Date of Hearing: July 7, 2021

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE
Miguel Santiago, Chair
SB 378 (Gonzalez) – As Amended June 29, 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) Provides the following definitions:

    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.

2) 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.

3) Allows, upon mutual agreement, a microtrench to be placed shallower than 12 inches in depth.

4) 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.

5) 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.

6) Requires an application for a permit to install fiber to include payment of a reasonable fee set by the local agency, consistent with existing law, to cover the cost of processing the application.

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) 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.

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: Unknown.

COMMENTS:

1) *Author's Statement.* "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."

2) *What is microtrenching?* Modern broadband service, including wired and wireless service, requires the installation of fiber optic cables to convey data signals across a telecommunications network. Companies that wish to install the fiber optic cables underground 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.

3) *Microtrenching in California.* Cities of various sizes and locations across California have already adopted microtrenching policies and ordinances. However, not all ordinances are created the same. 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 are also resistant to allow microtrenching because they are not familiar with the process, or because they associate it with first generation techniques that created issues. For example, too shallow installations and sealant breaks that are not climate adapted for particular areas may require early replacement. However, over time the technique and technology has evolved to be better adapted to the variety of climates and conditions that exist across the state. For example, the City of Los Angeles recently adopted[1] a microtrenching ordinance to accelerate the installation of fiber underground leading to over 40 miles of broadband deployment in recent months. By requiring local governments across the state to allow microtrenching in their local jurisdiction, this bill could help accelerate fiber deployment quickly across the state.

4) *Fiber outperforms other technologies*. Californians are accessing broadband internet in many different ways: outdated DSL, various wireless technologies, through traditional cable, and fiber. However, each technology has varying capabilities and different technologies are not available equally across the state. A recent report[2] based on Federal Communications Commission (FCC) data show that 94.9% of Californians have access to cable internet

[1] Case Study: Microtrenching in Los Angeles. https://www.crowncastle.com/case-studies/microtrenching-la
[2] Broadband Now: California. https://broadbandnow.com/California

service, whereas only 35.8% have access to fiber-optic service. Although cable internet service was a significant advancement from previous technologies because it can support higher speeds, societal technological needs are beginning to surpass the limits of what cable can provide. Take for example the results of increased reliance on the internet for work and school during the pandemic, which illustrates the limitations of current technologies like DSL or cable. As a wave of stay-at-home orders rolled out across the United States in March 2020, the average time it took to download videos, emails and documents increased as broadband speeds declined 4.9 percent[3]. Internet service providers responded to the slow-down by announcing commitments to install new fiber connections because fiber is the superior technology for carrying fixed broadband by almost any performance metric[4], and it is necessary to support next-generation wireless broadband networks. Give the societal needs for reliable, high-speed internet providers and public agencies are looking for ways to expedite widespread fiber deployment.

The state of California is already taking other actions to increase fiber deployment as well. In August 2020, Governor Newsom issued Executive Order N-73-20, which directed multiple state agencies to take actions to improve broadband access. The Executive Order specifically directed the CPUC to "…leverage utility infrastructure to increase access to existing fiber and cost-effectively deploy new fiber." The CPUC subsequently initiated a rulemaking (R. 20-09-001) to identify options to expedite deployment of reliable, fast, and affordable broadband infrastructure and services. Microtrenching, as defined by this bill, may be an infrastructure deployment strategy the CPUC could consider as part of this ongoing proceeding. In the meantime, some local governments in California are already moving forward to permit microtrenching, just as this bill would allow statewide.

5) *Similar legislation.*

AB 41 (Wood, 2021) would require each fixed ISP to provide certain public notifications about where it has deployed broadband. The bill also requires the California Department of Transportation (CalTrans) to develop guidelines and specifications for the deployment of broadband infrastructure using a microtrench. The bill is currently pending in the Senate.

SB 1206 (Gonzalez, 2020) contained provisions substantially similar to some in this bill. The bill would have required CalTrans to develop a model ordinance for local governments to follow when permitting fiber installations using microtrenching. The bill died in the Senate.

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[3] Ookla. Tracking COVID-19's Impact on Internet Performance. https://www.speedtest.net/insights/blog/tracking-covid-19-impact-global-internet-performance/#/

[4] Electronic Frontier Foundation. *The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband*. https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Medical Association
California Retailers Association
California Wireless Association
Crown Castle
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
South Bay Association of Chambers of Commerce

Opposition

City of Thousand Oaks
Southern California Contractors Association

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