



Chair/President – Colette Cosner  
Vice-Chair – Randy Charland  
Secretary/Treasurer – Ann Diamond

June 15, 2023

Chair Amparo Muñoz  
Underground Safety Board  
715 P Street, 20th Floor  
Sacramento, CA 95814

Dear Chair Muñoz:

As you know, the California Regional Common Ground Alliance (CARCGA) actively seeks to promote effective underground damage prevention practices in California. On occasion, CARCGA researches, develops and supports legislation to enhance and improve Government Code Section 4216 so that it is consistent with today's best practices, all of which are designed to eliminate safety risks to life, health and property while also preventing damage to underground infrastructure and vital public services. By utilizing a broad and diverse group of stakeholders, CARCGA's work product is balanced and consensus based.

CARCGA has developed and supports the passage of SB 778 by Senator Rosilicie Ochoa Bogh in the 2023 legislative session. The bill is intended to clarify and enhance portions of Government Code Section 4216 et seq.

While CARCGA's members have had the opportunity to develop and discuss the provisions contained in SB 778, we are concerned that the Underground Safety Board has neither formally nor informally opined on the legislation. We understand state boards and departments are restrained from engaging in the legislature unless they receive specific authorization from the administration. This restrained engagement policy is intended to preserve the administration's policy-making authority.

However, Government Code Section 4216.22 authorizes the board to "prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of this act." Government Code 4216.22 establishes the Underground Safety Board as the steward for Government Code Section 4216. As such, the Board should absolutely engage the legislature on any legislation, including SB 778, that propose to amend SB 778.

CARCGA welcomes the Underground Safety Board's engagement and suggestions on SB 778.

Cordially,

*Colette M. Cosner*

Colette Cosner  
Chair/President



State of California – A Natural Resources Agency

Gavin Newsom, Governor

**OFFICE OF ENERGY INFRASTRUCTURE SAFETY  
UNDERGROUND SAFETY BOARD**715 P Street, 20th Floor | Sacramento, CA 95814  
916.902.6000 | [www.energysafety.ca.gov](http://www.energysafety.ca.gov)**MEMBERS**Amparo Munoz, Chair  
William Johns, Vice Chair  
Ron Bianchini  
Randy Charland  
Marjorie Del Toro  
Marshall Johnson  
Carl Voss**EXECUTIVE OFFICER**

Tony Marino

June 29, 2023

Collette Cosner, Chair/President  
California Regional Common Ground Alliance  
387 Magnolia Ave, Ste 103-539  
Corona, CA 92879**EMAIL ONLY**

Dear Chair/President Cosner,

Thank you for your June 15 letter. The Underground Safety Board (Board) acknowledges and appreciates the commitment that you and the California Regional Common Ground Alliance (CARCGA) have demonstrated in striving to enhance the safety of excavations around buried facilities in the state.

As the Board's legislative committee, Member Del Toro and I will review the legislation proposed in Senate Bill 778 and aim to present our findings to the Board during the meeting scheduled for July 10-11. At that point, the Board will determine its next course of action in its engagement with the Legislature and the Administration regarding the bill.

Upon conducting a preliminary analysis of the bill, we have encountered several provisions that leave us uncertain about CARCGA's intended objectives. We therefore write to request an explanation of the intent of the bill's provisions.

To facilitate our review, please provide a description for each provision of:

1. The intended purpose of the provision,
2. The change CARCGA hopes to achieve with the provision,
3. The impact the proposed change is expected to have on excavators,
4. The impact the proposed change is expected to have on operators, and
5. The impact the proposed change is expected to have on homeowners.

If the bill contains any provisions not originally proposed by CARCGA, please identify them.

We request that you provide your responses no later than **Thursday, July 6** to ensure we have time to review them prior to the July meeting.

Sincerely,

A handwritten signature in cursive script that reads "Amparo Munoz".

AMPARO MUNOZ  
Member, Legislative Committee  
Underground Safety Board



Chair/President – Colette Cosner  
Vice-Chair – Randy Charland  
Secretary/Treasurer – Ann Diamond

July 5, 2023

Chair Amparo Muñoz  
Underground Safety Board  
715 P Street, 20<sup>th</sup> Floor  
Sacramento, CA 95814

EMAIL ONLY

Dear Chair Muñoz:

In response to your letter of June 29, 2023, enclosed is a matrix of the changes and an explanation of the reason for the suggested changes. I have also indicated who benefits from the proposed amendments.

The California Regional Common Ground Alliance (CARCGA), in most of the changes, is attempting to set up better communication between excavators and owners of underground lines as well as setting expectations of what is expected of both.

The only provision that wasn't originally proposed by CARCGA is the change in the Board make-up. This came from discussions about the vacancies the Board has experienced for the past few years.

If you wish to discuss these changes in more depth, please don't hesitate to reach out.

Sincerely,

Ann Diamond  
CARCGA Leg/Reg Committee co-chair

## SB 778 (Ochoa-Bogh)

## Detailed Explanation/Rationale of Each Provision

Benefits – O=Operator; E= Excavator; H= Homeowner; B= Underground Safety Board; C = Regional Notification Centers

#	Statute Reference	O/E/H/B/C	Description	Explanation/Rationale
1	4216(l)	E	Clarifies the legal excavation start date occurs once the excavator has received a response from all known operators.	<p>Authorizes an excavator to begin prior to two working days only if the excavator has received notification from all known operators.</p> <p>Existing law requires an excavator to wait two days even if the operator marked and notified the excavator. There is no reason to arbitrarily wait two days if all the marking is completed. This provision better matches the faster time frames created by newly adopted electronic positive response as provided by AB 1166 (Levine) in 2019. Primarily addresses scenarios where a low number or no underground utilities exist. There's no reason for an excavator to wait two days if:</p> <ol style="list-style-type: none"> <li>1. It has received a response from the known operators; and</li> <li>2. There are no "unknown" underground utilities in the excavation area.</li> </ol>
2	4216(v)	O/E/H	Changes the definition of work day by removing references to time and adds "legal" to the term "excavation start date and time"	<p>When the Dig Safe Act of 2016 was passed adding a time of 5pm it inadvertently made the electronic positive response (EPR) requirement due at 5pm. This time is needed because operators, due to the implementation of EPR, have the added responsibility of electronically notifying their systems that the ticket to mark has been completed.</p> <p>Adds the term "legal" since "legal excavation start date and time" is the term defined in 4216(l), not "excavation start date and time." Excavators would benefit from this change as there would be more on time EPR. In the first 5 months of 2023 the call centers had over 40,000 responses that were late but responded to within 8 hours after the current 5pm "legal start date and time"</p>
3	4216.2(a)	O/E	<p>Eliminates a broad provision indicating an operator can choose not to locate and field mark any underground utilities if the excavation area is not delineated.</p> <p>Adds more direct language indicating that if the delineation doesn't match the ticket description, an operator must contact the excavator by EPR to advise of the discrepancy and the operator may choose to not mark until the area delineated and description match.</p>	<p>This is a safety provision that changes the statute for confusing or unclear delineation markings.</p> <p>The difference between this change and number 9 immediately below here is who is making the request notification request. This provision affects professional excavators and they should always delineate.</p> <p>Excavators are required to use white markings to identify their excavation area. Rather than the statute creating a scenario where no action occurs (the operator simply does not locate and mark the underground infrastructure) for confusing excavation area markings or markings behind a locked gate, SB 778 requires an operator to pro-actively contact the excavator.</p> <p>This provision encourages communication and, therefore, increases safety for those excavating around underground utility lines.</p>
4	4216.2(d)	O/H	Similar to 4216.2(a) immediately above, this language gives the operator the discretion not to mark an area that is not appropriately delineated only for owners of private property working, or have work completed, on their property where an excavation permit is not required.	This section affects private property owners and clarifies that homeowners or contractors they hire must mark their areas of excavation. If they do not, SB 778 states the operator has the discretion to not field mark until the area is delineated.

				This provision applies to homeowners only and utility operators have requested the authority to mark on residential property even if the area of excavation is not delineated.
5	4216.2(g)	O/E/H	Clarifies that an excavator may not begin excavation unless the excavator receives an electronic positive response that are listed on the excavation ticket. SB 778 removes language referencing "delineated boundaries."	This language codifies the addition of electronic positive response into that statute as provided by AB 1166 (Levine) in 2019 and further associates excavation initiation with the area associated with the ticket rather than the delineated boundaries. Referencing the ticket is more appropriate and accurate language that eliminates the potential for any loopholes.
6	4216.2(j)	O/E	This new provision establishes the authority for an excavator to contact the regional notification center for a return trip ticket for situations when the operator sends an electronic positive response indicating "resend ticket requested." Operators have two working days to respond	Paragraph (j) incorporates some of the consequences resulting from the passage of AB 1166 (Levine) in 2019. DigAlert has incorporated a new set of codes for the electronic positive response (EPR) system. Some of the codes trigger "return trip" tickets. You can view the codes by clicking the link. SB 778 establishes the authority for excavators to request a return trip in the event they receive a "resent ticket" request. This provision is intended to increase communication between the excavator and operator
7	4216.2(k)	O/E	New provision to establish discretionary authority for an excavator to request a return trip ticket for the purpose of better determining the location of a subsurface installation. Requires a response within one working day of the request made	Consistent with the principle that better communication makes a safer work environment, this provision establishes authority for an excavator to request an operator to return to an excavation site to better locate an underground utility installation.
8	4216.2(l)	O/E	Establishes a timeframe, two days unless a later time is mutually agreed to, for a statutorily required meet and confer meeting when excavation occurs near a "high priority subsurface installation."	Section 4216.2(c) requires a meeting between the operator and excavator when excavation occurs around a high priority subsurface installation. The subdivision does not include any time frames and could create a loophole for the parties to drag their feet. New subdivision (l) establishes the time frame.  "High priority subsurface installations" include high-pressure natural gas pipelines, petroleum pipelines, high voltage electric lines, and other similarly dangerous infrastructure.
9	4216.3(a)(1)(D)	O/E	Authorizes utility operators the discretion to simply notify an excavator that there lines are not in conflict for pavement grinding only.	Allows utility operators that don't have anything embedded in asphalt or concrete not to mark. As an example, a water district installed their water line at 6 feet deep and if the work is only pavement grinding (which removes the top inches of a street) they can respond as no conflict and not mark. If this language isn't added, one might interpret that the operator would have to mark their lines even though the excavator will never find them in the grinding area.
10	4216.3(c)(1)(A)	O	Removes references to outdated provisions authorizing operators to request time extensions before they comply with electronic positive response requirements.	AB 1166 (Levine) from 2019 granted time extensions to utility operators to transition to electronic positive response systems. EPR gives an excavator a direct response via electronic mail or text message that the operator has completed its locate and mark responsibilities required by GC 4216.  The time extensions offered in AB 1166 expired on January 1, 2021
11	4216.4(a)(2)(A)	O/E	Recasts some provisions authorizing the use of vacuum excavation in the excavation area.  Requires operators to decline vacuum excavation using only EPR.  Places additional requirements on excavators when using vacuum excavation to only use vacuum excavation that is designed, engineered and purpose-built for vacuum excavation purposes.  Establishes a presumption that if an operator fails to reply to a request to use vacuum excavation then it agrees with its use.	Excavators that are working around underground utility installations must expose and identify them before they continue to excavate.  This is commonly done through potholing or when an excavation trench intersects and underground utility. The excavator must safely expose the utility without using heavy equipment such as a <a href="#">backhoe</a> or powered <a href="#">excavator</a> . Doing this by hand tool is back-breaking work so existing law and regulation authorizes the excavator to use Underground Safety Board <a href="#">authorized powered hand tools</a> and vacuum excavation to expose the utility lines (see GC 4216.4 for reference).

				<p>SB 778 adds an additional requirement for vacuum excavation in order to provide its safer use. Some excavators have used vacuum excavation trucks that were not designed for the actual purpose of vacuum excavation. SB 778 establishes minimum requirements to address those concerns.</p> <p>Vacuum excavation uses high pressure water to dig into the ground. The machines are typically very large and placed on a truck chassis. The material and water are immediately removed from the excavation using a high-pressure vacuum. Think of them as super-powered pressure washers designed to liquify dirt into mud and conveniently remove the mud through a giant vacuum.</p> <p>The presumption closes a loophole in the statute where an operator might not ever reply to a request for vacuum excavation use. By establishing a presumption, the statute more tightly defines the process for using vacuum excavation.</p>
12	4216.4(b)	E	Establishes a timeframe of one day for an operator to respond to an excavator's request for more information about a subsurface installation in the tolerance zone that cannot be located	Consistent with the principle that better communication makes a safer work environment, this provision establishes the timeframe for an operator to respond to a request for additional information regarding the exact location of a subsurface installation
13	4216.4(c)(1)	O/E	<p>Recasts the conditions when an excavator must call 911.</p> <p>An excavator must call 911 after discovering or causing excavation-related damage that may endanger life or cause serious bodily harm or damage to property including the escape of any flammable, toxic or corrosive gas or liquid. Also requires the excavator to notify the operator or contact the regional call center to determine the owner of the damaged utility. Requires the excavator to separately notify the Underground Safety Board.</p> <p>Adds the conditions when an excavator does NOT have to call 911 to include minor damage caused or discovered by the excavator that does not immediately endanger life or cause serious bodily injury or damage to property. Does require the excavator to notify the operator and Underground Safety Board.</p>	<p>This section codifies and clarifies regulations passed by the Underground Safety Board regarding damage notification.</p> <p>There's a clear distinction between SB 778 and the regulation, however. The regulation enumerates the conditions when the regional notification call centers should be notified. It also describes how they are to be notified and requires the notification centers to notify the board of the damage.</p> <p>SB 778 clarifies two scenarios – serious ones where people might be injured or dangerous materials are accidentally released and minor ones where no one is injured and only minor damage occurred to the underground installation.</p> <p>By creating the distinction between the two scenarios, SB 778 provides clear and objective conditions for excavators to assess. It also contains a clear description of their responsibilities to notify 911, the regional notification call centers and the Underground Safety Board all based on scenario's conditions.</p>
14	4216.5	O/E/H	<p>Declares that local agencies should not consider assessing a fee to locate and mark utilities.</p> <p>Declares that local agencies should consider including additional permit fees to offset the locate and mark service instead of charging a fee to locate and mark utilities.</p> <p>Especially declares that private property owners and homeowners should not be charged a fee to locate and mark underground utilities.</p>	<p>The locate and mark service is free to excavators. Excavators are defined as anyone planning to dig into the ground.</p> <p>The locate and mark service serves dual purposes. The first is to protect workers excavating around potentially dangerous utilities. The second is to protect an operator's property, namely the underground utility.</p> <p>The statute does allow local agencies to charge a fee for the locate and mark service. However, some assert charging a fee will deter excavators from requesting Call Before You Dig services. SB 778 attempts to dissuade local agencies from charging a fee.</p>

				<p>Previous legislation recast 4216.3 and the reference was never fixed in 4216.5. This particular change in SB 778 has the practical effect of limiting the fee to locate and mark services and not all the other requirements and responsibilities found in 4216.3's entirety.</p>
15	4216.6(g)	C	<p>Changes the responsibility for compiling incident reports from the regional notification call centers to the Underground Safety Board.</p> <p>Requires the CA Regional Common Ground Alliance to provide statewide information to the board by April 15.</p> <p>Requires the board to post the information to its website.</p>	<p>Please note both the Northern and Southern California regional notification call centers are members of the CA Regional Common Ground Alliance (CARCGA). SB 778 originated from CARCGA so CARCGA is willing and able to accept this new responsibility.</p> <p>It seems most appropriate to have the state body, the Underground Safety Board, compile and report incident information and not the call centers which are private non-profit organizations established to facilitate locate and mark requests between excavators and operators.</p>
16	4216.7(e)(1)	O/E	<p>Defines "approximate location" for the purpose of determining an inaccurate field mark for the narrow purpose of assessing utility operator liabilities.</p>	<p>"Approximate location" is used to define "inaccurate field mark."  "Approximate" is a word, by its nature, that lacks specificity. The definition used to define "approximate location" in SB 778 describes the "tolerance zone" of a utility marking which is commonly understood in the construction industry and specifically defined in GC 4216(u).</p>
17	4216.13(b)(2)	B	<p>Removes "building contractor" as a requirement to be a member of the Underground Safety Board. Adds the term "industry" to the phrases "general engineering contractor industry" and "specialty contractor industry."</p>	<p>Few building contractors utilize the 811 Call Before You Dig service. This makes filling that position more difficult. The current statute could be interpreted to require a board member to hold a contractor's license, further restricting the pool of potential candidates. SB 778 expands the requirements for board membership to the industry in order for employees of construction companies to be qualified to serve on the Underground Safety Board. Specialty contractors include earthwork and paving, fencing, landscape, highway improvement and other similar industries better familiar with excavation.</p>