

**ASSEMBLY BILL**

**No. 811**

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**Introduced by Assembly Member Lowenthal**  
(Principal coauthor: Senator Hill)

February 21, 2013

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An act to add Section 7058.3 to the Business and Professions Code, and to amend Sections 4216 and 4216.6 of the Government Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

AB 811, as introduced, Lowenthal. Excavations: regional notification center system: contractor certification.

Existing law generally requires any person planning to conduct an excavation to contact a regional notification center prior to excavation, and, if practical, to delineate the areas to be excavated. Existing law authorizes the Attorney General, a district attorney, or the state or a local agency that issued a permit to excavate to bring an action for the enforcement of a civil penalty against an operator or excavator who negligently or knowingly and willfully violates the requirements of these and related provisions.

This bill would provide that these requirements may also be enforced by the Contractors' State License Board or by an action for civil damages brought in a court of competent jurisdiction by the person or entity that has sustained damages due to a violation of these requirements. The bill would provide that an operator or excavator that violates any of these requirements may be required to attend an education program, in addition to, or instead of, any other applicable penalty or enforcement mechanism. The bill would authorize specified entities, which have responsibility for the safety of operator facilities,

to require operators and excavators to attend an education program. The bill would require the regional notification centers to post on their Internet Web sites statewide information provided by operators and excavators regarding violations of these requirements and damages resulting from those violations.

The Contractors’ State License Law provides for licensing and regulation of contractors by the Contractors’ State License Board. Existing law requires contractors to obtain special certifications in order to perform asbestos-related work or to engage in hazardous substance removal or remedial action, as specified.

This bill would prohibit a contractor from engaging in any excavation activity, as defined, unless the qualifier for the license had passed an approved excavation certification examination. The bill would require the board to develop a written examination, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Public health and safety are benefitted by safe excavation
- 4 practices that protect underground operator infrastructure.
- 5 (b) The law provides various rules and requirements in order
- 6 to ensure that excavations that may impact underground operator
- 7 infrastructure be done in the safest and most efficient manner
- 8 possible.
- 9 (c) Violations of excavation rules and requirements may range
- 10 from minor violations with no damage to violations that result in
- 11 serious damage, including major property damage, service outages,
- 12 and serious bodily injury or death.
- 13 (d) Violators may range from homeowners or small contractors
- 14 to major contractors, operators, and municipalities.
- 15 (e) Construction, maintenance, and repair of public
- 16 infrastructure, private and public buildings, and residences are an
- 17 important part of the economy and the well being of Californians.
- 18 (f) Enforcement of excavation rules and requirements should
- 19 achieve the public safety goal of safe excavation practices, while
- 20 not unduly burdening the operators and excavators involved in the
- 21 construction, maintenance, and repair of public infrastructure,

1 private and public buildings, and residences with unnecessary costs  
2 and time delays.

3 (g) The enforcement options contained in Section 4 of this act  
4 are intended to achieve both goals by providing the flexibility  
5 needed to apply the enforcement method that will best achieve  
6 safe excavation practices in a given case, and in the most  
7 cost-efficient and timely manner possible.

8 SEC. 2. Section 7058.3 is added to the Business and Professions  
9 Code, to read:

10 7058.3. (a) A contractor shall not engage in any excavation  
11 activity, as defined in subdivision (c) of Section 4216 of the  
12 Government Code, unless the qualifier for the license passes an  
13 approved excavation certification examination.

14 (b) The Contractors' State License Board shall develop a written  
15 examination for the certification of contractors engaged in  
16 excavation activities, in consultation with the Division of  
17 Occupational Safety and Health in the Department of Industrial  
18 Relations, the Northern and Southern California One Call Centers,  
19 and the California Common Ground Alliance.

20 (c) A contractor or an employee of the contractor shall not  
21 excavate unless the contractor or the employee doing the excavation  
22 has passed the excavation certification examination.

23 (d) A contractor who is not certified may bid on, or contract  
24 for, the excavation if the work is performed by a contractor who  
25 is certified pursuant to this section.

26 SEC. 3. Section 4216 of the Government Code is amended to  
27 read:

28 4216. As used in this article the following definitions apply:

29 (a) "Approximate location of subsurface installations" means  
30 a strip of land not more than 24 inches on either side of the exterior  
31 surface of the subsurface installation. "Approximate location" does  
32 not mean depth.

33 (b) "*Education program*" means a training program in  
34 accordance with the requirements of Section 1509 of Title 8 of the  
35 California Code of Regulations, that meets the minimum training  
36 guidelines and practices of the current Common Ground Alliance  
37 Best Practices.

38 ~~(b)~~

39 (c) "Excavation" means ~~any~~ an operation in which earth, rock,  
40 or other material in the ground is moved, removed, or otherwise

1 displaced by means of tools, equipment, or explosives in any of  
 2 the following ways: grading, trenching, digging, ditching, drilling,  
 3 augering, tunneling, scraping, cable or pipe plowing and driving,  
 4 or any other way.

5 ~~(e)~~

6 (d) Except as provided in Section 4216.8, “excavator” means  
 7 any person, firm, contractor or subcontractor, owner, operator,  
 8 utility, association, corporation, partnership, business trust, public  
 9 agency, or other entity that, with ~~their~~ *its*, or his or her, own  
 10 employees or equipment performs any excavation.

11 ~~(d)~~

12 (e) “Emergency” means a sudden, unexpected occurrence,  
 13 involving a clear and imminent danger, demanding immediate  
 14 action to prevent or mitigate loss of, or damage to, life, health,  
 15 property, or essential public services. “Unexpected occurrence”  
 16 includes, but is not limited to, fires, floods, earthquakes or other  
 17 soil or geologic movements, riots, accidents, damage to a  
 18 subsurface installation requiring immediate repair, or sabotage.

19 ~~(e)~~

20 (f) “High priority subsurface installation” means high-pressure  
 21 natural gas pipelines with normal operating pressures greater than  
 22 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
 23 pipelines, high-voltage electric supply lines, conductors, or cables  
 24 that have a potential to ground of greater than or equal to 60kv, or  
 25 hazardous materials pipelines that are potentially hazardous to  
 26 workers or the public if damaged.

27 ~~(f)~~

28 (g) “Inquiry identification number” means the number that is  
 29 provided by a regional notification center to every person who  
 30 contacts the center pursuant to Section 4216.2. The inquiry  
 31 identification number shall remain valid for not more than 28  
 32 calendar days from the date of issuance, and after that date shall  
 33 require regional notification center revalidation.

34 ~~(g)~~

35 (h) “Local agency” means a city, county, city and county, school  
 36 district, or special district.

37 ~~(h)~~

38 (i) “Operator” means any person, corporation, partnership,  
 39 business trust, public agency, or other entity that owns, operates,  
 40 or maintains a subsurface installation. For purposes of Section

1 4216.1, an “operator” does not include an owner of real property  
2 where subsurface facilities are exclusively located if they are used  
3 exclusively to furnish services on that property and the subsurface  
4 facilities are under the operation and control of that owner.

5 (i)

6 (j) “Qualified person” means a person who completes a training  
7 program in accordance with the requirements of ~~Title 8, California~~  
8 ~~Code of Regulations, Section 1509, Section 1509 of Title 8 of the~~  
9 *California Code of Regulations, Injury and Illness Prevention*  
10 *Program*, that meets the minimum training guidelines and practices  
11 of Common Ground Alliance current Best Practices.

12 (j)

13 (k) “Regional notification center” means a nonprofit association  
14 or other organization of operators of subsurface installations that  
15 provides advance warning of excavations or other work close to  
16 existing subsurface installations, for the purpose of protecting  
17 those installations from damage, removal, relocation, or repair.

18 (k)

19 (l) “State agency” means every state agency, department,  
20 division, bureau, board, or commission.

21 (l)

22 (m) “Subsurface installation” means any underground pipeline,  
23 conduit, duct, wire, or other structure, except nonpressurized  
24 sewerlines, nonpressurized storm drains, or other nonpressurized  
25 drain lines.

26 SEC. 4. Section 4216.6 of the Government Code is amended  
27 to read:

28 4216.6. (a) (1) Any operator or excavator ~~who that~~ negligently  
29 violates *a requirement of* this article is subject to a civil penalty  
30 in an amount not to exceed ten thousand dollars (\$10,000).

31 (2) Any operator or excavator ~~who that~~ knowingly and willfully  
32 violates ~~any of the provisions~~ *a requirement of* this article is subject  
33 to a civil penalty in an amount not to exceed fifty thousand dollars  
34 (\$50,000).

35 (3) Except as otherwise ~~specifically~~ provided in this article, this  
36 section ~~is not intended to~~ *does not* affect any civil remedies  
37 otherwise provided by law for personal injury or for property  
38 damage, including any damage to subsurface installations, ~~nor is~~  
39 *does* this section ~~intended to~~ create any new civil remedies for  
40 those injuries or that damage.

1 (4) This article ~~shall~~ *does not be construed to* limit any other  
2 ~~provision of law~~ granting governmental immunity to state or local  
3 agencies or to impose any liability or duty of care not otherwise  
4 imposed by law upon ~~any~~ a state or local agency.

5 (b) An action may be brought by the Attorney General, the  
6 district attorney, or the local or state agency ~~which~~ *that* issued the  
7 permit to excavate, for the enforcement of the civil penalty pursuant  
8 to this section. If penalties are collected as a result of a civil suit  
9 brought by a state or local agency for collection of those civil  
10 penalties, the penalties imposed shall be paid to the general fund  
11 of the agency. If more than one agency is involved in enforcement,  
12 the penalties imposed shall be apportioned among them by the  
13 court in a manner that will fairly offset the relative costs incurred  
14 by the ~~state or local agencies, or both,~~ *agencies* in collecting these  
15 fees.

16 (c) *The requirements of this article may also be enforced by*  
17 *either of the following:*

18 (1) *The Contractors' State License Board as provided in Section*  
19 *7058.3 of the Business and Professions Code.*

20 (2) *An action for civil damages brought in a court of competent*  
21 *jurisdiction by the person or entity that has sustained damages*  
22 *due to a violation of the requirements of this article.*

23 (d) *In addition to, or instead of, any other penalty or*  
24 *enforcement mechanism provided by this article, an operator or*  
25 *excavator that violates any requirement of this article may be*  
26 *required to attend an education program. The following entities,*  
27 *which have responsibility for the safety of operator facilities, may*  
28 *require operators and excavators to attend an education program:*

29 (1) *The Contractors' State License Board.*

30 (2) *The Public Utilities Commission.*

31 (3) *The State Fire Marshal.*

32 (4) *The Division of Occupational Safety and Health in the*  
33 *Department of Industrial Relations.*

34 (5) *A court of competent jurisdiction.*

35 (e) *Statewide information provided by operators and excavators*  
36 *regarding violations of the requirements of this article and*  
37 *damages resulting from those violations shall be posted on the*  
38 *Internet Web site of the regional notification centers.*

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