California Underground Facilities Safe Excavation Board

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Agenda Item No. 38 Information Item – Staff Report

Fee Regulation

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SUMMARY

The Underground Safety Board's (Board) fee regulation limits operational expenses to a set amount, to be apportioned among members of the regional notification centers (RNCs). Board expenses have increased and the fiscal year 2025-2026 State budget has appropriated more money for the Board. However, the Board's regulatory cap prevents it from raising revenue sufficient to cover the allocated budget. Additionally, a recent termination case highlights another issue with the current regulatory language: when an entity terminates its RNC membership after the Board's annual fee is published, but before the fee goes into effect, the Board is unable to collect that entity's calculated portion of the fee. This leads to planned income levels not being met. Staff recommends the Board direct staff to begin drafting amended regulatory language for a regulations update to address these issues.

STRATEGIC PLAN

2020 Strategic Plan Objective: Build Board Operations to Achieve Compliance, Reporting, and Operational Excellence in a Resource-Efficient Manner.

BACKGROUND

Government Code Section 4216.16(b) authorizes the Board to obtain funding for its operational expenses from a fee charged to members of the RNCs, provided that the fee does not exceed the reasonable cost of enforcement of the DigSafe Act.[1]

Overview of Fee Process

In 2018, the Board established a regulation to apportion its operating expenses among members of the RNCs according to each member's proportion of statewide locate request

[1] Gov. Code Section 4216.16(b)

transmissions (commonly referred to as tickets).[2] The regulatory formula[3] for how the Board apportions its fee amongst the RNC members is:

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

Effective January 1, 2022, the Board amended the fee regulation to streamline the fee process and give advance notice to feepayers of their upcoming bill amounts by publishing the Board's fee spreadsheet in March, for fees that go into effect in the next billing year, which begins July 1.[4] This aligned the Board's fee period with state accounting periods (July 1 – June 30) while allowing sufficient time for calendar year-end ticket tabulation and notification to RNC members of their upcoming fee amounts.[5]

Regulatory Fee Cap

The Board's initial fee regulation, approved in 2018, set the Board's revenue requirement at $7,000,000 beginning in 2019. This amount was considered adequate to allow the Board to pay its operational expenses, repay its startup loan (and associated interest), and build a reasonable reserve.[6]

Part of the 2022 amended regulatory language fixed $7,000,000 as a cap on the total amount of fees that the Board could collect from RNC members.[7] Rather than require the Board to collect $7,000,000 each year, as the first iteration of the fee regulation specified, the amended regulation limited the Board's revenue to $7,000,000.[8]

FeePayers

Additionally, both the fee regulation and the DigSafe Act limit those entities responsible for paying a portion of the Board's operating expenses to only members of the RNCs. Under the fee regulation, the cost of the Board's operational expenses for the upcoming fiscal year is borne only by those members who receive 500 or more tickets in the previous calendar year. .

Discussion

The Fee Regulation Has Become Outdated

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[2] Cal. Code Regs., tit. 19, § 4010 (Eff. 01/01/2019).
[3] 19 CCR 4010
[4] 19 CCR 4010
[5] 2020 Results Report, p. 33
[6] 2020 Results Report, pp. 32-33
[7] 19 CCR 4010
[8] 2020 Results Report, p. 33

In the most recent fiscal year (2025-26), the Legislature appropriated the Board's Safe Energy Infrastructure and Excavation Fund (Fund 3302) at more than the self-imposed regulatory cap of $7,000,000. The higher appropriation reflects the increased Board budget for new staff. While the Board has some funds in its reserve that can cover immediate expenses, the increased budgetary needs makes the Board's current regulatory fee cap unworkable. The fee regulation can be adjusted through a regulations package to amend the fixed $7,000,000 cap and instead anchor the Board's fee amount to an amount up to what the State appropriates the Board in the annual State budget plus the State's upcoming annual pro rata (i.e., Statewide General Expenditures) amount assessed to the Safe Energy Infrastructure and Excavation Fund (Fund 3302).

2025 is the first time since the amended fee regulation went into effect that the Board increased its fee amount above $5,000,000, well below its $7,000,000 cap. Although the Board has historically been appropriated by the State to spend an amount consistent with $5,000,000 in revenue, the 2025-26 fiscal year's State budget added seven permanent staff positions to the Board's operations. These new positions are critical for the Board to continue to effectively manage the review and investigation of an estimated 233-percent increase in volume of damage notifications, enhance its enforcement capabilities, and address concerns raised by the U.S Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).[9]

This increase in spending will necessitate the Board collecting sufficient revenue to cover its increased operations as appropriated by the Legislature and Governor. Therefore, the fixed $7,000,000 cap will need to be adjusted in order for the Board to avoid the structural deficit explained in the 2020 Results Report.[10]

Case Study Highlights Timing Issues in Fee Regulation

Per regulation, the Fee Spreadsheet is published by March 1 of every year and notifies members what their total fee will be for the upcoming fiscal year, beginning July 1.[11] In August 2025, a case came to staff's attention in which an entity had terminated membership in June 2025, and therefore was not a member who could be invoiced and expected to pay the Board's fee for the next year under the Board's fee regulation.[12] However, because the entity was a member in February of 2025, its proportion of statewide tickets was factored into the Board's fee spreadsheet. The entity's reason for terminating membership was sale of assets to a new owner. The invoice can be forwarded to the new owner; however, there is no regulatory requirement that the new owner pay the invoice.

This case highlights a gap in the regulation that the Board may wish to address: in cases such as this one, where an entity terminates membership after the fees for all members are calculated and published for the upcoming billing year (March 1 of each year) and before the

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[9] 2025-26 FY Budget Change Proposal
[10] 2020 Results Report
[11] 19 CCR 4010
[12] 19 CCR 4010

fee goes into effect at the start of the billing year (July 1), the regulation as currently written leaves open the question of who pays the terminated member's portion of the Board's fee.

RECOMMENDATION

Staff recommend that the Board direct staff to begin drafting amended regulatory language that: 1) brings the regulatory cap on the Board's operational expenses into alignment its modern budget needs, 2) addresses issues that arise from cases in which an entity terminates membership after publication of the spreadsheet and before the fee goes into effect, and 3) build Board operations to achieve compliance, reporting, and operational excellence in a resource efficient manner.