

AMENDED IN ASSEMBLY JULY 1, 2015
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, 4216.12, 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, 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.

The bill would also ~~authorize~~ *require* 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 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 committee to coordinate education and outreach activities, develop standards, and investigate violations of the provisions described above, as specified.

The advisory committee would be composed of 9 members who would serve 2-year ~~terms~~ *terms, and one nonvoting ex officio member who may be invited by the appointed members of the committee*. The bill would authorize the advisory committee, commencing on January 1, 2017, to use compliance audits in furthering the purposes of these provisions. The bill would require the advisory committee to conduct an annual meeting on or before 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 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~~ *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 *all of the*
2 following:

3 ~~(a) Discussions that have taken place since Article 2~~
4 ~~(commencing with Section 4216) of Chapter 3.1 of Division 5 of~~
5 ~~Title 1 of the Government Code was added by Chapter 928 of the~~
6 ~~Statutes of 1989 have led to widespread agreement that many of~~
7 ~~the provisions of the article should be clarified.~~

8 *(a) For the state’s “one-call” law to be effective, it needs greater*
9 *clarity and effective enforcement, and it must foster communication*
10 *between operators of subsurface installations and the various types*
11 *of excavators in California.*

12 (b) Regional notification centers, or “one-call” centers, have
13 developed means of electronic communication that improve the
14 efficiency of the “one-call” process, and statutory barriers to using
15 new methods of notification should be eliminated.

16 (c) Electronic positive response is a means to communicate the
17 status of responses to an excavator’s notice of excavation via the
18 one-call center and provides the safety benefit that an excavator
19 has an easy means to know whether or not all of the utilities within
20 the excavation area have marked their underground ~~facilities.~~
21 *installations.*

22 (d) The delineation by an excavator of the area to be excavated
23 in advance of the field location and marking by subsurface facility
24 operators of their ~~facilities~~ *installations* aids the excavator in
25 understanding where ~~underground facilities~~ *subsurface installations*
26 were marked, and thus improves safety. This practice was
27 recommended by the National Transportation Safety Board in its
28 1997 study “Protecting Public Safety through Excavation Damage
29 Prevention” and is a best practice of the Common Ground Alliance.

30 (e) Continuing an excavation after an excavation “ticket” has
31 expired does not promote safety, and excavators should renew
32 their ticket with the one-call center before expiration. Continuing
33 excavation when markings are no longer visible does not promote
34 safety, and excavators should stop work until the subsurface
35 installations are remarked.

1 ~~(f) The benefits of eliminating old field marks once an~~
2 ~~excavation project is complete are more than just aesthetic;~~
3 ~~eliminating old field marks helps prevent confusion for the next~~
4 ~~excavator to dig in that area.~~

5 ~~(g)~~

6 (f) Increased communication between subsurface installation
7 operators and excavators before breaking ground has safety
8 benefits.

9 ~~(h)~~

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

19 ~~(i)~~

20 (h) Abandoned subsurface installations can be mistaken for
21 active subsurface installations that are marked, and thus present a
22 safety risk to excavators and the public. Safety will be improved
23 if subsurface facility operators identify these subsurface
24 installations when their existence is known.

25 ~~(j)~~

26 (i) The ability of an operator of subsurface ~~facilities~~ *installations*
27 to locate and mark affected ~~facilities~~ *installations* can be seriously
28 impaired by a lack of high-quality records of those ~~facilities,~~
29 *installations,* and thus operators should keep records of their
30 facilities for as long as they are in the ground, whether or not they
31 are in use.

32 ~~(k)~~

33 (j) Failure by an operator of subsurface ~~facilities~~ *installations*
34 to mark the ~~facilities—~~*installations* within the required
35 two-working-day period is a serious breach of duty.

36 ~~(l)~~

37 ~~(k) While a utility~~ *an operator* has two working days after an
38 excavator's call to the one-call center to mark its ~~underground~~
39 ~~facilities,~~ *subsurface installations,* failure of that ~~utility operator~~
40 to do so does not relieve the excavator of the safety responsibility

1 to wait until the ~~utility~~ operator has marked before commencing
2 excavation.

3 ~~(m)~~

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

8 ~~(n)~~

9 (m) ~~Facilities~~ *Installations* that are embedded in pavement
10 require more extensive communication *among operators, locators,*
11 *and excavators* to prevent ~~them~~ *the installations* from being
12 damaged.

13 ~~(o)~~

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

18 ~~(p)~~

19 (o) More communication is needed between the Department of
20 Transportation and the regional notification centers, including the
21 sharing of ~~facility location~~ *subsurface installation* information, so
22 that excavators may be alerted of possible Department of
23 Transportation subsurface installations in the area of planned
24 excavation ~~and of and, if the excavation is to take place in a~~
25 *Department of Transportation right-of-way*, the need to seek a
26 Department of Transportation encroachment permit.

27 ~~(q)~~

28 (p) Agricultural activities of less than 16 inches are not
29 excavations, and high-priority subsurface natural gas and hazardous
30 liquid pipeline installations are identified in rural areas with
31 above-ground markers pursuant to Section 192.707 of Part 192
32 and Section 195.410 of Part 195 of Title 49 of the Code of Federal
33 Regulations, respectively, so the management of safety around
34 ~~underground facilities~~ *subsurface installations* in agricultural
35 operations must be different.

36 ~~(r)~~

37 (q) Prevention of boring through sewer laterals with natural gas
38 and other subsurface installation services may be achieved through
39 reasonable care in the use of trenchless excavating technologies.

- 1 Indication of the location of sewer laterals can aid in prevention
- 2 of these cross-bores.
- 3 ~~(s)~~
- 4 (r) The exemption that permits private property owners to dig
- 5 on their property without calling a regional notification center to
- 6 have the area marked for ~~underground facilities~~ *subsurface*
- 7 *installations* does not have a basis in safety.
- 8 ~~(t)~~
- 9 (s) The exemption that permits homeowners to conduct
- 10 excavation on their property with heavy machinery or when there
- 11 is a utility easement on his or her property does not have a basis
- 12 in safety.
- 13 ~~(t)~~
- 14 (t) Behaviors that are suspected to be unsafe, but upon which
- 15 there is not widespread agreement as to the level of risk and,
- 16 therefore, are unregulated, must be monitored to better assess the
- 17 risk.
- 18 ~~(v)~~
- 19 (u) The Study on the Impact of Excavation Damage on Pipeline
- 20 Safety, submitted by the United States Department of
- 21 Transportation to Congress on October 9, 2014, reported that other
- 22 states have found that exemption of landscape maintenance
- 23 activities of less than 12 inches deep, when performed with hand
- 24 tools, ~~do~~ *does* not appear to have a significant impact on safety.
- 25 The report cautions, however, that while those activity-based
- 26 exemptions may be acceptable, they should be supported by
- 27 sufficient data.
- 28 ~~(w)~~
- 29 (v) Gas corporations have ready access to information about
- 30 damages that occur on their subsurface installations and should
- 31 collect relevant data to inform future discussions regarding the
- 32 risk of notification exemptions.
- 33 ~~(x)~~
- 34 (w) Other states have experienced a dramatic improvement in
- 35 safety after implementing centralized administrative oversight of
- 36 one-call laws.
- 37 ~~(y)~~
- 38 (x) California should have an advisory committee, composed
- 39 of excavation stakeholders, subject to oversight by the Legislature
- 40 and the Department of Finance, to perform three major tasks, which

1 are to coordinate the diverse education and outreach efforts
2 undertaken by state and local agencies, operators, and excavators
3 throughout the state and issue grants for targeted efforts, to study
4 excavation questions and develop standards that clarify best
5 practices, and to investigate potential violations of the one-call
6 law that inform both the standards it is to develop and potential
7 enforcement actions. Due to the size of the state, and in order to
8 reduce costs, the advisory committee should meet in northern and
9 southern California.

10 (z)

11 (y) The advisory committee should not be funded through the
12 General Fund, but should be funded through fines levied on gas
13 and electric corporations for safety violations, instead of having
14 those fines go to the General Fund.

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

17 ~~7110.7. (a) The Contractors' State License Board shall adopt~~
18 ~~a program to enforce violations by contractors of subdivision (a)~~
19 ~~of Section 4216.2 of the Government Code.~~

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

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

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

35 ~~(e) The board shall determine a graduated scale of fines~~
36 ~~consistent with Section 7099.2.~~

37 ~~SEC. 3.~~

38 ~~SEC. 2. Section 4216 of the Government Code is amended to~~
39 ~~read:~~

40 4216. As used in this article the following definitions apply:

- 1 (a) “Abandoned subsurface installation” means a subsurface
2 installation that is no longer in service and is physically
3 disconnected from any active or inactive subsurface installation.
- 4 (b) “Active subsurface installation” means a subsurface
5 installation currently in use or currently carrying service.
- 6 (c) “Advisory Committee” means the California Underground
7 Facilities Safe Excavation Advisory Committee.
- 8 (d) “Delineate” means to mark in white the location or path of
9 the proposed excavation using the guidelines in Appendix B of
10 the “Guidelines for Excavation Delineation” published in Best
11 Practices Version 11.0 by the Common Ground Alliance. If there
12 is a conflict between the marking practices in those guidelines and
13 other provisions of this article, this article shall control.
14 “Delineation” also includes physical identification of the area to
15 be excavated using pink marking, if an excavator makes a
16 determination that standard delineation may be misleading to those
17 persons using affected streets and highways, or be misinterpreted
18 as a traffic or pedestrian control, and the excavator has contacted
19 the regional notification center to advise the operators that the
20 excavator will physically identify the area to be excavated using
21 pink markings.
- 22 (e) “Electronic positive response” means an electronic response
23 from an operator to the regional notification center providing the
24 status of an operator’s statutorily required response to a ticket.
- 25 (f) (1) “Emergency” means a sudden, unexpected occurrence,
26 involving a clear and imminent danger, demanding immediate
27 action to prevent or mitigate loss of, or damage to, life, health,
28 property, or essential public services.
- 29 (2) “Unexpected occurrence” includes, but is not limited to, a
30 fire, flood, earthquake or other soil or geologic movement, riot,
31 accident, damage to a subsurface installation requiring immediate
32 repair, or sabotage.
- 33 (g) (1) “Excavation” means any operation in which earth, rock,
34 pavement, or other material below the existing grade is moved,
35 removed, or otherwise displaced by means of tools, equipment, or
36 explosives in any of the following ways: grading, trenching,
37 digging, ditching, drilling, augering, tunneling, scraping, cable or
38 pipe plowing and driving, gouging, crushing, jack hammering,
39 saw cutting, or any other way.

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

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

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

9 (i) Aeration, dethatching, and cutting of vegetation, including
10 lawn edging.

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

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

13 (C) Subparagraph (B) shall become inoperative on January 1,
14 2020.

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

25 (h) Except as provided in Section 4216.8, “excavator” means
26 any person, firm, contractor or subcontractor, owner, operator,
27 utility, association, corporation, partnership, business trust, public
28 agency, or other entity ~~that~~ *that, with his, her, or its own employees*
29 *or equipment, 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~~ *installations* are exclusively located if
32 they are used exclusively to furnish services on that property and
33 the subsurface facilities are under the operation and control of that
34 owner.

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

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

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

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

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

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

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

21 (x) “Tolerance zone” means 24 inches on each side of the field
22 marking placed by the operator in one of the following ways:

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

25 (2) Twenty-four inches plus one-half the specified size on each
26 side of a single marking with the size of installation specified.

27 (3) Twenty-four inches from each outside marking that
28 graphically shows the width of the outside surface of the subsurface
29 installation on a horizontal plane.

30 (y) “Working day” for the purposes of determining excavation
31 start date and time means a weekday Monday through Friday, from
32 7:00 a.m. to 5:00 p.m., except for federal holidays and state
33 holidays, as defined in Section 19853 of the Government Code.

34 ~~SEC. 4.~~

35 *SEC. 3.* Section 4216.1 of the Government Code is amended
36 to read:

37 4216.1. Every operator of a subsurface installation, except the
38 Department of Transportation, shall become a member of,
39 participate in, and share in the costs of, a regional notification
40 center. Operators of subsurface installations who are members of,

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

6 ~~SEC. 5.~~

7 *SEC. 4.* Section 4216.2 of the Government Code is amended
8 to read:

9 4216.2. (a) Before notifying the appropriate regional
10 notification center, an excavator planning to conduct an excavation
11 shall delineate the area to be excavated. If the area is not delineated,
12 an operator may, at the operator's discretion, choose not to locate
13 and field mark until the area to be excavated has been delineated.

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

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

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

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

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

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

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

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

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

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

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

1 ~~SEC. 6.~~

2 *SEC. 5.* Section 4216.3 of the Government Code is amended
3 to read:

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

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

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

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

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

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

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

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

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

34 *SEC. 6.* Section 4216.4 of the Government Code is amended
35 to read:

36 4216.4. (a) (1) Except as provided in paragraph (2), if an
37 excavation is within the approximate location of a subsurface
38 installation, the excavator shall ~~expose with hand tools to the depth~~
39 ~~of the excavation~~ *determine the exact location of the subsurface*
40 *installations within the tolerance zone, including any applicable*

1 ~~clearance requirements, for the full length of the project. zone~~
2 ~~using hand tools before using any power-driven excavation or~~
3 ~~boring equipment within the approximate location of the subsurface~~
4 ~~installations. In all cases the excavator shall use reasonable care~~
5 ~~to prevent damaging subsurface installations.~~

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

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

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

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

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

1 ~~SEC. 8.~~

2 *SEC. 7.* Section 4216.5 of the Government Code is amended
3 to read:

4 4216.5. The requirements of this article apply to state agencies
5 and to local agencies that own or operate subsurface installations,
6 except as otherwise provided in Section 4216.1. A local agency
7 that is required to provide the services described in Section 4216.3
8 may charge a fee in an amount sufficient to cover the cost of
9 providing that service.

10 ~~SEC. 9.~~

11 *SEC. 8.* Section 4216.6 of the Government Code is amended
12 to read:

13 4216.6. (a) (1) Any operator or excavator who negligently
14 violates this article is subject to a civil penalty in an amount not
15 to exceed ten thousand dollars (\$10,000).

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

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

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

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

1 (c) The requirements of this article may also be enforced
2 *following a recommendation of the California Underground*
3 *Facilities Safe Excavation Advisory Committee by a state or local*
4 *agency, which may include the Attorney General or a district*
5 *attorney, with jurisdiction over the activity or business undertaken*
6 *in commission of the violation. The following agencies shall act*
7 *to accept, amend, or reject the recommendations of the advisory*
8 *committee as follows:*

9 (1) ~~The registrar of the Contractors' State License Board shall~~
10 ~~enforce paragraph (1) of subdivision (a) of Section 4216.2 as~~
11 ~~specified in Section 7110.7 the provisions of this article on~~
12 ~~contractors, as defined in Article 2 of Chapter 9 of Division 3 of~~
13 ~~the Business and Professions Code.~~

14 (2) ~~The Public Utilities Commission may enforce subdivisions~~
15 ~~(a) and (b) of Section 4216.3 against operators of natural gas and~~
16 ~~electric underground infrastructure, unless those operators are~~
17 ~~municipal utilities. shall enforce the provisions of this article on~~
18 ~~gas corporations, as defined in Section 222 of the Public Utilities~~
19 ~~Code, and electrical corporations, as defined in Section 218 of the~~
20 ~~Public Utilities Code.~~

21 (3) ~~The Office of the State Fire Marshal may enforce~~
22 ~~subdivisions (a) and (b) of Section 4216.3 against operators of~~
23 ~~hazardous liquid pipelines, unless those operators are municipal~~
24 ~~utilities. shall enforce the provisions of this article on operators~~
25 ~~of hazardous liquid pipeline facilities, as defined in Section 60101~~
26 ~~of Chapter 601 of Subtitle VIII of Title 49 of the United States~~
27 ~~Code.~~

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

32 (e) For purposes of subdivision (d), the following terms have
33 the following meanings:

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

36 (2) "Statewide information" means information submitted by
37 operators and excavators using the California Regional Common
38 Ground Alliance's Virtual Private Damage Information Reporting
39 Tool. Supplied data shall comply with the Damage Information

1 Reporting Tool’s minimum essential information as listed in Best
2 Practices Version 11.0 by the Common Ground Alliance.

3 ~~SEC. 10.~~

4 *SEC. 9.* Section 4216.7 of the Government Code is amended
5 to read:

6 4216.7. (a) If a subsurface installation is damaged by an
7 excavator as a result of failing to comply with Section 4216.2 or
8 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing
9 to comply with the operator’s requests to protect the subsurface
10 installation as specified by the operator before the start of
11 excavation, the excavator shall be liable to the operator of the
12 subsurface installation for resulting damages, costs, and expenses
13 to the extent the damages, costs, and expenses were proximately
14 caused by the excavator’s failure to comply.

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

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

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

1 This section is not intended to create any presumption or to affect
2 the burden of proof in any action for personal injuries or property
3 damage, other than damage to the subsurface installation, nor is
4 this section intended to affect, create, or eliminate any remedy for
5 personal injury or property damage, other than damage to the
6 subsurface installation.

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

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

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

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

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

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

30 ~~SEC. 11.~~

31 *SEC. 10.* Section 4216.8 of the Government Code is amended
32 to read:

33 4216.8. This article does not apply to either of the following
34 persons:

35 (a) An owner of residential real property, not engaged as a
36 contractor or subcontractor licensed pursuant to Article 5
37 (commencing with Section 7065) of Chapter 9 of Division 3 of
38 the Business and Professions Code, who, as part of improving his
39 or her principal residence or an appurtenance thereto, is performing
40 or is having an excavation performed using hand tools that does

1 not require a permit issued by a state or local agency. A person
2 described in this subdivision is not an “excavator” as defined in
3 subdivision (h) of Section 4216, however this subdivision shall
4 not discourage a person from voluntarily notifying a regional
5 notification center pursuant to Section 4216.2, and does not relieve
6 an operator of a subsurface facility from the obligation to locate
7 and field mark pursuant to Section 4216.3 following the
8 notification. *This subdivision does not relieve a person performing*
9 *excavation activities from a duty of reasonable care to prevent*
10 *damage to subsurface installations.*

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

19
20 “It is the sole responsibility of the lessee or renter to follow
21 the requirements of the regional notification center law
22 pursuant to Article 2 (commencing with Section 4216) of
23 Chapter 3.1 of Division 5 of Title 1 of the Government Code.
24 By signing this contract, the lessee or renter accepts all
25 liabilities and responsibilities contained in the regional
26 notification center law.”

27
28 ~~SEC. 12.~~

29 *SEC. 11.* 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.~~

2 *SEC. 12.* Section 4216.10 is added to the Government Code,
3 to read:

4 4216.10. If the operator of a high-priority subsurface
5 installation finds that the depth of the subsurface installation subject
6 to agricultural activities described in subparagraph (A) of paragraph
7 (2) of subdivision (g) of Section 4216 is insufficient to safely
8 perform those activities, the operator of the high-priority subsurface
9 installation shall send notification, by registered mail, to the
10 landowner of the potential hazard and, within ___ days of that
11 notification, shall access the site at a date agreed upon by the
12 operator and the landowner to identify with permanent markers
13 the location and depth of the high-priority subsurface installation.

14 ~~SEC. 14.~~

15 *SEC. 13.* Section 4216.12 is added to the Government Code,
16 to read:

17 4216.12. (a) The California Underground Facilities Safe
18 Excavation Advisory Committee is hereby created under, and shall
19 be assisted by the staff of, the Contractors’ State License Board
20 in the Department of Consumer Affairs.

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

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

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

25 (3) Investigate possible violations of this article, as described
26 in Section 4216.19.

27 (c) *Notwithstanding any other law, the repeal of this section*
28 *renders the advisory committee subject to review by the*
29 *appropriate policy committees of the Legislature.*

30 (d) *This section shall remain in effect so long as, pursuant to*
31 *subdivision (c) of Section 7000.5 of the Business and Professions*
32 *Code, there is in the Department of Consumer Affairs a*
33 *Contractors’ State License Board.*

34 ~~SEC. 15.~~

35 *SEC. 14.* Section 4216.13 is added to the Government Code,
36 to read:

37 4216.13. (a) The advisory committee shall be composed of
38 nine members, of which ~~five~~ *four* shall be appointed by the
39 Governor, ~~two~~ *three* shall be appointed by the Contractors’ State
40 License Board, one shall be appointed by the Speaker of the

1 Assembly, and one shall be appointed by the Senate Committee
2 on Rules.

3 (b) The ~~five~~ *four* members appointed by the Governor shall be
4 appointed, as follows:

5 (1) Three members shall have knowledge and expertise in the
6 operation of subsurface installations. Of those three members, one
7 shall have knowledge and expertise in the operation of the
8 subsurface installations of a municipal utility. *At least one of the*
9 *three members shall have knowledge and experience in the*
10 *operation of high priority subsurface installations.*

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

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

16 (c) The ~~two~~ *three* members appointed by the Contractors' State
17 License Board shall have knowledge and experience in contract
18 excavation for employers who are not operators of subsurface
19 installations. *Of the three members, one member shall be a general*
20 *engineering contractor, one member shall be a general building*
21 *contractor, and one member shall be a specialty contractor. For*
22 *the purposes of this section, the terms "general engineering*
23 *contractor," "general building contractor," and "specialty*
24 *contractor" shall have the meanings given in Article 4*
25 *(commencing with Section 7055) of Chapter 9 of Division 3 of the*
26 *Business and Professions Code.*

27 (d) 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 (e) 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 (f) *The advisory committee may invite one director of operations*
35 *of a regional notification center to be a nonvoting ex officio*
36 *member of the advisory committee.*

37 ~~SEC. 16.~~

38 *SEC. 15.* Section 4216.14 is added to the Government Code,
39 to read:

1 4216.14. (a) The term of a member of the advisory committee
 2 is two years. Of the first members of the advisory committee, four
 3 members, determined by lot, shall serve for one year so that the
 4 terms of the members shall be staggered.

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

7 (c) To the extent possible, the appointing power shall fill any
 8 vacancy in the membership of the advisory committee within 60
 9 days after the vacancy occurs.

10 (d) Upon the recommendation of the advisory committee, the
 11 Governor may remove a member appointed by the Governor for
 12 incompetence or misconduct.

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

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

19 (g) A member of the advisory committee shall not serve more
 20 than two consecutive years as the chairperson of the advisory
 21 committee.

22 ~~SEC. 17.~~

23 *SEC. 16.* Section 4216.15 is added to the Government Code,
 24 to read:

25 4216.15. The advisory committee shall meet at least once every
 26 three months. The advisory committee shall hold meetings in
 27 Sacramento and Los Angeles, and in other locations in the state it
 28 deems necessary.

29 ~~SEC. 18.~~

30 *SEC. 17.* Section 4216.16 is added to the Government Code,
 31 to read:

32 4216.16. The advisory committee may obtain funding for its
 33 operational expenses from:

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

36 (b) A federal or state grant.

37 (c) A fee charged to members of the regional notification centers
 38 not to exceed the reasonable regulatory cost incident to enforcement
 39 of this article.

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

3 (e) Any other source.

4 ~~SEC. 19.~~

5 *SEC. 18.* Section 4216.17 is added to the Government Code,
6 to read:

7 4216.17. (a) In order to understand the needs for education
8 and outreach, and to facilitate discussion on how to coordinate
9 those efforts, the advisory committee shall annually convene a
10 meeting with state and local government agencies, California
11 operators, regional notification centers, and trade associations that
12 fund outreach and education programs that encourage safe
13 excavation practices.

14 (b) The advisory committee shall use the annual meeting
15 described in subdivision (a) to determine the areas in which
16 additional education and outreach efforts should be targeted. The
17 advisory committee shall grant the use of the moneys that may be
18 apportioned to it by the Public Utilities Commission pursuant to
19 paragraph (1) of subdivision (b) of Section 320.5 of the Public
20 Utilities Code to fund public education and outreach programs
21 designed to promote excavation safety around ~~underground~~
22 *facilities subsurface installations* and target towards specific
23 excavator groups.

24 ~~SEC. 20.~~

25 *SEC. 19.* Section 4216.18 is added to the Government Code,
26 to read:

27 4216.18. ~~On or before December 31, 2016, the~~ *The* advisory
28 committee shall develop a standard or set of standards ~~that~~
29 ~~addresses the evidence necessary~~ *relevant to safety practices in*
30 *excavating around subsurface installations and procedures and*
31 *guidance in encouraging those practices. The standard or set of*
32 *standards are not intended to replace other relevant standards,*
33 *including the best practices of the Common Ground Alliance, but*
34 *are to inform areas currently without established standards. The*
35 *standard or set of standards shall address all of the following:*

36 (a) *Evidence necessary* for excavators and operators to
37 demonstrate compliance with Sections 4216.2, 4216.3, and 4216.4.

38 (b) *Guidance for recommended sanctions against excavators*
39 *and operators for violations of the article designed to improve*
40 *safety. Sanctions may include notification and information letters,*

1 *direction to attend relevant education, and financial penalties.*
 2 *The guidance shall state the circumstances under which the*
 3 *investigation and a recommendation for sanction shall be*
 4 *transmitted to a state or local agency, which may include the*
 5 *Attorney General or a district attorney, for enforcement pursuant*
 6 *to subdivision (b) of Section 4216.20 and may allow for a decision*
 7 *not to transmit if the investigation was initiated by a complaint,*
 8 *the parties have settled the matter, and the advisory committee*
 9 *has determined that further enforcement is not necessary as a*
 10 *deterrent to maintain the integrity of subsurface installations and*
 11 *to protect the safety of excavators and the public.*
 12 *Recommendations for sanctions shall be graduated and shall*
 13 *consider all of the following:*

- 14 *(1) The type of violation and its gravity.*
- 15 *(2) The degree of culpability.*
- 16 *(3) The operator’s or excavator’s history of violations.*
- 17 *(4) The operator’s or excavator’s history of work conducted*
 18 *without violations.*
- 19 *(5) The efforts taken by the violator to prevent violation, and,*
 20 *once the violation occurred, the efforts taken to mitigate the safety*
 21 *consequences of the violation.*
- 22 *(c) What constitutes reasonable care, as required by paragraph*
 23 *(1) of subdivision (a) of Section 4216.4, in conducting deep*
 24 *excavations within the tolerance zone, considering the need to*
 25 *balance the protection of subsurface installations by the use of*
 26 *hand tools within the tolerance zone with the safety concerns of*
 27 *trench work.*
- 28 *(d) What constitutes reasonable care, as required by paragraph*
 29 *(1) of subdivision (a) of Section 4216.4, in grading activities on*
 30 *road shoulders and dirt roads which may include standards for*
 31 *potholing.*

32 ~~SEC. 21.~~

33 *SEC. 20.* Section 4216.19 is added to the Government Code,
 34 to read:

35 4216.19. (a) The advisory committee shall investigate possible
 36 violations of this article, including complaints from affected parties
 37 and members of the public.

38 (b) In furthering the purposes of this article, the advisory
 39 committee may authorize staff to use compliance audits, including
 40 field audits, and investigations of incidents and near-misses.

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

2 ~~SEC. 22.~~

3 *SEC. 21.* Section 4216.20 is added to the Government Code,
4 to read:

5 4216.20. (a) Upon the completion of an investigation of a
6 possible violation of this article, the advisory committee shall
7 inform the following parties of the result of the investigation,
8 including any findings of probable violation:

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

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

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

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

21 ~~SEC. 23.~~

22 *SEC. 22.* Section 4216.21 is added to the Government Code,
23 to read:

24 4216.21. (a) For an investigation that the advisory committee
25 undertakes as a result of a complaint of a violation of Sections
26 4216.2, 4216.3, or 4216.4, the complainant shall not file an action
27 in court for damages based on those violations until the
28 investigation is complete, or for 120 days after the investigation
29 begins, whichever comes first, during which time, applicable
30 statutes of limitation shall be tolled.

31 (b) If a complainant files an action in court against a person for
32 damages based upon violations of Sections 4216.2, 4216.3, or
33 4216.4, after the completion of an advisory committee investigation
34 in which the person was found not to have violated the article, the
35 complainant shall also notify the advisory committee when the
36 action is filed.

37 (c) This section only applies to a claim for damages to a
38 subsurface installation.

1 ~~SEC. 24.~~

2 *SEC. 23.* Section 4216.22 is added to the Government Code,
3 to read:

4 4216.22. (a) Notwithstanding Section 10231.5, the advisory
5 committee shall report to the Governor and the Legislature on or
6 before February 1, 2017, and each year thereafter, on the activities
7 of the advisory committee and any recommendations of the
8 advisory committee.

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

11 ~~SEC. 25.~~

12 *SEC. 24.* Section 320.5 is added to the Public Utilities Code,
13 to read:

14 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
15 is hereby established in the State Treasury. Moneys deposited into
16 the fund shall be used to cover the administrative expenses of the
17 California Underground Facilities Safe Excavation Advisory
18 Committee, upon appropriation by the Legislature. Additionally,
19 the moneys may be used as described in subdivision (b).

20 (b) Up to five hundred thousand dollars (\$500,000) of moneys
21 in the fund that are in excess of the moneys necessary for the
22 administrative expenses of the California Underground Facilities
23 Safe Excavation Advisory Committee may, upon appropriation
24 by the Legislature, be apportioned by the commission for the
25 following purposes:

26 (1) The California Underground Facilities Safe Excavation
27 Advisory Committee, to fund public education and outreach
28 programs designed to promote excavation safety around
29 ~~underground facilities~~ *subsurface installations* and targeted toward
30 specific excavator groups.

31 (2) The commission, to further a workforce development
32 program, which shall be consistent with its equal employment
33 opportunity program, that recruits and trains safety staff to perform
34 the highest quality gas and electric utility inspections, audits,
35 accident investigations, and data tracking and analysis. Moneys
36 used for training purposes may not be used to fulfill existing federal
37 or state training requirements but, instead, shall only be used for
38 training in addition to those requirements. The commission may
39 only apportion moneys for this purpose upon commission approval
40 of the workforce development program at a meeting of the

1 commission. No more than one hundred fifty thousand dollars
2 (\$150,000) of the Safe Energy Infrastructure and Excavation Fund
3 may be used for this purpose.

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

6 ~~SEC. 26.~~

7 *SEC. 25.* Section 971 is added to the Public Utilities Code, to
8 read:

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

14 (1) Damages to underground commission-related pipeline
15 facilities that occurred during the performance of landscaping
16 activities. Each gas corporation shall note in its investigation of
17 excavation damage incidents the approximate depth of the gas
18 facility at the time of damage, the type of excavator involved,
19 which may include “homeowner,” “licensed contractor,” or
20 “unlicensed contractor,” and whether the excavator had called the
21 regional notification center before performing the excavation. This
22 paragraph shall become inoperative on January 1, 2020.

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

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

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

29 (c) No later than February 1, 2019, the commission shall report
30 to the Legislature an analysis of excavation damages to
31 commission-regulated pipeline facilities. The report shall include
32 analyses of the types of damages and other information described
33 in subdivision (a).

34 ~~SEC. 27.~~

35 *SEC. 26.* Section 1702.5 of the Public Utilities Code is amended
36 to read:

37 1702.5. (a) The commission shall, in an existing or new
38 proceeding, develop and implement a safety enforcement program
39 applicable to gas corporations and electrical corporations that
40 includes procedures for monitoring, data tracking and analysis,

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

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

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

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

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

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

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

39 (e) This section does not apply to an exempt wholesale
40 generator, a qualifying small power producer, or qualifying

1 cogenerator, as defined in Section 796 of Title 16 of the United
2 States Code and the regulations enacted pursuant thereto. Nothing
3 in this section affects the commission's authority pursuant to
4 Section 761.3.

5 (f) ~~Moneys~~ *Notwithstanding any other law, moneys* collected
6 as a result of the issuance of citations pursuant to this section shall
7 be deposited in the Safe Energy Infrastructure and Excavation
8 Fund.

9 ~~SEC. 28.~~

10 *SEC. 27.* No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

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