
California Underground Facilities Safe Excavation Board

May 9-10, 2022

Agenda Item No. 4 Action Item – Staff Report

Update of Quorum Rules

PRESENTER

Tony Marino, Executive Officer

SUMMARY

The Board has not acted on agenized enforcement cases due to lack of a quorum, which Policy G-01 defines as five members. Due to vacancies and member conflict of interest recusals, the Board often finds itself in the position of not having a five-member quorum. To allow the Board to hear enforcement cases on a timely schedule, staff proposes to change the definition of quorum from five members to a majority of currently-seated, appointed members.

STRATEGIC PLAN

2021 Strategic Plan Objective: Foster Compliance with New and Existing Laws through Education, Outreach, and Enforcement

BACKGROUND

In January 2018, the Board adopted a set of policies, including a policy on parliamentary procedure (G-01), which defines a quorum of the Board for purposes of conducting business. Each policy was adopted with a review frequency. Policy G-01's frequency is biennial, and it is monitored by staff. Consistent with the review frequency, staff proposed no changes to Policy G-01 during the policy reviews in 2020¹ and 2022.²

Government Code § 4216.13 indicates that the Board is to be composed of nine members, seven of which are to be appointed by the Governor, and one each appointed by the Speaker of the Assembly and the Senate Rules Committee.

Policy G-01 defines a quorum as five members. Since January 2021, the Board has had two

¹ Item No. 3, "Review and Approval of Board Policies," January 13-14, 2020.

<https://energysafety.ca.gov/wp-content/uploads/docs/underground/item-3-board-policies.pdf>

² Item No. 4, "Review and Approval of Board Policies," January 10-11, 2022.

<https://energysafety.ca.gov/wp-content/uploads/item-4-staff-report-on-policy-updates.pdf>

vacancies. On one occasion,³ the Board has found that these vacancies, combined with member conflict of interest recusals, has led to an item not being heard for lack of a quorum.

DISCUSSION

To conduct business, the Board needs to have a quorum of members present. Members who need to recuse themselves because of potential or apparent conflicts of interest do not count toward a quorum. Member recusals for potential or apparent conflict of interest are common in enforcement items. As the Board has two vacancies, it has found itself in the past—and expects in the future—to not have a quorum of five members for enforcement items. Without a quorum, the Board cannot fulfill its duties to enforce or recommend enforcement to partner state agencies.

Staff proposes to change the definition of “quorum” to exclude vacancies, redefining it as a majority of currently-seated, appointed members. As the Board currently has seven members, the current effect of this change would be to reduce the quorum requirement to four members. A majority is defined as just over 50%, thus an eight-member Board would have a quorum of five. This change would allow the Board to continue to process enforcement actions and recommendations while it has member vacancies.

RECOMMENDATION

Staff proposes the Board approve Resolution 22-05-01, amending Policy G-01 to change the definition of a quorum from five members to a majority of currently-seated, appointed members.

ATTACHMENT

- A. Proposed changes to Policy No. G-01
- B. Resolution 22-05-01 amending Policy No. G-01

³ Item No. 3, “Decision on Notice of Probable Violation # 21LA01346 – Kana Pipeline, Inc.,” November 9, 2021. <https://energysafety.ca.gov/wp-content/uploads/docs/underground/21la01346-kana-nopv-packet-10-28.pdf>

Category:	Governance	Process Number:	G-01
Title:	Parliamentary Procedure		
Adopted:	January 9, 2018	Resolution:	18-01-05
Revision:	DRAFT		

Parliamentary procedure shall be conducted as follows. Any question of procedure not addressed in the governance provisions of this manual shall be addressed using the 11th Edition of Robert's Rules of Order.

- Procedures for small boards identified in the 11th Edition of Robert's Rules of Order shall apply, including, but not limited to, the following:
 - Motions need not be seconded.
 - There shall be no limit to the number of times a member may speak to a debatable question.
 - Informal discussion of a subject is permitted while no motion is pending.
- A quorum shall be ~~five members~~ a majority of the currently-seated, appointed members.

Monitoring Method: Staff
Frequency: Biennial

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. 22-05-01

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD UPDATING POLICY G-01 (PARLIAMENTARY PROCEDURE) TO MODIFY QUORUM

Whereas Government Code § 4216.12 identifies the general responsibilities of the California Underground Facilities Safe Excavation Board, including to investigate possible violations and to enforce the Dig Safe Law;

Whereas Government Code § 4216.13 specifies the appointing powers and composition of the nine-member board, which includes the knowledge and expertise required for appointment, such as that in subsurface installation operation, contract locating, contract excavation, worker safety for contract excavation, and agriculture;

Whereas the Board adopted policies during its first public meeting in January of 2018 and has reviewed and updated those policies regularly;

Whereas Board Policy No. G-01 outlines its parliamentary rules, including by setting a quorum at five members;

Whereas Board vacancies, coupled with member recusals due to actual and perceived conflicts of interest, have disrupted the ability of the Board to achieve a quorum given the current procedural policy;

Whereas the Board has a responsibility to continue to conduct business even when it has vacancies; and

Whereas amending Board Policy No. G-01 to change the quorum requirement from five members to a majority of appointed members will allow the board to conduct business even in light of vacancies;

Be it resolved that the Board amends and adopts Policy No. G-01 to change the definition of a quorum from five to a majority of the currently-seated, appointed members.

Date of Adoption: _____

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 22-05-01 adopted by the California Underground Facilities Safe Excavation Board on May 9, 2022: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD UPDATING POLICY G-01 (PARLIAMENTARY PROCEDURE) TO MODIFY QUORUM.

Tony Marino
Executive Officer

Chair

Date: May 9, 2022