

SENATE THIRD READING
SB 378 (Gonzalez)
As Amended June 29, 2021
Majority vote

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.

Major Provisions

- 1) Requires a local agency with jurisdiction to approve excavations to allow microtrenching for the installation fiber optic cable and ancillary equipment if the installation in the microtrench is limited to fiber, unless the local agency makes a written finding that doing so would have a specific, adverse impact on the public health or safety.
- 2) Defines a "microtrench" to mean a narrow open excavation trench no more than 4 inches wide and between 12 inches and 26 inches in depth.
- 3) Allows, upon mutual agreement, a microtrench to be 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 policies, ordinances, codes or construction rules to allow for microtrenching pursuant to this bill.
- 5) Specifies that nothing in this bill supersedes, nullifies or otherwise alters the requirements to comply with specified existing safety standards regarding excavations and the construction of underground electrical or telecommunications infrastructure.
- 6) Allows a local agency to impose a fee on an application not to exceed the reasonable cost to process the application, issue the permit and inspect the installation, including any costs incurred if the applicant elects to expedite review and processing.

COMMENTS

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 aurally 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 one to two 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.

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.

Arguments in Support

Crown Castle, sponsor of this measure, writes, "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."

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...

"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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "No state costs. This bill places new requirements on local agencies by requiring them to allow microtrenching, but local costs are not reimbursable because the bill provides explicit authority for each local agency to recover permitting costs from reasonable fees."

VOTES

SENATE FLOOR: 35-0-5

YES: Allen, Archuleta, Bates, Becker, Borgeas, Bradford, Caballero, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Atkins, Cortese, Grove, Limón, Stern

ASM LOCAL GOVERNMENT: 8-0-0

YES: Aguiar-Curry, Lackey, Bloom, Boerner Horvath, Ramos, Luz Rivas, Robert Rivas, Voepel

ASM COMMUNICATIONS AND CONVEYANCE: 12-0-1

YES: Santiago, Patterson, Boerner Horvath, Bryan, Davies, Eduardo Garcia, Holden, Low, Quirk-Silva, Rodriguez, Valladares, Akilah Weber

ABS, ABST OR NV: Bennett

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Voepel, Fong, Mullin, Eduardo Garcia, Luz Rivas, Quirk, Kalra, Stone, McCarty

UPDATED

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