

AMENDED IN SENATE APRIL 20, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 119

Introduced by Senator Hill

January 14, 2015

An act to add Section 7110.7 to the Business and Professions Code, to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 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, and to amend Section 1702.5 of, and to add Section 320.5 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, 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 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~~ *expand the definition of a subsurface installation as installation, to include an underground structure or submerged duct, pipeline, or structure structure, except as specified.* 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, before the legal start date and time of the excavation, to locate and field mark, within the area delineated for excavation, its subsurface installations. 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 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.

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 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 create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the authority, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified

purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

Existing law requires the Public Utilities Commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

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) Electronic positive response is a means to communicate the
- 12 status of responses to an excavator’s notice of excavation via the
- 13 one-call center and provides the safety benefit that an excavator
- 14 has an easy means to know whether or not all of the utilities within
- 15 the excavation area have marked their underground facilities.
- 16 (d) The delineation by an excavator of the area to be excavated
- 17 in advance of the field location and marking by subsurface facility

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

7 (e) Continuing an excavation after an excavation “ticket” has
8 expired does not promote safety, and excavators should renew
9 their ticket with the one-call center before expiration. Continuing
10 excavation when markings are no longer visible does not promote
11 safety, and excavators should stop work until the subsurface
12 installations are remarked.

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

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

20 (h) Construction sites often have many parties conducting
21 different, ongoing work, and so the inherent safety risks associated
22 with that work can be increased by a failure of these parties to
23 effectively communicate. Excavators, operators of subsurface
24 facilities, and locators have a responsibility to communicate with
25 other parties before entering these worksites, which may require
26 advance schedule coordination, and also have a responsibility to
27 observe the safety requirements set for those worksites.

28 (i) Abandoned subsurface installations can be mistaken for
29 active subsurface installations that are marked, and thus present a
30 safety risk to excavators and the public. Safety will be improved
31 if subsurface facility operators identify these subsurface
32 installations when their existence is known.

33 (j) The ability of an operator of subsurface facilities to locate
34 and mark affected facilities can be seriously impaired by a lack of
35 high-quality records of those facilities, and thus operators should
36 keep records of their facilities for as long as they are in the ground,
37 whether or not they are in use.

38 (k) Failure by an operator of subsurface facilities to mark the
39 facilities within the required two-working-day period is a serious
40 breach of duty.

1 (l) While a utility operator has two working days after an
2 excavator's call to the one-call center to mark its underground
3 facilities, failure of that utility to do so does not relieve the
4 excavator of the safety responsibility to wait until the utility
5 operator has marked before commencing excavation.

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

9 (n) Facilities that are embedded in pavement require more
10 extensive communication to prevent them from being damaged.
11 Excavators should not be liable for damage to traffic loops.

12 (o) Exemptions that allow a class of persons to excavate without
13 calling 811 shall be made not based on convenience, but rather
14 permitted only if alternative procedures allow the excavation to
15 take place without compromising safety.

16 (p) The exemption that permits the Department of Transportation
17 not to submit its maps to the regional notification center and not
18 to mark its underground facilities within 48 hours does not have
19 a basis in safety.

20 ~~(q) The exemption that permits operators of nonpressurized
21 sewer lines and nonpressurized storm drains not to submit their
22 maps to the regional notification center and not to mark their
23 underground facilities within 48 hours does not have a basis in
24 safety, as gas or electric lines could be installed through those lines
25 and drains and thus create a safety hazard to those who clean those
26 sewers and drains and the public.~~

27 ~~(r)~~

28 (q) The exemption that permits private property owners to dig
29 on their property without calling a regional notification center to
30 have the area marked for underground facilities does not have a
31 basis in safety.

32 ~~(s)~~

33 (r) The exemption that permits homeowners to conduct
34 excavation on their property with heavy machinery or when there
35 is a utility easement on his or her property does not have a basis
36 in safety.

37 ~~(t)~~

38 (s) Behaviors that are suspected to be unsafe, but upon which
39 there is not widespread agreement as to the level of risk and,

1 therefore, are unregulated, must be monitored to better assess the
2 risk.

3 ~~(t)~~

4 (t) Clarification is needed for excavators to understand best
5 excavation practices, and this could be accomplished through
6 clarification of the regulations on excavation by the Occupational
7 Safety and Health Standards Board.

8 ~~(v)~~

9 (u) Other states have experienced a dramatic improvement in
10 safety after implementing centralized administrative enforcement
11 of one-call laws.

12 ~~(w)~~

13 (v) California should have a board, composed of excavation
14 stakeholders, subject to oversight by the Legislature and the
15 Department of Finance, to enforce the state's safe excavation laws
16 through field audits, incident investigations, and administrative
17 hearings, and to promote safe excavation practices. Due to the size
18 of the state, and in order to reduce costs, the board should meet in
19 northern and southern California.

20 ~~(x)~~

21 (w) The board should not be funded through the General Fund,
22 but should be funded by the community that will most directly
23 benefit from the enforcement of the state's safe excavation laws,
24 including the participants in the state's regional notification centers,
25 and the board should also be funded by the fines it levies, instead
26 of having those fines go to the General Fund.

27 ~~(y)~~

28 (x) After a hearing before the board pursuant to the
29 Administrative Procedures Act, a person found to be in violation
30 of the state's safe excavation laws could meet a variety of sanctions
31 including a fine not exceeding a specified amount and the
32 requirement to undergo relevant education.

33 ~~(z)~~

34 (y) To preserve due process, the superior court should be
35 available to an aggrieved party as a forum in which to challenge
36 a board decision.

37 ~~(aa)~~

38 (z) Most persons who would be subject to the board's oversight
39 are also subject to the oversight of other enforcement agencies,

1 and those agencies should also take steps to reduce the safety risks
2 posed by violations of the state’s safe excavation laws.

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

5 7110.7. (a) The Contractors’ State License Board shall adopt
6 a program to enforce violations of paragraph (1) of subdivision
7 (a) of Section 4216.2 of the Government Code.

8 (b) The Contractors’ State License Board shall require
9 contractors to undergo training relating to compliance with
10 paragraph (1) of subdivision (a) of Section 4216.2 of the
11 Government Code, as determined by the board, for an initial
12 violation.

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

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

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

22 (1) Whether the regional notification center received a timely
23 request for locate and field mark.

24 (2) The gravity of the violation.

25 (3) The good faith of the contractor.

26 (4) The contractor’s history of previous violations.

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

29 4216. As used in this article the following definitions apply:

30 (a) “Abandoned subsurface installation” means a subsurface
31 installation that is no longer in service and is physically
32 disconnected from any active or inactive subsurface installation.

33 (b) “Active subsurface installation” means a subsurface
34 installation currently in use or currently carrying service.

35 (c) “Authority” means the California Underground Facilities
36 Safe Excavation Authority.

37 (d) “Delineate” means to mark in white paint the location or
38 path of the proposed excavation using the guidelines in Appendix
39 B of the “Guidelines for Excavation Delineation” published in
40 Best Practices Version 11.0 by the Common Ground Alliance. If

1 there is a conflict between the marking practices in those guidelines
2 and other provisions of this article, this article shall control.

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

6 (f) (1) “Emergency” means a sudden, unexpected occurrence,
7 involving a clear and imminent danger, demanding immediate
8 action to prevent or mitigate loss of, or damage to, life, health,
9 property, or essential public services.

10 (2) “Unexpected occurrence” includes, but is not limited to, a
11 fire, flood, earthquake or other soil or geologic movement, riot,
12 accident, damage to a subsurface installation requiring immediate
13 repair, or sabotage.

14 (g) “Excavation” means penetration of the plane between the
15 air and the existing surface of the ground or pavement by any
16 operation in which earth, rock, or other material is moved,
17 removed, or otherwise displaced by means of tools, equipment, or
18 explosives in any of the following ways: grading, trenching,
19 digging, ditching, drilling, augering, tunneling, scraping, cable or
20 pipe plowing and driving, gouging, crushing, jack hammering,
21 saw cutting, or any other way.

22 (h) Except as provided in Section 4216.8, “excavator” means
23 any person, firm, contractor or subcontractor, owner, operator,
24 utility, association, corporation, partnership, business trust, public
25 agency, or other entity that performs any excavation.

26 (i) “Hand tool” means a piece of equipment used for excavating
27 that uses human power and is not powered by any motor, engine,
28 hydraulic, or pneumatic device.

29 (j) “High priority subsurface installation” means high-pressure
30 natural gas pipelines with normal operating pressures greater than
31 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
32 pipelines, high-voltage electric supply lines, conductors, or cables
33 that have a potential to ground of greater than or equal to 60kv, or
34 hazardous materials pipelines that are potentially hazardous to
35 workers or the public if damaged.

36 (k) “Inactive subsurface installation” means both of the
37 following:

38 (1) The portion of an underground subsurface installation that
39 is not in use but is still connected to the subsurface installation, or

1 to any other subsurface installation, that is in use or still carries
2 service.

3 (2) A new underground subsurface installation that has not been
4 connected to any portion of an existing subsurface installation.

5 (l) “Legal excavation start date and time” means at least two
6 working days, not including the date of notification, or up to 14
7 calendar days from the date of notification, if so specified by the
8 excavator.

9 (m) “Local agency” means a city, county, city and county,
10 school district, or special district.

11 (n) (1) “Locate and field mark” means to indicate the existence
12 of any owned or maintained subsurface installations by using the
13 guidelines in Appendix B of the “Guidelines for Operator’s Facility
14 Field Delineation” published in Best Practices Version 11.0 by the
15 Common Ground Alliance and in conformance with the uniform
16 color code of the American Public Works Association. If there is
17 a conflict between the marking practices in the guidelines and this
18 article, this article shall control.

19 (2) “Locate and field mark” does not require an indication of
20 the depth.

21 (o) “Near miss” means an event in which damage did not occur,
22 but a clear potential for damage was identified.

23 (p) “Operator” means any person, corporation, partnership,
24 business trust, public agency, or other entity that owns, operates,
25 or maintains a subsurface installation. For purposes of Section
26 4216.1, an “operator” does not include an owner of real property
27 where subsurface facilities are exclusively located if they are used
28 exclusively to furnish services on that property and the subsurface
29 facilities are under the operation and control of that owner.

30 (q) “Pavement” means a manmade surface material that cannot
31 be removed with a conventional hand tool.

32 (r) “Positive response” means the response from an operator
33 directly to the excavator providing the status of an operator’s
34 statutorily required response to a ticket.

35 (s) “Qualified person” means a person who completes a training
36 program in accordance with the requirements of Section 1509 of
37 Title 8 of the California Code of Regulations, Injury and Illness
38 Prevention Program, that meets the minimum locators training
39 guidelines and practices published in Best Practices Version 11.0
40 by the Common Ground Alliance.

1 (t) “Regional notification center” means a nonprofit association
2 or other organization of operators of subsurface installations that
3 provides advance warning of excavations or other work close to
4 existing subsurface installations, for the purpose of protecting
5 those installations from damage, removal, relocation, or repair.

6 (u) “State agency” means every state agency, department,
7 division, bureau, board, or commission.

8 (v) “Subsurface installation” means any underground or
9 submerged duct, pipeline, or structure, including, but not limited
10 to, a conduit, duct, line, pipe, wire, or other ~~structure~~: *structure*,
11 *except nonpressurized sewerlines, nonpressurized storm drains,*
12 *or other nonpressurized drain lines.*

13 (w) “Ticket” means an excavation location request issued a
14 number by the regional notification center.

15 (x) “Tolerance zone” means 24 inches on either side of the field
16 marking placed by the operator as follows:

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

19 (2) A single marking with the size of installation specified as
20 24 inches plus one-half the specified size on either side from the
21 single marking.

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

25 (y) “Working day” for the purposes of determining excavation
26 start date and time means a weekday Monday through Friday, from
27 7:00 a.m. to 5:00 p.m., except for federal holidays and state
28 holidays, as defined in Section 19853 of the Government Code.

29 SEC. 4. Section 4216.1 of the Government Code is amended
30 to read:

31 4216.1. Every operator of a subsurface installation shall become
32 a member of, participate in, and share in the costs of, a regional
33 notification center. Operators of subsurface installations who are
34 members of, participate in, and share in, the costs of a regional
35 notification center, including, but not limited to, the Underground
36 Service Alert—Northern California or the Underground Service
37 Alert—Southern California are in compliance with this section
38 and Section 4216.9.

39 SEC. 5. Section 4216.2 of the Government Code is amended
40 to read:

1 4216.2. (a) Before notifying the appropriate regional
2 notification center, an excavator planning to conduct an excavation
3 shall delineate the area to be excavated. If the area is not delineated,
4 an operator may, at the operator's discretion, choose not to locate
5 and field mark until the area to be excavated has been delineated.

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

16 (c) When the excavation is proposed within 10 feet of a high
17 priority subsurface installation, the operator of the high priority
18 subsurface installation shall notify the excavator of the existence
19 of the high priority subsurface installation prior to the legal
20 excavation start date and time, and set up an onsite meeting at a
21 mutually agreed upon time to determine actions or activities
22 required to verify the location and prevent damage to the high
23 priority subsurface installation. The excavator shall not begin
24 excavating until after the completion of the onsite meeting.

25 (d) Except in an emergency, every excavator covered by Section
26 4216.8 planning to conduct an excavation on private property that
27 does not require an excavation permit may contact the appropriate
28 regional notification center if the private property is known, or
29 reasonably should be known, to contain a subsurface installation
30 other than the underground facility owned or operated by the
31 excavator. Before notifying the appropriate regional notification
32 center, an excavator shall delineate the area to be excavated. Any
33 temporary marking placed at the planned excavation location shall
34 be clearly seen, functional, and considerate to surface aesthetics
35 and the local community. An excavator shall check if any local
36 ordinances apply to the placement of temporary markings.

37 (e) If an excavator gives less than the legal excavation start date
38 and time and it is not an emergency, the regional notification center
39 shall take the information and provide a ticket but an operator shall
40 have until the legal excavation start date and time to respond.

1 (f) The regional notification center shall provide a ticket to the
2 person who contacts the center pursuant to this section and shall
3 notify any member, if known, who has a subsurface installation
4 in the area of the proposed excavation. A ticket shall be valid for
5 28 days from the date of issuance. If work continues beyond 28
6 days, the excavator shall update the ticket either by accessing the
7 center’s Internet Web site or by calling “811” by the end of the
8 28th day.

9 (g) A record of all notifications by an excavator or operator to
10 the regional notification center shall be maintained for a period of
11 not less than three years. The record shall be available for
12 inspection by the excavator and any member, or their
13 representative, during normal working hours and according to
14 guidelines for inspection as may be established by the regional
15 notification centers.

16 (h) Unless an emergency exists, an excavator shall not begin
17 excavation until the excavator receives a positive response from
18 all known subsurface installations within the delineated boundaries
19 of the proposed area of excavation.

20 (i) 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 (j) 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 (k) 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) (A) Unless the excavator and operator
34 mutually agree to a later start date and time, or otherwise agree to
35 the sequence and timeframe in which the operator will locate and
36 field mark, an operator shall do one of the following before the
37 legal excavation start date and time:

38 (i) Locate and field mark within the area delineated for
39 excavation and, where multiple subsurface installations of the same

1 type are known to exist together, mark the number of subsurface
2 installations.

3 (ii) To the extent and degree of accuracy that the information
4 is available, provide information to an excavator where the
5 operator’s active or inactive subsurface installations are located.

6 (iii) Advise the excavator it operates no subsurface installations
7 in the area delineated for excavation.

8 ~~(B) An operator shall mark both main and service lines in
9 response to a locate request up to the meter. If there is no meter,
10 the lines shall be marked to the property line or behind the curb
11 or sidewalk, whichever is furthest from the main line.~~

12 ~~(C)~~

13 (B) An operator shall mark newly installed subsurface
14 installations in areas with continuing excavation activity.

15 ~~(D)~~

16 (C) An operator shall indicate with an “A” inside a circle the
17 presence of any abandoned subsurface installations within the
18 delineated area. There shall be no liability associated with marking
19 abandoned subsurface installations. The markings are to make an
20 excavator aware that there are abandoned subsurface installations
21 within that delineated work area.

22 (2) Only a qualified person shall perform subsurface installation
23 locating activities.

24 (3) A qualified person performing subsurface installation
25 locating activities on behalf of an operator shall use a minimum
26 of a single-frequency utility locating device and shall have access
27 to alternative sources for verification, if necessary.

28 (4) An operator shall amend, update, maintain, and preserve all
29 plans and records for its subsurface installations as that information
30 becomes known. If there is a change in ownership of a subsurface
31 installation, the records shall be turned over to the new operator
32 who will assume full responsibility of the subsurface installation.
33 Records on abandoned subsurface installations shall be kept
34 beginning on January 1, 2016.

35 (b) If the field marks are no longer reasonably visible, an
36 excavator shall renotify the regional notification center with a
37 request for remarks that can be for all or a portion of the
38 excavation. Excavation shall cease in the area to be remarked. If
39 the area to be remarked is not the full extent of the original
40 excavation, the excavator shall delineate the portion to be remarked.

1 If the delineation markings are no longer reasonably visible, the
2 excavator shall redelineate the area to be remarked. If remarks are
3 requested, the operator shall have two working days, not including
4 the date of request, to remark the subsurface installation.
5 Excavation shall cease in the area where the remarks are requested.
6 If the area to be remarked is not the full extent of the original
7 excavation, the excavator shall delineate the portion to be remarked
8 and provide a description of the area requested to be remarked on
9 the ticket. The excavator shall provide a description for the area
10 to be remarked that falls within the area of the original location
11 request.

12 (c) Every operator may supply an electronic positive response
13 through the regional notification center before the legal excavation
14 start date and time. The regional notification center shall make
15 those responses available.

16 (d) The excavator shall notify the appropriate regional
17 notification center of the failure of an operator to identify
18 subsurface installations pursuant to subparagraph ~~(A), (B), or (C)~~
19 *(A) or (B)* of paragraph (1) of subdivision (a), or subdivision (b).
20 The notification shall include the ticket issued by the regional
21 notification center. A record of all notifications received pursuant
22 to this subdivision shall be maintained by the regional notification
23 center for a period of not less than three years. The record shall
24 be available for inspection pursuant to subdivision (h) of Section
25 4216.2.

26 (e) If an operator or local agency knows that it has a subsurface
27 installation embedded or partially embedded in the pavement that
28 is not visible from the surface, the operator or local agency shall
29 contact the excavator before pavement removal to communicate
30 and determine a plan of action to protect that subsurface installation
31 and excavator.

32 (f) An excavator shall not be responsible for a traffic signal
33 detector loop, even if the excavator is notified that it is embedded
34 in the pavement, unless there is a local ordinance or permit
35 requirement to the contrary.

36 SEC. 7. Section 4216.4 of the Government Code is amended
37 to read:

38 4216.4. (a) (1) Except as provided in paragraph (2), if an
39 excavation is within the approximate location of a subsurface
40 installation, the excavator shall expose with hand tools to the depth

1 of the excavation within the tolerance zone, including any
2 applicable clearance requirements, for the full length of the project.

3 (2) (A) An excavator may use a vacuum excavation device to
4 expose subsurface installations within the tolerance zone if the
5 operator has marked the subsurface installation, the excavator has
6 contacted any operator whose subsurface installations may be in
7 conflict with the excavation, and the operator has agreed to the
8 use of a vacuum excavation device. An excavator shall inform the
9 regional notification center of his or her intent to use a vacuum
10 excavation device when obtaining a ticket.

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

14 (b) If the exact location of the subsurface installation cannot be
15 determined by hand excavating in accordance with subdivision
16 (a), the excavator shall request the operator to provide additional
17 information to the excavator, to the extent that information is
18 available to the operator, to enable the excavator to determine the
19 exact location of the installation. If the excavator has questions
20 about the markings that an operator has placed, the excavator may
21 contact the notification center to send a request to have the operator
22 contact the excavator directly. The regional notification center
23 shall provide the excavator with the contact telephone number of
24 the subsurface installation operator.

25 (c) An excavator discovering or causing damage to a subsurface
26 installation, including all breaks, leaks, nicks, dents, gouges,
27 grooves, or other damage to subsurface installation lines, conduits,
28 coatings, or cathodic protection, shall immediately notify the
29 subsurface installation operator. The excavator may contact the
30 regional notification center to obtain the contact information of
31 the subsurface installation operator. If high priority subsurface
32 installations are damaged and the operator cannot be contacted
33 immediately, the excavator shall call 911 emergency services.

34 (d) Each excavator, operator, or locator shall communicate with
35 each other and respect the appropriate safety requirements and
36 ongoing activities of the other parties, if known, at an excavation
37 site.

38 SEC. 8. Section 4216.5 of the Government Code is amended
39 to read:

1 4216.5. The requirements of this article apply to state agencies
2 and to local agencies that own or operate subsurface installations.
3 A local agency that is required to provide the services described
4 in Section 4216.3 may charge a fee in an amount sufficient to cover
5 the cost of providing that service.

6 SEC. 9. Section 4216.6 of the Government Code is amended
7 to read:

8 4216.6. (a) (1) Any operator or excavator who negligently
9 violates this article is subject to a civil penalty in an amount not
10 to exceed ten thousand dollars (\$10,000).

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

14 (3) Except as otherwise specifically provided in this article, this
15 section is not intended to affect any civil remedies otherwise
16 provided by law for personal injury or for property damage,
17 including any damage to subsurface installations, nor is this section
18 intended to create any new civil remedies for those injuries or that
19 damage.

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

24 (b) An action may be brought by the Attorney General, the
25 district attorney, or the local or state agency that issued the permit
26 to excavate, for the enforcement of the civil penalty pursuant to
27 this section either in a civil action brought in the name of the people
28 of the State of California or in an administrative hearing before
29 the authority pursuant to Section 4216.19. If penalties are collected
30 as a result of a civil suit brought by a state or local agency for
31 collection of those civil penalties, the penalties imposed shall be
32 paid to the general fund of the agency. If more than one agency is
33 involved in enforcement, the penalties imposed shall be
34 apportioned among them by the court in a manner that will fairly
35 offset the relative costs incurred by the state or local agencies, or
36 both, in collecting these fees.

37 (c) The requirements of this article may also be enforced as
38 follows:

1 (1) The Contractors' State License Board shall enforce paragraph
2 (1) of subdivision (a) of Section 4216.2 as specified in Section
3 7110.7 of the Business and Professions Code.

4 (2) The Public Utilities Commission may enforce subdivisions
5 (a) and (b) of Section 4216.3 against operators of natural gas and
6 electric underground infrastructure, unless those operators are
7 municipal utilities.

8 (3) The Office of the State Fire Marshal may enforce
9 subdivisions (a) and (b) of Section 4216.3 against operators of
10 hazardous liquid pipelines, unless those operators are municipal
11 utilities.

12 (d) Statewide information provided by operators and excavators
13 regarding facility events shall be compiled and made available in
14 an annual report by regional notification centers and posted on the
15 Internet Web sites of the regional notification centers.

16 (e) For purposes of subdivision (d), the following terms have
17 the following meanings:

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

20 (2) "Statewide information" means information submitted by
21 operators and excavators using the California Regional Common
22 Ground Alliance's Virtual Private Damage Information Reporting
23 Tool. Supplied data shall comply with the Damage Information
24 Reporting Tool's minimum essential information as listed in Best
25 Practices Version 11.0 by the Common Ground Alliance.

26 SEC. 10. Section 4216.7 of the Government Code is amended
27 to read:

28 4216.7. (a) If a subsurface installation is damaged by an
29 excavator as a result of failing to comply with Section 4216.2 or
30 4216.4, or as a result of failing to comply with the operator's
31 requests to protect the subsurface installation as specified by the
32 operator before the start of excavation, the excavator shall be liable
33 to the operator of the subsurface installation for resulting damages,
34 costs, and expenses to the extent the damages, costs, and expenses
35 were proximately caused by the excavator's failure to comply.

36 (b) If an operator has failed to become a member of, participate
37 in, or share in the costs of, a regional notification center, that
38 operator shall forfeit his or her claim for damages to his or her
39 subsurface installation arising from an excavation against an
40 excavator who has called at least two working days in advance to

1 the extent damages were proximately caused by the operator's
2 failure to be a member.

3 (c) If an operator of a subsurface installation has failed to
4 comply with the provisions of Section 4216.3, including, but not
5 limited to, the requirement to field mark the appropriate location
6 of subsurface installations within two working days of notification,
7 has failed to comply with paragraph (2) of subdivision (a) of
8 Section 4216.2, or has failed to comply with subdivision (b) of
9 Section 4216.4, the operator shall be liable to the excavator who
10 has complied with Sections 4216.2 and 4216.4 for damages,
11 including liquidated damages, liability, losses, costs, and expenses
12 resulting from the operator's failure to comply with these specified
13 requirements to the extent the damages, costs, and expenses were
14 proximately caused by the operator's failure to comply.

15 (d) An excavator who damages a subsurface installation due to
16 an inaccurate field mark by an operator, or by a third party under
17 contract to perform field marking for the operator, shall not be
18 liable for damages, replacement costs, or other expenses arising
19 from damages to the subsurface installation if the excavator
20 complied with Sections 4216.2 and 4216.4.

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

26 (f) For the purposes of this section, "inaccurate field mark"
27 means a mark, or set of markings, made pursuant to Section 4216.3,
28 that did not correctly indicate the approximate location of a
29 subsurface installation affected by an excavation and includes the
30 actual physical location of a subsurface installation affected by an
31 excavation that should have been marked pursuant to Section
32 4216.3 but was not.

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

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

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

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

4 SEC. 11. Section 4216.8 of the Government Code is amended
5 to read:

6 4216.8. This article does not apply to either of the following
7 persons:

8 (a) An owner of residential real property doing work not
9 requiring a permit issued by a state or local agency on his or her
10 residential real property that has no easement or right-of-way who
11 only uses hand tools for excavation.

12 (b) Any person or private entity that leases or rents power
13 operated or power-driven excavating or boring equipment,
14 regardless of whether an equipment operator is provided for that
15 piece of equipment or not, to a contractor or subcontractor licensed
16 pursuant to Article 5 (commencing with Section 7065) of Chapter
17 9 of Division 3 of the Business and Professions Code, if the signed
18 rental agreement between the person or private entity and the
19 contractor or subcontractor contains the following provision:

20
21 “It is the sole responsibility of the lessee or renter to follow
22 the requirements of the regional notification center law
23 pursuant to Article 2 (commencing with Section 4216) of
24 Chapter 3.1 of Division 5 of Title 1 of the Government Code.
25 By signing this contract, the lessee or renter accepts all
26 liabilities and responsibilities contained in the regional
27 notification center law.”

28
29 SEC. 12. Section 4216.9 of the Government Code is amended
30 to read:

31 4216.9. (a) A permit to excavate issued by any local agency,
32 as defined in Section 4216, or any state agency, shall not be valid
33 unless the applicant has been provided an initial ticket by a regional
34 notification center pursuant to Section 4216.2. For purposes of
35 this section, “state agency” means every state agency, department,
36 division, bureau, board, or commission, including the Department
37 of Transportation.

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

1 SEC. 13. Section 4216.10 is added to the Government Code,
2 to read:

3 4216.10. (a) On or before January 1, 2017, the Occupational
4 Safety and Health Standards Board shall revise subdivision (b) of
5 Section 1541 of Title 8 of the California Code of Regulations to
6 clarify best practices to be used by excavators when excavating
7 near subsurface installations.

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

15 SEC. 14. Section 4216.11 is added to the Government Code,
16 to read:

17 4216.11. (a) The California Underground Facilities Safe
18 Excavation Authority is hereby created.

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

25 (c) The authority may hold hearings and conduct any
26 investigations necessary to carry out its powers and duties
27 prescribed by this article and, for those purposes, has the same
28 powers as are conferred upon heads of departments of the state by
29 Article 2 (commencing with Section 11180) of Chapter 2 of Part
30 1 of Division 3 of Title 2.

31 SEC. 15. Section 4216.12 is added to the Government Code,
32 to read:

33 4216.12. (a) The authority shall be composed of nine members,
34 of which seven shall be appointed by the Governor, one shall be
35 appointed by the Speaker of the Assembly, and one shall be
36 appointed by the Senate Committee on Rules.

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

39 (1) Three members shall have knowledge and expertise in
40 managing underground. Of those three members, one shall have

1 knowledge and expertise in managing the underground institutions
2 of a municipal utility.

3 (2) Two members shall have knowledge and expertise in contract
4 excavation.

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

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

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

12 (d) The member appointed by the Senate Committee on Rules
13 shall have knowledge and expertise in managing the underground
14 installations on one's own property, and may be drawn from
15 agricultural, commercial, or residential, or other, property sectors.

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

18 4216.13. (a) The term of a member of the authority is two
19 years. Of the first members of the authority, four members,
20 determined by lot, shall serve for one year so that the terms of the
21 members shall be staggered.

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

24 (c) To the extent possible, the Governor shall fill any vacancy
25 in the membership of the authority within 60 days after the vacancy
26 occurs.

27 (d) Upon the recommendation of the authority, the Governor
28 may remove a member appointed by the Governor for
29 incompetence or misconduct.

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

32 4216.14. (a) The authority shall select a chairperson from
33 among its members at the first meeting of each calendar year or
34 when a vacancy in the chair exists.

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

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

1 SEC. 18. Section 4216.15 is added to the Government Code,
2 to read:

3 4216.15. The authority shall meet at least once every three
4 months. The authority shall hold meetings in Sacramento and Los
5 Angeles, and in other locations in the state it deems necessary.

6 SEC. 19. Section 4216.16 is added to the Government Code,
7 to read:

8 4216.16. (a) In addition to other powers specified in this article,
9 the authority may do any of the following:

10 (1) Apply for and accepts grants, contributions, and
11 appropriations, and award grants consistent with the goals and
12 objectives of a program or activity the authority is authorized to
13 implement or administer.

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

17 (3) Sue and be sued.

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

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

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

27 SEC. 20. Section 4216.17 is added to the Government Code,
28 to read:

29 4216.17. The authority may obtain funding for its operational
30 expenses from:

31 (a) A federal or state grant.

32 (b) A fee charged to members of the regional notification centers
33 not to exceed the reasonable regulatory cost incident to enforcement
34 of this article.

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

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

38 (e) Any other source.

39 SEC. 21. Section 4216.18 is added to the Government Code,
40 to read:

1 4216.18. In the enforcement of this article, and furtherance of
2 its purposes, the authority may authorize staff to use compliance
3 audits, including field audits, and investigations of incidents and
4 near-misses.

5 SEC. 22. Section 4216.19 is added to the Government Code,
6 to read:

7 4216.19. (a) After providing opportunity for hearing pursuant
8 to the administrative adjudication provisions of the Administrative
9 Procedure Act (Chapter 4.5 (commencing with Section 11400) of
10 Part 1 of Division 3 of Title 2), the authority, upon making a
11 finding of violation, may:

- 12 (1) Assess a civil penalty of no more than ____ dollars (\$_____).
- 13 (2) Reach a settlement in lieu of assessing a civil penalty.
- 14 (3) Require remedial education relevant to the violation.

15 (b) The authority may do both of the following:

- 16 (1) Use the services of a third party to collect civil penalties.
- 17 (2) If the authority determines that an individual cannot afford
18 to pay a penalty imposed pursuant to this section, the authority
19 may exempt the individual from payment of the penalty in whole
20 or in part.

21 SEC. 23. Section 4216.20 is added to the Government Code,
22 to read:

23 4216.20. (a) A person aggrieved by a decision of the authority
24 may, within 30 days after receiving the decision, request judicial
25 review of the decision in superior court.

26 (b) In accordance with the judicial review and appeals process
27 under the Administrative Procedure Act (Chapter 3.5 (commencing
28 with Section 1140), and Chapter 5 (commencing with Section
29 11500), of Part 1 of Division 3 of Title 2), the court shall hear and
30 determine all matters connected with the decision of the authority
31 for which judicial review is requested.

32 (c) (1) Except as provided in paragraph (2), the cost of the
33 judicial review, including the cost of preparing a record and
34 transcript, shall be paid by the party filing the request for judicial
35 review.

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

1 SEC. 24. Section 4216.21 is added to the Government Code,
2 to read:

3 4216.21. (a) Notwithstanding Section 10231.5, the authority
4 shall report to the Governor and the Legislature on or before
5 January 1, 2017, and each year thereafter, on the activities of the
6 authority and any recommendations of the authority.

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

9 SEC. 25. Section 320.5 is added to the Public Utilities Code,
10 to read:

11 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
12 is hereby established in the State Treasury. Moneys deposited into
13 the fund shall be used to cover the administrative expenses of the
14 California Underground Facilities Safe Excavation Authority, upon
15 appropriation by the Legislature.

16 (b) Any excess moneys in the fund that are not necessary for
17 the administrative expenses of the California Underground
18 Facilities Safe Excavation Authority may, upon appropriation by
19 the Legislature, be apportioned by the commission for the following
20 purposes:

21 (1) The California Underground Facilities Safe Excavation
22 Authority, for the purpose of the education and training of persons
23 who violate Article 2 (commencing with Section 4216) of Chapter
24 3.1 of Division 5 of Title 1 of the Government Code.

25 (2) Regional notification centers, as defined in Section 4216 of
26 the Government Code, to cover the cost of public education and
27 outreach programs designed to promote excavation safety around
28 underground facilities.

29 (3) The commission, to further a workforce development
30 program, which shall be consistent with its equal employment
31 opportunity program, that recruits and trains safety staff to perform
32 the highest quality gas and electric utility inspections, audits,
33 accident investigations, and data tracking and analysis. The
34 commission may only apportion moneys for this purpose upon
35 commission approval of the workforce development program at a
36 meeting of the commission.

37 SEC. 26. Section 1702.5 of the Public Utilities Code is
38 amended to read:

39 1702.5. (a) The commission shall, in an existing or new
40 proceeding, develop and implement a safety enforcement program

1 applicable to gas corporations and electrical corporations that
2 includes procedures for monitoring, data tracking and analysis,
3 and investigations, as well as issuance of citations by commission
4 staff, under the direction of the executive director. The enforcement
5 program shall be designed to improve gas and electrical system
6 safety through the enforcement of applicable law, or order or rule
7 of the commission related to safety using a variety of enforcement
8 mechanisms, including the issuance of corrective actions, orders,
9 and citations by designated commission staff, and recommendations
10 for action made to the commission by designated commission staff.

11 (1) When considering the issuance of citations and assessment
12 of penalties, the commission staff shall take into account voluntary
13 reporting of potential violations, voluntary removal or resolution
14 efforts undertaken, the prior history of violations, the gravity of
15 the violation, and the degree of culpability.

16 (2) The procedures shall include, but are not limited to,
17 providing notice of violation within a reasonable period of time
18 after the discovery of the violation.

19 (3) The commission shall adopt an administrative limit on the
20 amount of monetary penalty that may be set by commission staff.

21 (b) The commission shall develop and implement an appeals
22 process to govern the issuance and appeal of citations or resolution
23 of corrective action orders issued by the commission staff. The
24 appeals process shall provide the respondent a reasonable period
25 of time, upon receiving a citation, to file a notice of appeal, shall
26 afford an opportunity for a hearing, and shall require the hearing
27 officer to expeditiously provide a draft disposition.

28 (c) The commission shall, within a reasonable time set by the
29 commission, conclude a safety enforcement action with a finding
30 of violation, a corrective action order, a citation, a determination
31 of no violation, approval of the corrective actions undertaken by
32 the gas corporation or electrical corporation, or other action. The
33 commission may institute a formal proceeding regarding the alleged
34 violation, potentially resulting in additional enforcement action,
35 regardless of any enforcement action taken at the commission staff
36 level.

37 (d) The commission shall implement the safety enforcement
38 program for gas safety by July 1, 2014, and implement the safety
39 enforcement program for electrical safety no later than January 1,
40 2015.

1 (e) This section does not apply to an exempt wholesale
2 generator, a qualifying small power producer, or qualifying
3 cogenerator, as defined in Section 796 of Title 16 of the United
4 States Code and the regulations enacted pursuant thereto. Nothing
5 in this section affects the commission's authority pursuant to
6 Section 761.3.

7 (f) Moneys collected as a result of the issuance of citations
8 pursuant to this section shall be deposited in the Safe Energy
9 Infrastructure and Excavation Fund.

O