California Underground Facilities Safe Excavation Board
("Dig Safe Board")

August 10, 2020

Agenda Item No. 5 (Information Item) – Staff Report

Dig Safe Board Regulatory Fee – Draft Regulation Language

PRESENTER

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SUMMARY

At the July 13, 2020 Board meeting, staff presented a report providing an update on collection of the Board's regulatory fee for Board discussion as well as two different options for the Board to consider for collection of the regulatory fee. Following the Board's direction, staff have prepared this report which includes an outline and the text of the draft fee regulation language for the board to review and provide feedback on prior to final language being presented for Board action at a future meeting.

STRATEGIC PLAN

2020 Strategic Objective: Continue Building a Foundation for Board Operations
Strategic Activity: Review of the Board's Fee Regulation

BACKGROUND

The Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016)[1] created the Board and authorized it to obtain funding for its operational expenses from fees charged to members of California's two regional notification centers (Gov't Code § 4216.16(b)).[2] It required payments to be apportioned "…in a manner consistent with formulas used by the regional notification centers."

[1] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB661
[2].https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4216.16.&lawCode=GOV

Fee Regulation

To implement this statute, the Board on August 20, 2018 approved a regulation to require the one-call centers to assess the fee through their standard invoicing processes and collect it on the Board's behalf (19 CCR § 4010)[3]. This model was chosen as it was seen as being in the best interest of members, as they were already accustomed to being invoiced by and paying the one-call centers. The regulation went into effect on January 1, 2019, and the one-call centers began issuing invoices soon thereafter.

Implementation

In staff reports presented to the Board in April 2019[4], June 2020[5], and July 2020,[6] staff outlined numerous concerns raised by members of the one-call centers regarding the invoicing process for the Board's fee as well as options for improving the collections process.

The June 8, 2020 staff report included a recommendation from staff that the Board direct staff to prepare draft regulation language which would provide that the Board would issue its own fee invoices. In the discussion that ensued, the Board directed staff to also consider amending the regulation for the one call centers to continue collecting the fee including potentially requiring the fee to be a line item on existing one-call center invoices.

The July 13, 2020 staff report outlined the various pros and cons of the options of the Board issuing its own invoices or utilizing the one-call centers to issue invoices for and collect the regulatory fee on the Board's behalf as well as presented questions to guide Board discussion of the options. Following a discussion and comments from stakeholders, including the one-call centers, the Board directed staff to collaborate with the one-call centers and prepare draft regulation language for the one-call centers to continue collecting the regulatory fee on the Board's behalf.

DISCUSSION

Collaborating with the One-Call Centers

Following the Board's direction at the July 2020 meeting to collaborate with the one-call centers, staff engaged in discussions with the directors of the one-call centers to develop solutions and strategies for improving the fee process for all parties involved. Using the information gleaned from these meetings, staff developed draft regulation language designed to improve the process for the one-call centers and Board staff while improving the customer experience for members of the one-call centers.

The draft regulations outlined below specify and clarify roles, responsibilities, and processes as well as increase information sharing in standardized formats that will enhance the

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[3] 19 CCR § 4010(b)(2), https://osfm.fire.ca.gov/media/4202/_text-et-digfees_endorsed.pdf
[4] April 15, 2019, Agenda Item No. 3, *Discussion on Fee Implementation,* https://digsafe.fire.ca.gov/media/2052/item-3-fee-implementation.pdf
[5] June 8, 2020, Agenda Item No. 4, *Update on Fee Implementation and Collection,* https://digsafe.fire.ca.gov/media/2386/item-4-fee-implementation-accessible.pdf
[6] July 13, 2020, Agenda Item No. 6, *Discussion of Dig Safe Board Regulatory Fee Implementation,* https://digsafe.fire.ca.gov/media/2431/item-6-discussion-of-fee-implementation.pdf

operational process for the one-call centers and for Board staff.

Highlights of Draft Regulation Changes

The outline below includes the key changes made to the regulatory language to improve the regulatory fee process.

Change in Fee Calculation to New Tickets Only

This change realigns the base of billable tickets from new, renewal, and remark tickets to only new tickets. This change would align with the billing basis currently used by the one-call centers who now both bill only for new tickets. When the fee regulation was first created in 2018, the Board used the billing model of USA North 811 who at the time billed for the same ticket types contained in the current regulation.

As changing to billing to only new tickets would decrease the number of ticket categories that together make up the basis for the Board's fee, and the fee has a minimum ticket threshold that members must exceed to be subject to the fee, this reduction in tickets would decrease the number of members subject to paying the Board's regulatory fee by approximately 100 from the current total number of approximately 1,800.

Realignment of Billing Periods

Beginning in June 2022, the draft regulation moves the fee billing periods from a calendar year (Jan-Dec) cycle to a fiscal year (Jul-Jun) cycle to better align with state accounting periods as well as to allow sufficient time for ticket tabulation and notification of one-call center members prior to new billing amounts being applied. The current process of calendar year (Jan-Dec) tickets forming the basis for the fee in the next calendar year leaves insufficient time to tabulate ticket counts and has delayed issuance of January invoices. The previous calendar year (Jan-Dec) would continue to be used as the basis for the ticket counts and thus the billing proportions. There would be an abbreviated billing period from January to June of 2022 to accommodate the transition to fiscal year (Jul-Jun) billing periods. Staff plans to use the time between when the ticket totals are tabulated after the end of the previous calendar year (December 31) and when the new fee period begins (July 1) to conduct additional outreach to members regarding the new fee amounts. The amounts would also be posted on the Board's website.

Fee Amount

Starting with the July 2022 billing period, the draft regulation decreases the Board's operational expenses which the ticket proportions are applied to from $7.0 million to $5.0 million, increasing by 3%, subject to approval in the State Budget Act, each year thereafter. While this is higher than the $3.8 million in the current regulation, the Board's expenses pursuant to the State Budget Act have increased to approximately $4.8 million annually[7].

The increase in the Board's expenses is the result of legislatively approved budget increases for increased personnel costs through statewide bargaining agreements and additional temporary and permanent positions the Board new statutes as well as increases to pro rata

[7] 2020-21 State Budget Act, Department of Forestry and Fire Protection, Page 18
http://ebudget.ca.gov/2020-21/pdf/Enacted/GovernorsBudget/3000/3540.pdf

charges which the Board pays for statewide central service departments such as Cal HR, the Department of Technology, and the State Controller's Office.[8]

Late Invoices

The draft regulation stipulates that the one-call centers will collect any late fees, but that the late invoices will be issued by the Board. The draft regulation also sets 120 days after the invoice issue date as the date at which late fees would apply. Delaying application of late fees provides ample time for Board staff to contact those who have not paid so they have enough time to pay the invoice before being subjected to late fees. This reflects the reality that staff encountered in communicating with those who had not paid whereby most members stated they were unaware of or had not received the invoice for the regulatory fee and would have paid it if they had received it.

Information Sharing

The draft regulation formalizes and specifies the frequency and exact information the one-call centers need to submit to the Board regarding invoices, payments, tickets, and general as well as billing contact information. Empowered with this information, Board staff will be readily equipped with the tools it needs to assess late fees appropriately, conduct proactive outreach to members, and respond to members' inquiries. This will vastly improve the customer experience and reduce the burden on the one-call centers to answer fee questions. In the current process, when a member calls Board staff with a question, Board staff needs to reach out to the one-call centers for invoice information such as invoices issued and fees collected between the twice-yearly collection periods, as staff does not have a copy of each invoice issued by the one-call centers for the regulatory fee.

Regulatory Fee as a Line Item or Separate Invoice

The Board must decide whether the regulatory fee should be included as a line item on the invoices the one-call centers issue to their members for their own operating costs or whether the one-call centers may send it as a separate invoice. Each option has various costs and benefits that the Board may weigh when making its decision.

Having the fee as a line item on existing one-call center invoices provides members with a streamlined payment venue whereby they receive a single invoice from a single source for the Board's regulatory fee as well as for the operational fees of the one-call center with which they may issue a single payment that would cover both. As the Board discussed during its June 2020 meeting, this was how the fee was initially envisioned. The one-call centers have voiced concerns with this option, stating that it would increase their workload. One-call centers have stated that having the fee as a separate invoice is easier for them to process and allows for more straightforward separation between fee revenues and member dues. If the fee were invoiced separate from the member dues, the invoices would need to be sent

[8] As part of the checks and balances of government and to ensure that the services level provided by state departments is commensurate with the resources available to them, the state Legislature is vested with appropriation authority that sets spending caps through the annual budget process. A unit of government – such as the Dig Safe Board – cannot spend more than its legislatively authorized appropriation limit in a single year. As a corollary, any money left unspent from one fiscal year cannot be added onto the appropriations cap in the next fiscal year without legislative approval.

concurrently to minimize confusion for the members. Understanding the need of the one-call centers to recover their costs incident to issuing and collecting the Board's regulatory fee, a provision in the regulations would specify that they may assess a surcharge, separate from the board's fee, to recover such expenses. Board members have previously noted that costs, whether incurred by Board staff or one-call center staff, are ultimately passed along to members in both situations.

CONCLUSION

Following the Board's guidance, staff coordinated with the one-call centers and agreed to reasonable solutions on many of the issues that have complicated the current invoice and fee collection process which will ultimately improve the customer experience for members. The Board must still decide the invoice format and whether the fee will be a line item or separate.

RECOMMENDATION

Staff recommends that the Board review the draft regulation language and weighing the benefits and drawbacks for all of the parties involved, decide if the one-call centers should issue the Board's regulatory as a line item on their own invoices, or as a separate invoice and any dependencies associate with that option. Based on the conclusions the Board arrives at, staff will revise the regulatory language for action at a future Board meeting.

ATTACHMENTS

A: Draft Fee Regulation Language
B: Current Regulation Language

ATTACHMENT A

Draft Fee Regulation Language

§ 4010. Fees.

(a) Fee Basis.

(1) Each member of a regional notification center as defined in Government Code, section 4216, subdivision (q) who receives more than 200 locate request transmissions in the previous calendar year shall pay a fee to support the operational expenses of the California Underground Facilities Safe Excavation Board as provided in the following formula:

Fee = member billable locate request transmissions / statewide billable locate request transmissions X Board operational expenses

(2) In the formula above:

(A) "Member billable locate request transmissions" represents the number of locate request transmissions a member of the regional notification center that meets or exceeds the threshold identified in (a)(1) received in the previous calendar year. For purposes of this section, "billable locate request transmission" means the notification provided by a regional notification center to an operator to locate and field mark in response to a new ticket, as identified in Government Code section 4216.2, subdivision (e) and to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i).

(B) "Statewide billable locate request transmissions" is the sum of all member billable locate request transmissions issued by the regional notification centers in the previous calendar year excluding those that do not meet or exceed the threshold identified in section (a)(1).

(C) "Board operational expenses" is the sum of the estimated operational expenses, including any loan repayment, of the California Underground Facilities Safe Excavation Board, subject to the State Budget Act. Prior to January 2022, Board Operational Expenses shall be based on a calendar year and is $7 million for each calendar year 2019, 2020, and 2021. Board Operational expenses for January through June of 2022 shall be the estimated costs for this period, $3.5 million. After June 2022 Board Operational Expenses shall be based on a July to June fiscal year and is $5 million for fiscal year 2022 and each year thereafter.

(3) The Board shall post to its website by March 1 of each year, the total statewide billable locate request transmissions from the previous calendar year, the member billable locate request transmissions for each member of a regional notification center from the previous calendar year, and the amount of regulatory fees to be paid by each member of a regional notification center in the upcoming billing period.

(b) The Regional Notification Centers shall collect the regulatory fee on the board's behalf.

(1) The regional notification centers shall include the Board's regulatory fee as a separate line item on the same invoices they issue to members of the regional notification center to recoup the operating costs of the regional notification center pursuant to Government Code 4216.1.

(A) The "member billable locate request transmissions," "statewide billable locate request transmissions," and the "Board operational expenses" shall be reflected on the invoice to each member of a regional notification center.

(B) Each member of a regional notification center shall remit the fee under subdivision (a) to the regional notification center by the due date in the invoice issued by the regional notification center.

(2) Within 15 days of the end of each calendar quarter, the regional notification center shall remit to the board any regulatory fees it has collected pursuant to this section.

(3) The regional notification centers may add an additional surcharge as a separate line item as reimbursement for any costs associated with the collection of the board's regulatory fee.

(c) Any member who fails to pay the regulatory fee within 120 days of the date the invoice was issued, shall be assessed a late fee of 5% of the amount of the regulatory fee, which shall be in addition to the amount of the regulatory fee listed on the invoice. The board will issue a late fee invoice to the member and the fee will be payable to the regional notification center following the process outlined in part (b) of this section. The board will send the regional notification center a copy of the late fee invoice within 5 days of submitting it to a member of the regional notification center.

(d) Data Reporting and Recordkeeping

(1) Within 15 days of the end of each month, a regional notification center shall submit a report electronically to the board which includes the following:

(A) Information on payments received the previous month including a table with the member identification code, any sub member codes, invoice number, payment received date, amount of payment received, and identifying information about the payment such as a check, ACH, or other payment identification number. If a payment is applied to more than one invoice, each invoice shall be listed as a separate row and amount in the table.

(B) Information about invoices issued in the previous month including a copy of each invoice and a table with the member identification code, any sub member codes, invoice number, invoice date, invoice due date, the amount of the regulatory fee, whether it was sent by mail or email, and the applicable email or physical address the invoice was sent to.

(2) Within 15 calendar days of the end of each calendar quarter, a regional notification center shall submit a report electronically to the board which includes the following:

(A) Information about tickets each member received in the previous quarter

including the member identification code, any sub member codes, the total number of locate request transmissions issued to that member in each of the following ticket categories: new as identified in Government Code section 4216.2, subdivision (e), renewal, remark, and update as identified in Government Code section 4216.2, subdivision (i).

(B) Information about changes to the membership list including any additions or deletions of members and any change to member or sub-member codes including but not limited to member names.

(C)A table including the following for each member: member code, member name, and the names, titles, phone numbers, and email addresses for the general and billing contact for each member.

ATTACHMENT B

Current Fee Regulation Language

(a)

(1) Each member of a regional notification center as defined in Government Code, section 4216, subdivision (q) who receives more than 200 locate request transmissions in the previous calendar year shall pay a fee to support the operational expenses of the California Underground Facilities Safe Excavation Board as provided in the following formula:

Fee = member locate request transmissions / statewide locate request transmissions X Board operational expenses

(2) In the formula above:

(A) "member locate request transmissions" represents the number of locate request transmissions the member of the regional notification center received in the previous calendar year;

(B) "statewide locate request transmissions" is the total number of locate request transmissions issued by the regional notification centers in the previous calendar year, not including those locate request transmissions issued to members who received less than 200 locate request transmissions in the previous calendar year; and

(C) "Board operational expenses" is the sum of the estimated operational expenses, including any loan repayment, of the California Underground Facilities Safe Excavation Board in the current calendar year, subject to the State Budget Act. The "Board operational expenses" is $7 million for each calendar year 2019, 2020, and 2021, subject to the State Budget Act. The "Board operational expenses" is $3.8 million for calendar year 2022 and each calendar year thereafter, subject to the State Budget Act.

(3) The "member locate request transmissions," "statewide total locate request transmissions," and the "Board operational expenses" shall be reflected on the invoice to each member of a regional notification center.

(b)

(1) Each member of a regional notification center shall remit the fee under subdivision (a) to the regional notification center by the due date in the billing statement issued by the regional notification center.

(2) At least semi-annually on April 1 and October 1, the regional notification centers shall submit to the California Underground Facilities Safe Excavation Board the fees received by the regional notification centers as of the date of submittal to the California Underground Facilities Safe Excavation Board.

(c) If a member fails to pay the fee by the due date in the billing statement as provided in

subdivision (b), the Board shall issue an invoice to seek and obtain the fee directly from the member and charge the member a late fee of 5% of the amount of the fee, in addition to the fee due in the billing statement. The regional notification centers shall inform the Board of any failure to pay the fee and shall provide a copy of the member's billing statement.

(d) For purposes of this section, “locate request transmission” means the notification provided by a regional notification center to an operator to locate and field mark in response to a new or renewed ticket, as identified in Government Code section 4216.2, subdivision (e), to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i), or to a ticket requesting a remark, as identified in Government Code section 4216.3, subdivision (b).