

**Introduced by Senator Hill**January 14, 2015

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An act to add Section 7110.7 to the Business and Professions Code, and to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4616.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections 4216.10, 4216.11, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, and 4216.21 to, the Government Code, relating to excavations.

## LEGISLATIVE COUNSEL'S DIGEST

SB 119, as introduced, Hill. Protection of subsurface installations.

Existing law vests the Contractors' State License Board with all functions and duties relating to the administration of The Contractors' State License Law. Existing law authorizes the issuance of licenses to applicants for contractors' licenses by written examination under rules and regulations adopted by the board.

This bill would require the board to adopt a program to enforce violations of provisions relating to excavation. The bill would authorize the board to require a contractor to undergo training, levy a fine, and suspend a contractor's license for a violation.

Existing law requires every operator of a subsurface installation, except the Department of Transportation, to become a member of, participate in, and share in the costs of, a regional notification center. Existing law requires any person who plans to conduct any excavation to contact the appropriate regional notification center before commencing that excavation, as specified. Existing law defines a subsurface installation as any underground any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, storm drains, or other drain lines. Existing law requires an operator

of a subsurface installation, who receives notification of proposed excavation work, within 2 working days of that notification, excluding weekends and holidays, to mark the approximate location and number of subsurface installations that may be affected by the excavation or to advise that no subsurface installations operated by him or her would be affected. Existing law requires an operator of a subsurface installation that has failed to comply with these provisions to be liable to the excavator for damages, costs, and expenses.

This bill would declare the need to clarify and revise these provisions. The bill would define and redefine various terms relating to a regional notification center. The bill would instead define a subsurface installation as an underground or submerged duct, pipeline, or structure. This bill would also delete the exception for the Department of Transportation.

The bill would require an excavator planning to conduct an excavation to delineate the area to be excavated before notifying the appropriate regional notification center of the planned excavation, as provided. The bill would require an operator to maintain and preserve all plans and records for any subsurface installation owned by that operator as that information becomes known, as specified.

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also require, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which the court or arbitrator finds that the excavator complied with those provisions, the excavator to be awarded reasonable attorneys' fees and expenses.

The bill would delete the existing exemptions pertaining to an owner of real property and would instead exempt an owner of residential real property who only uses nonmechanized hand tools for excavation work not requiring a permit on his or her residential real property that has no easement or right of way.

Existing law authorizes the Occupational Safety and Health Standards Board to adopt and to publish occupational safety and health standards.

This bill would require the board, on or before January 1, 2017, to revise these provisions to clarify best practices to be used by excavators when excavating near subsurface installations. The bill would also

require the board to convene an advisory committee hearing to seek input from operators, regional notification centers, labor, and excavators on best practices to be used for excavating in urban areas, the appropriate frequency of potholing, and other best practices developed by various industry associations.

This bill would create the California Underground Facilities Safe Excavation Authority. The bill would require the authority to enforce laws relating to the protection of underground infrastructure by hearing complaints and assessing civil penalties for violations of these provisions.

The bill would also authorize the Public Utilities Commission and the Office of the State Fire Marshal to enforce the requirement to locate and field mark subsurface installations and lines against operators of natural gas and electric underground infrastructure and hazardous liquid pipelines, unless these operators are municipal utilities.

The authority would be composed of 9 members who would serve 2-year terms. The bill would authorize the authority to use compliance audits and investigations in enforcing these provisions and furthering its purposes. The bill would require the authority, on or before January 1, 2017, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would make other conforming changes.

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 the following:
- 2 (a) Discussions that have taken place since Article 2
- 3 (commencing with Section 4216) of Chapter 3.1 of Division 5 of
- 4 Title 1 of the Government Code was added by Chapter 928 of the
- 5 Statutes of 1989 have led to widespread agreement that many of
- 6 the provisions of the article should be clarified.
- 7 (b) Regional notification centers, or “one-call” centers, have
- 8 developed means of electronic communication that improve the
- 9 efficiency of the “one-call” process, and statutory barriers to using
- 10 new methods of notification should be eliminated.
- 11 (c) The delineation by an excavator of the area to be excavated
- 12 in advance of the field location and marking by subsurface facility
- 13 operators of their facilities aids the excavator in understanding

1 where underground facilities were marked, and thus improves  
2 safety. This practice was recommended by the National  
3 Transportation Safety Board in its 1997 study “Protecting Public  
4 Safety through Excavation Damage Prevention” and is a best  
5 practice of the Common Ground Alliance.

6 (d) Continuing an excavation after an excavation “ticket” has  
7 expired does not promote safety, and excavators should apply for  
8 a new ticket before the expiration of an old one. Continuing  
9 excavation when markings are no longer visible does not promote  
10 safety, and excavators should stop work until the lines are  
11 remarked.

12 (e) The benefits of eliminating old field marks once an  
13 excavation project is complete are more than just aesthetic;  
14 eliminating old field marks helps prevent confusion for the next  
15 excavator to dig in that area.

16 (f) Increased communication between subsurface installation  
17 operators and excavators before breaking ground has safety  
18 benefits.

19 (g) Abandoned lines that are not marked can be mistaken for  
20 active lines that are marked, and thus present a safety risk to  
21 excavators and the public. Safety will be improved if subsurface  
22 facility operators identify these lines when their existence is known.

23 (h) The ability of an operator of subsurface facilities to locate  
24 and mark affected facilities can be seriously impaired by a lack of  
25 high-quality records of those facilities, and thus operators should  
26 keep records of their facilities for as long as they are in the ground,  
27 whether or not they are in use.

28 (i) Failure by an operator of subsurface facilities to mark the  
29 facilities within the required 48 hour period is a serious breach of  
30 duty.

31 (j) Mismarks by an operator place excavators and the public at  
32 great safety risk, and so operators who mismark their facilities are  
33 entitled to no award for any damages to those facilities.

34 (k) Facilities that are embedded in pavement require more  
35 extensive communication to prevent them from being damaged.  
36 Excavators should not be liable for damage to traffic loops.

37 (l) Exemptions that allow a class of persons to excavate without  
38 calling 811 shall be made not based on convenience, but rather  
39 permitted only if alternatives procedures allow the excavation to  
40 take place without compromising safety.

1 (m) The exemption that permits the Department of  
2 Transportation not to submit its maps to the regional notification  
3 center and not to mark its underground facilities within 48 hours  
4 does not have a basis in safety.

5 (n) The exemption that permits operators of nonpressurized  
6 sewer lines and nonpressurized storm drains not to submit their  
7 maps to the regional notification center and not to mark their  
8 underground facilities within 48 hours does not have a basis in  
9 safety, as gas or electric lines could be installed through those lines  
10 and drains and thus create a safety hazard to those who clean those  
11 sewers and drains and the public.

12 (o) The exemption that permits private property owners to dig  
13 on their property without calling a regional notification center to  
14 have the area marked for underground facilities does not have a  
15 basis in safety.

16 (p) The exemption that permits homeowners to conduct  
17 excavation on their property with heavy machinery or when there  
18 is a utility easement on his or her property does not have a basis  
19 in safety.

20 (q) Behaviors that are suspected to be unsafe, but upon which  
21 there is not widespread agreement as to the level of risk and,  
22 therefore, are unregulated, must be monitored to better assess the  
23 risk.

24 (r) Clarification is needed for excavators to understand best  
25 excavation practices, and this could be accomplished through  
26 clarification of the regulations on excavation by the Occupational  
27 Safety and Health Standards Board.

28 (s) Other states have experienced a dramatic improvement in  
29 safety after implementing centralized administrative enforcement  
30 of one-call laws.

31 (t) California should have a board, composed of excavation  
32 stakeholders, subject to oversight by the Legislature and the  
33 Department of Finance, to enforce the state's safe excavation laws  
34 through field audits, incident investigations, and administrative  
35 hearings, and to promote safe excavation practices. Due to the size  
36 of the state, and in order to reduce costs, the board should meet in  
37 northern and southern California.

38 (u) The board should not be funded through the General Fund,  
39 but should be funded by the community that will most directly  
40 benefit from the enforcement of the state's safe excavation laws,

1 including the participants in the state’s regional notification centers,  
2 and the board should also be funded by the fines it levies, instead  
3 of having those fines go to the General Fund.

4 (v) After a hearing before the board pursuant to the  
5 Administrative Procedures Act, a person found to be in violation  
6 of the state’s safe excavation laws could meet a variety of sanctions  
7 including a fine not exceeding a specified amount and the  
8 requirement to undergo relevant education.

9 (w) To preserve due process, the superior court should be  
10 available to an aggrieved party as a forum in which to challenge  
11 a board decision.

12 (x) Most persons who would be subject to the board’s oversight  
13 are also subject to the oversight of other enforcement agencies,  
14 and those agencies should also take steps to reduce the safety risks  
15 posed by violations of the state’s safe excavation laws.

16 SEC. 2. Section 7110.7 is added to the Business and Professions  
17 Code, to read:

18 7110.7. (a) The Contractors’, State License Board shall adopt  
19 a program to enforce violations of paragraph (1) of subdivision  
20 (a) of Section 4216.2 of the Government Code.

21 (b) The Contractors’ State License Board shall require  
22 contractors to undergo training relating to compliance with  
23 paragraph (1) of subdivision (a) of Section 4216.2 of the  
24 Government Code, as determined by the board, for an initial  
25 violation.

26 (c) If the contractor does not attend training within two months  
27 of being notified of the requirement to do so, or fails to provide a  
28 reasonable explanation for his or her delay in scheduling that  
29 training in writing, the board shall, in addition, levy a fine.

30 (d) A subsequent violation within one calendar year of the first  
31 violation, failure to attend training, or failure to pay fines ultimately  
32 may result in suspension of the contractor’s license.

33 (e) The board shall determine a graduated scale of fines  
34 considering the following factors:

- 35 (1) Whether the regional notification center received a timely  
36 request for locate and mark.
- 37 (2) The gravity of the violation.
- 38 (3) The good faith of the contractor.
- 39 (4) The contractor’s history of previous violations.

1 SEC. 3. Section 4216 of the Government Code is amended to  
2 read:

3 4216. As used in this article the following definitions apply:

4 ~~(a) “Approximate location of subsurface installations” means~~  
5 ~~a strip of land not more than 24 inches on either side of the exterior~~  
6 ~~surface of the subsurface installation. “Approximate location” does~~  
7 ~~not mean depth.~~

8 (a) *“Abandoned subsurface installation” means a subsurface*  
9 *installation that is no longer in service and is physically*  
10 *disconnected from any active or inactive subsurface installation.*

11 (b) *“Active subsurface installation” means a subsurface*  
12 *installation currently in use or currently carrying service.*

13 (c) *“Authority” means the California Underground Facilities*  
14 *Safe Excavation Authority.*

15 (d) *“Delineate” means to mark in white paint the location or*  
16 *path of the proposed excavation using the guidelines in Appendix*  
17 *B of the Guidelines for Excavation Delineation published in Best*  
18 *Practices Version 11.0 by the Common Ground Alliance. If there*  
19 *is a conflict between the marking practices in those guidelines and*  
20 *other provisions of this article, this article shall control.*

21 (e) *“Electronic positive response” means an electronic response*  
22 *from an operator to the regional notification center providing the*  
23 *status of an operator’s statutorily required response to a ticket.*

24 (f) (1) *“Emergency” means a sudden, unexpected occurrence,*  
25 *involving a clear and imminent danger, demanding immediate*  
26 *action to prevent or mitigate loss of, or damage to, life, health,*  
27 *property, or essential public services.*

28 (2) *“Unexpected occurrence” includes, but is not limited to, a*  
29 *fire, flood, earthquake or other soil or geologic movement, riot,*  
30 *accident, damage to a subsurface installation requiring immediate*  
31 *repair, or sabotage.*

32 ~~(b)~~

33 (g) *“Excavation” means penetration of the plane between the*  
34 *air and the existing surface of the ground or pavement by any*  
35 *operation in which earth, rock, or other material in the ground is*  
36 *moved, removed, or otherwise displaced by means of tools,*  
37 *equipment, or explosives in any of the following ways: grading,*  
38 *trenching, digging, ditching, drilling, augering, tunneling, scraping,*  
39 *cable or pipe plowing and driving, gouging, crushing, jack*  
40 *hammering, saw cutting, or any other way.*

1 (e)  
 2 (h) Except as provided in Section 4216.8, “excavator” means  
 3 any person, firm, contractor or subcontractor, owner, operator,  
 4 utility, association, corporation, partnership, business trust, public  
 5 agency, or other entity ~~that, with their, or his or her, own employees~~  
 6 ~~or equipment that performs any excavation.~~

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

14 (e)  
 15 (i) “High priority subsurface installation” means high-pressure  
 16 natural gas pipelines with normal operating pressures greater than  
 17 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
 18 pipelines, high-voltage electric supply lines, conductors, or cables  
 19 that have a potential to ground of greater than or equal to 60kv, or  
 20 hazardous materials pipelines that are potentially hazardous to  
 21 workers or the public if damaged.

22 ~~(f) “Inquiry identification number” means the number that is~~  
 23 ~~provided by a regional notification center to every person who~~  
 24 ~~contacts the center pursuant to Section 4216.2. The inquiry~~  
 25 ~~identification number shall remain valid for not more than 28~~  
 26 ~~calendar days from the date of issuance, and after that date shall~~  
 27 ~~require regional notification center revalidation.~~

28 (j) *“Inactive subsurface installation” means both of the*  
 29 *following:*

30 (1) *The portion of an underground subsurface installation that*  
 31 *is not in use but is still connected to the subsurface installation,*  
 32 *or to any other subsurface installation, that is in use or still carries*  
 33 *service.*

34 (2) *A new underground subsurface installation that has not*  
 35 *been connected to any portion of an existing subsurface*  
 36 *installation.*

37 (k) *“Legal excavation start date and time” means at least two*  
 38 *working days, not including the date of notification, or up to 14*  
 39 *calendar days from the date of notification, if so specified by the*  
 40 *excavator.*

1     ~~(g)~~

2     (l) “Local agency” means a city, county, city and county, school  
3 district, or special district.

4     (m) (1) *“Locate and field mark” means to indicate the existence*  
5 *of a subsurface installation by using the guidelines in Appendix B*  
6 *of the “Guidelines for Excavation Delineation” published in Best*  
7 *Practices Version 11.0 by the Common Ground Alliance and in*  
8 *conformance with the uniform color code of the American Public*  
9 *Works Association. If there is a conflict between the marking*  
10 *practices in the guidelines and this article, this article shall control.*

11     (2) *“Locate and field mark” does not require an indication of*  
12 *the depth of cover.*

13     (n) *“Near miss” means an event in which damage did not occur,*  
14 *but a clear potential for damage was identified.*

15     ~~(h)~~

16     (o) “Operator” means any person, corporation, partnership,  
17 business trust, public agency, or other entity that owns, operates,  
18 or maintains a subsurface installation. For purposes of Section  
19 4216.1, an “operator” does not include an owner of real property  
20 where subsurface facilities are exclusively located if they are used  
21 exclusively to furnish services on that property and the subsurface  
22 facilities are under the operation and control of that owner.

23     (p) *“Pavement” means a manmade surface material that cannot*  
24 *be removed with a conventional hand tool.*

25     (q) *“Positive response” means the response from an operator*  
26 *directly to the excavator providing the status of an operator’s*  
27 *statutorily required response to a ticket.*

28     ~~(i)~~

29     (r) “Qualified person” means a person who completes a training  
30 program in accordance with the requirements of Title 8, California  
31 Code of Regulations, Section 1509, Injury Prevention Program,  
32 that meets the minimum training guidelines and practices ~~of~~  
33 ~~Common Ground Alliance current Best Practices.~~ *published in*  
34 *Best Practices Version 11.0 by the Common Ground Alliance.*

35     ~~(j)~~

36     (s) “Regional notification center” means a nonprofit association  
37 or other organization of operators of subsurface installations that  
38 provides advance warning of excavations or other work close to  
39 existing subsurface installations, for the purpose of protecting  
40 those installations from damage, removal, relocation, or repair.

1 ~~(k)~~

2 (t) “State agency” means every state agency, department,  
3 division, bureau, board, or commission.

4 ~~(f)~~

5 (u) “Subsurface installation” means any underground pipeline,  
6 conduit, duct, wire, or other structure, except nonpressurized  
7 sewerlines, nonpressurized storm drains, or other nonpressurized  
8 drain lines; or submerged duct, pipeline, or structure, including,  
9 but not limited to, a conduit, duct, line, pipe, wire, or other  
10 structure.

11 (v) “Ticket” means an excavation location request issued a  
12 number by the regional notification center.

13 (w) “Tolerance zone” means 24 inches on either side of the  
14 field marking placed by the operator as follows:

15 (1) A single marking, assumed to be the centerline of the  
16 subsurface installation, 24 inches from either side of that marking.

17 (2) A single marking with the size of installation specified as  
18 24 inches plus one-half the specified size on either side from the  
19 single marking.

20 (3) Multiple markings that graphically show the width of the  
21 installation 24 inches from the marking that graphically show the  
22 outside surface of the subsurface installation on a horizontal plane.

23 (x) “Working day” for the purposes of determining excavation  
24 start date and time means a weekday Monday through Friday,  
25 from 7:00 a.m. to 5:00 p.m., except for federal and state holidays.

26 SEC. 4. Section 4216.1 of the Government Code is amended  
27 to read:

28 4216.1. Every operator of a subsurface installation, except the  
29 Department of Transportation, installation shall become a member  
30 of, participate in, and share in the costs of, a regional notification  
31 center. Operators of subsurface installations who are members of,  
32 participate in, and share in, the costs of a regional notification  
33 center, including, but not limited to, the South Shore Utility  
34 Coordinating Council, the Underground Service Alert—Northern  
35 California or the Underground Service Alert—Southern California  
36 are in compliance with this section and Section 4216.9.

37 SEC. 5. Section 4216.2 of the Government Code is amended  
38 to read:

39 4216.2. ~~(a) (1) Except in an emergency, any person planning~~  
40 ~~to conduct any excavation shall contact the appropriate regional~~

1 notification center, at least two working days, but not more than  
2 14 calendar days, prior to commencing that excavation, if the  
3 excavation will be conducted in an area that is known, or  
4 reasonably should be known, to contain subsurface installations  
5 other than the underground facilities owned or operated by the  
6 excavator and, if practical, the excavator shall delineate with white  
7 paint or other suitable markings the area to be excavated.

8 4216.2. (a) (1) *Before notifying the appropriate regional*  
9 *notification center, an excavator planning to conduct an excavation*  
10 *shall delineate the area to be excavated. If the area is not*  
11 *delineated, an operator shall not locate and field mark.*

12 (2) *Except in an emergency, an excavator planning to conduct*  
13 *an excavation shall notify the appropriate regional notification*  
14 *center of the excavator's intent to excavate at least two working*  
15 *days, and not more than 14 calendar days, before beginning that*  
16 *excavation. The date of the notification shall not count as part of*  
17 *the two-working-day notice. If an excavator gives less notice than*  
18 *the legal excavation start date and time and the excavation is not*  
19 *an emergency, the regional notification center will take the*  
20 *information and provide a ticket, but an operator has until the*  
21 *legal excavation start date and time to respond.*

22 (2)

23 (3) *When the excavation is proposed within 10 feet of a high*  
24 *priority subsurface installation, the operator of the high priority*  
25 *subsurface installation shall notify the excavator of the existence*  
26 *of the high priority subsurface installation prior to the legal*  
27 *excavation start date and time, as such date and time are authorized*  
28 *pursuant to paragraph (1) of subdivision (a) of Section 4216.2.*  
29 *The excavator and operator or its representative shall conduct an*  
30 *onsite meeting at a mutually agreed-on time to determine actions*  
31 *or activities required to verify the location of the high priority*  
32 *subsurface installations prior to start time. and set up an onsite*  
33 *meeting at a mutually agreed upon time to determine actions or*  
34 *activities required to verify the location and prevent damage to*  
35 *the high-priority subsurface installation. The excavator shall not*  
36 *begin excavating until after the completion of the onsite meeting.*

37 (b) *Except in an emergency, every excavator covered by Section*  
38 *4216.8 planning to conduct an excavation on private property that*  
39 *does not require an excavation permit may contact the appropriate*  
40 *regional notification center if the private property is known, or*

1 reasonably should be known, to contain a subsurface installation  
 2 other than the underground facility owned or operated by the  
 3 excavator and, if practical, the excavator shall delineate with white  
 4 paint or other suitable markings the area to be excavated. *excavator.*  
 5 *Before notifying the appropriate regional notification center, an*  
 6 *excavator shall delineate the area to be excavated. Any temporary*  
 7 *marking placed at the planned excavation location shall be clearly*  
 8 *seen, functional, and considerate to surface aesthetics and the*  
 9 *local community. An excavator shall check if any local ordinances*  
 10 *apply to the placement of temporary markings.*

11 *(c) If an excavator gives less than the legal excavation start*  
 12 *date and time and it is not an emergency, the regional notification*  
 13 *center shall take the information and provide a ticket but an*  
 14 *operator shall have until the legal excavation start date and time*  
 15 *to respond.*

16 ~~(e)~~

17 *(d) The regional notification center shall provide an inquiry*  
 18 ~~*identification number a ticket*~~ *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. A ticket shall be*~~  
 27 ~~*valid for 28 days from the date of issuance. If work continues*~~  
 28 ~~*beyond 28 days, the excavator shall update the ticket either by*~~  
 29 ~~*accessing the center's Internet Web site or by calling "811" by*~~  
 30 ~~*the end of the 28th day.*~~

31 ~~(d)~~

32 *(e) A record of all notifications by excavators and operators an*  
 33 *excavator or operator to the regional notification center shall be*  
 34 *maintained for a period of not less than three years. The record*  
 35 *shall be available for inspection by the excavator and any member,*  
 36 *or their representative, during normal working hours and according*  
 37 *to guidelines for inspection as may be established by the regional*  
 38 *notification centers.*

39 ~~*(e) As used in this section, the delineation is practical when any*~~  
 40 ~~*of the following conditions exist:*~~

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

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

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

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

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

16 *(f) An excavator shall not begin excavation until the excavator*  
17 *receives a positive response from all known subsurface installations*  
18 *within the delineated boundaries of the proposed area of*  
19 *excavation.*

20 *(g) If a site requires special access, an excavator shall request*  
21 *an operator to contact the excavator regarding that special access*  
22 *or give special instructions on the location request.*

23 *(h) If a ticket obtained by an excavator expires but work is*  
24 *ongoing, the excavator shall call into the regional notification*  
25 *center and get a new ticket and wait a minimum of two working*  
26 *days, not including the date of call in, before restarting excavation.*  
27 *All excavation shall cease during the waiting period.*

28 *(i) When the excavation is complete, the excavator shall*  
29 *eliminate or camouflage any temporary markings that remain for*  
30 *45 days or more, unless a local ordinance indicates otherwise.*

31 SEC. 6. Section 4216.3 of the Government Code is amended  
32 to read:

33 ~~4216.3. (a) (1) Any operator of a subsurface installation who~~  
34 ~~receives timely notification of any proposed excavation work in~~  
35 ~~accordance with Section 4216.2 shall, within two working days~~  
36 ~~of that notification, excluding weekends and holidays, or before~~  
37 ~~the start of the excavation work, whichever is later, or at a later~~  
38 ~~time mutually agreeable to the operator and the excavator, locate~~  
39 ~~and field mark the approximate location and, if known, the number~~  
40 ~~of subsurface installations that may be affected by the excavation~~

1 to the extent and degree of accuracy that the information is  
 2 available either in the records of the operator or as determined  
 3 through the use of standard locating techniques other than  
 4 excavating, otherwise advise the person who contacted the center  
 5 of the location of the operator's subsurface installations that may  
 6 be affected by the excavation, or advise the person that the operator  
 7 does not operate any subsurface installations that would be affected  
 8 by the proposed excavation.

9 4216.3. (a) (1) (A) *An operator shall locate and field mark,*  
 10 *if known, the number of subsurface installations that may be*  
 11 *affected by an excavation, to the extent and degree of accuracy*  
 12 *that the information is available, provide information to an*  
 13 *excavator where the operator's active or inactive lines are located,*  
 14 *and advise the excavator that there is no conflict before the legal*  
 15 *excavation start date and time. The excavator and operator may*  
 16 *mutually agree to a later start date and time or the sequence and*  
 17 *timeframe in which the operator will mark.*

18 (B) *An operator shall mark both main and service lines in*  
 19 *response to a locate request up to the meter. If there is no meter,*  
 20 *the lines shall be marked to the property line or behind the curb*  
 21 *or sidewalk, whichever is furthest from the main line.*

22 (C) *An operator shall mark newly installed subsurface*  
 23 *installations in areas with continuing excavation activity.*

24 (D) *If known, an operator shall mark with an "A" inside a circle*  
 25 *any abandoned lines. There shall be no liability associated with*  
 26 *marking abandoned lines. The markings are to make an excavator*  
 27 *aware that there are abandoned subsurface installations within*  
 28 *that delineated work area.*

29 (2) Only a qualified person shall perform subsurface installation  
 30 locating activities.

31 (3) A qualified person performing subsurface installation  
 32 locating activities on behalf of a subsurface installation ~~an operator~~  
 33 shall use a minimum of a single-frequency utility locating device  
 34 and shall have access to alternative sources for verification, if  
 35 necessary.

36 ~~(4) Operators of high priority subsurface installations shall~~  
 37 ~~maintain and preserve all plans and records for its subsurface~~  
 38 ~~installations.~~

39 ~~(b) Every operator of a subsurface installation who field marks~~  
 40 ~~the location of a subsurface installation shall make a reasonable~~

1 effort to make field markings in conformance with the uniform  
2 color code of the American Public Works Association.

3 (e) ~~If, at any time during an excavation for which there is a valid  
4 inquiry identification number, an operator's field markings are no  
5 longer reasonably visible, the excavator shall contact the  
6 appropriate regional notification center. The regional notification  
7 center shall contact any member, if known, who has a subsurface  
8 installation in the area of the excavation. Upon receiving timely  
9 notification or renotification pursuant to this subdivision, the  
10 operator shall re-locate and re-mark, within two working days,  
11 those subsurface installations that may be affected by the  
12 excavation to the extent necessary, in conformance with this  
13 section.~~

14 (4) *An operator shall amend, update, maintain, and preserve  
15 all plans and records for its subsurface installations as that  
16 information becomes known. If there is a change in ownership of  
17 a subsurface installation, the records shall be turned over to the  
18 new operator who will assume full responsibility of the subsurface  
19 installation. Records on abandoned lines shall be kept beginning  
20 on January 1, 2016.*

21 (b) *Every operator who has lines in the area of a proposed  
22 excavation shall locate and field mark the location of a subsurface  
23 installation.*

24 (c) *If the field marks are no longer reasonably visible, an  
25 excavator shall renotify the regional notification center with a  
26 request for remarks that can be for all or a portion of the  
27 excavation. Excavation shall cease in the area to be remarked. If  
28 the area to be remarked is not the full extent of the original  
29 excavation, the excavator shall delineate the portion to be  
30 remarked. If the delineation markings are no longer reasonably  
31 visible, the excavator shall redelineate the area to be remarked.  
32 If remarks are requested, the operator shall have two working  
33 days, not including the date of request, to remark the subsurface  
34 installation. Excavation shall cease in the area where the remarks  
35 are requested. If the area to be remarked is not the full extent of  
36 the original excavation, the excavator shall delineate the portion  
37 to be remarked and provide a description of the area requested to  
38 be remarked on the ticket. The excavator shall provide a  
39 description for the area to be remarked that falls within the area  
40 of the original location request.*

1 (d) Every operator may supply an electronic positive response  
2 through the regional notification center before the legal excavation  
3 start date and time. The regional notification center shall make  
4 those responses available.

5 ~~(d)~~

6 (e) The excavator shall notify the appropriate regional  
7 notification center of the failure of an operator to comply with this  
8 section. The notification shall include the ~~inquiry identification~~  
9 ~~number~~ ticket issued by the regional notification center. A record  
10 of all notifications received pursuant to this subdivision shall be  
11 maintained by the regional notification center for a period of not  
12 less than three years. The record shall be available for inspection  
13 pursuant to subdivision ~~(d)~~ (e) of Section 4216.2.

14 (f) If an operator or local agency knows that it has a subsurface  
15 installation embedded or partially embedded in the pavement that  
16 is not visible from the surface, the owner or local agency shall  
17 contact the excavator before pavement removal to communicate  
18 and determine a plan of action to protect that subsurface  
19 installation and excavator.

20 (g) An excavator shall not be responsible for a traffic signal  
21 detector loop, even if the excavator is notified that it is embedded  
22 in the pavement, unless there is a local ordinance or permit  
23 requirement to the contrary.

24 SEC. 7. Section 4216.4 of the Government Code is amended  
25 to read:

26 ~~4216.4. (a) When the excavation is within the approximate~~  
27 ~~location of subsurface installation, the excavator shall determine~~  
28 ~~the exact location of subsurface installations in conflict with the~~  
29 ~~excavation by excavating with hand tools within the area of the~~  
30 ~~approximate location of subsurface installations as provided by~~  
31 ~~the operators in accordance with Section 4216.3 before using any~~  
32 ~~power-operated or power-driven excavating or boring equipment~~  
33 ~~within the approximate location of the subsurface installation,~~  
34 ~~except that power-operated or power-driven excavating or boring~~  
35 ~~equipment may be used for the removal of any existing pavement~~  
36 ~~if there are no subsurface installations contained in the pavement.~~  
37 ~~If documented notice of the intent to use vacuum excavation~~  
38 ~~devices, or power-operated or power-driven excavating or boring~~  
39 ~~equipment, has been provided to the subsurface installation~~  
40 ~~operator or operators and it is mutually agreeable with the operator~~

1 ~~or operators and the excavator, the excavator may utilize vacuum~~  
2 ~~excavation devices, or power-operated or power-driven excavating~~  
3 ~~or boring equipment within the approximate location of a~~  
4 ~~subsurface installation and to any depth.~~

5 *4216.4. (a) (1) Except as provided in paragraph (2), if an*  
6 *excavation is within the approximate location of a subsurface*  
7 *installation, the excavator shall expose with hand tools to the depth*  
8 *of the excavation within the tolerance zone, including any*  
9 *applicable clearance requirements, for the full length of the project.*

10 *(2) (A) An excavator may use a vacuum excavation device to*  
11 *expose subsurface installations within the tolerance zone if the*  
12 *operator has marked the subsurface installation, the excavator*  
13 *has contacted any operator whose subsurface installations may*  
14 *be in conflict with the excavation, and the operator has agreed to*  
15 *the use of a vacuum excavation device. An excavator shall inform*  
16 *the regional notification center of his or her intent to use a vacuum*  
17 *excavation device when obtaining a ticket.*

18 *(B) An excavator may use power-operated or boring equipment*  
19 *for the removal of any existing pavement only if there is no known*  
20 *subsurface installation contained in the pavement.*

21 *(b) If the exact location of the subsurface installation cannot be*  
22 *determined by hand excavating in accordance with subdivision*  
23 *(a), the excavator shall request the operator to provide additional*  
24 *information to the excavator, to the extent that information is*  
25 *available to the operator, to enable the excavator to determine the*  
26 *exact location of the installation. If the excavator has questions*  
27 *about the markings that an operator has placed, the excavator*  
28 *may contact the notification center to send a request to have the*  
29 *operator contact the excavator directly. The regional notification*  
30 *center shall provide the excavator with the contact phone number*  
31 *of the subsurface installation operator.*

32 *(c) An excavator discovering or causing damage to a subsurface*  
33 *installation, including all breaks, leaks, nicks, dents, gouges,*  
34 *grooves, or other damage to subsurface installation lines, conduits,*  
35 *coatings, or cathodic protection, shall immediately notify the*  
36 *subsurface installation operator. The excavator may contact the*  
37 *regional notification center to obtain the contact information of*  
38 *the subsurface installation operator. If high priority subsurface*  
39 *installations are damaged and the operator cannot be contacted*  
40 *immediately, the excavator shall call 911 emergency services.*

1 (d) Each excavator, operator, or locator shall communicate  
2 with each other and respect the appropriate safety requirements  
3 and ongoing activities of the other parties, if known, at an  
4 excavation site.

5 SEC. 8. Section 4216.5 of the Government Code is amended  
6 to read:

7 4216.5. The requirements of this article apply to state agencies  
8 and to local agencies ~~which that~~ own or operate subsurface  
9 ~~installations, except as otherwise provided in Section 4216.1.~~  
10 ~~installations.~~ A local agency ~~which that~~ is required to provide the  
11 services described in Section 4216.3 may charge a fee in an amount  
12 sufficient to cover the cost of providing that service.

13 SEC. 9. Section 4216.6 of the Government Code is amended  
14 to read:

15 4216.6. (a) (1) Any operator or excavator who negligently  
16 violates this article is subject to a civil penalty in an amount not  
17 to exceed ten thousand dollars (\$10,000).

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

21 (3) Except as otherwise specifically provided in this article, this  
22 section is not intended to affect any civil remedies otherwise  
23 provided by law for personal injury or for property damage,  
24 including any damage to subsurface installations, nor is this section  
25 intended to create any new civil remedies for those injuries or that  
26 damage.

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

31 (b) An action may be brought by the Attorney General, the  
32 district attorney, or the local or state agency ~~which that~~ issued the  
33 permit to excavate, for the enforcement of the civil penalty pursuant  
34 to this ~~section.~~ *section either in a civil action brought in the name*  
35 *of the people of the State of California or in an administrative*  
36 *hearing before the authority pursuant to Section 4216.19.* If  
37 penalties are collected as a result of a civil suit brought by a state  
38 or local agency for collection of those civil penalties, the penalties  
39 imposed shall be paid to the general fund of the agency. If more  
40 than one agency is involved in enforcement, the penalties imposed

1 shall be apportioned among them by the court in a manner that  
2 will fairly offset the relative costs incurred by the state or local  
3 agencies, or both, in collecting these fees.

4 (c) *The requirements of this article may also be enforced as*  
5 *follows:*

6 (1) *The Contractors' State License Board shall enforce*  
7 *paragraph (1) of subdivision (a) of Section 4216.2 as specified in*  
8 *Section 7110.7 of the Business and Professions Code.*

9 (2) *The Public Utilities Commission may enforce subdivisions*  
10 *(a) and (b) of Section 4216.3 against operators of natural gas and*  
11 *electric underground infrastructure, unless those operators are*  
12 *municipal utilities.*

13 (3) *The Office of the State Fire Marshal may enforce*  
14 *subdivisions (a) and (b) of Section 4216.3 against operators of*  
15 *hazardous liquid pipelines, unless those operators are municipal*  
16 *utilities.*

17 (c) Statewide information provided by operators and excavators  
18 regarding facility events shall be compiled and made available in  
19 an annual report by regional notification centers and posted on the  
20 Internet Web sites of the regional notification centers.

21 (d) For purposes of subdivision (c), the following terms have  
22 the following meanings:

23 (1) "Facility event" means the occurrence of excavator  
24 downtime, damages, near misses, and violations.

25 (2) "Statewide information" means information submitted by  
26 operators and excavators using the California Regional Common  
27 Ground Alliance's Virtual Private Damage Information Reporting  
28 Tool. Supplied data shall comply with the Damage Information  
29 Reporting Tool's minimum essential information as listed in ~~the~~  
30 ~~Common Ground Alliance's most recent Best Practices Handbook.~~  
31 *Best Practices Version 11.0 by the Common Ground Alliance.*

32 SEC. 10. Section 4216.7 of the Government Code is amended  
33 to read:

34 4216.7. (a) If a subsurface installation is damaged by an  
35 excavator as a result of failing to comply with Section 4216.2 or  
36 4216.4, or as a result of failing to comply with the operator's  
37 requests to protect the subsurface installation as specified by the  
38 operator ~~prior to~~ *before* the start of excavation, the excavator shall  
39 be liable to the operator of the subsurface installation for resulting  
40 damages, costs, and expenses to the extent the damages, costs, and

1 expenses were proximately caused by the excavator's failure to  
2 comply.

3 ~~(b) If the operator of a subsurface installation has failed to~~  
4 ~~comply with the regional notification center system requirements~~  
5 ~~of Section 4216.1, that operator shall forfeit his or her claim for~~  
6 ~~damages to his or her subsurface installation, arising from the~~  
7 ~~excavation, against an excavator who has complied with the~~  
8 ~~requirements of Section 4216.2 to the extent damages were~~  
9 ~~proximately caused by the operator's failure to comply.~~

10 *(b) If an operator has failed to become a member of, participate*  
11 *in, or share in the costs of, a regional notification center, that*  
12 *operator shall forfeit his or her claim for damages to his or her*  
13 *subsurface installation arising from an excavation against an*  
14 *excavator who has called at least two working days in advance to*  
15 *the extent damages were proximately caused by the operator's*  
16 *failure to be a member.*

17 *(c) If an operator of a subsurface installation has failed to*  
18 *comply with the provisions of Section 4216.3, including, but not*  
19 *limited to, the requirement to field mark the appropriate location*  
20 *of subsurface installations within two working days of notification,*  
21 *has failed to comply with paragraph (2) of subdivision (a) of*  
22 *Section 4216.2, or has failed to comply with subdivision (b) of*  
23 *Section 4216.4, the operator shall be liable to the excavator who*  
24 *has complied with Sections 4216.2 and 4216.4 for damages,*  
25 *including liquidated damages, liability, losses, costs, and expenses*  
26 *resulting from the operator's failure to comply with these specified*  
27 *requirements to the extent the damages, costs, and expenses were*  
28 *proximately caused by the operator's failure to comply.*

29 *(d) An excavator who damages a subsurface installation due to*  
30 *an inaccurate field mark by an operator, or by a third party under*  
31 *contract to perform field marking for the operator, shall not be*  
32 *liable for damages, replacement costs, or other expenses arising*  
33 *from damages to the subsurface installation if the excavator*  
34 *complied with Sections 4216.2 and 4216.4.*

35 *(e) In any actions for reimbursement or indemnification for a*  
36 *claim arising from damage to a subsurface installation in which*  
37 *the court or arbitrator finds that the excavator complied with the*  
38 *requirements for Sections 4216.2 and 4216.4, the excavator shall*  
39 *be awarded reasonable attorney's fees and expenses.*

1 (f) For the purposes of this section, “inaccurate field mark”  
 2 means a mark, or set of markings, made pursuant to Section  
 3 4216.3, that did not correctly indicate the approximate location  
 4 of a subsurface installation affected by an excavation and includes  
 5 the actual physical location of a subsurface installation affected  
 6 by an excavation that should have been marked pursuant to Section  
 7 4216.3 but was not.

8 (d)

9 (g) Nothing in this section shall be construed to do any of the  
 10 following:

11 (1) Affect claims including, but not limited to, third-party claims  
 12 brought against the excavator or operator by other parties for  
 13 damages arising from the excavation.

14 (2) Exempt the excavator or operator from his or her duty to  
 15 mitigate any damages as required by common or other applicable  
 16 law.

17 (3) Exempt the excavator or operator from liability to each other  
 18 or third parties based on equitable indemnity or comparative or  
 19 contributory negligence.

20 SEC. 11. Section 4216.8 of the Government Code is amended  
 21 to read:

22 4216.8. This article does not apply to ~~any~~ either of the  
 23 following persons:

24 ~~(a) An owner of real property who contracts for an excavation~~  
 25 ~~project on the property, not requiring a permit issued by a state or~~  
 26 ~~local agency, with a contractor or subcontractor licensed pursuant~~  
 27 ~~to Article 5 (commencing with Section 7065) of Chapter 9 of~~  
 28 ~~Division 3 of the Business and Professions Code.~~

29 ~~(b) An owner of residential real property, not engaged as a~~  
 30 ~~contractor or subcontractor licensed pursuant to Article 5~~  
 31 ~~(commencing with Section 7065) of Chapter 9 of Division 3 of~~  
 32 ~~the Business and Professions Code, who as part of improving his~~  
 33 ~~or her principal residence or appurtenances thereto is performing~~  
 34 ~~or having performed excavation work not requiring a permit issued~~  
 35 ~~by a state or local agency.~~

36 (a) An owner of residential real property doing work not  
 37 requiring a permit issued by a state or local agency on his or her  
 38 residential real property that has no easement or right of way who  
 39 only uses nonmechanized hand tools for excavation.

40 (e)

1 (b) Any person or private entity that leases or rents power  
 2 operated or power-driven excavating or boring equipment,  
 3 regardless of whether an equipment operator is provided for that  
 4 piece of equipment or not, to a contractor or subcontractor licensed  
 5 pursuant to Article 5 (commencing with Section 7065) of Chapter  
 6 9 of Division 3 of the Business and Professions Code, if the signed  
 7 rental agreement between the person or private entity and the  
 8 contractor or subcontractor contains the following provision:

9 “It is the sole responsibility of the lessee or renter to follow  
 10 the requirements of the regional notification center law  
 11 pursuant to Article 2 (commencing with Section 4216) of  
 12 Chapter 3.1 of Division 5 of Title 1 of the Government Code.  
 13 By signing this contract, the lessee or renter accepts all  
 14 liabilities and responsibilities contained in the regional  
 15 notification center law.”

16 SEC. 12. Section 4216.9 of the Government Code is amended  
 17 to read:

18 4216.9. (a) ~~No~~ A permit to excavate issued by any local  
 19 agency, as defined in Section 4216, or any state agency, shall *not*  
 20 be valid unless the applicant has been provided an initial ~~inquiry~~  
 21 ~~identification number ticket~~ by a regional notification center  
 22 pursuant to Section 4216.2. For purposes of this section, “state  
 23 agency” means every state agency, department, division, bureau,  
 24 board, or commission, including the Department of Transportation.

25 (b) This article does not exempt any person or corporation from  
 26 Sections 7951, 7952, and 7953 of the Public Utilities Code.

27 SEC. 13. Section 4216.10 is added to the Government Code,  
 28 to read:

29 4216.10. (a) On or before January 1, 2017, the Occupational  
 30 Safety and Health Standards Board shall revise subdivision (b) of  
 31 Section 1541 of Title 8 of the California Code of Regulations to  
 32 clarify best practices to be used by excavators when excavating  
 33 near subsurface installations.

34 (b) The board shall convene an advisory committee hearing to  
 35 seek input from operators, regional notification centers, labor, and  
 36 excavators on best practices to be used by excavators when  
 37 excavating in urban areas where there is a high density of  
 38 subsurface installations, the appropriate frequency of potholing,  
 39 and other best practices developed by various industry associations,  
 40 including the Common Ground Alliance.

1 SEC. 14. Section 4216.11 is added to the Government Code,  
2 to read:

3 4216.11. (a) The California Underground Facilities Safe  
4 Excavation Authority is hereby created.

5 (b) The authority shall enforce this article and further its  
6 purposes, and thus has the same powers as are conferred upon  
7 heads of departments of the state by Article 1 (commencing with  
8 Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 in  
9 the Government Code. Notwithstanding Section 11152, the  
10 authority shall not adopt rules or regulations.

11 (c) The authority may hold hearings and conduct any  
12 investigations necessary to carry out its powers and duties  
13 prescribed by this article and, for those purposes, has the same  
14 powers as are conferred upon heads of departments of the state by  
15 Article 2 (commencing with Section 11180) of Chapter 2 of Part  
16 1 of Division 3 of Title 2.

17 SEC. 15. Section 4216.12 is added to the Government Code,  
18 to read:

19 4216.12. (a) The authority shall be composed of nine members,  
20 of which seven shall be appointed by the Governor, one shall be  
21 appointed by the Speaker of the Assembly, and one shall be  
22 appointed by the Senate Committee on Rules.

23 (b) The seven members appointed by the Governor shall be  
24 appointed, as follows:

25 (1) Three members shall have knowledge and expertise in  
26 managing underground. Of those three members, one shall have  
27 knowledge and expertise in managing the underground institutions  
28 of a municipal utility.

29 (2) Two members shall have knowledge and expertise in contract  
30 excavation.

31 (3) One member shall have knowledge and expertise in  
32 subsurface installation location and marking.

33 (4) One member shall have knowledge and expertise in operating  
34 a regional notification center.

35 (c) The member appointed by the Speaker of the Assembly shall  
36 have knowledge and expertise in representing in safety matters  
37 the workers employed by contract excavators.

38 (d) The member appointed by the Senate Committee on Rules  
39 shall have knowledge and expertise in managing the underground

1 installations on one's own property, and may be drawn from  
2 agricultural, commercial, or residential, or other, property sectors.

3 SEC. 16. Section 4216.13 is added to the Government Code,  
4 to read:

5 4216.13. (a) The term of a member of the authority is two  
6 years. Of the first members of the authority, four members,  
7 determined by lot, shall serve for one year so that the terms of the  
8 members shall be staggered.

9 (b) A member shall not be appointed for more than two  
10 consecutive full terms.

11 (c) To the extent possible, the Governor shall fill any vacancy  
12 in the membership of the authority within 60 days after the vacancy  
13 occurs.

14 (d) Upon the recommendation of the authority, the Governor  
15 may remove a member appointed by the Governor for  
16 incompetence or misconduct.

17 SEC. 17. Section 4216.14 is added to the Government Code,  
18 to read:

19 4216.14. (a) The authority shall select a chairperson from  
20 among its members at the first meeting of each calendar year or  
21 when a vacancy in the chair exists.

22 (b) Subject to subdivision (c), the manner in which the  
23 chairperson is selected and the chairperson's term of office shall  
24 be determined by the authority.

25 (c) A member of the authority shall not serve more than two  
26 consecutive years as the chairperson of the authority.

27 SEC. 18. Section 4216.15 is added to the Government Code,  
28 to read:

29 4216.15. The authority shall meet at least once every three  
30 months. The authority shall hold meetings in Sacramento and Los  
31 Angeles, and in other locations in the state it deems necessary.

32 SEC. 19. Section 4216.16 is added to the Government Code,  
33 to read:

34 4216.16. (a) In addition to other powers specified in this article,  
35 the authority may do any of the following:

36 (1) Apply for and accepts grants, contributions, and  
37 appropriations, and award grants consistent with the goals and  
38 objectives of a program or activity the authority is authorized to  
39 implement or administer.

1 (2) Contract for professional services if the work or services  
2 cannot be satisfactorily performed by its employees or by any other  
3 state agency.

4 (3) Sue and be sued.

5 (4) Request and utilize the advice and services of all federal,  
6 state, local, and regional agencies.

7 (5) Conduct public education and outreach programs consistent  
8 with this article, promote the development of safety procedures  
9 for excavation and demolition projects constructed in the area of  
10 underground facilities, or make grants to local governments or  
11 private entities to do so.

12 (b) Notwithstanding Section 11152, the authority shall not adopt  
13 rules or regulations.

14 SEC. 20. Section 4216.17 is added to the Government Code,  
15 to read:

16 4216.17. The authority may obtain funding for its operational  
17 expenses from:

18 (a) A federal or state grant.

19 (b) A fee charged to members of the regional notification centers  
20 not to exceed the reasonable regulatory cost incident to enforcement  
21 of this article.

22 (c) A fine assessed pursuant to Section 4216.19.

23 (d) A filing or administrative fee to hear a complaint pursuant  
24 to Section 4216.19.

25 (e) Any other source.

26 SEC. 21. Section 4216.18 is added to the Government Code,  
27 to read:

28 4216.18. In the enforcement of this article, and furtherance of  
29 its purposes, the authority may authorize staff to use compliance  
30 audits, including field audits, and investigations of incidents and  
31 near-misses.

32 SEC. 22. Section 4216.19 is added to the Government Code,  
33 to read:

34 4216.19. (a) After providing opportunity for hearing pursuant  
35 to the Administrative Procedures Act (Chapter 4.5 (commencing  
36 with Section 11400) of Part 1 of Division 3 of Title 2), the  
37 authority, upon making a finding of violation, may:

38 (1) Assess a civil penalty of no more than \_\_\_\_ dollars (\$\_\_\_\_).

39 (2) Reach a settlement in lieu of assessing a civil penalty.

40 (3) Require remedial education relevant to the violation.

- 1 (b) The authority may do both of the following:
- 2 (1) Use the services of a third party to collect civil penalties.
- 3 (2) If the authority determines that an individual cannot afford
- 4 to pay a penalty imposed pursuant to this section, the authority
- 5 may exempt the individual from payment of the penalty in whole
- 6 or in part.

7 SEC. 23. Section 4216.20 is added to the Government Code,  
8 to read:

9 4216.20. (a) A person aggrieved by a decision of the authority  
10 may, within 30 days after receiving the decision, request judicial  
11 review of the decision in superior court.

12 (b) In accordance with the judicial review and appeals process  
13 under the Administrative Procedure Act (Chapter 3.5 (commencing  
14 with Section 11340) of Part 1 of Division 3 of Title 2), the court  
15 shall hear and determine all matters connected with the decision  
16 of the authority for which judicial review is requested.

17 (c) (1) Except as provided in paragraph (2), the cost of the  
18 judicial review, including the cost of preparing a record and  
19 transcript, shall be paid by the party filing the request for judicial  
20 review.

21 (2) If the party filing the request for judicial review prevails,  
22 the court may require that the cost of the judicial review, including  
23 the cost of preparing a record and transcript, be paid by the  
24 authority, unless the authority waives the award of attorney’s fees.

25 SEC. 24. Section 4216.21 is added to the Government Code,  
26 to read:

27 4216.21. (a) Notwithstanding Section 10231.5, the authority  
28 shall report to the Governor and the Legislature on or before  
29 January 1, 2017, and each year thereafter, on the activities of the  
30 authority and any recommendations of the authority.

31 (b) A report to be submitted pursuant to subdivision (a) shall  
32 be submitted in compliance with Section 9795.