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***California Underground Facilities Safe Excavation Board***  
***(“Dig Safe Board”)***

**July 15, 2019**

**Agenda Item No. 5 (Action Item) – Staff Report**

Resolution No. 19-07-03: Support of or Opposition to Legislation to Amend Government  
Code Section 4216.3 (AB 1166 (Levine))

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***Presenter***

Brittney Branaman, Policy and Budget Manager

***Recommendation***

Staff recommends the approval of Resolution No. 19-07-03 to support Assembly Bill 1166 (“AB 1166” or “the bill”), if amended to give the Dig Safe Board (“the Board”) authority to grant limited extensions beyond the January 1, 2021 implementation deadline to operators who provide good cause for needing it. The extensions would provide operators with the time to make business changes necessary to comply with statute while preserving the author’s intent to promote accountability in locate and mark activities as soon as reasonably possible.

***Summary***

AB 1166 would enhance the enforceability of the state’s one-call law and support policy efforts to improve excavation safety by requiring utility locators to record and transmit their responses electronically to the state’s regional notification (or “one-call”) centers (USA North 811 and DigAlert). Currently, most utility locators record and transmit their responses to the excavator directly using paint on the ground or email notifications. This system creates several challenges, including that of retaining documentation of the response provided by the operator. This bill intends to improve the efficiency and accuracy of the locate and mark process and ensure that there is better communication between the various operators and excavators working throughout the state.

This bill would amend existing law in the following ways:

- Require every operator of buried infrastructure to supply “electronic positive response<sup>1</sup>” through the regional notification centers before the legal excavation start date and time, beginning January 2021,

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<sup>1</sup>“Electronic positive response” describes a system where utility locators record and transmit their responses electronically to the excavator through the one-call center. For example, a locator, upon marking the location of a buried utility, will transmit the response code “10 – Locate Area Marked” to the one-call center, and this response will be available to the excavator when

- Require the regional notification centers to make “electronic positive response” available to the excavator, beginning January 2021, instead of January 1, 2018,
- Require the regional notification centers to annually report to the Dig Safe Board regarding their technological development, and
- Require the Dig Safe Board to adopt regulations to implement the bill by January 2021

### ***Background***

On February 21, 2019, Assemblymember Levine introduced AB 1166 to address record falsification allegations made by the Public Utilities Commission (CPUC) in its recently-opened adjudicatory proceeding (I.18-12-007), in which Pacific Gas and Electric Co. (PG&E) employees purportedly represented that they had performed their buried utility marking responsibilities within the statutory 48-hour timeframe, when those employees had not done so. The CPUC alleges, and the bill’s author expresses concern, that a failure to properly respond to tickets within the statutory timeframe poses a safety risk, as excavators might begin digging prior to receiving a response from all operators, putting employees and the public at risk. The bill would require operators to respond to Underground Service Alert (“USA”) tickets through electronic positive response, creating a record held by the one-call centers. The transmission of such a record electronically will function as a deterrent to record falsification, as the excavator will be able to see whether the electronic record accurately reflects when the response was received.

### ***Discussion***

One of the key observations of AB 1166 is that current statute does not require a uniform mechanism by which timely utility locates must be documented and transmitted. AB 1166 requires the Board to focus on creating regulations that address this inadequacy.

To comply with 4216.3, operators must mark the ground using paint (or other means such as flags or stakes) above where their infrastructure lies within two working days of notification, or provide maps or other information to the excavator to assist in finding the infrastructure, or inform the excavator that none of the utility’s buried infrastructure exists within the area of excavation.

This interaction is bilateral between the excavator and each individual utility, and it is often conducted without any documentation aside from paint left on the ground by utility locate and mark personnel.

The diversity of subsurface installation operators, however, may pose a challenge to the implementation of electronic positive response. An operator of a subsurface

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he or she looks up his or her ticket online. Similarly, if an operator determines that none of their facilities are present within the area of proposed excavation, the locator will transmit the code “1 – Clear, No Conflict.”

installation is defined broadly to include any person who owns infrastructure not fully-contained within the bounds of that person's property (GOV 4216(o)), and every operator of subsurface installations must be a member of the one-call centers (GOV 4216.1). Many diverse types of enterprises are, therefore, subject to the existing law's locate and mark requirements, would be subject to the requirements of this bill.

While the biggest one-call center members, such as communications providers and gas and electric utilities, respond to anywhere from several hundred thousand to upward of a million 811 tickets annually, approximately 35% of the more-than-2,000 members receive less than 200 tickets annually. To make electronic positive response feasible for smaller members, DigAlert and USA North 811 offer a web-based service to provide the response. Larger members, however, use dedicated ticket management software provided by third-party vendors. Those members who do not currently use electronic positive response would need to configure their software to allow for and properly manage this new functionality. Some large members may still print and distribute tickets manually to their locators, and so would need to choose between using the web-based service from DigAlert and USA North 811 or procuring their own ticket management software.

While the January 1, 2021, electronic positive response deadline proposed in AB 1166 is likely realistic for most operators, some may not be able to meet it. Allowing the Board to grant limited extensions for operators who request the extension—and who provide good cause for needing it—may assist operators in achieving compliance while still meeting the author's intent for operators to supply electronic positive response as soon as is feasible.

AMENDED IN SENATE JUNE 10, 2019

AMENDED IN ASSEMBLY MAY 1, 2019

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1166**

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**Introduced by Assembly Member Levine**

February 21, 2019

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An act to amend Section 4216.3 of the Government Code, relating to underground infrastructure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1166, as amended, Levine. Public works: protection of underground infrastructure: regional notification center system: electronic positive response.

Existing law creates the California Underground Facilities Safe Excavation Board and requires the board to perform various duties relating to the protection of subsurface installations. Existing law requires an excavator planning to conduct an excavation to notify the appropriate regional notification center of the excavator's intent to excavate at least 2 working days, and not more than 14 calendar days, before beginning that excavation. Existing law requires the regional notification center to take the information and provide a ticket, and prohibits an excavator from beginning excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation, as provided. Existing law, commencing January 1, 2018, authorizes every operator to supply an electronic positive response through the regional notification center before the legal excavation start date and time, and

requires the regional notification center to make those responses available to the excavator. Existing law defines ~~an electronic~~ “*electronic positive response, response,*” for these purposes, to mean an electronic response from an operator to the regional notification center providing the status of an operator’s statutorily required response to a ticket.

This bill would, instead, on and after January 1, 2021, require every operator to supply an electronic positive response through the regional notification center before the legal excavation start date and time, and would require the board, on or before January 1, 2021, to adopt regulations to implement this requirement. The bill would ~~also require the board to oversee technology development in communication between regional notification centers and operators that enhances safety, accountability, and efficiency on a reasonable schedule for compliance; regional notification centers to annually report to the board regarding technological development, as prescribed.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4216.3 of the Government Code is
- 2 amended to read:
- 3 4216.3. (a) (1) (A) Unless the excavator and operator
- 4 mutually agree to a later start date and time, or otherwise agree to
- 5 the sequence and timeframe in which the operator will locate and
- 6 field mark, an operator shall do one of the following before the
- 7 legal excavation start date and time:
- 8 (i) Locate and field mark within the area delineated for
- 9 excavation and, where multiple subsurface installations of the same
- 10 type are known to exist together, mark the number of subsurface
- 11 installations.
- 12 (ii) To the extent and degree of accuracy that the information
- 13 is available, provide information to an excavator where the
- 14 operator’s active or inactive subsurface installations are located.
- 15 (iii) Advise the excavator it operates no subsurface installations
- 16 in the area delineated for excavation.
- 17 (B) An operator shall mark newly installed subsurface
- 18 installations in areas with continuing excavation activity.
- 19 (C) An operator shall indicate with an “A” inside a circle the
- 20 presence of any abandoned subsurface installations, if known,

1 within the delineated area. The markings are to make an excavator  
2 aware that there are abandoned subsurface installations within that  
3 delineated work area.

4 (2) Only a qualified person shall perform subsurface installation  
5 locating activities.

6 (3) A qualified person performing subsurface installation  
7 locating activities on behalf of an operator shall use a minimum  
8 of a single-frequency utility locating device and shall have access  
9 to alternative sources for verification, if necessary.

10 (4) An operator shall amend, update, maintain, and preserve all  
11 plans and records for its subsurface installations as that information  
12 becomes known. If there is a change in ownership of a subsurface  
13 installation, the records shall be turned over to the new operator.  
14 Commencing January 1, 2017, records on abandoned subsurface  
15 installations, to the extent that those records exist, shall be retained.

16 (b) If the field marks are no longer reasonably visible, an  
17 excavator shall renotify the regional notification center with a  
18 request for remarks that can be for all or a portion of the  
19 excavation. Excavation shall cease in the area to be remarked. If  
20 the delineation markings are no longer reasonably visible, the  
21 excavator shall redelineate the area to be remarked. If remarks are  
22 requested, the operator shall have two working days, not including  
23 the date of request, to remark the subsurface installation. If the  
24 area to be remarked is not the full extent of the original excavation,  
25 the excavator shall delineate the portion to be remarked and provide  
26 a description of the area requested to be remarked on the ticket.  
27 The excavator shall provide a description for the area to be  
28 remarked that falls within the area of the original location request.

29 (c) (1) (A) On and after January 1, 2021, every operator shall  
30 supply an electronic positive response through the regional  
31 notification center before the legal excavation start date and time.  
32 On or before January 1, 2021, the board shall adopt regulations to  
33 implement this requirement.

34 (B) The regional notification center shall make the responses  
35 required by subparagraph (A) available to the excavator.

36 (2) ~~The board regional notification centers shall oversee~~  
37 ~~technology annually report to the board regarding their continual~~  
38 ~~technological development in their roles of facilitating~~  
39 ~~communication between regional notification centers excavators~~

1 and operators *in a manner* that enhances safety, accountability,  
2 and ~~efficiency on a reasonable schedule for compliance.~~ *efficiency.*

3 (d) The excavator shall notify the appropriate regional  
4 notification center of the failure of an operator to identify  
5 subsurface installations pursuant to subparagraph (A) or (B) of  
6 paragraph (1) of subdivision (a), or subdivision (b). The notification  
7 shall include the ticket issued by the regional notification center.  
8 ~~★ The regional notification center shall maintain a record of all~~  
9 notifications received pursuant to this subdivision ~~shall be~~  
10 ~~maintained by the regional notification center~~ for a period of not  
11 less than three years. The record shall be available for inspection  
12 pursuant to subdivision (f) of Section 4216.2.

13 (e) If an operator or local agency knows that it has a subsurface  
14 installation embedded or partially embedded in the pavement that  
15 is not visible from the surface, the operator or local agency shall  
16 contact the excavator before pavement removal to communicate  
17 and determine a plan of action to protect that subsurface installation  
18 and excavator.

**RESOLUTION NO. 19-07-03**

**RESOLUTION OF  
THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION  
BOARD IN SUPPORT OF ASSEMBLY BILL 1166 (LEVINE) IF  
AMENDED**

WHEREAS, pursuant to the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), codified under Government Code section 4216 et seq. (the “statute”), the California Underground Facilities Safe Excavation Board (the “Board”) is mandated to coordinate education and outreach activities that encourage safe excavation practices, develop certain standards for safe excavation practices, investigate possible violations of the statute, and enforce the statute on specified persons;

WHEREAS, Government Code section 4216.3, subdivision (a)(1)(A), requires an operator receiving a ticket to provide one of three prescribed responses to the excavator before the legal excavation start time; and

WHEREAS, Assembly Bill 1166, introduced by Assembly Member Levine, (the “bill”) would require the Board to adopt regulations requiring every operator to supply electronic positive response through the regional notification centers, which must then make those responses available to the excavator, before the legal excavation start time, beginning January 2021; and

WHEREAS, the bill requires the regional notification centers to report annually to the Board on the state of their technological development; and

WHEREAS, the bill further requires the Board to adopt regulations by January 2021 to implement the legislation; and

WHEREAS, in order to encourage operator compliance with the requirement to supply electronic positive response to the regional notification centers, the Board must be given discretion to address reasonable barriers which operators may face in their efforts to come into compliance with the new requirements imposed by the bill;

THEREFORE, BE IT RESOLVED that the California Underground Facilities Safe Excavation Board supports Assembly Bill 1166 (Levine) if amended to explicitly provide the Board discretion to grant operators limited extensions for good cause. Further, the Executive Officer, in consultation with Board Members Muñoz and Charland, is delegated the authority to modify and convey the Board’s position on the bill to the Legislature upon any subsequent bill amendments.

Date of Adoption: \_\_\_\_\_