California Underground Facilities Safe Excavation Board

April 19, 2018

Agenda Item No. 2 (Action Item) – Staff Report

Resolution No. 18-04-01: Support of Legislation to Eliminate the Statutory Operative Date of July 1, 2020 to Authorize the Board to Begin Conducting Investigations Prior to July 1, 2020

Presenter
Tony Marino, Executive Officer

Background
Pursuant to Government Code sections 4216.12(b)(3) and 4216.19, beginning July 1, 2020, the Board is authorized to investigate possible violations of 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"). However, the Board is authorized to hire investigators on July 1, 2018 under the Budget Act of 2017, and currently, the Board may recommend enforcement of the statute on persons under the jurisdiction of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, as provided in Government Code section 4216.6(c).

Discussion
The Board is statutorily unable to perform its fundamental function of conducting investigations prior to July 1, 2020, yet may hire investigators two years before the Board is authorized to conduct investigations. The investigators would be barred from performing their duties for two years. Further, although the Board is currently authorized to recommend enforcement of the statute on persons under the jurisdiction of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, the Board would not be able to do so until after July 1, 2020 when the Board can begin conducting investigations. Legislation to change the statute to authorize the Board to begin conducting investigations prior to July 1, 2020 would allow the Board to perform its duty to recommend enforcement of the statute to the other state agencies. The statutory change would also give the Board the opportunity to perform its fundamental function of conducting investigations prior to review by the appropriate policy committees of the Legislature on and after January 1, 2020 (Government Code section 4216.12(c)).

Recommendation
Staff recommends the Board adopt Resolution No. 18-04-01 in support of legislation to amend the statute to enable the Board to conduct investigations prior to July 1, 2020.

Attachment: Spring Finance Letter, March 29, 2018

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

EDMUND G. BROWN JR. ▪ GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 29, 2018

Honorable Holly Mitchell, Chair
Senate Budget and Fiscal Review Committee

Attention: Mr. Joe Stephenshaw, Staff Director (2)

Honorable Phil Ting, Chair
Assembly Budget Committee

Attention: Mr. Christian Griffith, Chief Consultant (2)

Amendment to and Addition of Various Budget Bill Items, Support, and Trailer Bill Language, Department of Forestry and Fire Protection

Helicopter Acquisition and Support—It is requested that Item 3540-001-0001 be increased by $6,130,000 to fund support costs associated with the acquisition of new helicopters, including: (1) training, (2) purchase of spare parts and equipment, and (3) the addition of vendor-provided maintenance mechanics. It is further requested that Item 3540-004-0001 be decreased by $2,542,000 to reflect the actual cost to purchase four helicopters in fiscal year 2018-19, which has been refined based on the Department's helicopter delivery schedule and related information. These actions will begin a multi-year effort to fully replace the Department's aging helicopter fleet with new modern helicopters. These new state of the art helicopters will have enhanced firefighting capabilities, including the ability to fly at night, which will improve the Department's ability to respond to the increasing number and severity of wildfires resulting from climate change.

Aviation Parts and Logistics Contract Funding—It is requested that Item 3540-001-0001 be increased by $1,651,000 to fund increased costs associated with the Department's aviation parts and logistics contract. This action is requested to provide the Department with additional resources to meet the requirements of the new contract, which will go into effect in 2018-19. This proposal will ensure continuity of service from the vendor, which is integral to the operation and maintenance of the Department's aviation assets.

Increased Workers' Compensation Costs—It is requested that Item 3540-001-0001 be increased by $4,019,000, Item 3540-001-0028 be increased by $4,000, and Item 3540-002-3228 be increased by $111,000 to provide additional resources to reflect the Department's rising workers' compensation costs.

Board of Forestry and Fire Protection Effectiveness Monitoring—It is requested that Item 3540-001-3212 be increased by $425,000 to enable the Board of Forestry and Fire Protection to continue to engage academic institutions, governmental agencies, and consultants to monitor the effectiveness of the state's forest practice laws, rules, and regulations.

Safe Energy Infrastructure and Excavation Fund Loan Repayment Extension and Trailer Bill Language—It is requested that Item 3540-401 be added to extend the repayment date for the loan from the California High-Cost Fund-B Administrative Committee Fund to the Safe Energy Infrastructure and Excavation Fund by two years, from July 1, 2019 to July 1, 2021 (see Attachment 1). Budget Bill language is also requested to authorize earlier repayment of the loan under specified conditions.

Additionally, it is requested that trailer bill language be adopted to: (1) clarify that the California Underground Facilities Safe Excavation Board cannot take enforcement actions before July 1, 2020, and (2) enable the Board to conduct investigations prior to July 1, 2020 (see Attachments 2 and 3).

The effect of my requested action is reflected on the attachment.

If you have any questions or need additional information regarding this matter, please call Stephen Benson, Principal Program Budget Analyst, at (916) 324-0043.

MICHAEL COHEN
Director
By:

/s/ Amy M. Costa

AMY M. COSTA
Chief Deputy Director

Attachment

cc: Honorable Ricardo Lara, Chair, Senate Appropriations Committee
Attention: Mr. Mark McKenzie, Staff Director
Honorable Jim Nielsen, Vice Chair, Senate Budget and Fiscal Review Committee
Attention: Mr. Kirk Feely, Budget Fiscal Director
Honorable Lorena Gonzalez Fletcher, Chair, Assembly Appropriations Committee
Attention: Mr. Jay Dickenson, Chief Consultant
Honorable Jay Obernolte, Vice Chair, Assembly Budget Committee
Attention: Ms. Cyndi Hillery, Staff Director
Honorable Bob Wieckowski, Chair, Senate Budget and Fiscal Review Subcommittee No. 2
Honorable Richard Bloom, Chair, Assembly Budget Subcommittee No. 3
Mr. Mac Taylor, Legislative Analyst (4)
Mr. Christopher Woods, Senate President pro Tempore's Office (2)
Mr. Jason Sisney, Assembly Speaker's Office (2)
Ms. Cheri West, Deputy Chief of Staff, Policy, Assembly Republican Leader's Office
Mr. Jim Richardson, Policy and Fiscal Director, Assembly Republican Leader's Office
Mr. Bryan Cash, Assistant Secretary for Administration and Finance, Natural Resources Agency
Mr. Ken Pimlott, Director, Department of Forestry and Fire Protection
Ms. Janet Barentson, Chief Deputy Director, Department of Forestry and Fire Protection
Mr. Tony Favro, Deputy Director, Department of Forestry and Fire Protection
Ms. Melissa Gamer, Chief of Budgets, Department of Forestry and Fire Protection

3540-401—Notwithstanding Provision 1 of Item 8660-012-0470, Budget Act of 2017 (Chs. 14, 22, and 54, Stats. 2017) the $7,406,000 loan from the California High-Cost Fund-B Administrative Committee Fund to the Safe Energy Infrastructure and Excavation Fund shall be repaid no later than July 1, 2021, upon the order of the Department of Finance. The Department of Finance may order repayment of all or a portion of the loan if it determines that either of the following circumstances exist: (a) the fund from which the loan was made requires earlier repayment, or (b) there is an adequate balance in the fund receiving the loan to repay it at an earlier date. This loan shall be repaid with the interest calculated at the rate earned by the Pooled Money Investment Account at the time of transfer.

Section 4216.6 of the Government Code is amended to read:

(a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars ($10,000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars ($50,000).

(3) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(4) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section in a civil action brought in the name of the people of the State of California. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

(c) The requirements of this article may also be enforced following a recommendation of the California Underground Facilities Safe Excavation Board by the following agencies, that shall act to accept, amend, or reject the recommendations of the board as follows:

(1) The Registrar of Contractors of the Contractors' State License Board shall enforce the provisions of this article on contractors, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, and telephone corporations, as defined in Section 234 of the Public Utilities Code, when acting as a contractor, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code. Nothing in this section affects the California Public Utilities Commission's existing authority over a public utility.

(2) The Public Utilities Commission shall enforce the provisions of this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code.

(3) The Office of the State Fire Marshal shall enforce the provisions of this article on operators of hazardous liquid pipeline facilities, as defined in Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the United States Code.

(d) A local governing board may enforce the provisions of this article on local agencies under the governing board's jurisdiction.

(e) Commencing July 1, 2020, the California Underground Facilities Safe Excavation Board shall enforce the provisions of this article on persons other than those listed in subdivisions (c)

and (d). The board shall not initiate enforcement action pursuant to this subdivision for violations that occur prior to July 1, 2020.

(f) Moneys collected as a result of penalties imposed pursuant to subdivisions (c) and (e) shall be deposited into the Safe Energy Infrastructure and Excavation Fund.

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available in an annual report by regional notification centers and posted on the Internet Web sites of the regional notification centers.

(h) For purposes of subdivision (g), the following terms have the following meanings:

(1) "Incident event" means the occurrence of excavator downtime, damages, near misses, and violations.

(2) "Statewide information" means information submitted by operators and excavators using the California Regional Common Ground Alliance's Virtual Private Damage Information Reporting Tool. Supplied data shall comply with the Damage Information Reporting Tool's minimum essential information as listed in the most recent version of the Best Practices guide of the Common Ground Alliance.

Section 4216.19 of the Health and Safety Code is amended to read:

(a) The board shall investigate possible violations of this article.

(b) The board may investigate reports of incident events, as defined in paragraph (1) of subdivision (h) of Section 4216.6 and complaints from affected parties and members of the public.

(c) In determining whether to pursue an investigation, the board shall consider whether the parties have settled the matter and whether further enforcement is necessary as a deterrent to maintain the integrity of subsurface installations and to protect the safety of excavators and the public.

(d) If the board, upon the completion of an investigation, finds a probable violation of the article, the board shall transmit the investigation results and any recommended penalty to the state or local agency pursuant to subdivision (c) or (d) of Section 4216.6.

(e) Sanctions shall be graduated and may include notification and information letters, direction to attend relevant education, and financial penalties. When considering the issuance of citations and assessment of penalties, the board shall consider all of the following:

(1) The type of violation and its gravity.

(2) The degree of culpability.

(3) The operator's or excavator's history of violations.

(4) The operator's or excavator's history of work conducted without violations.

(5) The efforts taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

~~(f) This section shall become operative on July 1, 2020.~~

RESOLUTION NO. 18-04-01

RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD IN SUPPORT OF LEGISLATION TO AMEND THE STATUTE TO COMMENCE INVESTIGATIONS PRIOR TO JULY 1, 2020

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, the Board is not authorized to investigate possible violations of the statute until July 1, 2020, as provided in Government Code sections 4216.12, subdivision (b)(3), and 4216.19;

WHEREAS, the Board is currently authorized to recommend enforcement of the statute on persons under the jurisdiction of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, as provided in Government Code section 4216.6, subdivision (c);

WHEREAS, the Board is authorized to hire investigators on July 1, 2018 under the Budget Act of 2017, and the Board shall be subject to review by the appropriate policy committees of the Legislature on and after January 1, 2020 pursuant to Government Code section 4216.12, subdivision (c); and

WHEREAS, the Board is statutorily unable to perform its fundamental function of conducting investigations prior to review by the Legislature, yet may hire investigators two years before the Board is authorized to conduct investigations and may recommend enforcement of the statute on persons under the jurisdiction of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal;

THEREFORE, BE IT RESOLVED that the California Underground Facilities Safe Excavation Board supports legislation to amend the statute, specifically, Government Code section 4216.19, to eliminate the operative date of July 1, 2020 and thereby authorize the Board to begin conducting investigations prior to July 1, 2020.

Date of Adoption: _____