

## INITIAL STATEMENT OF REASONS

### PROBLEM STATEMENT

In the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), the Legislature expressed its commitment to safe excavations around subsurface installations through a number of changes to article 2, chapter 3.1, division 5, of title 1 of the Government Code (the “Article”). In 2015, the year before the Act’s enactment, two persons were killed, a dozen others injured, when heavy machinery cut into two underground natural gas pipelines in both Fresno and Bakersfield. These were but two of the more than 5,000 natural gas pipelines struck in 2015.<sup>1</sup> The same year, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Administration (“PHMSA”) published its final rule on state damage prevention programs, in which states would be evaluated for adequate enforcement of their one-call laws starting in 2016. Determinations of inadequacy could lead to loss of federal funding for pipeline safety programs and federal enforcement against state excavators and subsurface installation operators.<sup>2</sup>

A notable feature of the Act was the creation of the California Underground Facilities Safe Excavation Board (the “Board”), whose mission is to coordinate the state’s safe excavation education and outreach activities, develop standards, investigate possible violations, and ensure enforcement of the Article through recommendations to jurisdictional state and local agencies or through direct enforcement action. (Gov. Code, §§ 4216.6, 4216.12.) The Act authorizes the Board to obtain funding for its operational expenses to carry out its mission from fees charged to members of regional notification centers. (Gov. Code, § 4216.16, subd. (b).)

Regional notification centers (Underground Service Alert—Northern California (“USA North”) and the Underground Service Alert—Southern California (“DigAlert”)) are 501(c)(6) not-for-profit public benefit corporations that are responsible for processing notifications of proposed excavation from excavators and transmitting those notifications to subsurface installation operators who may have subsurface installations in the area. Every operator of subsurface installations is required to participate in the regional notification centers—a participation which generally involves providing maps in the form of digital shapefiles which indicate areas in which their subsurface installations exist and where they would like to be notified of a proposed excavation—and every subsurface installation operator, excluding the California Department of Transportation, is required to share in the costs to operate these centers. (Gov. Code, § 4216.1.)

### BENEFITS

The benefit of the proposed regulation will be to ensure that the Board has sufficient funding for its operational expenses to carry out the purposes and intent of the Act and

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<sup>1</sup> California Regional Common Ground Alliance, *2015 CARCGA Facility Event Report*, p. 8.

<sup>2</sup> Letter from Alan K. Mayberry to Attorney General Kamala Harris, December 22, 2015.

to exercise the powers and duties conferred upon the Board by the Act. The specific benefits anticipated from the proposed regulation for sufficient funding include 1) coordination of education and outreach activities that encourage safe excavation practices, 2) development of standards for safe excavation, 3) investigations of possible violations of the Article, and 4) enforcement of the Article.

In accordance with Government Code section 4216.16, subdivision (b), the proposed fee charged to members of the regional notification centers do not exceed the reasonable regulatory cost incident to enforcement of the Article, and the fee is apportioned in a manner consistent with formulas used by the regional notification centers.

## **PURPOSE AND NECESSITY**

### **Specific sections which have been modified:**

**Section 4010, subdivision (a):** To establish and specify the amount of the fees the members of the regional notification centers must pay to support the reasonable operational expenses of the Board.

**Necessity:** Each time a person contacts a regional notification center to notify it of a proposed excavation, a tracking tool, which is referred to as a “ticket,” is created by the regional notification center. The ticket contains location information about the proposed excavation, which is then compared to digital maps provided by subsurface installation operators showing the regions in which those installations are found, and those operators whose installation regions overlap with the area of proposed excavation are then notified by the regional notification center of the proposed excavation. This notification to the operator is referred to as a “locate request transmission.” In California, an average of roughly eight locate request transmissions are made for each ticket.

Government Code section 4216.16, subdivision (b), provides that the Board “shall apportion the fee in the manner consistent with formulas used by the regional notification centers.” Each of the state’s two regional notification centers assesses their operational fee somewhat differently, but both are consistent in that the fees are proportionate to the number of locate request transmissions the regional notification centers provide their members.

DigAlert assesses a fee on its members for each new locate request transmissions provided to the member—a fee which is to be paid monthly. USA North members pay a percentage of the center’s budget in proportion to the locate request transmissions they receive from new, extension, and renewal tickets they receive.<sup>3</sup> DigAlert has a \$10 fixed monthly database fee for its members, and USA North charges a flat annual fee of \$150 that can be applied toward the first 200 locate request transmissions.

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<sup>3</sup> “Extension” tickets are renewals pursuant to Gov. Code § 4216.2(e), and “renewal” tickets are new tickets pursuant to Gov. Code § 4216.2(i).

Assessing a fee based on locate request transmissions requires consideration of two components: a predictable operational expense<sup>4</sup> and an unpredictable total number of locate request transmissions. The main driver of the variability of locate request transmissions is the systemic link between tickets and the economy at large. As the economy booms, construction spending rises and excavators call in tickets. In weak economy, the reverse happens. The economy, however, is not the only factor to influence ticket numbers. As the Board, utilities, and contractor associations become more successful in convincing persons who currently do not contact the regional notification centers to do so, tickets—hence locate request transmissions—should increase.<sup>5</sup> On the other hand, the number of locate request transmissions per ticket in the state dropped from 10.5 in 2000 to 8.3 in 2017 as members tighten the boundaries of the shapefiles they provide to the regional notification centers to reduce the number of spurious locate request transmissions. The centers—USA North in particular—expects further tightening as members adapt to a change in billing practice (members had been billed by the miles of infrastructure they reported to USA North before the current system of billing by number of locate request transmissions). This is a source of significant uncertainty as 50% of the locate request transmissions sent from DigAlert went to 1.1% of its members, and 50% of the locate request transmissions sent from USA North went to only 1.0% of its members, meaning that a change from only one of the large members could cause a significant drop in overall locate request transmissions (and therefore any fees based on their number).

The Legislature, in authorizing the Board's first budget, provided a loan of \$7,406,000 from the California High-Cost Fund-B Administrative Committee Fund to cover the Board's operational expenses for its first two fiscal years, to be repaid with interest calculated at the rate of the Pooled Money Investment Account.<sup>6</sup> The interest rate at the time of transfer (March 6, 2018) was 1.48%.

The Budget Act of 2017 required loan repayment on July 1, 2019. Recognizing that repayment of the loan for two years of operating expenses in addition to collection of operating expenses for the 2019-20 fiscal year would impose a steep fee on regional notification center members to be paid over a short period of time and with little notice, the Department of Finance requested in a Spring Finance Letter for the 2018-19 Budget that the loan be repaid instead on July 1, 2021.<sup>7</sup> This initial statement of reasons anticipates legislative approval of this request. Should the Legislature reject or modify the Spring Finance Letter request, a substantial, sufficiently related change will be made to the proposed regulation with fees modified accordingly and appropriate public notice will be given.

A fee to cover the operating expenses of the Board must cover costs that include loan repayment (principal and interest), reasonable reserve, personnel including salary and

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<sup>4</sup> \$3,563,000 unless modified by the Legislature.

<sup>5</sup> Unfortunately, the number of excavations that happen without notification are unknown, making quantification of what constitutes success thus far elusive.

<sup>6</sup> Item 8660-012-0470 of AB 97 (Budget Act, Chapter 14, Statutes of 2017).

<sup>7</sup> Budget Change Proposal 3540-306-BCP-2018-A1.

benefits, printing, communications, office supplies and equipment, postage, travel, training, facilities (buildings and utilities), and information technology. The loan repayment and reasonable reserve should be collected prior to July 1, 2021. This naturally creates two expected fee amounts—one that is to be applied in the period in which the loan is being repaid, and one that is to be applied afterward to support the Board’s continuing operational expenses.

Considering the unpredictability of the number of locate request transmissions that will be received by regional notification center members in the years covering the Board’s loan repayment, the Board chose to use USA North’s formula as a model. Each regional notification center member will be assessed a fee in proportion to the member’s percentage of the statewide total locate request transmissions in the previous calendar year. The locate request transmissions used in the calculation are those which result from each new ticket, renewal ticket, and remark ticket (as identified in Government Code section 4216.2, subdivision (e), section 4216.2, subdivision (i), and section 4216.3, subdivision (b), respectively). A comparison of the relevant ticket terminology used by the two regional notification centers can be seen in the table below:

<b>Ticket Type Terminology</b>		
<b>USA North</b>	<b>DigAlert</b>	<b>Statute</b>
new	new	"The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation." 4216.2(e)
renewal	new	"If a ticket obtained by an excavator expires but work is ongoing, the excavator shall contact the regional notification center and get a new ticket..." 4216.2(i)
extension	update	"If work continues beyond 28 days, the excavator shall renew the ticket either by accessing the center’s Internet Web site or by calling '811' by the end of the 28th day." 4216.2(e)
remark	remark	"If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a request for remarks that can be for all or a portion of the excavation." 4216.3(b)

The Board, however, did not choose to implement a minimum bill like that assessed by USA North. A large proportion of regional notification center members receive few or no locate request transmissions a year, and adding a minimum fee would be regressive, disproportionately affect the smaller subsurface installation operators, and potentially serve as a disincentive to smaller subsurface installation operators to come forward and join the regional notification centers. In this light, and to minimize transaction costs, the Board chose to exempt a subsurface installation operator from paying a fee if that operator received fewer than 200 locate request transmissions in the previous year. According to data provided by DigAlert and USA North, 783 (or 35.9%) of the 2,181 combined members of the regional notification centers received fewer than 200 locate request transmissions for new, renewal, and remark tickets in 2017. But, their fiscal impact is minimal, constituting 0.43% of the total number of billable locate request transmissions. By exempting members with fewer than 200 locate request transmissions from paying a fee to the Board, the Board expects to eliminate all financial impact to 35% of the smallest regional notification center members while shifting less than half of a percent of the cost to the other members.

**Section 4010, subdivision (b)(1):** To establish and specify payment method instructions to remit the fee to the regional notification centers.

**Necessity:** The regional notification centers will apply the fee on bills sent to their members. Using the existing billing system prevents confusing regional notification center members with sending two payments to two different sources. It allows members to pay using their accustomed payment method and billing cycle.

**Section 4010, subdivision (b)(2):** To establish and specify deadlines for regional notification centers to remit to the Board the members' fees to support the reasonable operational expenses of the Board.

**Necessity:** Payment on at least a semi-annual basis allows the regional notification centers to apply the surcharge on member bills in whatever ways they see fit. This will also limit confusion and minimize process changes for members, as DigAlert and USA North have different billing cycles. Remittance for the prior 6 months of locate request transmissions will be on April 1 and October 1 each year to ensure processing by the beginning of the state's fiscal year on July 1.

**Section 4010, subdivision (c):** To establish late fees and specify that the Board shall seek and obtain late payments directly from members of regional notification centers.

**Necessity:** In the event a member fails to pay the required fee under subdivision (a), the Board will need to assess a late fee to cover costs to seek and obtain the late payment from the member. The 5% late fee is consistent with formulas used by the regional notification centers and based on the Board's operational expenses to seek and obtain late payments from the member. The regional notification centers must inform the Board of late payments, along with the member's billing statement information, so that the Board may seek and obtain the fee, including late fee, from the member.

**Section 4010, subdivision (d):** To specify that the Board may reduce the amount or waive payment of the fee if the Board determines that there is or will be more than sufficient revenue for operational expenses.

**Necessity:** In the event the Board determines that there is or will be more than sufficient revenue for operational expenses, the Board must be able to reduce or waive the required fee under subdivision (a) so that the Board does not generate more revenue than necessary to pay for its operational expenses. The Board must be able to adjust the fees (decrease or waive) in reaction to changes in the economy and operational needs.

**Section 4010, subdivision (e):** To define the term “locate request transmission” used in subdivision (a) for clarity.

**Necessity:** The term “locate request transmission” could be interpreted variously, as DigAlert and USA North create multiple types of tickets—not all of which the centers bill for—and use common terminology to define different concepts. For instance, USA North uses the term “extension” to mean a renewal of a ticket prior to expiration after 28 days. DigAlert does not use the term “extension,” but uses “update” to express the same concept. In order to better tie jobs to tickets—even when those tickets have expired—USA North uses the term “renewal” to describe a new ticket that replaces one that has expired before it was renewed. USA North identifies remark tickets separately, while remarks are absorbed into DigAlert’s definition of an “update” ticket.

Rather than tie the definition of a locate request transmission to the different practices and definitions used by the regional notification centers, the regulation links it to the specific activities described in statute for new and renewed tickets (Government Code section 4216.2, subdivision (e)), and for new tickets obtained to replace expired tickets (Government Code section 4216.2, subdivision (i)), or a ticket requesting a remark, as identified in Government Code section 4216.3, subdivision (b).

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The proposed regulations were developed in consultation with the administrative heads of the state’s two regional notification centers, both in documents listed below and in conversations. The proposed regulations were also developed in consultation with Board members who also work for regional notification center members subject to the fee, and Board staff hosted a webinar, to which all regional notification center members were invited, to discuss and receive feedback on the proposed regulations.

The Board relied on the following sources:

- Budget Change Proposal 3540-306-BCP-2018-A1
- Budget Act AB 97 (Budget Act, Chapter 14, Statutes of 2017)
- *2015 CARCGA Facility Event Report*, California Regional Common Ground Alliance
- Dig Alert Att.1 Ticket History

- Dig Alert Att. 2 Member Tickets
- Dig Alert Att. 3 Monthly Ticket Trends
- Dig Alert Att. 4 Ticket Types by Year
- Dig Alert Att. 5 Sample Invoice
- Dig Alert Att. 6 Underground Service Alert of Southern California Articles of Incorporation, Bylaws, Operating Procedures (Incorporated May 21, 1984; Revised February 2018)
- Dig Alert Response-Letter to the Board from the Underground Service Alert of Southern California (dated January 4, 2018), including attachments.
- Maryland Underground Facilities Damage Prevention Authority, *Seventh Report to the Governor and General Assembly of Maryland*, January, 2018
- *Operating Reserve Policy Toolkit for Nonprofit Organizations*, First Edition, September 15, 2010
- PHMSA Letter from Alan K. Mayberry to Attorney General Kamala Harris, December 22, 2015.
- PHMSA Letter from Alan K. Mayberry to Attorney General Kamala Harris, December 28, 2016.
- USAN Underground Service Alert South (dated December 29, 2017) email
- USAN Underground Service Alert North (dated January 10, 2018) email
- USAN Att. 1 Ticket Volume 2017
- USAN Att. 2 Member Billing
- USAN Att. 3 Tickets by Type 2017

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulation was made after analysis of the cost requirements for those entities affected.

Any cost incurred by an operator, defined under Government Code section 4216 as any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation, would be based on the number of locate request transmissions the operator may receive from a regional notification center for excavation activity as an operator and member of a regional notification center. As costs are based on a percentage of the statewide total of the operator's annual locate request transmissions, the expected costs are tied directly to the Board's operational expenses. To account for the Board's operational expenses, its loan repayment (and the interest on that loan), and to build a reasonable reserve, the Board expects the total statewide impact for the 2019, 2020, and 2021 calendar years to be about \$7,000,000 per year, dropping to \$3,800,000 in 2022.

Costs to local governments are not mandated by the state as defined under Government Code section 17514. Any cost incurred by a local government would be based on the number of locate request transmissions the local government may receive from a regional notification center for excavation activity as an operator and member of a regional notification center. As costs are based on a percentage of the statewide total of the operator's annual locate request transmissions, expected costs to local

governments are proportional to the locate request transmissions local governments receive. Based on locate request transmissions local governments received from regional notification centers in year 2017, the estimated statewide cost may be less than \$1,842,000 (before 2022) and less than \$996,000 (2022 and after).

Any cost incurred by a state agency would be based on the number of locate request transmissions the state agency may receive from a regional notification center for excavation activity as an operator and member of a regional notification center. As costs are based on a percentage of the statewide total of the operator's annual locate request transmissions, expected costs to state agencies are proportional to the locate request transmissions local governments receive. Nevertheless, based on locate request transmissions state agencies, including the Regents of the University of California, received from regional notification centers in year 2017, the estimated statewide cost may be less than \$13,000 (before 2022) and less than \$7,000 (2022 and after).

The burden of fees is heavily weighted toward a small number of large utility services, as 50% of the locate request transmissions are provided to 1% of the members of USA North and DigAlert.

The median member of USA North, a representative subsurface installation operator, had 395 billable locate request transmissions in 2017 out of a total of 12,224,964 statewide. The economic impact of the fee from January 1, 2019 to June 30, 2021 would be  $(395/12,224,964) \times \$7,000,000 = \$226.18$  per year until 2022 and  $(395/12,224,964) \times \$3,800,000 = \$122.78$  thereafter. The median member of DigAlert had 678 billable locate request transmissions, making their annual fee \$388.22 until 2022 and \$210.75 thereafter.

The proposed regulation does not by itself affect a savings of federal funding to the state, but it is a necessary condition for not losing up to 4% funding to the PHMSA state base grant (currently provided to the California Public Utilities Commission and the Office of the State Fire Marshal), which can occur if a state's damage prevention program has been determined by PHMSA to have been inadequate for five years.<sup>8</sup> As the Board is integral in the state receiving a determination of adequacy, the regulation is a necessary condition to sustaining the current level of federal funds.

The Board concludes that it is:

- (1) unlikely that the proposed regulation will create or eliminate any jobs within the State;  
Stakeholder representatives were consulted during development of the regulation. It is unlikely that the proposed regulations will have an impact on the creation or elimination of jobs on the businesses of operators that are members

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<sup>8</sup> Section 198.53, Title 49, Code of Federal Regulations.



of regional notification centers as the proposed regulations do not fundamentally change the way they do business.

- (2) unlikely that the proposed regulation will create new businesses or eliminate any existing businesses within the State;

The proposed regulations serve to generate revenue for the Board through minimal fees charged to operators that are members of regional notification centers, and thus, it is unlikely that the proposed regulations will impact the business environment by creating new businesses or eliminating existing businesses.

- (3) unlikely that the proposed regulation will affect the expansion of businesses currently doing business in the state;

The Board has determined that this regulatory proposal will unlikely limit or discourage the expansion of existing businesses within the state.

- (4) The benefit to the public is the protection of life and property. Through fees charged to regional notification center members, the Board will be able to obtain sufficient funds for the Board's operational costs to implement the Dig Safe Act of 2016 to prevent unsafe excavation practices near subsurface installations.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

Although the proposed action will directly affect businesses statewide, including small businesses, the Board concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

The requirement that members of the regional notification centers pay a fee to the Board will affect businesses, including small businesses, because the members are businesses that own, operate, or maintain a subsurface installation and will incur the expense of paying a small fee to the Board. However, the Board has determined that the fee would be minimal and insignificant given that the cost is borne primarily by large utility services. Therefore, the proposed regulation will not have a significant statewide adverse economic impact directly on members of the regional notification centers. See discussion above.

## **CONSIDERATION OF REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

*Funding Source* Alternative 1 (selected alternative): Assess a fee on members of the regional notification centers pursuant to Government Code section 4216.16, subdivision (b).

Analysis: Members of the regional notification centers were specifically identified by the Legislature as a potential source of funds to pay for the Board's reasonable operating expenses. Other possible sources, however, are currently not appropriate or feasible.

*Funding Source Alternative 2:* Supplement a fee assessed on regional notification center members with a federal grant pursuant to Government Code section 4216.16, subdivision (a).

Analysis: Several sources of funding are available from the federal Department of Transportation for natural gas and hazardous liquid (including petroleum product) pipeline safety. The largest source of funding authorized pursuant to Chapter 601 of Title 49 of the United States Code, authorizing state pipeline safety partner agencies to have up to 80% of their pipeline safety program expenses to be reimbursed by the federal government. As the Board's activities may qualify for reimbursement due to its connection to the Office of the State Fire Marshal (the state's pipeline safety partner for hazardous liquids), the Board's 2018 Plan identifies pursuit of this funding source as a strategic activity.

However, this potential funding source has its limitations. It only covers audit and investigation activities, and only for natural gas and hazardous liquid pipelines. Education and outreach activities would likely not be covered, and administrative, regulation and standard development, and other Board costs would be excluded. Investigations of water, communications, electric, sewer, and other accidents would not be eligible. The final percentage of eligible costs reimbursed varies as well, often between 60% and 80%.

The federal grant is also not a timely supplemental funding source. The earliest the Board could apply for funding would be September 2018 for 2019 operations, reimbursable in 2020. Given the uncertainty in funding and the time between now and when it could be collected, this federal source is not a feasible alternative.

Two other federal grants may also be available for the Board, but they are small and better suited to funding specific initiatives than operating costs. The state Damage Prevention Grant (\$100,000 maximum) is available to improve the overall quality and effectiveness of the state's program and is available to a state program (including the Board, the California Public Utilities Commission, and the Office of the State Fire Marshal) or to a regional notification centers—the applicant determined by the Governor.<sup>9</sup> The state One-Call Grant (\$45,000 maximum) is available to assist in improving the quality of the state's one-call notification system.<sup>10</sup> Both of these grants have a year between application and award and, as they have performance reporting requirements, they are better suited to discreet, measurable projects than for absorption into general operational expenses.

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<sup>9</sup> Section 60134, Chapter 601, Title 49, United States Code.

<sup>10</sup> Section 6107, Chapter 61, Title 49, United States Code.

*Funding Source Alternative 3: Assess a fee on excavators who contact the regional notification centers pursuant to Government Code section 4216.2, subdivision (b).*

Analysis: One potential source of funds is the excavators who contact the regional notification center, as they are both a beneficiary of center services and subject to Board investigation of potential violations of the Article. The regional notification centers, however, have long held a policy of making the service free to excavators to encourage participation by excavators. The Legislature, in the Act, reinforced this policy by prohibiting both the Board and regional notification centers from charging a fee to excavators for location services. A fee assessed on excavators for contacting the regional notification centers is contrary to clear statutory direction.

*Funding Source Alternative 4: Assess a fee on persons for obtaining a contractor's license.*

Analysis: Assessing a charge on a contractor's license fee could be a source of Board revenue, as the fee wouldn't serve as a deterrent for incremental use of the regional notification centers, and thus might not run afoul of the statutory prohibition against charging for obtaining a ticket. Not all persons with a contractor's license, however, are excavators. A charge for the reasonable regulatory costs incident to performing investigations, inspections, and audits and the administrative enforcement and adjudication of violations of the Article imposed upon a person who does not excavate could be interpreted to be unlawful pursuant to Section 3 of Article XIII A of the California Constitution.

*Funding Source Alternative 5: Charge a filing fee for complaints of violations of the Article.*

Analysis: Any person may complain to the Board of a possible violation of the Article,<sup>11</sup> and so a filing fee for complaints could serve as a source of revenue for the Board. The Maryland Underground Facilities Damage Prevention Authority, for instance, requires a filing fee of \$200.00 for each complaint. Such a filing fee, however, may serve as a disincentive for the public to bring complaints before the Board, a deterrent effect that would disproportionately affect smaller persons and corporate entities—small contractors, for instance—but more importantly a filing fee could impede reporting of unsafe behavior to the Board, which is contrary to the Legislature's purpose in creating the Board in the Act.

This deterrent effect may contribute to Maryland's Damage Prevention Authority receiving only 87 complaints in the 2016 calendar year,<sup>12</sup> the most it had ever received. Even without the policy concern of potential deterrence, this alternative may be dismissed on a fiscal basis. Were Maryland's 87 complaints scaled up based on the population ratio between our two states and multiplied by the \$200 filing fee, the

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<sup>11</sup> Gov. Code 4216.19 (b).

<sup>12</sup> Maryland Underground Facilities Damage Prevention Authority, *Seventh Report to the Governor and General Assembly of Maryland*, January, 2018, p. 4.

revenue would only add to \$113,522, dropping the effective long-run fee per locate request transmission minimally. Given the potential deterrent effect, the uncertainty in the number of complaints, and the small drop in regional notification center member fees from a complainant filing fee, it is not a feasible source of Board operating expenses.

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*Billing Methodology Alternative 1* (selected alternative): Assess a fee on regional notification center members in proportion to the percentage of the statewide total of locate request transmissions they received in the previous calendar year, exempting those members who received fewer than 200 locate request transmissions.

Analysis: This mechanism ensures the Board will receive sufficient funds to cover its operating expenses regardless of whether the statewide number of locate request transmissions increases or decreases. It buffers the Board against being paid too little in the case of economic downturn and protects regional notification center members from overpaying during economic boom—a time at which those members are placing increased resources into their locate and mark responsibilities.

*Billing Methodology Alternative 2*: Assess a fee on regional notification center members on each individual locate request transmission.

Analysis: Assessing a set fee on each locate request transmission would be simple to understand, but make prediction of payment amounts difficult for both the Board and the regional notification center members as such payments would depend on an uncertain number of future locate request transmissions. This uncertainty has a negative financial impact to regional notification center members. In light of the Board’s need to repay its startup loan by July 1, 2021, the Board would have to assess a risk premium on its fee to account for the foreseeable risks of a reduction of locate request transmissions due to a slowdown in economic growth or other factors. In analyzing historical ticket variability, the Board would have proposed to add a risk premium of more than 20% under this billing methodology until the July 1, 2021 repayment of the Board’s loan. After loan repayment, the risk premium would be considerably smaller.

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*Payment Mechanism Alternative 1* (selected alternative): Payment made by a member of a regional notification center as a surcharge on the member’s existing invoice from the regional notification center.

Analysis: Using the existing billing system prevents confusing regional notification center members with sending two payments to two different sources. It allows members to pay using the method for which they have become accustomed. It will also prevent members from having to pay for the operation of two billing departments, as members ultimately for payment processing. This option is the least prescriptive, as the regional

notification centers would have flexibility in determining the best way to invoice members.

*Payment Mechanism Alternative 2:* Invoice directly from the Board to regional notification center members, and payment made directly to the Board.

Analysis: Duplicating the billing system means that a member would need to make two payments, in the form of check or electronic funds transfer—one to the regional notification center and another to the Board—on potentially different schedules. The Board does not currently have the ability to accept credit cards, limiting the payment options for regional notification center members. Duplicating the billing would require the Board to apply additional resources to it, taking resources away from fulfilling its core mission and providing less value to a public that includes the regional notification center members.

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*Definition of “locate request transmission” Alternative 1 (selected alternative):* Define as all new tickets and renewal tickets described in Government Code section 4216.2, subdivision (e), including a new ticket obtained to replace an expired ticket, as described in Government Code section 4216.2, subdivision (i), and tickets for remarking service, as described in Government Code section 4216.3, subdivision (b).

Analysis: This definition has a stable statutory basis. It also allows regional notification centers to have other types of tickets that are not billable but provide value. For instance, excavators can call in a damage ticket to notify all operators in the excavation area that one of their subsurface installations has been damaged. Billing for such a ticket could serve as a disincentive for subsurface installation operators to promote damage tickets as a communication tool.

*Definition of “locate request transmission” Alternative 2:* Define as all new tickets described in Government Code section 4216.2, subdivision (e), including a new ticket obtained to replace an expired ticket, as described in Government Code section 4216.2, subdivision (i), but excluding renewal tickets described in Government Code section 4216.2, subdivision (e).

Analysis: This definition is narrower than Alternative 1 and would involve roughly 35% fewer tickets. However, the narrower base of tickets creates more opportunity for feepayers to change behavior, increasing the chance that the fee will create a distortion by inducing feepayers to promote one type of ticket or another. Also, a narrower base is also more susceptible to shifts in industry practice as time progresses.

## **REASONABLE ALTERNATIVES – SMALL BUSINESS**

The proposed regulations have no substantial effect to small business. The Board has identified no alternative that would lessen adverse impact, if any, on small business and still allow the Board to effectively enforce the regulations.

## **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The Board has not found any unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as this proposed rulemaking action. To the contrary, federal statute and regulations support the functions that this regulation funds the Board to undertake. Section 60134 of Title 49 of the United States Code states nine elements that are found in effective state damage prevention programs, including enforcement of the state's damage prevention law. PHMSA conducts evaluations (pursuant to Section 60114 of Title 49 of the United States Code and Subpart D of Part 198 of Title 49 of the Code of Federal Regulations) to determine the adequacy of state damage prevention programs. On December 28, 2016, PHMSA Associate Administrator Alan Mayberry conveyed in a letter to Attorney General Kamala Harris PHMSA's determination that the state had an inadequate damage prevention program for lack of the function that the Legislature created the Board to provide.