

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 811

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

February 21, 2013

An act to add Section 7058.3 to the Business and Professions Code, and to amend Sections ~~4216~~ 4216, 4216.2, and 4216.6 of the Government Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

AB 811, as amended, 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~~ *participates in* an approved excavation ~~certification examination~~. ~~The bill would require the board to develop a written examination, as specified.~~ *training program. The bill would prohibit an employee of a contractor from excavating unless at least one of specified conditions is met. The bill would permit a contractor who has not participated in an excavation training program to bid on, or contract for, the excavation if the work is performed by a contractor who has participated in an excavation training program. The bill would require the employer of persons performing excavations to maintain records demonstrating that those persons have complied with the specified training requirements and to produce these records upon the request of a state or local agency investigating damage to a subsurface installation involving the employer or his or her employees.*

This bill would create an exception to these requirements by permitting a person to perform an excavation service when immediately necessary to protect life and public property from imminent danger, or to restore, repair, or maintain public utilities, or to prevent utility services from being destroyed, damaged, or interrupted by a natural disaster, serious accident, or other case of emergency.

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:

1 (a) Public health and safety are benefitted by safe excavation
2 practices that protect underground operator infrastructure.

3 (b) The law provides various rules and requirements in order
4 to ensure that excavations that may impact underground operator
5 infrastructure be done in the safest and most efficient manner
6 possible.

7 (c) Violations of excavation rules and requirements may range
8 from minor violations with no damage to violations that result in
9 serious damage, including major property damage, service outages,
10 and serious bodily injury or death.

11 (d) Violators may range from homeowners or small contractors
12 to major contractors, operators, and municipalities.

13 (e) Construction, maintenance, and repair of public
14 infrastructure, private and public buildings, and residences are an
15 important part of the economy and the well being of Californians.

16 (f) Enforcement of excavation rules and requirements should
17 achieve the public safety goal of safe excavation practices, while
18 not unduly burdening the operators and excavators involved in the
19 construction, maintenance, and repair of public infrastructure,
20 private and public buildings, and residences with unnecessary costs
21 and time delays.

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

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

29 7058.3. (a) A contractor shall not engage in any excavation
30 activity, as defined in subdivision (c) of Section 4216 of the
31 Government Code, unless the qualifier for the license ~~passes~~
32 *participates in* an approved excavation ~~certification examination~~
33 *training program*.

34 ~~(b) The Contractors' State License Board shall develop a written~~
35 ~~examination for the certification of contractors engaged in~~
36 ~~excavation activities, in consultation with the Division of~~
37 ~~Occupational Safety and Health in the Department of Industrial~~
38 ~~Relations, the Northern and Southern California One Call Centers,~~
39 ~~and the California Common Ground Alliance.~~

40 ~~(c) A contractor or an~~

1 (b) An employee of ~~the~~ a contractor shall not excavate unless
 2 ~~the contractor or at least one of the employee doing the excavation~~
 3 ~~has passed the excavation certification examination.~~ following
 4 conditions has been met:

5 (1) The employee is an apprentice or contracting party or has
 6 graduated from a registered apprenticeship program, approved
 7 by the California Apprenticeship Council or a federal Office of
 8 Apprenticeship program, or a state apprenticeship program
 9 authorized by the federal Office of Apprenticeship.

10 (2) The employee has successfully completed an excavation
 11 training program.

12 (3) The employee is engaging in hand-digging, as defined in
 13 subdivision (f) of Section 4216 of the Government Code, and there
 14 is a competent person, as defined in subdivision (a) of Section
 15 1504 of Title 8 of the California Code of Regulations, onsite who
 16 has successfully completed an excavation training program.

17 ~~(d)~~

18 (c) A contractor who ~~is not certified~~ has not participated in an
 19 excavation training program may bid on, or contract for, the
 20 excavation if the work is performed by a contractor who ~~is certified~~
 21 has participated in an excavation training program pursuant to
 22 this section.

23 (d) The employer of persons performing excavations shall
 24 maintain records demonstrating that those persons have complied
 25 with the training requirements in this section. The employer shall
 26 produce these records upon the request of a state or local agency
 27 in that agency’s investigation of damage to a subsurface
 28 installation involving the employer or his or her employees.

29 SEC. 3. Section 4216 of the Government Code is amended to
 30 read:

31 4216. As used in this article the following definitions apply:

32 (a) “Approximate location of subsurface installations” means
 33 a strip of land not more than 24 inches on either side of the exterior
 34 surface of the subsurface installation. “Approximate location” does
 35 not mean depth.

36 (b) “Education program” means a training program in
 37 accordance with the requirements of Section 1509 of Title 8 of the
 38 California Code of Regulations, that meets the minimum training
 39 guidelines and practices of the current Common Ground Alliance
 40 Best Practices.

1 (c) “Excavation” means an operation in which earth, rock, or
2 other material in the ground is moved, removed, or otherwise
3 displaced by means of tools, equipment, or explosives in any of
4 the following ways: grading, trenching, digging, ditching, drilling,
5 augering, tunneling, scraping, cable or pipe plowing and driving,
6 or any other way.

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

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 (f) *“Hand digging” means an operation using nonmechanized,
20 nonpower-driven, nonair-driven, and nonwater-driven equipment
21 in the movement of earth, rock, or other material in the ground.*

22 ~~(f)~~

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

30 ~~(g)~~

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

37 ~~(h)~~

38 (i) “Local agency” means a city, county, city and county, school
39 district, or special district.

40 ~~(i)~~

1 (j) “Operator” means any person, corporation, partnership,
2 business trust, public agency, or other entity that owns, operates,
3 or maintains a subsurface installation. For purposes of Section
4 4216.1, an “operator” does not include an owner of real property
5 where subsurface facilities are exclusively located if they are used
6 exclusively to furnish services on that property and the subsurface
7 facilities are under the operation and control of that owner.

8 ~~(j)~~

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

14 ~~(k)~~

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

20 ~~(l)~~

21 (m) “State agency” means every state agency, department,
22 division, bureau, board, or commission.

23 ~~(m)~~

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

28 *SEC. 4. Section 4216.2 of the Government Code is amended*
29 *to read:*

30 4216.2. (a) (1) Except in an emergency, any person planning
31 to conduct any excavation shall contact the appropriate regional
32 notification center, at least two working days, but not more than
33 14 calendar days, prior to commencing that excavation, if the
34 excavation will be conducted in an area that is known, or
35 reasonably should be known, to contain subsurface installations
36 other than the underground facilities owned or operated by the
37 excavator and, if practical, the excavator shall delineate with white
38 paint or other suitable markings the area to be excavated.

39 (2) When the excavation is proposed within 10 feet of a high
40 priority subsurface installation, the operator of the high priority

1 subsurface installation shall notify the excavator of the existence
2 of the high priority subsurface installation prior to the legal
3 excavation start date and time, as such date and time are authorized
4 pursuant to paragraph (1) ~~of subdivision (a) of Section 4216.2.~~
5 The excavator and operator or its representative shall conduct an
6 onsite meeting at a mutually-agreed-on time to determine actions
7 or activities required to verify the location of the high priority
8 subsurface installations prior to start time.

9 (b) Except in an emergency, every excavator covered by Section
10 4216.8 planning to conduct an excavation on private property may
11 contact the appropriate regional notification center if the private
12 property is known, or reasonably should be known, to contain a
13 subsurface installation other than the underground facility owned
14 or operated by the excavator and, if practical, the excavator shall
15 delineate with white paint or other suitable markings the area to
16 be excavated.

17 (c) The regional notification center shall provide an inquiry
18 identification number to the person who contacts the center
19 pursuant to this section and shall notify any member, if known,
20 who has a subsurface installation in the area of the proposed
21 excavation. An inquiry identification number may be validated for
22 more than 28 days when mutually agreed between the excavator
23 and any member operator so notified that has a subsurface
24 installation in the area of the proposed excavation; and, it may be
25 revalidated by notification to the regional notification center by
26 the excavator prior to the time of its expiration.

27 (d) A record of all notifications by excavators and operators to
28 the regional notification center shall be maintained for a period of
29 not less than three years. The record shall be available for
30 inspection by the excavator and any member, or their
31 representative, during normal working hours and according to
32 guidelines for inspection as may be established by the regional
33 notification centers.

34 *(e) Notwithstanding Section 7058.3 of the Business and*
35 *Professions Code, a person may perform an excavation when*
36 *immediately necessary to protect life and public property from*
37 *imminent danger, or to restore, repair, or maintain public utilities,*
38 *or to prevent utility services from being destroyed, damaged, or*
39 *interrupted by a natural disaster, serious accident, or other case*
40 *of emergency.*

1 (e)

2 (f) As used in this section, the delineation is practical when any
3 of the following conditions exist:

4 (1) When delineating a prospective excavation site with white
5 paint could not be misleading to those persons using affected streets
6 and highways.

7 (2) When the delineation could not be misinterpreted as a traffic
8 or pedestrian control.

9 (3) Where an excavator can determine the exact location of an
10 excavation prior to the time an area has been field marked pursuant
11 to Section 4216.3.

12 (4) Where delineation could not be construed as duplicative.

13 (f)

14 (g) Where an excavator makes a determination that it is not
15 practical to delineate the area to be excavated, the excavator shall
16 contact the regional notification center to advise the operators that
17 the excavator shall identify the area to be excavated in another
18 manner sufficient to enable the operator to determine the area of
19 the excavation to be field marked pursuant to Section 4216.3.

20 ~~SEC. 4.~~

21 *SEC. 5.* Section 4216.6 of the Government Code is amended
22 to read:

23 4216.6. (a) (1) Any operator or excavator that negligently
24 violates a requirement of this article is subject to a civil penalty in
25 an amount not to exceed ten thousand dollars (\$10,000).

26 (2) Any operator or excavator that knowingly and willfully
27 violates a requirement of this article is subject to a civil penalty in
28 an amount not to exceed fifty thousand dollars (\$50,000).

29 (3) Except as otherwise provided in this article, this section does
30 not affect any civil remedies otherwise provided by law for
31 personal injury or for property damage, including any damage to
32 subsurface installations, nor does this section create any new civil
33 remedies for those injuries or that damage.

34 (4) This article does not limit any other law granting
35 governmental immunity to state or local agencies or to impose any
36 liability or duty of care not otherwise imposed by law upon a state
37 or local agency.

38 (b) An action may be brought by the Attorney General, the
39 district attorney, or the local or state agency that issued the permit
40 to excavate, for the enforcement of the civil penalty pursuant to

1 this section. If penalties are collected as a result of a civil suit
2 brought by a state or local agency for collection of those civil
3 penalties, the penalties imposed shall be paid to the general fund
4 of the agency. If more than one agency is involved in enforcement,
5 the penalties imposed shall be apportioned among them by the
6 court in a manner that will fairly offset the relative costs incurred
7 by the agencies in collecting these fees.

8 (c) The requirements of this article may also be enforced by
9 either of the following:

10 ~~(1) The Contractors' State License Board as provided in Section~~
11 ~~7058.3 of the Business and Professions Code.~~

12 ~~(2) An~~ *an* action for civil damages brought in a court of
13 competent jurisdiction by the person or entity that has sustained
14 damages due to a violation of the requirements of this article.

15 (d) In addition to, ~~or instead of,~~ any other penalty or enforcement
16 mechanism provided by this article, an operator or excavator that
17 violates any requirement of this article may be required to attend
18 an education program. The following entities, ~~which~~ *that* have
19 responsibility for the safety of operator facilities, may require
20 operators and excavators to attend an education program:

21 (1) The Contractors' State License Board.

22 (2) The Public Utilities Commission.

23 (3) The State Fire Marshal.

24 (4) The Division of Occupational Safety and Health in the
25 Department of Industrial Relations.

26 (5) A court of competent jurisdiction.

27 (e) Statewide information provided by operators and excavators
28 regarding violations of the requirements of this article and damages
29 resulting from those violations shall be posted on the Internet Web
30 site of the regional notification centers.