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# California Underground Facilities Safe Excavation Board

December 9-10, 2024

## Agenda Item No. 11 Information Item – Staff Report

*Senate Bill 778 (SB 778) Update*

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### **PRESENTER**

Brittney Branaman, Acting Executive Officer

### **AUTHOR**

Evan Nussbaum, Policy Analyst

### **SUMMARY**

Senate Bill 778 (SB 778), amending sections of CA Gov. Code section 4216 (California's excavation law, also known as the Dig Safe Act), was signed into law by Governor Newsom on September 22, 2024. The amendments to CA Gov. Code sections 4216, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.10, 4216.13, 4216.18, and 4216.19 will be effective January 1, 2025. Underground Safety Board staff prepared an informational bulletin informing excavators and operators of the changes to statute, including those affecting their responsibilities surrounding the one-call process.

### **BACKGROUND**

The Board has a statutory responsibility under Government Code 4216.12<sup>1</sup> to coordinate education and outreach activities that encourage safe excavation practices. In addition, the Board has a mission to improve public and worker safety by facilitating communication and learning among excavators and the operators of subsurface installations in the state.<sup>2</sup>

### **DISCUSSION**

Senate Bill 778 (SB 778), which amends sections of CA Gov. Code section 4216 (California's excavation law, also known as the Dig Safe Act), was introduced in the 2023 legislative session by Senator Ochoa-Bogh. SB 778 passed through both houses of the legislature near the end of the 2024 session and was signed into law by Governor Newsom on September 22, 2024. The

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<sup>1</sup> [Gov. Code § 4216.12\(b\)\(1\)](#)

<sup>2</sup> [Underground Safety Board Policy B-02](#)

amendments to CA Gov. Code sections 4216, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.10, 4216.13, 4216.18, and 4216.19 will be effective January 1, 2025.

Underground Safety Board staff have prepared an informational bulletin informing excavators and operators of the changes to law made by SB 778. This bulletin highlights changes to excavator and operator responsibilities surrounding the 811 process, including during 811-ticket creation, expiration, and response; information requests made to operators when verifying a buried facility's location; emergency services notification and damage reporting requirements; and a few updated definitions to statutory terms.

**RECOMMENDATION**

Staff does not have any recommendation regarding this information item.

*Attachments:*

1. *SB 778 Update: Underground Safety Board Information Bulletin 24-001*

**ATTACHMENT 1:**

**SB 778 UPDATE: UNDERGROUND SAFETY BOARD INFORMATION BULLETIN 24-001**

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# Underground Safety Board

## Information Bulletin 24-001

Issued: December 9, 2024

The Office of Energy Infrastructure Safety (Energy Safety) – Underground Safety Board (Board) provides this Information Bulletin to alert stakeholders of upcoming changes to excavation law.

### BACKGROUND

[Senate Bill \(SB\) 778](#) (Excavations: subsurface installations) was signed into law on September 22, 2024, and made several changes to the Dig Safe Act (Government Code “Gov. Code” sections 4216 – 4216.21). These changes are to Gov. Code sections 4216, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.10, 4216.13, 4216.18, and 4216.19 and will take effect on January 1, 2025.

SB 778’s changes will impact:

#### Excavator duties:

- When creating an 811 ticket,
- Prior to starting excavation,
- When encountering or causing damage to subsurface installations, including in an emergency.

#### Operator duties:

- When responding to an 811 ticket,
- When assisting an excavator seeking additional information for a located marked facility,
- When encountering or causing damage to subsurface installations while acting as an excavator, including in an emergency.

#### Local agencies:

- Statutory guidance for providing locate and mark services to excavators.

#### All stakeholders:

- Revised definitions of Approximate Location, Electronic Positive Response, and Working Day,
- Removal of outdated language,
- Changes to 811 call center reporting obligations,
- Modifications to Board composition,
- Changes to the types of information used to develop safe excavation standards.

## Clarification of Operator Duties: Shift from *Respond* to *Fulfill Obligations*

SB 778 did not alter an operator's existing locate and mark responsibilities under the law. However, the bill removed the terms *respond* and *response* where the law describes an operator's required actions prior to the legal excavation start date and time specified on a ticket. The new language makes it clear that the operator **fulfills its obligations** as outlined in section [4216.3\(a\)\(1\)\(A\)](#)—the provisions of which have not changed.

### **Reference: California Government Code Section 4216.3(a)(1)(A):**

*“Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time:*

*(i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.*

*(ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located.*

*(iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.”*

## Ticket Procedures: Operator Response, Legal Start Time and Ticket Expiration

| Gov. Code Section                   | Summary of Change(s)   | Amended Statute Text*   |
|-------------------------------------|--|---|
| <a href="#"><u>4216.2(b)</u></a>    | The operator's <i>response</i> to a ticket in this subsection is clarified to refer to the duties listed in <a href="#"><u>4216.3(a)(1)(A)</u></a> .   | "Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to fulfill their obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3. However, an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator." |
| <a href="#"><u>4216.2(g)(1)</u></a> | Clarifies that the excavator must wait to begin excavation until all operators that are listed on the ticket have performed their duties listed in <a href="#"><u>4216.3(a)(1)(A)</u></a> . Excavator must still observe any onsite meeting requirement that applies.  | "Unless an emergency exists, an excavator shall not begin excavation until all operators of subsurface installations that are listed on the ticket have fulfilled their obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c)."   |
| <a href="#"><u>4216.2(g)(2)</u></a> | This language is new to the law. Paragraph (1) refers to <a href="#"><u>4216.2(g)(1)</u></a> whose conditions are listed in the previous row of this table.  | "The excavator may begin excavation before the legal excavation start date and time if all conditions in paragraph (1) have been satisfied."  |
| <a href="#"><u>4216.2(i)</u></a>    | An excavator must immediately stop excavation and get a new ticket if their ticket expires. However, subdivision (i) no longer includes waiting a minimum of two days after making the new ticket to restart work. The changes clarify that a new ticket for a job after expiration of an old ticket for the job has the same conditions and starting options as any other new ticket as found in <a href="#"><u>4216.2(g)</u></a> . | "If a ticket obtained by an excavator expires but work is ongoing, the excavator shall immediately cease excavation, contact the regional notification center, and get a new ticket pursuant to subdivision (b), and may not resume excavation until the conditions in subdivision (g) have been satisfied."  |

## Requirements for Vacuum Excavation Device Use on Excavation Tickets

| Gov. Code Section                      | Summary of Change(s)   | Amended Statute Text*   |
|--|--|---|
| <a href="#"><u>4216.4(a)(2)(A)</u></a> | The law still requires an excavator to show their intent to use vacuum excavation on the ticket, but now if an operator disagrees with the use of the vacuum, they must say so through an EPR to the ticket. | “An excavator may use a vacuum excavation device to expose subsurface installations within the tolerance zone if the excavator has informed the regional notification center of their intent to use a vacuum excavation device when obtaining a ticket and the operator has agreed to the use of a vacuum excavation device. An operator not agreeing to the use of a vacuum excavation device shall include that information on their electronic positive response.” |

## Requirement for Operator to Respond to Excavator Requests for Information

| Gov. Code Section                | Summary of Change(s)   | Amended Statute Text*  |
|----------------------------------|--|--|
| <a href="#"><u>4216.4(b)</u></a> | An operator must now provide available, relevant information to the excavator within one working day when: <ul style="list-style-type: none"> <li>• the excavator has attempted to expose a marked facility with hand tools, approved power tools per Board regulation (<a href="#"><u>19 CCR § 4501</u></a>), or vacuum excavation and cannot find it, <u>and</u></li> <li>• the excavator contacts the operator and requests additional information to locate the facility.</li> </ul> | “If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. The operator shall provide relevant existing additional information to the excavator within one working day. If the excavator has questions about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.” |

Damage Protocols: 911, Operator, and 811 Center Notifications

| Gov. Code Section                   | Summary of Change(s)   | Amended Statute Text*  |
|-------------------------------------|--|--|
| <a href="#"><u>4216.4(c)(1)</u></a> | <p>An excavator still must call 911 right away if they discover or cause damage to a gas or hazardous liquid pipeline and flammable, toxic, or corrosive gas or liquid escapes, or if it is a high priority facility. However, under certain conditions, an excavator who is an operator may not be required to call 911.</p>  | <p>“An excavator shall immediately call 911 emergency services upon discovering or causing damage to one of the following:</p> <p>(A) A gas or hazardous liquid pipeline subsurface installation in which the damage results in the escape of any flammable, toxic, or corrosive gas or liquid.</p> <p>(B) A high priority subsurface installation of any kind, except that the excavator does not need to call 911 if all of the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>(i) The excavator is the operator of the high priority subsurface installation.</li> <li>(ii) The damage was discovered by the operator during operations and maintenance activities.</li> <li>(iii) The damage does not meet the circumstances in subparagraph (A).”</li> </ul>  |
| <a href="#"><u>4216.4(c)(2)</u></a> | <p>An excavator still must notify the operator immediately if they discover or cause damage to any subsurface installation. However, an excavator must call 911 before calling the operator if:</p> <ul style="list-style-type: none"> <li>• the damage resulted in the escape of flammable, toxic, or corrosive gas or liquid, <u>or</u></li> <li>• the damage is to a high priority line.</li> </ul> | <p>“An excavator shall immediately notify the operator upon discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection. In the event of damage to a subsurface excavation described in paragraph (1), the excavator must contact the operator immediately after calling 911 emergency services. The excavator [...]”</p>   |
| <a href="#"><u>4216.4(c)(3)</u></a> | <p>An excavator still must notify the 811 center (USA North or DigAlert) within 48 hours if they discover or cause damage to a subsurface installation. However, under certain conditions, an excavator who is an operator may not be required to notify the 811 center.</p>   | <p>“Except as provided in subparagraph (A), an excavator shall notify the regional notification center within 48 hours of discovering or causing damage to any subsurface installation pursuant to paragraph (2).</p> <p>(A) An excavator does not need to notify the regional notification center within 48 hours of discovering or causing the damage. of damage discovered by the excavator if all of the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>(i) The excavator is the operator of the subsurface installation.</li> <li>(ii) The damage was discovered by the operator during operations and maintenance activities.</li> <li>(iii) The damage does not meet the circumstances in subparagraph (A) of paragraph (1).”</li> </ul> <p>(B) Nothing in this section preempts or impedes the board’s authority to impose more restrictive notification windows.”</p> |



## Guidelines for Local Agency Cost Recovery and Fee Considerations

| Gov. Code Section                    | Summary of Change(s)  | Amended Statute Text*   |
|--------------------------------------|---|---|
| <a href="#"><u>4216.5(b)-(d)</u></a> | Subdivisions b, c, and d are new to the law. If local agencies choose to charge a fee to fulfill their obligations under 4216.3(a)(1), they should consider providing the service for free and must consider certain other factors. | (b) “A local agency that chooses to recover its costs via a fee shall consider whether the fee could deter an excavator from contacting the regional notification center.<br>(c) “A local agency shall consider recouping its costs via existing permit fees instead of a separate fee related to responding to a ticket.”<br>(d) “A local agency shall consider not charging a fee to an excavator covered by Section 4216.8 to encourage the excavator to create a ticket as specified in subdivision (d) of Section 4216.2.” |

## Removal of 811 Center Annual Report and Related Definitions

| Gov. Code Section                | Summary of Change(s)  | Amended Statute Text*                    |
|----------------------------------|---|--|
| <a href="#"><u>4216.6(g)</u></a> | 811 centers are no longer required to create an annual report using data from CARCGA’s Virtual Private DIRT and <i>incident events</i> .                              | This section has been deleted by SB 778. |
| <a href="#"><u>4216.6(h)</u></a> | Deletes the reference to 4216.2(g) and the definition of “statewide information.” Section 4216.6(h)(1), the definition of “incident event,” has been moved to 4216.19 | This section has been deleted by SB 778. |

## Definitions of “Approximate Location” and “Inaccurate Field Marks”

| Gov. Code Section                       | Summary of Change(s)  | Amended Statute Text*   |
|---|---|---|
| <a href="#"><u>4216.7(e)(1)-(2)</u></a> | New definition for “approximate location” as it applies to “inaccurate field marks.” Moves unchanged definition of “inaccurate field marks” from 4216.7(e) to 4216.7(e)(2). | “For the purposes of this section:<br>(1) “Approximate location” means a strip of land not more than 24 inches on either side of the exterior surface of the subsurface installation. It does not mean depth.<br>(2) “Inaccurate field mark” means a mark, or set of markings, made pursuant to Section 4216.3 or 4216.10, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.” |

## Revised Requirements for Certain Board Seats

| Gov. Code Section                    | Summary of Change(s)   | Amended Statute Text*  |
|--------------------------------------|--|--|
| <a href="#"><u>4216.13(b)(2)</u></a> | Allows the three member seats on the Board that are for specific types of contract excavators to be filled by someone with <i>knowledge and experience</i> in those specific fields. | “Three members shall have knowledge and experience in contract excavation for employers who are not operators of subsurface installations. Of the three members, one member shall have knowledge and experience in general engineering contracting work and one member shall have knowledge and experience in specialty contracting work. For the purposes of this section, the terms “general engineering contracting” and “specialty” contracting” shall have the meanings given in Article 4 (commencing with Section 7055) of Chapter 9 of Division 3 of the Business and Professions Code.” |
| <a href="#"><u>4216.13(d)</u></a>    | The seat for a member with locating and marking knowledge can now be filled by someone under the direct employment of an operator.   | “The member appointed by the Senate Committee on Rules shall have knowledge and expertise in subsurface installation location and marking.”  |

## Removed Restrictions for Standards Development

| Gov. Code Section              | Summary of Change(s)   | Amended Statute Text*   |
|--------------------------------|--|---|
| <a href="#"><u>4216.18</u></a> | Removes the reference to the 811 Center reports that are no longer required and removes restrictions on the data the Board may use to develop standards. | “The board shall develop a standard or set of standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices. When possible, standards should be informed by publicly available data, including, but not limited to, that collected by state and federal agencies and by the regional notification centers. ...” |

## Updated Use of Incident Events in Board Investigations

| Gov. Code Section                 | Summary of Change(s)   | Amended Statute Text*   |
|-----------------------------------|--|---|
| <a href="#"><u>4216.19(b)</u></a> | The reference to 4216.6(h)(1) has been deleted and the definition of <i>incident event from that section</i> has been moved into this section as part of the text. | “The board may investigate reports of occurrences of excavator downtime, damages, near misses, and complaints of violations from affected parties and members of the public.” |

## Updated Definitions, Outdated Language and Operator Response Changes

| Gov. Code Section  | Summary of Change(s)  | Amended Statute Text*  |
|--|---|--|
| <a href="#"><u>4216(e) Electronic Positive Response</u></a>          | <i>Statutorily required response to ticket</i> changed to “obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3” ( <a href="#"><u>4216.3(a)(1)(A)</u></a> ) | “‘Electronic positive response’ means an electronic response from an operator to the regional notification center providing the status of an operator’s obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3.”   |
| <a href="#"><u>4216(v) Working Day</u></a>                           | Added the word “legal” to “excavation start date and time.”   | “‘Working day’ for the purposes of determining legal excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the internet website of the regional notification center.”  |
| <a href="#"><u>4216.3(c)(1)(A)</u></a>                               | Removed outdated language about mandatory EPR implementation date and possible extension date for certain operators.  | “Every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time.”  |
| <a href="#"><u>4216.3(c)(1)(B)</u></a>                               | Added the words “electronic positive” before “response.”  | “The regional notification center shall make the electronic positive responses required by subparagraph (A) available to the excavator.”   |
| <a href="#"><u>4216.3(d)</u></a>                                     | This section was deleted to remove outdated language telling the Board to adopt emergency regulations before 1/1/2021 for the implementation of mandatory EPR.                                  | This section has been deleted by SB 778.   |
| <a href="#"><u>4216.3(d), (e)</u></a><br><b>(Effective 1/1/2025)</b> | New subsections (d) and (e): text remains the same as current 2024 law, but the section labels have changed. Previously these were subsections (e) and (f), respectively.                       | <p>“(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. The regional notification center shall maintain a record of all notifications received pursuant to this subdivision for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.</p> <p>(e) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.”</p> |

|                               |   |  |
|-------------------------------|---|--|
| <b><u>4216.4(a)(2)(C)</u></b> | Removed language about dates for power-tool use and telling the Board to adopt those regulations.   | “An excavator may use power-operated or boring equipment, as determined by the board, prior to determining the exact location of subsurface installations. The board shall adopt regulations to implement this paragraph.”   |
| <b><u>4216.5(a)</u></b>       | The word <i>which</i> is replaced by “that” in two places; there is new language that clarifies a local agency may charge for 4216.3(a)(1) required activities rather than the entire section 4216.3. | “The requirements of this article apply to state agencies and to local agencies that own or operate subsurface installations, except as otherwise provided in Section 4216.1. A local agency that is required to provide the services described in paragraph (1) of subdivision (a) of Section 4216.3 may charge a fee in an amount sufficient to cover the cost of providing that service.” |
| <b><u>4216.10(b)</u></b>      | <i>Provide a response to the excavator</i> has been changed to “fulfill its obligations.”   | “An operator shall fulfill its obligations pursuant to subdivision (a) of Section 4216.3.”   |
| <b><u>4216.10(d)</u></b>      | <i>Internet Web Site</i> changed to “internet website.”   | “A ticket for an area of continual excavation shall be valid for one year from the date of issuance. The excavator may renew the ticket within two working days either by accessing the regional notification center’s internet website or by calling ‘811.’”  |

\*Amended Statute Text in this document was taken from the California Legislative Information website: [Today's Law As Amended - SB-778 Excavations: subsurface installations](#). Accessed November 20, 2024.

## Resources

Dig Safe Act: [CA Gov. Code Sections 4216 – 4216.21](#).

*Note: This link directs to current law. SB 778 amendments are effective January 1, 2025.*

Underground Safety Board Regulations: [19 CA Code Regs. Sections 4000 – 4501](#)

Contact the Underground Safety Board: [digboard@energysafety.ca.gov](mailto:digboard@energysafety.ca.gov)

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UNDERGROUND SAFETY BOARD  
Office of Energy Infrastructure Safety  
[www.energysafety.ca.gov/who-we-are/undergroundsafetyboard/](http://www.energysafety.ca.gov/who-we-are/undergroundsafetyboard/)

715 P Street, 20th Floor  
Sacramento, CA 95814  
916.902.6000

