

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MAY 5, 2015

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~~ 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add ~~Section 320.5~~ Sections 320.5 and 971 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. 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 expand the definition of a subsurface installation, to include an underground structure or submerged duct, pipeline, or 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 authorize, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which a court 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 for a subsurface installation.

The bill would require the operator of a high-priority subsurface installation to make specified notifications to a landowner if agricultural activities cannot safely be performed due to the depth of the subsurface installations and to mark the location and depth of those installations, as specified.

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.

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.

The Natural Gas Pipeline Safety Act of 2011, within the Public Utilities Act, designates the Public Utilities Commission as the state authority responsible for regulating and enforcing intrastate gas pipeline transportation and pipeline facilities pursuant to federal law, including the development, submission, and administration of a state pipeline safety program certification for natural gas. Existing federal law requires each operator of a buried gas pipeline to carry out a program to prevent damage to that pipeline from excavation activities, as specified.

The bill would require each gas corporation, as part of its damage prevention program to collect specified information to inform its outreach activities and to report this information to the Public Utilities Commission, as specified.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the requirements described above are within the act, a violation of these requirements would impose a state-mandated local program by creating a new crime.

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.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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
18 operators of their facilities aids the excavator in understanding
19 where underground facilities were marked, and thus improves
20 safety. This practice was recommended by the National
21 Transportation Safety Board in its 1997 study “Protecting Public
22 Safety through Excavation Damage Prevention” and is a best
23 practice of the Common Ground Alliance.

24 (e) Continuing an excavation after an excavation “ticket” has
25 expired does not promote safety, and excavators should renew
26 their ticket with the one-call center before expiration. Continuing
27 excavation when markings are no longer visible does not promote
28 safety, and excavators should stop work until the subsurface
29 installations are remarked.

30 (f) The benefits of eliminating old field marks once an
31 excavation project is complete are more than just aesthetic;

1 eliminating old field marks helps prevent confusion for the next
2 excavator to dig in that area.

3 (g) Increased communication between subsurface installation
4 operators and excavators before breaking ground has safety
5 benefits.

6 (h) Construction sites often have many parties conducting
7 different, ongoing work, and so the inherent safety risks associated
8 with that work can be increased by a failure of these parties to
9 effectively communicate. Excavators, operators of subsurface
10 facilities, and locators have a responsibility to communicate with
11 other parties before entering these worksites, which may require
12 advance schedule coordination, and also have a responsibility to
13 observe the safety requirements set for those worksites.

14 (i) Abandoned subsurface installations can be mistaken for
15 active subsurface installations that are marked, and thus present a
16 safety risk to excavators and the public. Safety will be improved
17 if subsurface facility operators identify these subsurface
18 installations when their existence is known.

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

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

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

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

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

38 (o) Exemptions that allow a class of persons to excavate without
39 calling 811 shall be made not based on convenience, but rather

1 permitted only if alternative procedures allow the excavation to
2 take place without compromising safety.

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

7 (q) *Agricultural activities of less than 16 inches are not*
8 *excavations, and high-priority subsurface natural gas and*
9 *hazardous liquid pipeline installations are identified in rural areas*
10 *with above-ground markers pursuant to Section 192.707 of Part*
11 *192 and Section 195.410 of Part 195 of Title 49 of the Code of*
12 *Federal Regulations, respectively, so the management of safety*
13 *around underground facilities in agricultural operations must be*
14 *different.*

15 (r) *Prevention of boring through sewer laterals with natural*
16 *gas and other subsurface installation services may be achieved*
17 *through reasonable care in the use of trenchless excavating*
18 *technologies. Indication of the location of sewer laterals can aid*
19 *in prevention of these cross-bores.*

20 (~~q~~)

21 (s) The exemption that permits private property owners to dig
22 on their property without calling a regional notification center to
23 have the area marked for underground facilities does not have a
24 basis in safety.

25 (~~r~~)

26 (t) The exemption that permits homeowners to conduct
27 excavation on their property with heavy machinery or when there
28 is a utility easement on his or her property does not have a basis
29 in safety.

30 (~~s~~)

31 (u) Behaviors that are suspected to be unsafe, but upon which
32 there is not widespread agreement as to the level of risk and,
33 therefore, are unregulated, must be monitored to better assess the
34 risk.

35 (v) *The Study on the Impact of Excavation Damage on Pipeline*
36 *Safety, submitted by the United States Department of*
37 *Transportation to Congress on October 9, 2014, reported that*
38 *other states have found that exemption of landscape maintenance*
39 *activities of less than 12 inches deep, when performed with hand*
40 *tools, do not appear to have a significant impact on safety. The*

1 *report cautions, however, that while those activity-based*
2 *exemptions may be acceptable, they should be supported by*
3 *sufficient data.*

4 ~~(t)~~

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

9 ~~(u)~~

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

13 ~~(v)~~

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

21 ~~(w)~~

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

28 ~~(x)~~

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

34 ~~(y)~~

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

38 ~~(z)~~

39 (ac) Most persons who would be subject to the board's oversight
40 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)~~ by contractors
7 of subdivision (a) of Section 4216.2 of the Government Code.

8 (b) The Contractors’ State License Board shall require
9 contractors to undergo ~~training~~ a training program relating to
10 compliance with ~~paragraph (1)~~ of subdivision (a) of Section 4216.2
11 of the Government Code, as determined by the board, for an initial
12 violation. *The training program shall be conducted by a regional
13 notification center, as defined in Section 4216 of the Government
14 Code, or by a training program approved by a regional notification
15 center.*

16 (c) If the contractor does not ~~attend training within two months~~
17 *submit evidence of completion of a training program within 30*
18 *days* of being notified of the requirement to do so, or fails to
19 provide a reasonable explanation for his or her delay in scheduling
20 that training in writing, the board shall, in addition, levy a fine.
21 *contractor shall be subject to further disciplinary action.*

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

25 (e) The board shall determine a graduated scale of fines
26 ~~considering the following factors:~~ *consistent with Section 7099.2.*

27 ~~(1) Whether the regional notification center received a timely~~
28 ~~request for locate and field mark.~~

29 ~~(2) The gravity of the violation.~~

30 ~~(3) The good faith of the contractor.~~

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

32 SEC. 3. Section 4216 of the Government Code is amended to
33 read:

34 4216. As used in this article the following definitions apply:

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

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

1 (c) “Authority” means the California Underground Facilities
2 Safe Excavation Authority.

3 (d) “Delineate” means to mark in white ~~paint~~ the location or
4 path of the proposed excavation using the guidelines in Appendix
5 B of the “Guidelines for Excavation Delineation” published in
6 Best Practices Version 11.0 by the Common Ground Alliance. If
7 there is a conflict between the marking practices in those guidelines
8 and other provisions of this article, this article shall control.
9 *“Delineation” also includes physical identification of the area to*
10 *be excavated using pink marking, an excavator makes a*
11 *determination that standard delineation may be misleading to*
12 *those persons using affected streets and highways, or be*
13 *misinterpreted as a traffic or pedestrian control, and the excavator*
14 *has contacted the regional notification center to advise the*
15 *operators that the excavator will physically identify the area to be*
16 *excavated using pink markings.*

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

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

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

28 (g) (1) “Excavation” means penetration of the plane between
29 the air and the existing surface of the ground or pavement by any
30 operation in which earth, rock, *pavement*, or other material *below*
31 *the existing grade* is moved, removed, or otherwise displaced by
32 means of tools, equipment, or explosives in any of the following
33 ways: grading, trenching, digging, ditching, drilling, augering,
34 tunneling, scraping, cable or pipe plowing and driving, gouging,
35 crushing, jack hammering, saw cutting, or any other way.

36 (2) *For purposes of this article, “excavation” does not include*
37 *any of the following:*

38 (A) *Plowing, cultivating, planting, harvesting, or similar*
39 *operations in connection with agricultural activities, unless the*
40 *activity disturbs the soil to a depth of 16 inches or more.*

1 (B) *Landscape maintenance activity that is performed with hand*
2 *tools at a depth of more than 12 inches. Landscape maintenance*
3 *activity includes all of the following:*

4 (i) *Aeration, dethatching, and cutting of vegetation, including*
5 *lawn edging.*

6 (ii) *Installation or replacement of ground cover and plant life.*

7 (iii) *Minor fixes to existing drainage and sprinkler systems.*

8 (C) *This paragraph shall become inoperative on January 1,*
9 *2020.*

10 (3) *The exclusion of the activities in paragraph (2) from the*
11 *definition of “excavation” shall not be used to discourage a person*
12 *planning to perform those activities from voluntarily notifying a*
13 *regional notification center pursuant to Section 4216.2, and does*
14 *not relieve an operator of a subsurface installation from the*
15 *obligation to locate and mark pursuant to Section 4216.3 following*
16 *the notification. This paragraph shall become inoperative on*
17 *January 1, 2020.*

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

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

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

32 (k) “Inactive subsurface installation” means both of the
33 following:

34 (1) The portion of an underground subsurface installation that
35 is not in use but is still connected to the subsurface installation, or
36 to any other subsurface installation, that is in use or still carries
37 service.

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

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

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

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

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

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

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

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

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

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

37 (t) “Regional notification center” means a nonprofit association
38 or other organization of operators of subsurface installations that
39 provides advance warning of excavations or other work close to

1 existing subsurface installations, for the purpose of protecting
2 those installations from damage, removal, relocation, or repair.

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

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

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

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

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

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

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

22 (y) “Working day” for the purposes of determining excavation
23 start date and time means a weekday Monday through Friday, from
24 7:00 a.m. to 5:00 p.m., except for federal holidays and state
25 holidays, as defined in Section 19853 of the Government Code.

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

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

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

38 4216.2. (a) Before notifying the appropriate regional
39 notification center, an excavator planning to conduct an excavation
40 shall delineate the area to be excavated. If the area is not delineated,

1 an operator may, at the operator's discretion, choose not to locate
2 and field mark until the area to be excavated has been delineated.

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

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

22 (d) Except in an emergency, every excavator covered by Section
23 4216.8 planning to conduct an excavation on private property that
24 does not require an excavation permit may contact the appropriate
25 regional notification center if the private property is known, or
26 reasonably should be known, to contain a subsurface installation
27 other than the underground facility owned or operated by the
28 excavator. Before notifying the appropriate regional notification
29 center, an excavator shall delineate the area to be excavated. Any
30 temporary marking placed at the planned excavation location shall
31 be clearly seen, functional, and considerate to surface aesthetics
32 and the local community. An excavator shall check if any local
33 ordinances apply to the placement of temporary markings.

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

38 (f) The regional notification center shall provide a ticket to the
39 person who contacts the center pursuant to this section and shall
40 notify any member, if known, who has a subsurface installation

1 in the area of the proposed excavation. A ticket shall be valid for
2 28 days from the date of issuance. If work continues beyond 28
3 days, the excavator shall update the ticket either by accessing the
4 center’s Internet Web site or by calling “811” by the end of the
5 28th day.

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

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

17 (i) If a site requires special access, an excavator shall request
18 an operator to contact the excavator regarding that special access
19 or give special instructions on the location request.

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

25 (k) When the excavation is complete, the excavator shall
26 eliminate or camouflage any temporary markings that remain for
27 45 days or more, unless a local ordinance indicates otherwise.

28 SEC. 6. Section 4216.3 of the Government Code is amended
29 to read:

30 4216.3. (a) (1) (A) Unless the excavator and operator
31 mutually agree to a later start date and time, or otherwise agree to
32 the sequence and timeframe in which the operator will locate and
33 field mark, an operator shall do one of the following before the
34 legal excavation start date and time:

35 (i) Locate and field mark within the area delineated for
36 excavation and, where multiple subsurface installations of the same
37 type are known to exist together, mark the number of subsurface
38 installations.

1 (ii) To the extent and degree of accuracy that the information
2 is available, provide information to an excavator where the
3 operator’s active or inactive subsurface installations are located.
4 (iii) Advise the excavator it operates no subsurface installations
5 in the area delineated for excavation.
6 (B) An operator shall mark newly installed subsurface
7 installations in areas with continuing excavation activity.
8 (C) An operator shall indicate with an “A” inside a circle the
9 presence of any abandoned subsurface installations within the
10 delineated area. The markings are to make an excavator aware that
11 there are abandoned subsurface installations within that delineated
12 work area.
13 (2) Only a qualified person shall perform subsurface installation
14 locating activities.
15 (3) A qualified person performing subsurface installation
16 locating activities on behalf of an operator shall use a minimum
17 of a single-frequency utility locating device and shall have access
18 to alternative sources for verification, if necessary.
19 (4) An operator shall amend, update, maintain, and preserve all
20 plans and records for its subsurface installations as that information
21 becomes known. If there is a change in ownership of a subsurface
22 installation, the records shall be turned over to the new operator.
23 Records on abandoned subsurface installations shall be kept
24 beginning on January 1, 2016.
25 (b) If the field marks are no longer reasonably visible, an
26 excavator shall renotify the regional notification center with a
27 request for remarks that can be for all or a portion of the
28 excavation. Excavation shall cease in the area to be remarked. If
29 the area to be remarked is not the full extent of the original
30 excavation, the excavator shall delineate the portion to be remarked.
31 If the delineation markings are no longer reasonably visible, the
32 excavator shall redelineate the area to be remarked. If remarks are
33 requested, the operator shall have two working days, not including
34 the date of request, to remark the subsurface installation.
35 Excavation shall cease in the area where the remarks are requested.
36 If the area to be remarked is not the full extent of the original
37 excavation, the excavator shall delineate the portion to be remarked
38 and provide a description of the area requested to be remarked on
39 the ticket. The excavator shall provide a description for the area

1 to be remarked that falls within the area of the original location
2 request.

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

7 (d) The excavator shall notify the appropriate regional
8 notification center of the failure of an operator to identify
9 subsurface installations pursuant to subparagraph (A) or (B) of
10 paragraph (1) of subdivision (a), or subdivision (b). The notification
11 shall include the ticket issued by the regional notification center.
12 A record of all notifications received pursuant to this subdivision
13 shall be maintained by the regional notification center for a period
14 of not less than three years. The record shall be available for
15 inspection pursuant to subdivision (h) of Section 4216.2.

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

22 SEC. 7. Section 4216.4 of the Government Code is amended
23 to read:

24 4216.4. (a) (1) Except as provided in paragraph (2), if an
25 excavation is within the approximate location of a subsurface
26 installation, the excavator shall expose with hand tools to the depth
27 of the excavation within the tolerance zone, including any
28 applicable clearance requirements, for the full length of the project.

29 (2) (A) An excavator may use a vacuum excavation device to
30 expose subsurface installations within the tolerance zone if the
31 operator has marked the subsurface installation, the excavator has
32 contacted any operator whose subsurface installations may be in
33 conflict with the excavation, and the operator has agreed to the
34 use of a vacuum excavation device. An excavator shall inform the
35 regional notification center of his or her intent to use a vacuum
36 excavation device when obtaining a ticket.

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

1 (b) If the exact location of the subsurface installation cannot be
2 determined by hand excavating in accordance with subdivision
3 (a), the excavator shall request the operator to provide additional
4 information to the excavator, to the extent that information is
5 available to the operator, to enable the excavator to determine the
6 exact location of the installation. If the excavator has questions
7 about the markings that an operator has placed, the excavator may
8 contact the notification center to send a request to have the operator
9 contact the excavator directly. The regional notification center
10 shall provide the excavator with the contact telephone number of
11 the subsurface installation operator.

12 (c) An excavator discovering or causing damage to a subsurface
13 installation, including all breaks, leaks, nicks, dents, gouges,
14 grooves, or other damage to subsurface installation lines, conduits,
15 coatings, or cathodic protection, shall immediately notify the
16 subsurface installation operator. The excavator may contact the
17 regional notification center to obtain the contact information of
18 the subsurface installation operator. If high priority subsurface
19 installations are damaged and the operator cannot be contacted
20 immediately, the excavator shall call 911 emergency services.

21 (d) Each excavator, operator, or locator shall communicate with
22 each other and respect the appropriate safety requirements and
23 ongoing activities of the other parties, if known, at an excavation
24 site.

25 SEC. 8. Section 4216.5 of the Government Code is amended
26 to read:

27 4216.5. The requirements of this article apply to state agencies
28 and to local agencies that own or operate subsurface installations.
29 A local agency that is required to provide the services described
30 in Section 4216.3 may charge a fee in an amount sufficient to cover
31 the cost of providing that service.

32 SEC. 9. Section 4216.6 of the Government Code is amended
33 to read:

34 4216.6. (a) (1) Any operator or excavator who negligently
35 violates this article is subject to a civil penalty in an amount not
36 to exceed ten thousand dollars (\$10,000).

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

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

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

11 (b) An action may be brought by the Attorney General, the
12 district attorney, or the local or state agency that issued the permit
13 to excavate, for the enforcement of the civil penalty pursuant to
14 this section either in a civil action brought in the name of the people
15 of the State of California or in an administrative hearing before
16 the authority pursuant to ~~Section 4216.19~~. 4216.20. If penalties
17 are collected as a result of a civil suit brought by a state or local
18 agency for collection of those civil penalties, the penalties imposed
19 shall be paid to the general fund of the agency. If more than one
20 agency is involved in enforcement, the penalties imposed shall be
21 apportioned among them by the court in a manner that will fairly
22 offset the relative costs incurred by the state or local agencies, or
23 both, in collecting these fees.

24 (c) The requirements of this article may also be enforced as
25 follows:

26 (1) The Contractors' State License Board shall enforce paragraph
27 (1) of subdivision (a) of Section 4216.2 as specified in Section
28 7110.7 of the Business and Professions Code.

29 (2) The Public Utilities Commission may enforce subdivisions
30 (a) and (b) of Section 4216.3 against operators of natural gas and
31 electric underground infrastructure, unless those operators are
32 municipal utilities.

33 (3) The Office of the State Fire Marshal may enforce
34 subdivisions (a) and (b) of Section 4216.3 against operators of
35 hazardous liquid pipelines, unless those operators are municipal
36 utilities.

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

1 (e) For purposes of subdivision (d), the following terms have
2 the following meanings:

3 (1) “Facility event” means the occurrence of excavator
4 downtime, damages, near misses, and violations.

5 (2) “Statewide information” means information submitted by
6 operators and excavators using the California Regional Common
7 Ground Alliance’s Virtual Private Damage Information Reporting
8 Tool. Supplied data shall comply with the Damage Information
9 Reporting Tool’s minimum essential information as listed in Best
10 Practices Version 11.0 by the Common Ground Alliance.

11 SEC. 10. Section 4216.7 of the Government Code is amended
12 to read:

13 4216.7. (a) If a subsurface installation is damaged by an
14 excavator as a result of failing to comply with Section 4216.2 or
15 4216.4, or as a result of failing to comply with the operator’s
16 requests to protect the subsurface installation as specified by the
17 operator before the start of excavation, the excavator shall be liable
18 to the operator of the subsurface installation for resulting damages,
19 costs, and expenses to the extent the damages, costs, and expenses
20 were proximately caused by the excavator’s failure to comply.

21 (b) If an operator has failed to become a member of, participate
22 in, or share in the costs of, a regional notification center, that
23 operator shall forfeit his or her claim for damages to his or her
24 subsurface installation arising from an excavation against an
25 excavator who has complied with this article to the extent damages
26 were proximately caused by the operator’s failure to comply with
27 this article.

28 (c) If an operator of a subsurface installation has failed to
29 comply with the provisions of Section 4216.3, including, but not
30 limited to, the requirement to field mark the appropriate location
31 of subsurface installations within two working days of notification,
32 has failed to comply with paragraph (2) of subdivision (a) of
33 Section 4216.2, or has failed to comply with subdivision (b) of
34 Section 4216.4, the operator shall be liable to the excavator who
35 has complied with Sections 4216.2 and 4216.4 for damages,
36 including liquidated damages, liability, losses, costs, and expenses
37 resulting from the operator’s failure to comply with these specified
38 requirements to the extent the damages, costs, and expenses were
39 proximately caused by the operator’s failure to comply.

1 (d) An excavator who damages a subsurface installation due to
2 an inaccurate field mark by an operator, or by a third party under
3 contract to perform field marking for the operator, shall not be
4 liable for damages, replacement costs, or other expenses arising
5 from damages to the subsurface installation if the excavator
6 complied with Sections 4216.2 and 4216.4.

7 This section is not intended to create any presumption or to affect
8 the burden of proof in any action for personal injuries or property
9 damage, other than damage to the subsurface installation, nor is
10 this section intended to affect, create, or eliminate any remedy for
11 personal injury or property damage, other than damage to the
12 subsurface installation.

13 (e) In any actions for reimbursement or indemnification for a
14 claim arising from damage to a subsurface installation in which a
15 court finds that the excavator complied with the requirements of
16 this article, the excavator may be awarded reasonable attorney's
17 fees and expenses.

18 (f) For the purposes of this section, "inaccurate field mark"
19 means a mark, or set of markings, made pursuant to Section 4216.3,
20 that did not correctly indicate the approximate location of a
21 subsurface installation affected by an excavation and includes the
22 actual physical location of a subsurface installation affected by an
23 excavation that should have been marked pursuant to Section
24 4216.3 but was not.

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

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

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

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

36 SEC. 11. Section 4216.8 of the Government Code is amended
37 to read:

38 4216.8. This article does not apply to either of the following
39 persons:

1 (a) An owner of residential real property doing work not
2 requiring a permit issued by a state or local agency on his or her
3 residential real property that has no easement or right-of-way for
4 a subsurface installation who only uses hand tools for excavation.
5 *A person described in this subdivision is not an “excavator” as*
6 *defined in subdivision (h) of Section 4216, however this subdivision*
7 *shall not discourage a person from voluntarily notifying a regional*
8 *notification center pursuant to Section 4216.2, and does not relieve*
9 *an operator of a subsurface facility from the obligation to locate*
10 *and field mark pursuant to Section 4216.3 following the*
11 *notification.*

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. If the operator of a high-priority subsurface*
4 *installation finds that the depth of the subsurface installation*
5 *subject to agricultural activities described in subparagraph (A)*
6 *of paragraph (2) of subdivision (g) of Section 4216 is insufficient*
7 *to safely perform those activities, the operator of the high-priority*
8 *subsurface installation shall send notification, by registered mail,*
9 *to the landowner of the potential hazard and, within ___ days of*
10 *that notification, shall access the site at a date agreed upon by the*
11 *operator and the landowner to identify with permanent markers*
12 *the location and depth of the high-priority subsurface installation.*

13 ~~SEC. 13.~~

14 ~~SEC. 14. Section 4216.10~~ *4216.11 is added to the Government*
15 ~~Code, to read:~~

16 ~~4216.10.~~

17 *4216.11. (a) On or before January 1, 2017, the Occupational*
18 *Safety and Health Standards Board shall revise subdivision (b) of*
19 *Section 1541 of Title 8 of the California Code of Regulations to*
20 *clarify best practices to be used by excavators when excavating*
21 *near subsurface installations.*

22 *(b) The board shall convene an advisory committee hearing to*
23 *seek input from operators, regional notification centers, labor, and*
24 *excavators on best practices to be used by excavators when*
25 *excavating in urban areas where there is a high density of*
26 *subsurface installations, the appropriate frequency of potholing,*
27 *and other best practices developed by various industry associations,*
28 *including the Common Ground Alliance.*

29 ~~SEC. 14.~~

30 ~~SEC. 15. Section 4216.11~~ *4216.12 is added to the Government*
31 ~~Code, to read:~~

32 ~~4216.11.~~

33 *4216.12. (a) The California Underground Facilities Safe*
34 *Excavation Authority is hereby created.*

35 *(b) The authority shall enforce this article and further its*
36 *purposes, and thus has the same powers as are conferred upon*
37 *heads of departments of the state by Article 1 (commencing with*
38 *Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 in*
39 *the Government Code. Notwithstanding Section 11152, the*
40 *authority shall not adopt rules or regulations.*

1 (c) The authority may hold hearings and conduct any
2 investigations necessary to carry out its powers and duties
3 prescribed by this article and, for those purposes, has the same
4 powers as are conferred upon heads of departments of the state by
5 Article 2 (commencing with Section 11180) of Chapter 2 of Part
6 1 of Division 3 of Title 2.

7 ~~SEC. 15.~~

8 ~~SEC. 16.~~ Section ~~4216.12~~ *4216.13* is added to the Government
9 Code, to read:

10 ~~4216.12.~~

11 *4216.13.* (a) The authority shall be composed of nine members,
12 of which seven shall be appointed by the Governor, one shall be
13 appointed by the Speaker of the Assembly, and one shall be
14 appointed by the Senate Committee on Rules.

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

17 (1) Three members shall have knowledge and expertise in
18 managing underground. Of those three members, one shall have
19 knowledge and expertise in managing the underground institutions
20 of a municipal utility.

21 (2) Two members shall have knowledge and expertise in contract
22 excavation.

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

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

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

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

34 ~~SEC. 16.~~

35 ~~SEC. 17.~~ Section ~~4216.13~~ *4216.14* is added to the Government
36 Code, to read:

37 ~~4216.13.~~

38 *4216.14.* (a) The term of a member of the authority is two
39 years. Of the first members of the authority, four members,

1 determined by lot, shall serve for one year so that the terms of the
2 members shall be staggered.

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

5 (c) To the extent possible, the Governor shall fill any vacancy
6 in the membership of the authority within 60 days after the vacancy
7 occurs.

8 (d) Upon the recommendation of the authority, the Governor
9 may remove a member appointed by the Governor for
10 incompetence or misconduct.

11 ~~SEC. 17.~~

12 ~~SEC. 18.~~ Section ~~4216.14~~ 4216.15 is added to the Government
13 Code, to read:

14 ~~4216.14.~~

15 4216.15. (a) The authority shall select a chairperson from
16 among its members at the first meeting of each calendar year or
17 when a vacancy in the chair exists.

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

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

23 ~~SEC. 18.~~

24 ~~SEC. 19.~~ Section ~~4216.15~~ 4216.16 is added to the Government
25 Code, to read:

26 ~~4216.15.~~

27 4216.16. The authority shall meet at least once every three
28 months. The authority shall hold meetings in Sacramento and Los
29 Angeles, and in other locations in the state it deems necessary.

30 ~~SEC. 19.~~

31 ~~SEC. 20.~~ Section ~~4216.16~~ 4216.17 is added to the Government
32 Code, to read:

33 ~~4216.16.~~

34 4216.17. (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.~~

15 ~~SEC. 21.~~ Section ~~4216.17~~ *4216.18* is added to the Government
16 Code, to read:

17 ~~4216.17.~~

18 *4216.18.* The authority may obtain funding for its operational
19 expenses from:

20 (a) A federal or state grant.

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

24 (c) A fine assessed pursuant to Section ~~4216.19.~~ *4216.20.*

25 (d) A filing or administrative fee to hear a complaint pursuant
26 to Section ~~4216.19.~~ *4216.20.*

27 (e) Any other source.

28 ~~SEC. 21.~~

29 ~~SEC. 22.~~ Section ~~4216.18~~ *4216.19* is added to the Government
30 Code, to read:

31 ~~4216.18.~~

32 *4216.19.* In the enforcement of this article, and furtherance of
33 its purposes, the authority may authorize staff to use compliance
34 audits, including field audits, and investigations of incidents and
35 near-misses.

36 ~~SEC. 22.~~

37 ~~SEC. 23.~~ Section ~~4216.19~~ *4216.20* is added to the Government
38 Code, to read:

1 ~~4216.19.~~

2 *4216.20.* (a) After providing opportunity for hearing pursuant
3 to the administrative adjudication provisions of the Administrative
4 Procedure Act (Chapter 4.5 (commencing with Section 11400) of
5 Part 1 of Division 3 of Title 2), the authority, upon making a
6 finding of violation, may:

7 (1) Assess a civil penalty of no more than ____ dollars (\$____).

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

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

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

11 (1) Use the services of a third party to collect civil penalties.

12 (2) If the authority determines that an individual cannot afford
13 to pay a penalty imposed pursuant to this section, the authority
14 may exempt the individual from payment of the penalty in whole
15 or in part.

16 ~~SEC. 23.~~

17 *SEC. 24.* Section ~~4216.20~~ *4216.21* is added to the Government
18 Code, to read:

19 ~~4216.20.~~

20 *4216.21.* (a) A person aggrieved by a decision of the authority
21 may, within 30 days after receiving the decision, request judicial
22 review of the decision in superior court.

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

29 ~~SEC. 24.~~

30 *SEC. 25.* Section ~~4216.21~~ *4216.22* is added to the Government
31 Code, to read:

32 ~~4216.21.~~

33 *4216.22.* (a) Notwithstanding Section 10231.5, the authority
34 shall report to the Governor and the Legislature on or before
35 January 1, 2017, and each year thereafter, on the activities of the
36 authority and any recommendations of the authority.

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

1 ~~SEC. 25.~~

2 *SEC. 26.* Section 320.5 is added to the Public Utilities Code,
3 to read:

4 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
5 is hereby established in the State Treasury. Moneys deposited into
6 the fund shall be used to cover the administrative expenses of the
7 California Underground Facilities Safe Excavation Authority, upon
8 appropriation by the Legislature.

9 (b) Any excess moneys in the fund that are not necessary for
10 the administrative expenses of the California Underground
11 Facilities Safe Excavation Authority may, upon appropriation by
12 the Legislature, be apportioned by the commission for the following
13 purposes:

14 (1) The California Underground Facilities Safe Excavation
15 Authority, for the purpose of the education and training of persons
16 who violate Article 2 (commencing with Section 4216) of Chapter
17 3.1 of Division 5 of Title 1 of the Government Code.

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

22 (3) The commission, to further a workforce development
23 program, which shall be consistent with its equal employment
24 opportunity program, that recruits and trains safety staff to perform
25 the highest quality gas and electric utility inspections, audits,
26 accident investigations, and data tracking and analysis. The
27 commission may only apportion moneys for this purpose upon
28 commission approval of the workforce development program at a
29 meeting of the commission.

30 *SEC. 27.* Section 971 is added to the Public Utilities Code, to
31 read:

32 *971. (a) As a part of its damage prevention program carried*
33 *out pursuant to Section 192.614 of Part 192 of Title 49 of the Code*
34 *of Federal Regulation, each gas corporation shall collect data to*
35 *inform its outreach activities. The data shall include all of the*
36 *following:*

37 *(1) Damages that occurred during the performance of*
38 *landscaping activities. Each gas corporation shall note in its*
39 *investigation of excavation damage incidents the approximate*
40 *depth of the gas facility at the time of damage, the type of excavator*

1 *involved, which may include “homeowner,” “licensed contractor,”*
2 *or “unlicensed contractor,” and whether the excavator had called*
3 *the regional notification center before performing the excavation.*
4 *This paragraph shall become inoperative on January 1, 2020.*

5 *(2) Any other information that the commission shall require.*

6 *(b) Each gas corporation shall annually report to the*
7 *commission excavation damage data and analyses in a format of*
8 *the commission’s choosing.*

9 *(c) No later than February 1, 2019, the commission shall report*
10 *to the Legislature an analysis of excavation damages to*
11 *commission-regulated pipeline facilities. The report shall include*
12 *analyses of the types of damages described in subdivision (a).*

13 ~~SEC. 26.~~

14 SEC. 28. Section 1702.5 of the Public Utilities Code is amended
15 to read:

16 1702.5. (a) The commission shall, in an existing or new
17 proceeding, develop and implement a safety enforcement program
18 applicable to gas corporations and electrical corporations that
19 includes procedures for monitoring, data tracking and analysis,
20 and investigations, as well as issuance of citations by commission
21 staff, under the direction of the executive director. The enforcement
22 program shall be designed to improve gas and electrical system
23 safety through the enforcement of applicable law, or order or rule
24 of the commission related to safety using a variety of enforcement
25 mechanisms, including the issuance of corrective actions, orders,
26 and citations by designated commission staff, and recommendations
27 for action made to the commission by designated commission staff.

28 (1) When considering the issuance of citations and assessment
29 of penalties, the commission staff shall take into account voluntary
30 reporting of potential violations, voluntary removal or resolution
31 efforts undertaken, the prior history of violations, the gravity of
32 the violation, and the degree of culpability.

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

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

38 (b) The commission shall develop and implement an appeals
39 process to govern the issuance and appeal of citations or resolution
40 of corrective action orders issued by the commission staff. The

1 appeals process shall provide the respondent a reasonable period
2 of time, upon receiving a citation, to file a notice of appeal, shall
3 afford an opportunity for a hearing, and shall require the hearing
4 officer to expeditiously provide a draft disposition.

5 (c) The commission shall, within a reasonable time set by the
6 commission, conclude a safety enforcement action with a finding
7 of violation, a corrective action order, a citation, a determination
8 of no violation, approval of the corrective actions undertaken by
9 the gas corporation or electrical corporation, or other action. The
10 commission may institute a formal proceeding regarding the alleged
11 violation, potentially resulting in additional enforcement action,
12 regardless of any enforcement action taken at the commission staff
13 level.

14 (d) The commission shall implement the safety enforcement
15 program for gas safety by July 1, 2014, and implement the safety
16 enforcement program for electrical safety no later than January 1,
17 2015.

18 (e) This section does not apply to an exempt wholesale
19 generator, a qualifying small power producer, or qualifying
20 cogenerator, as defined in Section 796 of Title 16 of the United
21 States Code and the regulations enacted pursuant thereto. Nothing
22 in this section affects the commission's authority pursuant to
23 Section 761.3.

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

27 *SEC. 29. No reimbursement is required by this act pursuant*
28 *to Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*