

AMENDED IN ASSEMBLY JUNE 16, 2015

AMENDED IN SENATE JUNE 1, 2015

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, 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add 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.

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 attorney's 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: *who, as part of improving his or her principal residence, is performing, or is having performed, an excavation using hand tools that does not require a permit, as specified.*

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. *Advisory Committee under, and assisted by the staff of, the Contractors' State License Board, in the Department of Consumer Affairs.* 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: *committee to coordinate education and outreach activities, develop standards, and investigate violations of the provisions described above, as specified.*

The ~~authority~~ *advisory committee* would be composed of 9 members who would serve 2-year terms. The bill would authorize the ~~authority~~ *advisory committee, commencing on January 1, 2017*, to use compliance audits and investigations in enforcing these provisions and furthering its purposes. ~~in furthering the purposes of these provisions.~~ The bill would require the ~~authority~~, *advisory committee to conduct an annual meeting on or before January 1, February 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~~, *advisory committee*, 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: 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

1 Transportation Safety Board in its 1997 study “Protecting Public
2 Safety through Excavation Damage Prevention” and is a best
3 practice of the Common Ground Alliance.

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

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

14 (g) Increased communication between subsurface installation
15 operators and excavators before breaking ground has safety
16 benefits.

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

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

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

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

38 (l) While a utility operator has two working days after an
39 excavator’s call to the one-call center to mark its underground
40 facilities, failure of that utility to do so does not relieve the

1 excavator of the safety responsibility to wait until the utility
2 operator has marked before commencing excavation.

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

6 (n) Facilities that are embedded in pavement require more
7 extensive communication to prevent them from being damaged.

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

12 (p) More communication is needed between the Department of
13 Transportation and the regional notification centers, including the
14 sharing of facility location information, so that excavators may be
15 alerted of possible Department of Transportation subsurface
16 installations in the area of planned excavation and of the need to
17 seek a Department of Transportation encroachment permit.

18 (q) Agricultural activities of less than 16 inches are not
19 excavations, and high-priority subsurface natural gas and hazardous
20 liquid pipeline installations are identified in rural areas with
21 above-ground markers pursuant to Section 192.707 of Part 192
22 and Section 195.410 of Part 195 of Title 49 of the Code of Federal
23 Regulations, respectively, so the management of safety around
24 underground facilities in agricultural operations must be different.

25 (r) Prevention of boring through sewer laterals with natural gas
26 and other subsurface installation services may be achieved through
27 reasonable care in the use of trenchless excavating technologies.
28 Indication of the location of sewer laterals can aid in prevention
29 of these cross-bores.

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

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

38 (u) 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 (v) The Study on the Impact of Excavation Damage on Pipeline
4 Safety, submitted by the United States Department of
5 Transportation to Congress on October 9, 2014, reported that other
6 states have found that exemption of landscape maintenance
7 activities of less than 12 inches deep, when performed with hand
8 tools, do not appear to have a significant impact on safety. The
9 report cautions, however, that while those activity-based
10 exemptions may be acceptable, they should be supported by
11 sufficient data.

12 ~~(w) Clarification is needed for excavators to understand best
13 excavation practices, and this could be accomplished through
14 clarification of the regulations on excavation by the Occupational
15 Safety and Health Standards Board.~~

16 *(w) Gas corporations have ready access to information about
17 damages that occur on their subsurface installations and should
18 collect relevant data to inform future discussions regarding the
19 risk of notification exemptions.*

20 (x) Other states have experienced a dramatic improvement in
21 safety after implementing centralized administrative enforcement
22 oversight of one-call laws.

23 ~~(y) California should have a board, an advisory committee,
24 composed of excavation stakeholders, subject to oversight by the
25 Legislature and the Department of Finance, to enforce the state's
26 safe excavation laws through field audits, incident investigations,
27 and administrative hearings, and to promote safe excavation
28 practices. perform three major tasks, which are to coordinate the
29 diverse education and outreach efforts undertaken by state and
30 local agencies, operators, and excavators throughout the state
31 and issue grants for targeted efforts, to study excavation questions
32 and develop standards that clarify best practices, and to investigate
33 potential violations of the one-call law that inform both the
34 standards it is to develop and potential enforcement actions. Due
35 to the size of the state, and in order to reduce costs, the board
36 advisory committee should meet in northern and southern
37 California.~~

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

1 ~~excavation laws, including the participants in the state's regional~~
2 ~~notification centers, and the board should also be funded by the~~
3 ~~finest it levies, through fines levied on gas and electric corporations~~
4 ~~for safety violations, instead of having those fines go to the General~~
5 ~~Fund.~~

6 ~~(aa) After a hearing before the board pursuant to the~~
7 ~~Administrative Procedure Act, a person found to be in violation~~
8 ~~of the state's safe excavation laws could meet a variety of sanctions~~
9 ~~including a fine not exceeding a specified amount and the~~
10 ~~requirement to undergo relevant education.~~

11 ~~(ab) To preserve due process, the superior court should be~~
12 ~~available to an aggrieved party as a forum in which to challenge~~
13 ~~a board decision.~~

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

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

20 7110.7. (a) The Contractors' State License Board shall adopt
21 a program to enforce violations by contractors of subdivision (a)
22 of Section 4216.2 of the Government Code.

23 (b) The Contractors' State License Board shall require
24 contractors to undergo a training program relating to compliance
25 with subdivision (a) of Section 4216.2 of the Government Code,
26 as determined by the board, for an initial violation. The training
27 program shall be conducted by a regional notification center, as
28 defined in Section 4216 of the Government Code, or by a training
29 program approved by a regional notification center.

30 (c) If the contractor does not submit evidence of completion of
31 a training program within 30 days of being notified of the
32 requirement to do so, or fails to provide a reasonable explanation
33 for his or her delay in scheduling that training in writing, the
34 contractor shall be subject to further disciplinary action.

35 (d) A subsequent violation within one calendar year of the first
36 violation, failure to attend training, or failure to pay fines ultimately
37 may result in suspension of the contractor's license.

38 (e) The board shall determine a graduated scale of fines
39 consistent with Section 7099.2.

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

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

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

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

9 (c) ~~“Authority”~~ “Advisory Committee” means the California
10 Underground Facilities Safe Excavation ~~Authority~~. *Advisory*
11 *Committee*.

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

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

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

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

37 (g) (1) “Excavation” means ~~penetration of the plane between~~
38 ~~the air and the existing surface of the ground or pavement by~~ any
39 operation in which earth, rock, pavement, or other material below
40 the existing grade is moved, removed, or otherwise displaced by

1 means of tools, equipment, or explosives in any of the following
2 ways: grading, trenching, digging, ditching, drilling, augering,
3 tunneling, scraping, cable or pipe plowing and driving, gouging,
4 crushing, jack hammering, saw cutting, or any other way.

5 (2) For purposes of this article, “excavation” does not include
6 any of the following:

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

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

13 (i) Aeration, dethatching, and cutting of vegetation, including
14 lawn edging.

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

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

17 (C) Subparagraph (B) shall become inoperative on January 1,
18 2020.

19 (3) The exclusion of the activities in paragraph (2) from the
20 definition of “excavation” shall not be used to discourage a person
21 planning to perform those activities from voluntarily notifying a
22 regional notification center pursuant to Section 4216.2, and does
23 not relieve an operator of a subsurface installation from the
24 obligation to locate and field mark pursuant to Section 4216.3
25 following the notification.

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

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

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

1 (k) “Inactive subsurface installation” means both of the
2 following:

3 (1) The portion of an underground subsurface installation that
4 is not in use but is still connected to the subsurface installation, or
5 to any other subsurface installation, that is in use or still carries
6 service.

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

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

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

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

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

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

27 (p) “Operator” means any person, corporation, partnership,
28 business trust, public agency, or other entity that owns, operates,
29 or maintains a subsurface installation. For purposes of Section
30 4216.1, an “operator” does not include an owner of real property
31 where subsurface facilities are exclusively located if they are used
32 exclusively to furnish services on that property and the subsurface
33 facilities are under the operation and control of that owner.

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

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

39 (s) “Qualified person” means a person who completes a training
40 program in accordance with the requirements of Section 1509 of

1 Title 8 of the California Code of Regulations, Injury and Illness
2 Prevention Program, that meets the minimum locators training
3 guidelines and practices published in Best Practices Version 11.0
4 by the Common Ground Alliance.

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

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

12 (v) “Subsurface installation” means any underground or
13 submerged duct, pipeline, or structure, including, but not limited
14 to, a conduit, duct, line, pipe, wire, or other structure, except
15 nonpressurized sewerlines, nonpressurized storm drains, or other
16 nonpressurized drain lines.

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

19 (x) “Tolerance zone” means 24 inches on ~~either~~ *each* side of
20 the field marking placed by the operator ~~as follows:~~ *in one of the*
21 *following ways:*

22 (1) ~~A Twenty-four inches from each side of a single marking,~~
23 ~~assumed to be the centerline of the subsurface installation, 24~~
24 ~~inches from either side of that marking.~~ *installation.*

25 (2) ~~A Twenty-four inches plus one-half the specified size on~~
26 ~~each side of a single marking with the size of installation specified~~
27 ~~as 24 inches plus one-half the specified size on either side from~~
28 ~~the single marking.~~ *specified.*

29 (3) ~~Multiple markings that graphically show the width of the~~
30 ~~installation 24 inches from the~~ *Twenty-four inches from each*
31 *outside* marking that graphically ~~show~~ *shows the width of the*
32 outside surface of the subsurface installation on a horizontal plane.

33 (y) “Working day” for the purposes of determining excavation
34 start date and time means a weekday Monday through Friday, from
35 7:00 a.m. to 5:00 p.m., except for federal holidays and state
36 holidays, as defined in Section 19853 of the Government Code.

37 SEC. 4. Section 4216.1 of the Government Code is amended
38 to read:

39 4216.1. Every operator of a subsurface installation, except the
40 Department of Transportation, shall become a member of,

1 participate in, and share in the costs of, a regional notification
2 center. Operators of subsurface installations who are members of,
3 participate in, and share in, the costs of a regional notification
4 center, including, but not limited to, the Underground Service
5 Alert—Northern California or the Underground Service
6 Alert—Southern California are in compliance with this section
7 and Section 4216.9.

8 SEC. 5. Section 4216.2 of the Government Code is amended
9 to read:

10 4216.2. (a) Before notifying the appropriate regional
11 notification center, an excavator planning to conduct an excavation
12 shall delineate the area to be excavated. If the area is not delineated,
13 an operator may, at the operator's discretion, choose not to locate
14 and field mark until the area to be excavated has been delineated.

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

25 (c) When the excavation is proposed within 10 feet of a high
26 priority subsurface installation, the operator of the high priority
27 subsurface installation shall notify the excavator of the existence
28 of the high priority subsurface installation prior to the legal
29 excavation start date and time, and set up an onsite meeting at a
30 mutually agreed upon time to determine actions or activities
31 required to verify the location and prevent damage to the high
32 priority subsurface installation. The excavator shall not begin
33 excavating until after the completion of the onsite meeting.

34 (d) Except in an emergency, every excavator covered by Section
35 4216.8 planning to conduct an excavation on private property that
36 does not require an excavation permit may contact the appropriate
37 regional notification center if the private property is known, or
38 reasonably should be known, to contain a subsurface installation
39 other than the underground facility owned or operated by the
40 excavator. Before notifying the appropriate regional notification

1 center, an excavator shall delineate the area to be excavated. Any
2 temporary marking placed at the planned excavation location shall
3 be clearly seen, functional, and considerate to surface aesthetics
4 and the local community. An excavator shall check if any local
5 ordinances apply to the placement of temporary markings.

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

10 (f) The regional notification center shall provide a ticket to the
11 person who contacts the center pursuant to this section and shall
12 notify any member, if known, who has a subsurface installation
13 in the area of the proposed excavation. A ticket shall be valid for
14 28 days from the date of issuance. If work continues beyond 28
15 days, the excavator shall update the ticket either by accessing the
16 center's Internet Web site or by calling "811" by the end of the
17 28th day.

18 (g) A record of all notifications by an excavator or operator to
19 the regional notification center shall be maintained for a period of
20 not less than three years. The record shall be available for
21 inspection by the excavator and any member, or their
22 representative, during normal working hours and according to
23 guidelines for inspection as may be established by the regional
24 notification centers.

25 (h) Unless an emergency exists, an excavator shall not begin
26 excavation until the excavator receives a positive response from
27 all known subsurface installations within the delineated boundaries
28 of the proposed area of excavation.

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

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

37 (k) When the excavation is complete, the excavator shall
38 eliminate or camouflage any temporary markings that remain for
39 45 days or more, unless a local ordinance indicates otherwise.

1 SEC. 6. Section 4216.3 of the Government Code is amended
2 to read:

3 4216.3. (a) (1) (A) Unless the excavator and operator
4 mutually agree to a later start date and time, or otherwise agree to
5 the sequence and timeframe in which the operator will locate and
6 field mark, an operator shall do one of the following before the
7 legal excavation start date and time:

8 (i) Locate and field mark within the area delineated for
9 excavation and, where multiple subsurface installations of the same
10 type are known to exist together, mark the number of subsurface
11 installations.

12 (ii) To the extent and degree of accuracy that the information
13 is available, provide information to an excavator where the
14 operator's active or inactive subsurface installations are located.

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

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

19 (C) An operator shall indicate with an "A" inside a circle the
20 presence of any abandoned subsurface installations within the
21 delineated area. The markings are to make an excavator aware that
22 there are abandoned subsurface installations within that delineated
23 work area.

24 (2) Only a qualified person shall perform subsurface installation
25 locating activities.

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

30 (4) An operator shall amend, update, maintain, and preserve all
31 plans and records for its subsurface installations as that information
32 becomes known. If there is a change in ownership of a subsurface
33 installation, the records shall be turned over to the new operator.
34 Records on abandoned subsurface ~~installations shall be kept~~
35 ~~beginning on January 1, 2016.~~ *installations, to the extent that those*
36 *records exist, shall be retained.*

37 (b) If the field marks are no longer reasonably visible, an
38 excavator shall renotify the regional notification center with a
39 request for remarks that can be for all or a portion of the
40 excavation. Excavation shall cease in the area to be remarked. If

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

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

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

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

33 SEC. 7. Section 4216.4 of the Government Code is amended
34 to read:

35 4216.4. (a) (1) Except as provided in paragraph (2), if an
36 excavation is within the approximate location of a subsurface
37 installation, the excavator shall expose with hand tools to the depth
38 of the excavation within the tolerance zone, including any
39 applicable clearance requirements, for the full length of the project.

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

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

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

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

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

36 SEC. 8. Section 4216.5 of the Government Code is amended
37 to read:

38 4216.5. The requirements of this article apply to state agencies
39 and to local agencies that own or operate subsurface installations,
40 except as otherwise provided in Section 4216.1. A local agency

1 that is required to provide the services described in Section 4216.3
2 may charge a fee in an amount sufficient to cover the cost of
3 providing that service.

4 SEC. 9. Section 4216.6 of the Government Code is amended
5 to read:

6 4216.6. (a) (1) Any operator or excavator who negligently
7 violates this article is subject to a civil penalty in an amount not
8 to exceed ten thousand dollars (\$10,000).

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

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

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

22 (b) An action may be brought by the Attorney General, the
23 district attorney, or the local or state agency that issued the permit
24 to excavate, for the enforcement of the civil penalty pursuant to
25 this section either in a civil action brought in the name of the people
26 of the State of ~~California or in an administrative hearing before~~
27 ~~the authority pursuant to Section 4216.20.~~ *California*. If penalties
28 are collected as a result of a civil suit brought by a state or local
29 agency for collection of those civil penalties, the penalties imposed
30 shall be paid to the general fund of the agency. If more than one
31 agency is involved in enforcement, the penalties imposed shall be
32 apportioned among them by the court in a manner that will fairly
33 offset the relative costs incurred by the state or local agencies, or
34 both, in collecting these fees.

35 (c) The requirements of this article may also be enforced as
36 follows:

37 (1) The Contractors' State License Board shall enforce paragraph
38 (1) of subdivision (a) of Section 4216.2 as specified in Section
39 7110.7 of the Business and Professions Code.

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

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

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

13 (e) For purposes of subdivision (d), the following terms have
14 the following meanings:

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

17 (2) “Statewide information” means information submitted by
18 operators and excavators using the California Regional Common
19 Ground Alliance’s Virtual Private Damage Information Reporting
20 Tool. Supplied data shall comply with the Damage Information
21 Reporting Tool’s minimum essential information as listed in Best
22 Practices Version 11.0 by the Common Ground Alliance.

23 SEC. 10. Section 4216.7 of the Government Code is amended
24 to read:

25 4216.7. (a) If a subsurface installation is damaged by an
26 excavator as a result of failing to comply with Section 4216.2 or
27 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing
28 to comply with the operator’s requests to protect the subsurface
29 installation as specified by the operator before the start of
30 excavation, the excavator shall be liable to the operator of the
31 subsurface installation for resulting damages, costs, and expenses
32 to the extent the damages, costs, and expenses were proximately
33 caused by the excavator’s failure to comply.

34 (b) If an operator has failed to become a member of, participate
35 in, or share in the costs of, a regional notification center, that
36 operator shall forfeit his or her claim for damages to his or her
37 subsurface installation arising from an excavation against an
38 excavator who has complied with this article to the extent damages
39 were proximately caused by the operator’s failure to comply with
40 this article.

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

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

19 This section is not intended to create any presumption or to affect
20 the burden of proof in any action for personal injuries or property
21 damage, other than damage to the subsurface installation, nor is
22 this section intended to affect, create, or eliminate any remedy for
23 personal injury or property damage, other than damage to the
24 subsurface installation.

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

30 (f) For the purposes of this section, "inaccurate field mark"
31 means a mark, or set of markings, made pursuant to Section 4216.3,
32 that did not correctly indicate the approximate location of a
33 subsurface installation affected by an excavation and includes the
34 actual physical location of a subsurface installation affected by an
35 excavation that should have been marked pursuant to Section
36 4216.3 but was not.

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

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

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

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

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

12 4216.8. This article does not apply to either of the following
13 persons:

14 ~~(a) An owner of residential real property doing work not~~
15 ~~requiring a permit issued by a state or local agency on his or her~~
16 ~~residential real property that has no easement or right-of-way for~~
17 ~~a subsurface installation who only uses hand tools for excavation.~~
18 *An owner of residential real property, not engaged as a contractor*
19 *or subcontractor licensed pursuant to Article 5 (commencing with*
20 *Section 7065) of Chapter 9 of Division 3 of the Business and*
21 *Professions Code, who, as part of improving his or her principal*
22 *residence or an appurtenance thereto, is performing or is having*
23 *an excavation performed using hand tools that does not require a*
24 *permit issued by a state or local agency. A person described in*
25 *this subdivision is not an “excavator” as defined in subdivision*
26 *(h) of Section 4216, however this subdivision shall not discourage*
27 *a person from voluntarily notifying a regional notification center*
28 *pursuant to Section 4216.2, and does not relieve an operator of a*
29 *subsurface facility from the obligation to locate and field mark*
30 *pursuant to Section 4216.3 following the notification.*

31 (b) Any person or private entity that leases or rents power
32 operated or power-driven excavating or boring equipment,
33 regardless of whether an equipment operator is provided for that
34 piece of equipment or not, to a contractor or subcontractor licensed
35 pursuant to Article 5 (commencing with Section 7065) of Chapter
36 9 of Division 3 of the Business and Professions Code, if the signed
37 rental agreement between the person or private entity and the
38 contractor or subcontractor contains the following provision:
39

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

8
9 SEC. 12. Section 4216.9 of the Government Code is amended
10 to read:

11 4216.9. (a) A permit to excavate issued by any local agency,
12 as defined in Section 4216, or any state agency, shall not be valid
13 unless the applicant has been provided an initial ticket by a regional
14 notification center pursuant to Section 4216.2. For purposes of
15 this section, “state agency” means every state agency, department,
16 division, bureau, board, or commission, including the Department
17 of Transportation.

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

20 SEC. 13. Section 4216.10 is added to the Government Code,
21 to read:

22 4216.10. If the operator of a high-priority subsurface
23 installation finds that the depth of the subsurface installation subject
24 to agricultural activities described in subparagraph (A) of paragraph
25 (2) of subdivision (g) of Section 4216 is insufficient to safely
26 perform those activities, the operator of the high-priority subsurface
27 installation shall send notification, by registered mail, to the
28 landowner of the potential hazard and, within ___ days of that
29 notification, shall access the site at a date agreed upon by the
30 operator and the landowner to identify with permanent markers
31 the location and depth of the high-priority subsurface installation.

32 ~~SEC. 14. Section 4216.11 is added to the Government Code,
33 to read:~~

34 ~~4216.11. (a) On or before January 1, 2017, the Occupational
35 Safety and Health Standards Board shall revise subdivision (b) of
36 Section 1541 of Title 8 of the California Code of Regulations to
37 clarify best practices to be used by excavators when excavating
38 near subsurface installations.~~

39 ~~(b) The board shall convene an advisory committee hearing to
40 seek input from operators, regional notification centers, labor, and~~

1 ~~excavators on best practices to be used by excavators when~~
 2 ~~excavating in urban areas where there is a high density of~~
 3 ~~subsurface installations, the appropriate frequency of potholing,~~
 4 ~~and other best practices developed by various industry associations,~~
 5 ~~including the Common Ground Alliance.~~

6 ~~SEC. 15.~~

7 *SEC. 14.* Section 4216.12 is added to the Government Code,
 8 to read:

9 4216.12. (a) The California Underground Facilities Safe
 10 Excavation Authority is hereby created. *Advisory Committee is*
 11 *hereby created under, and shall be assisted by the staff of, the*
 12 *Contractors' State License Board in the Department of Consumer*
 13 *Affairs.*

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

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

26 *(b) The advisory committee shall perform the following tasks:*

27 *(1) Coordinate education and outreach activities that encourage*
 28 *safe excavation practices, as described in Section 4216.17.*

29 *(2) Develop standards, as described in Section 4216.18.*

30 *(3) Investigate possible violations of this article, as described*
 31 *in Section 4216.19.*

32 ~~SEC. 16.~~

33 *SEC. 15.* Section 4216.13 is added to the Government Code,
 34 to read:

35 4216.13. (a) ~~The authority~~ *advisory committee* shall be
 36 composed of nine members, of which ~~seven~~ *five* shall be appointed
 37 by the Governor, *two shall be appointed by the Contractors' State*
 38 *License Board*, one shall be appointed by the Speaker of the
 39 Assembly, and one shall be appointed by the Senate Committee
 40 on Rules.

1 (b) The ~~seven~~ *five* members appointed by the Governor shall
2 be appointed, as follows:

3 (1) Three members shall have knowledge and expertise in
4 ~~managing underground~~ *the operation of subsurface installations*.
5 Of those three members, one shall have knowledge and expertise
6 ~~in managing the underground institutions~~ *the operation of the*
7 *subsurface installations* of a municipal utility.

8 ~~(2) Two members shall have knowledge and expertise in contract~~
9 ~~excavation.~~

10 ~~(3)~~

11 (2) One member shall have knowledge and expertise in
12 subsurface installation location and ~~marking~~ *marking and shall*
13 *not be under the direct employment of an operator.*

14 ~~(4)~~

15 (3) One member shall have knowledge and expertise in operating
16 a regional notification center.

17 (c) *The two members appointed by the Contractors' State*
18 *License Board shall have knowledge and experience in contract*
19 *excavation for employers who are not operators of subsurface*
20 *installations.*

21 ~~(e)~~

22 (d) The member appointed by the Speaker of the Assembly shall
23 have knowledge and expertise in representing in safety matters
24 the workers employed by contract excavators.

25 ~~(f)~~

26 (e) The member appointed by the Senate Committee on Rules
27 shall have knowledge and expertise in managing the underground
28 installations on one's own property, and may be drawn from
29 agricultural, commercial, or residential, or other, property sectors.

30 ~~SEC. 17.~~

31 *SEC. 16.* Section 4216.14 is added to the Government Code,
32 to read:

33 4216.14. (a) The term of a member of the ~~authority~~ *advisory*
34 *committee* is two years. Of the first members of the ~~authority~~,
35 *advisory committee*, four members, determined by lot, shall serve
36 for one year so that the terms of the members shall be staggered.

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

1 (c) To the extent possible, the ~~Governor~~ *appointing power* shall
 2 fill any vacancy in the membership of the ~~authority~~ *advisory*
 3 *committee* within 60 days after the vacancy occurs.

4 (d) Upon the recommendation of the ~~authority~~, *advisory*
 5 *committee*, the Governor may remove a member appointed by the
 6 Governor for incompetence or misconduct.

7 (e) *The advisory committee shall select a chairperson from*
 8 *among its members at the first meeting of each calendar year or*
 9 *when a vacancy in the chair exists.*

10 (f) *Subject to subdivision (g), the manner in which the*
 11 *chairperson is selected and the chairperson’s term of office shall*
 12 *be determined by the advisory committee.*

13 (g) *A member of the advisory committee shall not serve more*
 14 *than two consecutive years as the chairperson of the advisory*
 15 *committee.*

16 ~~SEC. 18.~~ Section 4216.15 is added to the Government Code,
 17 to read:

18 4216.15. ~~(a) The authority shall select a chairperson from~~
 19 ~~among its members at the first meeting of each calendar year or~~
 20 ~~when a vacancy in the chair exists.~~

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

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

26 ~~SEC. 19.~~

27 ~~SEC. 17.~~ Section ~~4216.16~~ 4216.15 is added to the Government
 28 Code, to read:

29 4216.16.

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

34 ~~SEC. 20.~~ Section 4216.17 is added to the Government Code,
 35 to read:

36 4216.17. ~~(a) In addition to other powers specified in this article,~~
 37 ~~the authority may do any of the following:~~

38 (1) ~~Apply for and accepts grants, contributions, and~~
 39 ~~appropriations, and award grants consistent with the goals and~~

1 objectives of a program or activity the authority is authorized to
2 implement or administer.

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

6 ~~(3) Sue and be sued.~~

7 ~~(4) Request and utilize the advice and services of all federal,~~
8 ~~state, local, and regional agencies.~~

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

14 ~~(b) Notwithstanding Section 11152, the authority shall not adopt~~
15 ~~rules or regulations.~~

16 ~~SEC. 21.~~

17 ~~SEC. 18.~~ Section 4216.18 4216.16 is added to the Government
18 Code, to read:

19 4216.18.

20 4216.16. The authority *advisory committee* may obtain funding
21 for its operational expenses from:

22 (a) *The Safe Energy Infrastructure and Excavation Fund,*
23 *created in Section 320.5 of the Public Utilities Code.*

24 ~~(a)~~

25 (b) A federal or state grant.

26 ~~(b)~~

27 (c) A fee charged to members of the regional notification centers
28 not to exceed the reasonable regulatory cost incident to enforcement
29 of this article.

30 ~~(e) A fine assessed pursuant to Section 4216.20.~~

31 (d) A filing or administrative fee to hear a complaint pursuant
32 to Section 4216.20.

33 (e) Any other source.

34 ~~SEC. 19.~~ Section 4216.17 is added to the Government Code,
35 to read:

36 4216.17. (a) *In order to understand the needs for education*
37 *and outreach, and to facilitate discussion on how to coordinate*
38 *those efforts, the advisory committee shall annually convene a*
39 *meeting with state and local government agencies, California*
40 *operators, regional notification centers, and trade associations*

1 that fund outreach and education programs that encourage safe
2 excavation practices.

3 (b) The advisory committee shall use the annual meeting
4 described in subdivision (a) to determine the areas in which
5 additional education and outreach efforts should be targeted. The
6 advisory committee shall grant the use of the moneys that may be
7 apportioned to it by the Public Utilities Commission pursuant to
8 paragraph (1) of subdivision (b) of Section 320.5 of the Public
9 Utilities Code to fund public education and outreach programs
10 designed to promote excavation safety around underground
11 facilities and target towards specific excavator groups.

12 SEC. 20. Section 4216.18 is added to the Government Code,
13 to read:

14 4216.18. On or before December 31, 2016, the advisory
15 committee shall develop a standard or set of standards that
16 addresses the evidence necessary for excavators and operators to
17 demonstrate compliance with Sections 4216.2, 4216.3, and 4216.4.

18 ~~SEC. 22.~~

19 SEC. 21. Section 4216.19 is added to the Government Code,
20 to read:

21 4216.19. ~~In the enforcement~~(a) The advisory committee shall
22 investigate possible violations of this article, including complaints
23 from affected parties and members of the public.

24 (b) ~~In furthering the purposes of this article, and furtherance of~~
25 ~~its purposes, the authority~~ the advisory committee may authorize
26 staff to use compliance audits, including field audits, and
27 investigations of incidents and near-misses.

28 (c) This section shall become operative on January 1, 2017.

29 ~~SEC. 23.~~

30 SEC. 22. Section 4216.20 is added to the Government Code,
31 to read:

32 ~~4216.20.~~ (a) After providing opportunity for hearing pursuant
33 to the administrative adjudication provisions of the Administrative
34 Procedure Act (Chapter 4.5 (commencing with Section 11400) of
35 Part 1 of Division 3 of Title 2), the authority, upon making a
36 finding of violation, may:

- 37 (1) ~~Assess a civil penalty of no more than _____ dollars (\$_____).~~
- 38 (2) ~~Reach a settlement in lieu of assessing a civil penalty.~~
- 39 (3) ~~Require remedial education relevant to the violation.~~
- 40 (b) ~~The authority may do both of the following:~~

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

2 ~~(2) If the authority determines that an individual cannot afford~~
3 ~~to pay a penalty imposed pursuant to this section, the authority~~
4 ~~may exempt the individual from payment of the penalty in whole~~
5 ~~or in part.~~

6 *4216.20. (a) Upon the completion of an investigation of a*
7 *possible violation of this article, the advisory committee shall*
8 *inform the following parties of the result of the investigation,*
9 *including any findings of probable violation:*

10 *(1) The party or parties whose activities were the subject of the*
11 *investigation.*

12 *(2) The complainant, if the investigation was initiated because*
13 *of a complaint.*

14 *(3) Any excavator or operator whose activities or subsurface*
15 *installations were involved in the incident investigated.*

16 *(b) If the advisory committee, upon the completion of an*
17 *investigation, finds a probable violation of the article, the advisory*
18 *committee shall transmit the investigation results and any*
19 *recommended penalty to the state or local agency with jurisdiction*
20 *over the activity or business undertaken in commission of the*
21 *violation.*

22 ~~SEC. 24.~~

23 *SEC. 23.* Section 4216.21 is added to the Government Code,
24 to read:

25 ~~4216.21. (a) A person aggrieved by a decision of the authority~~
26 ~~may, within 30 days after receiving the decision, request judicial~~
27 ~~review of the decision in superior court.~~

28 ~~(b) In accordance with the judicial review and appeals process~~
29 ~~under the Administrative Procedure Act (Chapter 3.5 (commencing~~
30 ~~with Section 11340), and Chapter 5 (commencing with Section~~
31 ~~11500), of Part 1 of Division 3 of Title 2), the court shall hear and~~
32 ~~determine all matters connected with the decision of the authority~~
33 ~~for which judicial review is requested.~~

34 *4216.21. (a) For an investigation that the advisory committee*
35 *undertakes as a result of a complaint of a violation of Sections*
36 *4216.2, 4216.3, or 4216.4, the complainant shall not file an action*
37 *in court for damages based on those violations until the*
38 *investigation is complete, or for 120 days after the investigation*
39 *begins, whichever comes first, during which time, applicable*
40 *statutes of limitation shall be tolled.*

1 (b) If a complainant files an action in court against a person
 2 for damages based upon violations of Sections 4216.2, 4216.3, or
 3 4216.4, after the completion of an advisory committee investigation
 4 in which the person was found not to have violated the article, the
 5 complainant shall also notify the advisory committee when the
 6 action is filed.

7 (c) This section only applies to a claim for damages to a
 8 subsurface installation.

9 ~~SEC. 25.~~

10 SEC. 24. Section 4216.22 is added to the Government Code,
 11 to read:

12 4216.22. (a) Notwithstanding Section 10231.5, the ~~authority~~
 13 *advisory committee* shall report to the Governor and the Legislature
 14 on or before ~~January 1, February 1, 2017~~, and each year thereafter,
 15 on the activities of the ~~authority~~ *advisory committee* and any
 16 recommendations of the ~~authority~~ *advisory committee*.

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

19 ~~SEC. 26.~~

20 SEC. 25. Section 320.5 is added to the Public Utilities Code,
 21 to read:

22 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
 23 is hereby established in the State Treasury. Moneys deposited into
 24 the fund shall be used to cover the administrative expenses of the
 25 California Underground Facilities Safe Excavation ~~Authority~~,
 26 *Advisory Committee*, upon appropriation by the Legislature.
 27 *Additionally, the moneys may be used as described in subdivision*
 28 *(b).*

29 (b) Up to five hundred thousand dollars (\$500,000) ~~in excess~~
 30 ~~of moneys in the fund, if the funds are not fund that are in excess~~
 31 ~~of the moneys~~ necessary for the administrative expenses of the
 32 California Underground Facilities Safe Excavation ~~Authority~~
 33 *Advisory Committee* may, upon appropriation by the Legislature,
 34 be apportioned by the commission for the following purposes:

35 (1) The California Underground Facilities Safe Excavation
 36 ~~Authority~~, *Advisory Committee*, to fund public education and
 37 outreach programs designed to promote excavation safety around
 38 underground facilities and targeted ~~to make toward~~ specific
 39 excavator groups.

1 (2) The commission, to further a workforce development
2 program, which shall be consistent with its equal employment
3 opportunity program, that recruits and trains safety staff to perform
4 the highest quality gas and electric utility inspections, audits,
5 accident investigations, and data tracking and analysis. Moneys
6 used for training purposes may not be used to fulfill existing federal
7 or state training requirements but, instead, shall only be used for
8 training in addition to those requirements. The commission may
9 only apportion moneys for this purpose upon commission approval
10 of the workforce development program at a meeting of the
11 commission. No more than one hundred fifty thousand dollars
12 (\$150,000) of the Safe Energy Infrastructure and Excavation Fund
13 may be used for this purpose.

14 (c) Any moneys not allocated pursuant to subdivisions (a) and
15 (b) shall be deposited into the General Fund.

16 ~~SEC. 27.~~

17 *SEC. 26.* Section 971 is added to the Public Utilities Code, to
18 read:

19 971. (a) As a part of its damage prevention program carried
20 out pursuant to Section 192.614 of Part 192 of Title 49 of the Code
21 of Federal Regulations, each gas corporation shall collect data to
22 inform its outreach activities. The data shall include all of the
23 following:

24 (1) Damages to *underground commission-related pipeline*
25 *facilities* that occurred during the performance of landscaping
26 activities. Each gas corporation shall note in its investigation of
27 excavation damage incidents the approximate depth of the gas
28 facility at the time of damage, the type of excavator involved,
29 which may include “homeowner,” “licensed contractor,” or
30 “unlicensed contractor,” and whether the excavator had called the
31 regional notification center before performing the excavation. This
32 paragraph shall become inoperative on January 1, 2020.

33 (2) *All claims filed by the gas corporation against an excavator*
34 *for damage to commission-regulated pipeline facilities.*

35 ~~(2)~~

36 (3) Any other information that the commission shall require.

37 (b) Each gas corporation shall annually report to the commission
38 excavation damage data and analyses in a format of the
39 commission’s choosing.

1 (c) No later than February 1, 2019, the commission shall report
2 to the Legislature an analysis of excavation damages to
3 commission-regulated pipeline facilities. The report shall include
4 analyses of the types of damages *and other information* described
5 in subdivision (a).

6 ~~SEC. 28.~~

7 *SEC. 27.* Section 1702.5 of the Public Utilities Code is amended
8 to read:

9 1702.5. (a) The commission shall, in an existing or new
10 proceeding, develop and implement a safety enforcement program
11 applicable to gas corporations and electrical corporations that
12 includes procedures for monitoring, data tracking and analysis,
13 and investigations, as well as issuance of citations by commission
14 staff, under the direction of the executive director. The enforcement
15 program shall be designed to improve gas and electrical system
16 safety through the enforcement of applicable law, or order or rule
17 of the commission related to safety using a variety of enforcement
18 mechanisms, including the issuance of corrective actions, orders,
19 and citations by designated commission staff, and recommendations
20 for action made to the commission by designated commission staff.

21 (1) When considering the issuance of citations and assessment
22 of penalties, the commission staff shall take into account voluntary
23 reporting of potential violations, voluntary removal or resolution
24 efforts undertaken, the prior history of violations, the gravity of
25 the violation, and the degree of culpability.

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

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

31 (b) The commission shall develop and implement an appeals
32 process to govern the issuance and appeal of citations or resolution
33 of corrective action orders issued by the commission staff. The
34 appeals process shall provide the respondent a reasonable period
35 of time, upon receiving a citation, to file a notice of appeal, shall
36 afford an opportunity for a hearing, and shall require the hearing
37 officer to expeditiously provide a draft disposition.

38 (c) The commission shall, within a reasonable time set by the
39 commission, conclude a safety enforcement action with a finding
40 of violation, a corrective action order, a citation, a determination

1 of no violation, approval of the corrective actions undertaken by
2 the gas corporation or electrical corporation, or other action. The
3 commission may institute a formal proceeding regarding the alleged
4 violation, potentially resulting in additional enforcement action,
5 regardless of any enforcement action taken at the commission staff
6 level.

7 (d) The commission shall implement the safety enforcement
8 program for gas safety by July 1, 2014, and implement the safety
9 enforcement program for electrical safety no later than January 1,
10 2015.

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

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

20 ~~SEC. 29:~~

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