastructure via microtrenching.
- 12) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, as specified.

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.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Background.** Modern broadband service, including wired and wireless service, requires the installation of fiber optic cables to convey data signals across a network. Companies that wish 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, and material is backfilled over the trench to seal it. Microtrenching requires significantly less excavation and can be performed more quickly than open trenching, saving time and money for installers.

New York City was the first large municipality to permit microtrenching on a widespread basis after successfully implementing a microtrenching pilot project to deploy fiber during reconstruction efforts after Hurricane Sandy. Since its adoption of microtrenching as a fiber installation method, the competition between fiber providers in the city has significantly increased in many commercial areas of the city, and fiber has been added in areas that previously lacked broadband infrastructure. While few cities in California have adopted uniform ordinances broadly permitting microtrenching, San Diego and Manhattan Beach have permitted microtrenching fiber projects. The City of Los Angeles adopted an ordinance in 2020 to broadly permit microtrenching for fiber.

- 2) **Author’s Statement.** According to the author, “SB 378 is a 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.”

- 3) **Bill Summary.** This bill requires local agencies to allow microtrenching as a method for installing underground 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. Local agencies must adopt or amend ordinances, codes, or construction rules to permit microtrenching as necessary to comply with the bill.

A microtrench must be four inches or less in width and between 12 and 26 inches in depth. However, a microtrench may be excavated shallower than 12 inches in depth in areas that are not beneath a paved roadway upon mutual agreement between a local agency and an installer.

The bill provides that it does not supersede, nullify, or otherwise alter the requirements to comply with safety standards, including “Dig Safe” requirements and PUC standards for installing underground electrical or telecommunications infrastructure.

An application for a permit to install fiber must include payment of a reasonable fee to cover the cost of processing the application. This bill also allows a local agency to impose a reasonable fee for expedited review of a permit application to install fiber.

This bill applies to cities, including charter cities, counties, special districts and POU's. This bill is sponsored by Crown Castle.

- 4) **Technical and Clarifying Amendments.** Section 3 of this bill contains the bulk of the bill's requirements, while section 4 contains the provisions regarding expedited permitting. Both sections contain definitions that are applicable only to each section. Both sections contain identical definitions for “local agency.” Only section 3 contains a definition for “fiber,” although section 4 also governs fiber installations. In addition, stakeholders have raised concerns regarding the fee language as being potentially confusing. In order to address these technical and clarifying concerns, the Committee may wish to adopt amendments that the author was unable to adopt before the Committee deadline. These amendments are as follows:

- a) Amend Section 3, subdivision (b), paragraph (3) as follows:

(3) To the extent necessary, a local agency with jurisdiction to approve excavations shall adopt or amend existing *policies*, ordinances, codes, or construction rules to allow for microtrenching pursuant to this subdivision

b) Amend Section 3, subdivision (c) as follows:

~~(c) An A local agency may impose a fee on an application for a permit to install fiber shall include payment of a reasonable fee set by the local agency to cover the cost of processing the application.~~ *that shall not exceed the reasonable costs of the local agency to process and issue the permit and inspect the installation that is the subject of the permit, including any costs incurred if the applicant elects to expedite processing and review.*

c) Strike Section 4 of the bill.

- 5) **Related Legislation.** AB 14 (Aguiar-Curry) makes permanent the California Advanced Services Fund (CASF) program to expand broadband service and makes significant modifications to the program. AB 14 is pending in the Senate.

AB 537 (Quirk) makes several changes to existing law that requires an application for a wireless telecommunications facility to be deemed approved. AB 537 is pending in the Senate.

SB 556 (Dodd) requires street light poles and traffic signal poles owned by a local government or local POU to be made available for the placement of small wireless facilities, and outlines the rates and fees that may be imposed for this use of these poles. SB 556 is pending in this committee.

- 6) **Previous Legislation.** SB 1206 (Gonzalez) of 2020 would have required CalTrans to develop a model ordinance for local governments to follow when permitting fiber installations using microtrenching. SB 1206 was held in Senate Rules Committee.
- 7) **Arguments in Support.** Crown Castle, sponsor of this measure, writes, “Instead of using traditional open-trench construction methods to install fiber which takes longer, costs more and creates lane closures and disruptions to local communities, some best practice jurisdictions are now using microtrenching technology which cuts a 2 inch wide and roughly 2 foot deep trench to lay the fiber underground while simultaneously backfilling and sealing. The entire process takes hours and cars can drive on the road the same day.

“Microtrenching is typically 60% cheaper and 80% quicker than traditional open-trench street excavations, as well as being less disruptive to the urban environment...Another benefit of microtrenching is that the excess capacity within the underground fiber lines are made available for use by local agencies and other communications industry providers. The City of Los Angeles recently adopted a microtrenching ordinance to accelerate the installation of fiber underground leading to over 40 miles of broadband deployment in recent months.

“SB 378 is necessary because every local jurisdiction in California has different fiber installation requirements. Certain local jurisdictions are using best practices to install fiber quickly while others continue to require outdated installation techniques that take longer and are more disruptive to local neighborhoods. Some cities have been resistant to allow microtrenching since they are not familiar with it, have to adopt ordinances to allow it, and associate problems with the first generation of the technology from ten years ago which have

been addressed (installs were too shallow, backfills and sealants weren't perfected for each climate).

"SB 378 will complement the state's effort to provide more funding for broadband by ensuring that public and private dollars are maximized and benefit residents as quickly as possible. Quicker installation of fiber means communities around the state can get connected to high-speed internet in days instead of months."

- 8) **Arguments in Opposition.** The City of Thousand Oaks states, "The City's opposition is not on the actual practice of microtrenching but instead the way the bill relinquishes local control. Cities have the police power to regulate the time, place and manner for handling permits. SB 378 institutes expedited review and processing option for applicants. Although the bill authorizes cities to determine a fee for accelerated permitting, it disregards the capacity for cities to actually expedite permits.

"Public Works and Community Development Departments are already inundated with a variety of project permits each day. In fact, both residential solar installation as well as electric vehicle (EV) charging stations by State Law have been given preferential streamline permitting with set deadlines or will be 'deemed approved.' For City staff to keep up with yet another State mandate, they will need to forestall other permit applications such as water, gas and electric. Adding another preferred permittee, even with the ability to collect a modest fee does not make it easy for city staff to keep up with the demand, nor will it provide the resources to bring on additional staff.

"As cities across the State are utilizing SB 1 funding to repave and repair worn streets and roads, the City of Thousand Oaks has enacted a moratorium on certain streets for three to five years, depending on surface repair. SB 378 is silent in assuring microtrenching projects will not damage newly paved streets. In past experience, when telecom providers installed underground cable, many streets and roads were destroyed and the City had to litigate for their repair. Although microtrenching is smaller in nature, installation practices should preserve the appearance of our streets and roads.

"Finally, the bill does not address the method for determining what communities in the City will benefit from fiber installation. There is great concern, that telecom companies will 'cherry-pick' neighborhoods, neglecting low-income and multi-family housing areas that need online access the most. We strongly suggest the author work closely with cities in resolving these issues to assure it is practical, does not destroy existing streets, and meets the needs of the community – especially those without proper access."

- 9) **Double-Referral.** This bill is double-referred to the Communications and Conveyance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Crown Castle [SPONSOR]
 Bay Area Council
 California Apartment Association

California Builders Alliance
California Building Industry Association
California Business Properties Association
California Retailers Association
California School Boards Association
California Wireless Association
Fiber Broadband Association
Garden Grove Chamber of Commerce
Greater Sacramento Economic Council
Harbor Association of Industry & Commerce
Los Angeles County Business Federation (BIZFED)
Sacramento Regional Builders Exchange
San Francisco Chamber of Commerce
Silicon Valley Leadership Group
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce

Opposition

City of Thousand Oaks
City of Santa Clarita
Towards an Internet of Living Beings
Wireless Radiation Education & Defense

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958