

AMENDED IN ASSEMBLY APRIL 9, 2013

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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, 4216.2, and 4216.6 *Section 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 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 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 participates in an approved excavation 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-no*. State-mandated local program: no.

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

- 1 *SECTION 1. Section 4216.6 of the Government Code is*
- 2 *amended to read:*

1 4216.6. (a) (1) Any operator or excavator who negligently  
2 violates this article is subject to a civil penalty in an amount not  
3 to exceed ten thousand dollars (\$10,000).

4 (2) Any operator or excavator who knowingly and willfully  
5 violates any of the provisions of this article is subject to a civil  
6 penalty in an amount not to exceed fifty thousand dollars (\$50,000).

7 (3) Except as otherwise specifically provided in this article, this  
8 section is not intended to affect any civil remedies otherwise  
9 provided by law for personal injury or for property damage,  
10 including any damage to subsurface installations, nor is this section  
11 intended to create any new civil remedies for those injuries or that  
12 damage.

13 (4) This article shall not be construed to limit any other provision  
14 of law granting governmental immunity to state or local agencies  
15 or to impose any liability or duty of care not otherwise imposed  
16 by law upon any state or local agency.

17 (b) An action may be brought by the Attorney General, the  
18 district attorney, or the local or state agency which issued the  
19 permit to excavate, for the enforcement of the civil penalty pursuant  
20 to this section. If penalties are collected as a result of a civil suit  
21 brought by a state or local agency for collection of those civil  
22 penalties, the penalties imposed shall be paid to the general fund  
23 of the agency. If more than one agency is involved in enforcement,  
24 the penalties imposed shall be apportioned among them by the  
25 court in a manner that will fairly offset the relative costs incurred  
26 by the state or local agencies, or both, in collecting these fees.

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

31 ~~SECTION 1. The Legislature finds and declares all of the~~  
32 ~~following:~~

33 ~~(a) Public health and safety are benefitted by safe excavation~~  
34 ~~practices that protect underground operator infrastructure.~~

35 ~~(b) The law provides various rules and requirements in order~~  
36 ~~to ensure that excavations that may impact underground operator~~  
37 ~~infrastructure be done in the safest and most efficient manner~~  
38 ~~possible.~~

39 ~~(c) Violations of excavation rules and requirements may range~~  
40 ~~from minor violations with no damage to violations that result in~~

1 serious damage, including major property damage, service outages,  
2 and serious bodily injury or death.

3 ~~(d) Violators may range from homeowners or small contractors  
4 to major contractors, operators, and municipalities.~~

5 ~~(e) Construction, maintenance, and repair of public  
6 infrastructure, private and public buildings, and residences are an  
7 important part of the economy and the well being of Californians.~~

8 ~~(f) Enforcement of excavation rules and requirements should  
9 achieve the public safety goal of safe excavation practices, while  
10 not unduly burdening the operators and excavators involved in the  
11 construction, maintenance, and repair of public infrastructure,  
12 private and public buildings, and residences with unnecessary costs  
13 and time delays.~~

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

19 ~~SEC. 2. Section 7058.3 is added to the Business and Professions  
20 Code, to read:~~

21 ~~7058.3. (a) A contractor shall not engage in any excavation,  
22 as defined in subdivision (c) of Section 4216 of the Government  
23 Code, unless the qualifier for the license participates in an approved  
24 excavation training program.~~

25 ~~(b) An employee of a contractor shall not excavate unless at  
26 least one of the following conditions has been met:~~

27 ~~(1) The employee is an apprentice or contracting party or has  
28 graduated from a registered apprenticeship program, approved by  
29 the California Apprenticeship Council or a federal Office of  
30 Apprenticeship program, or a state apprenticeship program  
31 authorized by the federal Office of Apprenticeship.~~

32 ~~(2) The employee has successfully completed an excavation  
33 training program.~~

34 ~~(3) The employee is engaging in hand-digging, as defined in  
35 subdivision (f) of Section 4216 of the Government Code, and there  
36 is a competent person, as defined in subdivision (a) of Section  
37 1504 of Title 8 of the California Code of Regulations, onsite who  
38 has successfully completed an excavation training program.~~

39 ~~(e) A contractor who has not participated in an excavation  
40 training program may bid on, or contract for, the excavation if the~~

1 work is performed by a contractor who has participated in an  
2 excavation training program pursuant to this section.

3 (d) The employer of persons performing excavations shall  
4 maintain records demonstrating that those persons have complied  
5 with the training requirements in this section. The employer shall  
6 produce these records upon the request of a state or local agency  
7 in that agency's investigation of damage to a subsurface installation  
8 involving the employer or his or her employees.

9 SEC. 3. Section 4216 of the Government Code is amended to  
10 read:

11 4216. As used in this article the following definitions apply:

12 (a) "Approximate location of subsurface installations" means  
13 a strip of land not more than 24 inches on either side of the exterior  
14 surface of the subsurface installation. "Approximate location" does  
15 not mean depth.

16 (b) "Education program" means a training program in  
17 accordance with the requirements of Section 1509 of Title 8 of the  
18 California Code of Regulations, that meets the minimum training  
19 guidelines and practices of the current Common Ground Alliance  
20 Best Practices.

21 (c) "Excavation" means an operation in which earth, rock, or  
22 other material in the ground is moved, removed, or otherwise  
23 displaced by means of tools, equipment, or explosives in any of  
24 the following ways: grading, trenching, digging, ditching, drilling,  
25 augering, tunneling, scraping, cable or pipe plowing and driving,  
26 or any other way.

27 (d) Except as provided in Section 4216.8, "excavator" means  
28 any person, firm, contractor or subcontractor, owner, operator,  
29 utility, association, corporation, partnership, business trust, public  
30 agency, or other entity that, with its, or his or her, own employees  
31 or equipment performs any excavation.

32 (e) "Emergency" means a sudden, unexpected occurrence,  
33 involving a clear and imminent danger, demanding immediate  
34 action to prevent or mitigate loss of, or damage to, life, health,  
35 property, or essential public services. "Unexpected occurrence"  
36 includes, but is not limited to, fires, floods, earthquakes or other  
37 soil or geologic movements, riots, accidents, damage to a  
38 subsurface installation requiring immediate repair, or sabotage.

- 1 (f) “Hand digging” means an operation using nonmechanized,  
 2 nonpower-driven, nonair-driven, and nonwater-driven equipment  
 3 in the movement of earth, rock, or other material in the ground.
- 4 (g) “High priority subsurface installation” means high-pressure  
 5 natural gas pipelines with normal operating pressures greater than  
 6 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
 7 pipelines, high-voltage electric supply lines, conductors, or cables  
 8 that have a potential to ground of greater than or equal to 60kv, or  
 9 hazardous materials pipelines that are potentially hazardous to  
 10 workers or the public if damaged.
- 11 (h) “Inquiry identification number” means the number that is  
 12 provided by a regional notification center to every person who  
 13 contacts the center pursuant to Section 4216.2. The inquiry  
 14 identification number shall remain valid for not more than 28  
 15 calendar days from the date of issuance, and after that date shall  
 16 require regional notification center revalidation.
- 17 (i) “Local agency” means a city, county, city and county, school  
 18 district, or special district.
- 19 (j) “Operator” means any person, corporation, partnership,  
 20 business trust, public agency, or other entity that owns, operates,  
 21 or maintains a subsurface installation. For purposes of Section  
 22 4216.1, an “operator” does not include an owner of real property  
 23 where subsurface facilities are exclusively located if they are used  
 24 exclusively to furnish services on that property and the subsurface  
 25 facilities are under the operation and control of that owner.
- 26 (k) “Qualified person” means a person who completes a training  
 27 program in accordance with the requirements of Section 1509 of  
 28 Title 8 of the California Code of Regulations, Injury and Illness  
 29 Prevention Program, that meets the minimum training guidelines  
 30 and practices of Common Ground Alliance current Best Practices.
- 31 (l) “Regional notification center” means a nonprofit association  
 32 or other organization of operators of subsurface installations that  
 33 provides advance warning of excavations or other work close to  
 34 existing subsurface installations, for the purpose of protecting  
 35 those installations from damage, removal, relocation, or repair.
- 36 (m) “State agency” means every state agency, department,  
 37 division, bureau, board, or commission.
- 38 (n) “Subsurface installation” means any underground pipeline,  
 39 conduit, duct, wire, or other structure, except nonpressurized

1 sewerlines, nonpressurized storm drains, or other nonpressurized  
2 drain lines.

3 ~~SEC. 4. Section 4216.2 of the Government Code is amended~~  
4 ~~to read:~~

5 ~~4216.2. (a) (1) Except in an emergency, any person planning~~  
6 ~~to conduct any excavation shall contact the appropriate regional~~  
7 ~~notification center, at least two working days, but not more than~~  
8 ~~14 calendar days, prior to commencing that excavation, if the~~  
9 ~~excavation will be conducted in an area that is known, or~~  
10 ~~reasonably should be known, to contain subsurface installations~~  
11 ~~other than the underground facilities owned or operated by the~~  
12 ~~excavator and, if practical, the excavator shall delineate with white~~  
13 ~~paint or other suitable markings the area to be excavated.~~

14 ~~(2) When the excavation is proposed within 10 feet of a high~~  
15 ~~priority subsurface installation, the operator of the high priority~~  
16 ~~subsurface installation shall notify the excavator of the existence~~  
17 ~~of the high priority subsurface installation prior to the legal~~  
18 ~~excavation start date and time, as such date and time are authorized~~  
19 ~~pursuant to paragraph (1). The excavator and operator or its~~  
20 ~~representative shall conduct an onsite meeting at a~~  
21 ~~mutually-agreed-on time to determine actions or activities required~~  
22 ~~to verify the location of the high priority subsurface installations~~  
23 ~~prior to start time.~~

24 ~~(b) Except in an emergency, every excavator covered by Section~~  
25 ~~4216.8 planning to conduct an excavation on private property may~~  
26 ~~contact the appropriate regional notification center if the private~~  
27 ~~property is known, or reasonably should be known, to contain a~~  
28 ~~subsurface installation other than the underground facility owned~~  
29 ~~or operated by the excavator and, if practical, the excavator shall~~  
30 ~~delineate with white paint or other suitable markings the area to~~  
31 ~~be excavated.~~

32 ~~(c) The regional notification center shall provide an inquiry~~  
33 ~~identification number to the person who contacts the center~~  
34 ~~pursuant to this section and shall notify any member, if known,~~  
35 ~~who has a subsurface installation in the area of the proposed~~  
36 ~~excavation. An inquiry identification number may be validated for~~  
37 ~~more than 28 days when mutually agreed between the excavator~~  
38 ~~and any member operator so notified that has a subsurface~~  
39 ~~installation in the area of the proposed excavation; and, it may be~~

1 revalidated by notification to the regional notification center by  
2 the excavator prior to the time of its expiration.

3 (d) ~~A record of all notifications by excavators and operators to  
4 the regional notification center shall be maintained for a period of  
5 not less than three years. The record shall be available for  
6 inspection by the excavator and any member, or their  
7 representative, during normal working hours and according to  
8 guidelines for inspection as may be established by the regional  
9 notification centers.~~

10 (e) ~~Notwithstanding Section 7058.3 of the Business and  
11 Professions Code, a person may perform an excavation when  
12 immediately necessary to protect life and public property from  
13 imminent danger, or to restore, repair, or maintain public utilities,  
14 or to prevent utility services from being destroyed, damaged, or  
15 interrupted by a natural disaster, serious accident, or other case of  
16 emergency.~~

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

19 (1) ~~When delineating a prospective excavation site with white  
20 paint could not be misleading to those persons using affected streets  
21 and highways.~~

22 (2) ~~When the delineation could not be misinterpreted as a traffic  
23 or pedestrian control.~~

24 (3) ~~Where an excavator can determine the exact location of an  
25 excavation prior to the time an area has been field marked pursuant  
26 to Section 4216.3.~~

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

28 (g) ~~Where an excavator makes a determination that it is not  
29 practical to delineate the area to be excavated, the excavator shall  
30 contact the regional notification center to advise the operators that  
31 the excavator shall identify the area to be excavated in another  
32 manner sufficient to enable the operator to determine the area of  
33 the excavation to be field marked pursuant to Section 4216.3.~~

34 SEC. 5. ~~Section 4216.6 of the Government Code is amended  
35 to read:~~

36 ~~4216.6. (a) (1) Any operator or excavator that negligently  
37 violates a requirement of this article is subject to a civil penalty in  
38 an amount not to exceed ten thousand dollars (\$10,000).~~



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

4 ~~(3) Except as otherwise provided in this article, this section does~~  
5 ~~not affect any civil remedies otherwise provided by law for~~  
6 ~~personal injury or for property damage, including any damage to~~  
7 ~~subsurface installations, nor does this section create any new civil~~  
8 ~~remedies for those injuries or that damage.~~

9 ~~(4) This article does not limit any other law granting~~  
10 ~~governmental immunity to state or local agencies or to impose any~~  
11 ~~liability or duty of care not otherwise imposed by law upon a state~~  
12 ~~or local agency.~~

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

23 ~~(e) The requirements of this article may also be enforced by an~~  
24 ~~action for civil damages brought in a court of competent~~  
25 ~~jurisdiction by the person or entity that has sustained damages due~~  
26 ~~to a violation of the requirements of this article.~~

27 ~~(d) In addition to any other penalty or enforcement mechanism~~  
28 ~~provided by this article, an operator or excavator that violates any~~  
29 ~~requirement of this article may be required to attend an education~~  
30 ~~program. The following entities, that have responsibility for the~~  
31 ~~safety of operator facilities, may require operators and excavators~~  
32 ~~to attend an education program:~~

33 ~~(1) The Contractors' State License Board.~~

34 ~~(2) The Public Utilities Commission.~~

35 ~~(3) The State Fire Marshal.~~

36 ~~(4) The Division of Occupational Safety and Health in the~~  
37 ~~Department of Industrial Relations.~~

38 ~~(5) A court of competent jurisdiction.~~

39 ~~(e) Statewide information provided by operators and excavators~~  
40 ~~regarding violations of the requirements of this article and damages~~

- 1 ~~resulting from those violations shall be posted on the Internet Web~~
- 2 ~~site of the regional notification centers.~~

O