

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

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 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 4216.12, 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, *to add Sections 17921.11 and 17940.8 to the Health and Safety Code*, and to amend ~~Section~~ Sections 955.5 and 1702.5 of, and to add Sections 320.5, 911.2, 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 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~~ *bill, the Dig Safe Act of 2015*, 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 also 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, if specified funds are appropriated by the Legislature and authority to hire sufficient staff is granted to the Contractors' State License Board, 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 bill would also require the advisory committee, by December 31, 2017, and in consultation with the Department of Food and Agriculture, to make recommendations, informed by a specified study, that addresses the long term treatment of agricultural activities in relation to subsurface excavation, and whether those provisions are appropriate or could be modified in ways to promote participation in safe agricultural practices around high priority subsurface installations, as specified.

The advisory committee would be composed of 9 members who would serve 2-year terms, and ~~one~~ 2 nonvoting ex officio ~~member~~ members 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 California Building Standards Law requires state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval and adoption. Under existing law, if a state agency does not have authority to adopt bulding standards applicable to state buildings, the commission is required to adopt specific building

standards, as prescribed. Existing law requires the commission to publish, or cause to be published, editions of the California Building Standards Code in its entirety once every 3 years. Existing law requires the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the commission and to adopt, amend, and repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupants and the public involving buildings and building construction.

This bill would require the department and the commission to develop and propose for adoption by the commission of building standards requiring all new residential and nonresidential nonpressurized building sewers that connect from building structures to the public right-of-way or applicable utility easement to include the installation of tracer wire or tape, as specified. The bill would authorize the department and the commission to expend funds from the existing Building Standards Administration Special Revolving Fund for this purpose, upon appropriation.

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~~ *Public Utilities 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 the Public Utilities Commission, no later than February 1, 2019, to report to the Legislature and to the California Underground Facilities Safe Excavation Advisory Committee an analysis of excavation damage to commission-regulated pipeline facilities. The bill would also require each gas corporation, as part of its damage prevention program, to collect certain information until January 1, 2020, to inform its outreach activities, and to report this information annually

until January 1, 2020, to the Public Utilities Commission and the California Underground Facilities Safe Excavation Advisory Committee, as specified. The bill would also require the each gas corporation to estimate Californians' use of regional notification centers, as specified, and to provide this estimate to the commission and the advisory committee on or before July 1, 2016.

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 *and clarifying* 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. This act shall be known, and may be cited, as
- 2 the Dig Safe Act of 2015.

1 SECTION 1.

2 SEC. 2. The Legislature finds and declares all of the following:

3 (a) For the state's "one-call" law to be effective, it needs greater
4 clarity and effective enforcement, and it must foster communication
5 between operators of subsurface installations and the various types
6 of excavators in California.

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 subsurface installations.

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

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

30 (f) Increased communication between subsurface installation
31 operators and excavators before breaking ground has safety
32 benefits.

33 (g) Construction sites often have many parties conducting
34 different, ongoing work, and so the inherent safety risks associated
35 with that work can be increased by a failure of these parties to
36 effectively communicate. Excavators, operators of subsurface
37 installations, and locators have a responsibility to communicate
38 with other parties before entering these worksites, which may
39 require advance schedule coordination, and also have a

1 responsibility to observe the safety requirements set for those
2 worksites.

3 (h) Abandoned subsurface installations can be mistaken for
4 active subsurface installations that are marked, and thus present a
5 safety risk to excavators and the public. Safety will be improved
6 if subsurface facility operators identify these subsurface
7 installations when their existence is known.

8 (i) The ability of an operator of subsurface installations to locate
9 and mark affected installations can be seriously impaired by a lack
10 of high-quality records of those installations, and thus operators
11 should keep records of their facilities for as long as they are in the
12 ground, whether or not they are in use.

13 (j) Failure by an operator of subsurface installations to mark
14 the installations within the required two-working-day period is a
15 serious breach of duty.

16 (k) While an operator has two working days after an excavator's
17 call to the one-call center to mark its subsurface installations,
18 failure of that operator to do so does not relieve the excavator of
19 the safety responsibility to wait until the operator has marked
20 before commencing excavation.

21 (l) Mismarks by an operator place excavators and the public at
22 great safety risk, and so operators who mismark their installations
23 are entitled to no award for any damages to those installations.

24 (m) Installations that are embedded in pavement require more
25 extensive communication among operators, locators, and
26 excavators to prevent the installations from being damaged.

27 (n) Exemptions that allow a class of persons to excavate without
28 calling 811 are to be permitted only if alternative procedures allow
29 the excavation to take place without compromising safety.

30 ~~(o) More communication is needed between the Department of
31 Transportation and the regional notification centers, including the
32 sharing of subsurface installation location information, so that
33 excavators may be alerted of possible Department of Transportation
34 subsurface installations in the area of planned excavation and, if
35 the excavation is to take place in a Department of Transportation
36 right-of-way, the need to seek a Department of Transportation
37 encroachment permit.~~

38 *(o) The Department of Transportation controls access to the*
39 *state right-of-way by the traveling public, excavators, and*
40 *contractors through the encroachment permit process authorized*

1 *in Article 2 (commencing with Section 670) of Chapter 3 of*
2 *Division 1 of the Streets and Highways Code. Recognizing that*
3 *the public is not always aware where the state right-of-way exists,*
4 *and that the Department of Transportation operates subsurface*
5 *installations in the state right-of-way, the Department of*
6 *Transportation shall facilitate clear communication channels with*
7 *those working around the state right-of-way, with utility companies,*
8 *and with the regional notification centers to promote safety and*
9 *to prevent damage to subsurface installations.*

10 (p) Insufficient information exists on how to best achieve safety
11 when conducting agricultural activities around subsurface
12 installations, and a study, informed by data collected about
13 damages in agricultural areas is needed to determine effective and
14 appropriate safety measures.

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

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

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

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

32 (u) The Study on the Impact of Excavation Damage on Pipeline
33 Safety, submitted by the United States Department of
34 Transportation to Congress on October 9, 2014, reported that other
35 states have found that exemption of landscape maintenance
36 activities of less than 12 inches deep, when performed with hand
37 tools, does not appear to have a significant impact on safety. The
38 report cautions, however, that while those activity-based
39 exemptions may be acceptable, they should be supported by
40 sufficient data.

1 (v) Insufficient data exists on the safety risks of the installation
2 of temporary real estate signposts; therefore, it is important that
3 natural gas distribution companies collect information on whether
4 damages are caused by these signposts.

5 (w) Gas corporations have ready access to information about
6 damages that occur on their subsurface installations and should
7 collect relevant data to inform future discussions regarding the
8 risk of notification exemptions.

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

12 (y) California should have an advisory committee, composed
13 of excavation stakeholders, subject to oversight by the Legislature
14 and the Department of Finance, to perform three major tasks, which
15 are to coordinate the diverse education and outreach efforts
16 undertaken by state and local agencies, operators, and excavators
17 throughout the state and issue grants for targeted efforts, to study
18 excavation questions and develop standards that clarify best
19 practices, and to investigate potential violations of the one-call
20 law that inform both the standards it is to develop and potential
21 enforcement actions. Due to the size of the state, and in order to
22 reduce costs, the advisory committee should meet in northern and
23 southern California.

24 (z) The advisory committee should not be funded through the
25 General Fund, but should be funded through fines levied on gas
26 and electric corporations for safety violations, instead of having
27 those fines go to the General Fund.

28 ~~SEC. 2.~~

29 *SEC. 3.* Section 4216 of the Government Code is amended to
30 read:

31 4216. As used in this article the following definitions apply:

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

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

37 (c) “Advisory Committee” means the California Underground
38 Facilities Safe Excavation Advisory Committee.

39 (d) “Delineate” means to mark in white the location or path of
40 the proposed excavation using the guidelines in Appendix B of

1 the “Guidelines for Excavation Delineation” published in the most
2 recent version of the Best Practices guide of the Common Ground
3 Alliance. If there is a conflict between the marking practices in
4 those guidelines and other provisions of this article, this article
5 shall control. “Delineation” also includes physical identification
6 of the area to be excavated using pink marking, if an excavator
7 makes a determination that standard delineation may be misleading
8 to those persons using affected streets and highways, or be
9 misinterpreted as a traffic or pedestrian control, and the excavator
10 has contacted the regional notification center to advise the operators
11 that the excavator will physically identify the area to be excavated
12 using pink markings.

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

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

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

24 (g) (1) “Excavation” means any operation in which earth, rock,
25 pavement, or other material in the ground is moved, removed, or
26 otherwise displaced by means of tools, equipment, or explosives
27 in any of the following ways: grading, trenching, digging, ditching,
28 drilling, augering, tunneling, scraping, cable or pipe plowing and
29 driving, gouging, crushing, jack hammering, saw cutting, or any
30 other way.

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

33 (A) Landscape maintenance activity that is performed with hand
34 tools at a depth of no more than 12 inches. Landscape maintenance
35 activity includes all of the following:

36 (i) Aeration, dethatching, and cutting of vegetation, including
37 lawn edging.

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

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

1 (B) Operator maintenance activities that are performed with
2 hand tools around an operator’s facilities that traverse from above
3 the ground to below ground in areas known, or reasonably believed,
4 to contain only the operator’s facilities. Operator maintenance
5 activities include all of the following:

6 (i) Clearing soil, debris, or vegetation from around or inside
7 vaults, casings, and other in-ground structures that house an
8 operator’s facilities.

9 (ii) Moving, removing, or displacing soil for the specific purpose
10 of mitigating or preventing corrosion to pipeline facilities such as
11 gas meters, risers, pipes, and valves located above ground or inside
12 vaults, casings, and other in-ground structures.

13 (iii) Replacing or repairing an operator’s facilities located above
14 ground or inside vaults, casings, and other in-ground structures.

15 (iv) Repairing or replacing vaults, casings, and other in-ground
16 structures that house an operator’s facilities.

17 (C) *Routine digging, grading, and scraping or similar operations*
18 *in a flood control area known, or reasonably known, not to contain*
19 *substructures, in connection with debris, vegetation, sediment, or*
20 *mudflow removal for the purposes of flood control where the flood*
21 *control facility is owned by a county, city, city and county, flood*
22 *control district, or similar special district, and the activity is*
23 *performed by or for the county, city, city and county, flood control*
24 *district, or similar special district.*

25 ~~(C) Subparagraph (A)~~

26 (D) *This paragraph shall become inoperative on January 1,*
27 *2020.*

28 (3) The exclusion of the activities in paragraph (2) from the
29 definition of “excavation” shall not be used to discourage a person
30 planning to perform those activities from voluntarily notifying a
31 regional notification center pursuant to Section 4216.2, and does
32 not relieve an operator of a subsurface installation from the
33 obligation to locate and field mark pursuant to Section 4216.3
34 following the notification. The exclusion of activities in paragraph
35 (2) does not relieve a person performing those activities from a
36 duty of reasonable care to prevent damage to subsurface
37 installations, and failure to exercise reasonable care may result in
38 liability for damage to a subsurface installation that is proximately
39 caused by those activities.

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

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

9 (j) “High priority subsurface installation” means high-pressure
10 natural gas pipelines with normal operating pressures greater than
11 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
12 pipelines, high-voltage electric supply lines, conductors, or cables
13 that have a potential to ground of greater than or equal to 60kv, or
14 hazardous materials pipelines that are potentially hazardous to
15 workers or the public if damaged.

16 (k) “Inactive subsurface installation” means both of the
17 following:

18 (1) The portion of an underground subsurface installation that
19 is not in use but is still connected to the subsurface installation, or
20 to any other subsurface installation, that is in use or still carries
21 service.

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

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

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

30 (n) (1) “Locate and field mark” means to indicate the existence
31 of any owned or maintained subsurface installations by using the
32 guidelines in Appendix B of the “Guidelines for Operator Facility
33 Field Delineation” published in the most recent version of the Best
34 Practices guide of the Common Ground Alliance and in
35 conformance with the uniform color code of the American Public
36 Works Association. If there is a conflict between the marking
37 practices in the guidelines and this article, this article shall control.

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

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

3 (p) “Operator” means any person, corporation, partnership,
4 business trust, public agency, or other entity that owns, operates,
5 or maintains a subsurface installation. For purposes of Section
6 4216.1, an “operator” does not include an owner of real property
7 where subsurface installations are exclusively located if they are
8 used exclusively to furnish services on that property and the
9 subsurface facilities are under the operation and control of that
10 owner.

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

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

16 (s) “Qualified person” means a person who completes a training
17 program in accordance with the requirements of Section 1509 of
18 Title 8 of the California Code of Regulations, Injury and Illness
19 Prevention Program, that meets the minimum locators training
20 guidelines and practices published in the most recent version of
21 the Best Practices guide of the Common Ground Alliance.

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

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

29 (v) “Subsurface installation” means any underground or
30 submerged duct, pipeline, or structure, including, but not limited
31 to, a conduit, duct, line, pipe, wire, or other structure, except
32 nonpressurized sewerlines, nonpressurized storm drains, or other
33 nonpressurized drain lines.

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

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

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

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

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

6 (y) “Working day” for the purposes of determining excavation
7 start date and time means a weekday Monday through Friday, from
8 7:00 a.m. to 5:00 p.m., except for federal holidays and state
9 holidays, as defined in Section 19853, or as otherwise posted on
10 the Internet Web site of the regional notification center.

11 ~~SEC. 3.~~

12 *SEC. 4.* Section 4216.1 of the Government Code is amended
13 to read:

14 4216.1. Every operator of a subsurface installation, except the
15 Department of Transportation, shall become a member of,
16 participate in, and share in the costs of, a regional notification
17 center. Operators of subsurface installations who are members of,
18 participate in, and share in, the costs of a regional notification
19 center, including, but not limited to, the Underground Service
20 Alert—Northern California or the Underground Service
21 Alert—Southern California are in compliance with this section
22 and Section 4216.9.

23 ~~SEC. 4.~~

24 *SEC. 5.* Section 4216.2 of the Government Code is amended
25 to read:

26 4216.2. (a) Before notifying the appropriate regional
27 notification center, an excavator planning to conduct an excavation
28 shall delineate the area to be excavated. If the area is not delineated,
29 an operator may, at the operator’s discretion, choose not to locate
30 and field mark until the area to be excavated has been delineated.

31 (b) Except in an emergency, an excavator planning to conduct
32 an excavation shall notify the appropriate regional notification
33 center of the excavator’s intent to excavate at least two working
34 days, and not more than 14 calendar days, before beginning that
35 excavation. The date of the notification shall not count as part of
36 the two-working-day notice. If an excavator gives less notice than
37 the legal excavation start date and time and the excavation is not
38 an emergency, the regional notification center will take the
39 information and provide a ticket, but an operator has until the legal
40 excavation start date and time to respond. *However, an excavator*

1 *and an operator may mutually agree to a different notice and start*
2 *date.*

3 (c) When the excavation is proposed within 10 feet of a high
4 priority subsurface installation, the operator of the high priority
5 subsurface installation shall notify the excavator of the existence
6 of the high priority subsurface installation prior to the legal
7 excavation start date and time, and set up an onsite meeting at a
8 mutually agreed upon time to determine actions or activities
9 required to verify the location and prevent damage to the high
10 priority subsurface installation. The excavator shall not begin
11 excavating until after the completion of the onsite meeting.

12 (d) Except in an emergency, every excavator covered by Section
13 4216.8 planning to conduct an excavation on private property that
14 does not require an excavation permit may contact the appropriate
15 regional notification center if the private property is known, or
16 reasonably should be known, to contain a subsurface installation
17 other than the underground facility owned or operated by the
18 excavator. Before notifying the appropriate regional notification
19 center, an excavator shall delineate the area to be excavated. Any
20 temporary marking placed at the planned excavation location shall
21 be clearly seen, functional, and considerate to surface aesthetics
22 and the local community. An excavator shall check if any local
23 ordinances apply to the placement of temporary markings.

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

28 (f) The regional notification center shall provide a ticket to the
29 person who contacts the center pursuant to this section and shall
30 notify any member, if known, who has a subsurface installation
31 in the area of the proposed excavation. A ticket shall be valid for
32 28 days from the date of issuance. If work continues beyond 28
33 days, the excavator shall update the ticket either by accessing the
34 center's Internet Web site or by calling "811" by the end of the
35 28th day.

36 (g) A record of all notifications by an excavator or operator to
37 the regional notification center shall be maintained for a period of
38 not less than three years. The record shall be available for
39 inspection by the excavator and any member, or their
40 representative, during normal working hours and according to

1 guidelines for inspection as may be established by the regional
2 notification centers.

3 (h) Unless an emergency exists, an excavator shall not begin
4 excavation until the excavator receives a positive response from
5 all known subsurface installations within the delineated boundaries
6 of the proposed area of excavation.

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

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

15 ~~SEC. 5.~~

16 *SEC. 6.* Section 4216.3 of the Government Code is amended
17 to read:

18 4216.3. (a) (1) (A) Unless the excavator and operator
19 mutually agree to a later start date and time, or otherwise agree to
20 the sequence and timeframe in which the operator will locate and
21 field mark, an operator shall do one of the following before the
22 legal excavation start date and time:

23 (i) Locate and field mark within the area delineated for
24 excavation and, where multiple subsurface installations of the same
25 type are known to exist together, mark the number of subsurface
26 installations.

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

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

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

34 (C) An operator shall indicate with an "A" inside a circle the
35 presence of any abandoned subsurface installations, if known,
36 within the delineated area. The markings are to make an excavator
37 aware that there are abandoned subsurface installations within that
38 delineated work area.

39 (2) Only a qualified person shall perform subsurface installation
40 locating activities.

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

5 (4) An operator shall amend, update, maintain, and preserve all
6 plans and records for its subsurface installations as that information
7 becomes known. If there is a change in ownership of a subsurface
8 installation, the records shall be turned over to the new operator.
9 Commencing January 1, 2016, records on abandoned subsurface
10 installations, to the extent that those records exist, shall be retained.

11 (b) If the field marks are no longer reasonably visible, an
12 excavator shall renotify the regional notification center with a
13 request for remarks that can be for all or a portion of the
14 excavation. Excavation shall cease in the area to be remarked. ~~If~~
15 ~~the area to be remarked is not the full extent of the original~~
16 ~~excavation, the excavator shall delineate the portion to be remarked.~~
17 If the delineation markings are no longer reasonably visible, the
18 excavator shall redelineate the area to be remarked. If remarks are
19 requested, the operator shall have two working days, not including
20 the date of request, to remark the subsurface installation.
21 ~~Excavation shall cease in the area where the remarks are requested.~~
22 If the area to be remarked is not the full extent of the original
23 excavation, the excavator shall delineate the portion to be remarked
24 and provide a description of the area requested to be remarked on
25 the ticket. The excavator shall provide a description for the area
26 to be remarked that falls within the area of the original location
27 request.

28 (c) Every operator may supply an electronic positive response
29 through the regional notification center before the legal excavation
30 start date and time. The regional notification center shall make
31 those responses available.

32 (d) The excavator shall notify the appropriate regional
33 notification center of the failure of an operator to identify
34 subsurface installations pursuant to subparagraph (A) or (B) of
35 paragraph (1) of subdivision (a), or subdivision (b). The notification
36 shall include the ticket issued by the regional notification center.
37 A record of all notifications received pursuant to this subdivision
38 shall be maintained by the regional notification center for a period
39 of not less than three years. The record shall be available for
40 inspection pursuant to subdivision (h) of Section 4216.2.

1 (e) If an operator or local agency knows that it has a subsurface
2 installation embedded or partially embedded in the pavement that
3 is not visible from the surface, the operator or local agency shall
4 contact the excavator before pavement removal to communicate
5 and determine a plan of action to protect that subsurface installation
6 and excavator.

7 ~~SEC. 6.~~

8 *SEC. 7.* Section 4216.4 of the Government Code is amended
9 to read:

10 4216.4. (a) (1) Except as provided in paragraph (2), if an
11 excavation is within the ~~approximate location~~ *tolerance zone* of a
12 subsurface installation, the excavator shall determine the exact
13 location of the subsurface installations ~~within the tolerance zone~~
14 *in conflict with the excavation* using hand tools before using any
15 power-driven excavation or boring equipment within the tolerance
16 zone of the subsurface installations. In all cases the excavator shall
17 use reasonable care to prevent damaging subsurface installations.

18 (2) (A) An excavator may use a vacuum excavation device to
19 expose subsurface installations within the tolerance zone if the
20 operator has marked the subsurface installation, the excavator has
21 contacted any operator whose subsurface installations may be in
22 conflict with the excavation, and the operator has agreed to the
23 use of a vacuum excavation device. An excavator shall inform the
24 regional notification center of his or her intent to use a vacuum
25 excavation device when obtaining a ticket.

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

29 (3) An excavator shall presume all subsurface installations to
30 be active, and shall use the same care around subsurface
31 installations that may be inactive as the excavator would use around
32 active subsurface installations.

33 (b) If the exact location of the subsurface installation cannot be
34 determined by hand excavating in accordance with subdivision
35 (a), the excavator shall request the operator to provide additional
36 information to the excavator, to the extent that information is
37 available to the operator, to enable the excavator to determine the
38 exact location of the installation. If the excavator has questions
39 about the markings that an operator has placed, the excavator may
40 contact the notification center to send a request to have the operator

1 contact the excavator directly. The regional notification center
2 shall provide the excavator with the contact telephone number of
3 the subsurface installation operator.

4 (c) An excavator discovering or causing damage to a subsurface
5 installation, including all breaks, leaks, nicks, dents, gouges,
6 grooves, or other damage to subsurface installation lines, conduits,
7 coatings, or cathodic protection, shall immediately notify the
8 subsurface installation operator. The excavator may contact the
9 regional notification center to obtain the contact information of
10 the subsurface installation operator. If high priority subsurface
11 installations are damaged and the operator cannot be contacted
12 immediately, the excavator shall call 911 emergency services.

13 (d) Each excavator, operator, or locator shall communicate with
14 each other and respect the appropriate safety requirements and
15 ongoing activities of the other parties, if known, at an excavation
16 site.

17 ~~SEC. 7.~~

18 *SEC. 8.* Section 4216.5 of the Government Code is amended
19 to read:

20 4216.5. The requirements of this article apply to state agencies
21 and to local agencies that own or operate subsurface installations,
22 except as otherwise provided in Section 4216.1. A local agency
23 that is required to provide the services described in Section 4216.3
24 may charge a fee in an amount sufficient to cover the cost of
25 providing that service.

26 ~~SEC. 8.~~

27 *SEC. 9.* Section 4216.6 of the Government Code is amended
28 to read:

29 4216.6. (a) (1) Any operator or excavator who negligently
30 violates this article is subject to a civil penalty in an amount not
31 to exceed ten thousand dollars (\$10,000).

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

35 (3) Except as otherwise specifically provided in this article, this
36 section is not intended to affect any civil remedies otherwise
37 provided by law for personal injury or for property damage,
38 including any damage to subsurface installations, nor is this section
39 intended to create any new civil remedies for those injuries or that
40 damage.

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

5 (b) An action may be brought by the Attorney General, the
6 district attorney, or the local or state agency that issued the permit
7 to excavate, for the enforcement of the civil penalty pursuant to
8 this section in a civil action brought in the name of the people of
9 the State of California. If penalties are collected as a result of a
10 civil suit brought by a state or local agency for collection of those
11 civil penalties, the penalties imposed shall be paid to the general
12 fund of the agency. If more than one agency is involved in
13 enforcement, the penalties imposed shall be apportioned among
14 them by the court in a manner that will fairly offset the relative
15 costs incurred by the state or local agencies, or both, in collecting
16 these fees.

17 (c) The requirements of this article may also be enforced
18 following a recommendation of the California Underground
19 Facilities Safe Excavation Advisory Committee by a state or local
20 agency, which may include the Attorney General or a district
21 attorney, with jurisdiction over the activity or business undertaken
22 in commission of the violation. The following agencies shall act
23 to accept, amend, or reject the recommendations of the advisory
24 committee as follows:

25 (1) The Registrar of Contractors of the Contractors' State
26 License Board shall enforce the provisions of this article on
27 contractors, as defined in Article 2 of Chapter 9 of Division 3 of
28 the Business and Professions Code.

29 (2) The Public Utilities Commission shall enforce the provisions
30 of this article on gas corporations, as defined in Section 222 of the
31 Public Utilities Code, and electrical corporations, as defined in
32 Section 218 of the Public Utilities Code.

33 (3) The Office of the State Fire Marshal shall enforce the
34 provisions of this article on operators of hazardous liquid pipeline
35 facilities, as defined in Section 60101 of Chapter 601 of Subtitle
36 VIII of Title 49 of the United States Code.

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

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

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

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

12 ~~SEC. 9.~~

13 *SEC. 10.* Section 4216.7 of the Government Code is amended
14 to read:

15 4216.7. (a) If a subsurface installation is damaged by an
16 excavator as a result of failing to comply with Section 4216.2 or
17 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing
18 to comply with the operator’s requests to protect the subsurface
19 installation as specified by the operator before the start of
20 excavation, the excavator shall be liable to the operator of the
21 subsurface installation for resulting damages, costs, and expenses
22 to the extent the damages, costs, and expenses were proximately
23 caused by the excavator’s failure to comply.

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

31 (c) If an operator of a subsurface installation *without a*
32 *reasonable basis, as determined by a court of competent*
33 *jurisdiction*, has failed to comply with the provisions of Section
34 4216.3, including, but not limited to, the requirement to field mark
35 the appropriate location of subsurface installations within two
36 working days of notification, *as defined by subdivision (y) of*
37 *Section 4216 and subdivision (b) of Section 4216.2*, has failed to
38 comply with ~~paragraph (2) of subdivision (a)~~ (c) of Section 4216.2,
39 or has failed to comply with subdivision (b) of Section 4216.4, the
40 operator shall be liable *for damages* to the excavator who has

1 complied with Sections 4216.2 and 4216.4 for damages, Section
2 4216.2, subdivisions (b) and (d) of Section 4216.3, and Section
3 4216.4, including liquidated damages, liability, losses, costs, and
4 ~~expenses~~ *expenses, actually incurred by the excavator*, resulting
5 from the operator's failure to comply with these specified
6 requirements to the extent the damages, costs, and expenses were
7 proximately caused by the operator's failure to comply.

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

14 This section is not intended to create any presumption or to affect
15 the burden of proof in any action for personal injuries or property
16 damage, other than damage to the subsurface installation, nor is
17 this section intended to affect, create, or eliminate any remedy for
18 personal injury or property damage, other than damage to the
19 subsurface installation.

20 ~~(e) In any actions for reimbursement or indemnification for a
21 claim arising from damage to a subsurface installation in which a
22 court finds that the excavator complied with the requirements of
23 this article, the excavator may be awarded reasonable attorney's
24 fees and expenses.~~

25 ~~(f)~~

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

33 ~~(g)~~

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

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

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

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

7 ~~SEC. 10.~~

8 *SEC. 11.* Section 4216.8 of the Government Code is amended
9 to read:

10 4216.8. This article does not apply to either of the following
11 persons:

12 (a) An owner of residential real property, not engaged as a
13 contractor or subcontractor licensed pursuant to Article 5
14 (commencing with Section 7065) of Chapter 9 of Division 3 of
15 the Business and Professions Code, who, as part of improving his
16 or her principal residence or an appurtenance thereto, is performing
17 or is having an excavation performed using hand tools, including
18 the installation of temporary real estate signposts, that does not
19 require a permit issued by a state or local agency. A person
20 described in this subdivision is not an “excavator” as defined in
21 subdivision (h) of Section 4216, however this subdivision shall
22 not discourage a person from voluntarily notifying a regional
23 notification center pursuant to Section 4216.2, and does not relieve
24 an operator of a subsurface facility from the obligation to locate
25 and field mark pursuant to Section 4216.3 following the
26 notification. Notwithstanding Section 4216.2, an owner of real
27 residential property is not required to wait until 14 calendar days
28 before the beginning of an excavation to notify the regional
29 notification center, but rather may do so at any time *at least two*
30 *working days before beginning an excavation* to learn the locations
31 of subsurface installations on his or her property. This subdivision
32 does not relieve a person performing excavation activities from a
33 duty of reasonable care to prevent damage to subsurface
34 installations, and failure to exercise reasonable care may result in
35 liability for damage to a subsurface installation that is proximately
36 caused by those activities.

37 (b) Any person or private entity that leases or rents power
38 operated or power-driven excavating or boring equipment,
39 regardless of whether an equipment operator is provided for that
40 piece of equipment or not, to a contractor or subcontractor licensed

1 pursuant to Article 5 (commencing with Section 7065) of Chapter
2 9 of Division 3 of the Business and Professions Code, if the signed
3 rental agreement between the person or private entity and the
4 contractor or subcontractor contains the following provision:

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

13
14 ~~SEC. 11.~~

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

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

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

26 ~~SEC. 12.~~

27 *SEC. 13.* Section 4216.12 is added to the Government Code,
28 to read:

29 4216.12. (a) The California Underground Facilities Safe
30 Excavation Advisory Committee is hereby created under, and shall
31 be assisted by the staff of, the Contractors’ State License Board
32 in the Department of Consumer Affairs.

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

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

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

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

1 (c) Notwithstanding any other law, the repeal of this section
2 renders the advisory committee subject to review by the appropriate
3 policy committees of the Legislature.

4 (d) This section shall remain in effect so long as, pursuant to
5 subdivision (c) of Section 7000.5 of the Business and Professions
6 Code, there is in the Department of Consumer Affairs a
7 Contractors' State License Board.

8 (e) This section shall become operative only if the Legislature
9 appropriates moneys from the Safe Energy Infrastructure and
10 Excavation Fund to the California Underground Facilities Safe
11 Excavation Advisory Committee for the purposes of this section
12 and grants authority to the Contractors' State License Board to
13 hire sufficient staff.

14 ~~SEC. 13.~~

15 *SEC. 14.* Section 4216.13 is added to the Government Code,
16 to read:

17 4216.13. (a) The advisory committee shall be composed of
18 nine members, of which four shall be appointed by the Governor,
19 three shall be appointed by the Contractors' State License Board,
20 one shall be appointed by the Speaker of the Assembly, and one
21 shall be appointed by the Senate Committee on Rules.

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

24 (1) Three members shall have knowledge and expertise in the
25 operation of subsurface installations. Of those three members, one
26 shall have knowledge and expertise in the operation of the
27 subsurface installations of a municipal utility. At least one of the
28 three members shall have knowledge and experience in the
29 operation of high priority subsurface installations.

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

33 (c) The three members appointed by the Contractors' State
34 License Board shall have knowledge and experience in contract
35 excavation for employers who are not operators of subsurface
36 installations. Of the three members, one member shall be a general
37 engineering contractor, one member shall be a general building
38 contractor, and one member shall be a specialty contractor. For
39 the purposes of this section, the terms "general engineering
40 contractor," "general building contractor," and "specialty

1 contractor” shall have the meanings given in Article 4
 2 (commencing with Section 7055) of Chapter 9 of Division 3 of
 3 the Business and Professions Code.

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

7 (e) The member appointed by the Senate Committee on Rules
 8 shall have knowledge and expertise in managing the underground
 9 installations on one’s own property, and may be drawn from
 10 agricultural, commercial, or residential, or other, property sectors.

11 (f) The advisory committee may invite ~~one director~~ *two directors*
 12 of operations of ~~a regional notification center~~ *centers* to be ~~a~~
 13 nonvoting ex officio ~~member~~ *members* of the advisory committee.

14 ~~SEC. 14.~~

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

17 4216.14. (a) The term of a member of the advisory committee
 18 is two years. Of the first members of the advisory committee, four
 19 members, determined by lot, shall serve for one year so that the
 20 terms of the members shall be staggered.

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

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

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

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

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

35 (g) A member of the advisory committee shall not serve more
 36 than two consecutive years as the chairperson of the advisory
 37 committee.

38 ~~SEC. 15.~~

39 *SEC. 16.* Section 4216.15 is added to the Government Code,
 40 to read:

1 4216.15. The advisory committee shall meet at least once every
2 three months. The advisory committee shall hold meetings in
3 Sacramento and Los Angeles, and in other locations in the state it
4 deems necessary.

5 ~~SEC. 16.~~

6 *SEC. 17.* Section 4216.16 is added to the Government Code,
7 to read:

8 4216.16. The advisory committee may obtain funding for its
9 operational expenses from:

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

12 (b) A federal or state grant.

13 (c) A fee charged to members of the regional notification centers
14 not to exceed the reasonable regulatory cost incident to enforcement
15 of this article.

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

18 (e) Any other source.

19 ~~SEC. 17.~~

20 *SEC. 18.* Section 4216.17 is added to the Government Code,
21 to read:

22 4216.17. (a) In order to understand the needs for education
23 and outreach, including of those groups with the highest awareness
24 and education needs, such as homeowners, and to facilitate
25 discussion on how to coordinate those efforts, the advisory
26 committee shall annually convene a meeting with state and local
27 government agencies, California operators, regional notification
28 centers, and trade associations that fund outreach and education
29 programs that encourage safe excavation practices.

30 (b) The advisory committee shall use the annual meeting
31 described in subdivision (a) to determine the areas in which
32 additional education and outreach efforts should be targeted. The
33 advisory committee shall grant the use of the moneys that may be
34 apportioned to it by the Public Utilities Commission pursuant to
35 paragraph (1) of subdivision (b) of Section 320.5 of the Public
36 Utilities Code to fund public education and outreach programs
37 designed to promote excavation safety around subsurface
38 installations and target towards specific excavator groups, giving
39 priority to those with the highest awareness and education needs,
40 such as homeowners.

1 ~~SEC. 18.~~

2 *SEC. 19.* Section 4216.18 is added to the Government Code,
3 to read:

4 4216.18. (a) The advisory committee shall develop a standard
5 or set of standards relevant to safety practices in excavating around
6 subsurface installations and procedures and guidance in
7 encouraging those practices. When possible, standards should be
8 informed by publicly available data, such as that collected by state
9 and federal agencies and by the regional notification centers
10 pursuant to subdivision (d) of Section 4216.6, and the advisory
11 committee should refrain from using data about facility events not
12 provided either to a state or federal agency or as statewide
13 information, as defined in paragraph (2) of subdivision (e) of
14 Section 4216.6. The standard or set of standards are not intended
15 to replace other relevant standards, including the best practices of
16 the Common Ground Alliance, but are to inform areas currently
17 without established standards. The standard or set of standards
18 shall address all of the following:

19 (1) Evidence necessary for excavators and operators to
20 demonstrate compliance with Sections 4216.2, 4216.3, and 4216.4.

21 (2) Guidance for recommended sanctions against excavators
22 and operators for violations of the article designed to improve
23 safety. Sanctions may include notification and information letters,
24 direction to attend relevant education, and financial penalties. The
25 guidance shall state the circumstances under which the
26 investigation and a recommendation for sanction shall be
27 transmitted to a state or local agency, which may include the
28 Attorney General or a district attorney, for enforcement pursuant
29 to subdivision (b) of Section 4216.20 and may allow for a decision
30 not to transmit if the investigation was initiated by a complaint,
31 the parties have settled the matter, and the advisory committee has
32 determined that further enforcement is not necessary as a deterrent
33 to maintain the integrity of subsurface installations and to protect
34 the safety of excavators and the public. Recommendations for
35 sanctions shall be graduated and shall consider all of the following:

36 (A) The type of violation and its gravity.

37 (B) The degree of culpability.

38 (C) The operator's or excavator's history of violations.

39 (D) The operator's or excavator's history of work conducted
40 without violations.

1 (E) The efforts taken by the violator to prevent violation, and,
2 once the violation occurred, the efforts taken to mitigate the safety
3 consequences of the violation.

4 (F) That homeowners have high awareness and education needs,
5 and for this reason, financial penalties shall not be recommended
6 except in cases in which a person's violations have been willful,
7 repeated, and flagrant.

8 (3) What constitutes reasonable care, as required by paragraph
9 (1) of subdivision (a) of Section 4216.4, ~~in conducting deep~~
10 ~~excavations using hand tools around subsurface installations~~
11 within the tolerance zone, considering the need to balance *worker*
12 *safety in trenches* with the protection of subsurface ~~installations~~
13 ~~by the use of hand tools within the tolerance zone with the safety~~
14 ~~concerns of trench work.~~ *installations. As part of determining*
15 *reasonable care, the advisory committee shall consider the*
16 *appropriate additional excavating depth an excavator should make*
17 *if either of the following occur:*

18 (A) *The subsurface installation is delineated within the tolerance*
19 *zone but it is not in conflict with the excavation.*

20 (B) *The location of a subsurface installation is determined, but*
21 *additional subsurface installations may exist immediately below*
22 *the located subsurface installation.*

23 (4) What constitutes reasonable care, as required by paragraph
24 (1) of subdivision (a) of Section 4216.4, in grading activities on
25 road shoulders and dirt roads which may include standards for
26 potholing.

27 ~~(b) The advisory committee shall develop and recommend a~~
28 ~~standard or set of standards requiring all new nonpressurized~~
29 ~~sewerlines, nonpressurized storm drains, and other nonpressurized~~
30 ~~drains that connect from building structures to the public~~
31 ~~right-of-way to include the installation of tracer tape or wire to aid~~
32 ~~in detection and tracing of these subsurface installations,~~
33 ~~nonpressurized sewerlines, nonpressurized storm drains, and other~~
34 ~~nonpressurized drains for adoption by the California Building~~
35 ~~Standards Commission as mandatory building standards.~~

36 (e)

37 (b) On or before December 31, 2017, the advisory committee
38 shall, in consultation with the Department of Food and Agriculture
39 and after an agricultural stakeholder process, make
40 recommendations for long-term treatment of agricultural activities

1 that include determining whether the notification requirements of
2 Section 4216.2, the locate and field mark requirements of Section
3 4216.3, and the excavation requirements of Section 4216.4 are
4 appropriate for all types of agricultural activities, or whether they
5 could be modified in ways to promote participation in safe
6 agricultural practices around high priority subsurface installations.

7 (1) The recommendations shall be informed by a study that
8 includes, but is not limited to, the following:

9 (A) A review of past damages attributable to agricultural
10 activities, including information provided by gas corporations
11 pursuant to subdivision (b) of Section 971 of the Public Utilities
12 Code.

13 (B) Estimations of the use of regional notification centers by
14 persons involved in agricultural activities provided by gas
15 corporations, including the methodology used for the development
16 of, the sources of error in, and confidence intervals for the
17 estimations, pursuant to subdivision (c) of Section 971 of the Public
18 Utilities Code.

19 (C) A review of the outreach and education practices of
20 operators of high priority subsurface installations toward persons
21 who undertake agricultural activities and measures of the successes
22 of those practices, with an explanation of how the measure of
23 success is defined.

24 (D) A review of existing standards for operator communication
25 with excavators, such as Recommended Practice 1162 by the
26 American Petroleum Institute.

27 (2) The recommendations shall address the following questions:

28 (A) Do agricultural activities differ from common types of
29 excavation in ways that may affect the applicability of Sections
30 4216.2, 4216.3, and 4216.4 to agricultural activities?

31 (B) Should a person notify the regional notification center before
32 undertaking agricultural activities that are not in the vicinity of
33 subsurface installations? What is a sufficient means by which a
34 person would know if there are subsurface installations in the
35 vicinity?

36 (C) What is the benefit of the requirement in subdivision (c) of
37 Section 4216.2 for an onsite meeting in advance of the performance
38 of agricultural activities in the vicinity of high priority subsurface
39 installations? Under what circumstances is an onsite meeting
40 appropriate in advance of the performance of agricultural activities,

1 and how far in advance of the performance of agricultural activities
2 does the onsite meeting requirement retain its benefit? What is the
3 most convenient and expedient means to initiate an onsite meeting
4 in advance of the performance of agricultural activities?

5 (D) What outreach and education activities on the part of
6 operators of high priority subsurface installations are important to
7 promote safety in performing agricultural activities? What actions
8 should the outreach and education activities induce in persons
9 performing agricultural activities, and how can success be
10 measured?

11 (E) How should the success of the advisory committee's
12 recommendations be measured?

13 ~~SEC. 19.~~

14 *SEC. 20.* Section 4216.19 is added to the Government Code,
15 to read:

16 4216.19. (a) The advisory committee shall investigate possible
17 violations of this article, including complaints from affected parties
18 and members of the public.

19 (b) In furthering the purposes of this article, the advisory
20 committee may authorize staff allocated to it by the Contractors'
21 State License Board to use compliance audits, including field
22 audits, and investigations of incidents and near-misses.

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

24 ~~SEC. 20.~~

25 *SEC. 21.* Section 4216.20 is added to the Government Code,
26 to read:

27 4216.20. (a) Upon the completion of an investigation of a
28 possible violation of this article, the advisory committee shall
29 inform the following parties of the result of the investigation,
30 including any findings of probable violation:

31 (1) The party or parties whose activities were the subject of the
32 investigation.

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

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

37 (b) If the advisory committee, upon the completion of an
38 investigation, finds a probable violation of the article, the advisory
39 committee may transmit the investigation results and any
40 recommended penalty to the state or local agency with jurisdiction

1 over the activity or business undertaken in commission of the
 2 violation.

3 ~~SEC. 21.~~

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

6 4216.21. (a) For an investigation that the advisory committee
 7 undertakes as a result of a complaint of a violation of Sections
 8 4216.2, 4216.3, or 4216.4, the complainant shall not file an action
 9 in court for damages based on those violations until the
 10 investigation is complete, or for 120 days after the investigation
 11 begins, whichever comes first, during which time, applicable
 12 statutes of limitation shall be tolled.

13 (b) If a complainant files an action in court against a person for
 14 damages based upon violations of Sections 4216.2, 4216.3, or
 15 4216.4, after the completion of an advisory committee investigation
 16 in which the person was found not to have violated the article, the
 17 complainant shall also notify the advisory committee when the
 18 action is filed.

19 (c) This section only applies to a claim for damages to a
 20 subsurface installation.

21 ~~SEC. 22.~~

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

24 4216.22. (a) Notwithstanding Section 10231.5, the advisory
 25 committee shall report to the Governor and the Legislature on or
 26 before February 1, 2017, and each year thereafter, on the activities
 27 of the advisory committee and any recommendations of the
 28 advisory committee.

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

31 *SEC. 24.* *Section 17921.11 is added to the Health and Safety*
 32 *Code, to read:*

33 *17921.11. (a) During the next regularly scheduled intervening*
 34 *code cycle that commences on or after January 1, 2016, or during*
 35 *a subsequent code adoption cycle, the department shall develop*
 36 *and propose for adoption by the California Building Standards*
 37 *Commission, pursuant to Chapter 4 (commencing with Section*
 38 *18935) of Part 2.5, building standards requiring all new residential*
 39 *nonpressurized building sewers that connect from building*
 40 *structures to the public right-of-way or applicable utility easement*

1 *to include the installation of tracer tape or wire to aid in detection*
2 *and tracing of these nonpressurized building sewers.*

3 *(b) In researching, developing, and proposing building*
4 *standards under this section, the Department of Housing and*
5 *Community Development is authorized to expend funds from the*
6 *Building Standards Administration Special Revolving Fund, upon*
7 *appropriation pursuant to Section 18931.7.*

8 *SEC. 25. Section 18940.8 is added to the Health and Safety*
9 *Code, to read:*

10 *18940.8. (a) During the next regularly scheduled intervening*
11 *code cycle that commences on or after January 1, 2016, or during*
12 *a subsequent code adoption cycle, the commission shall develop*
13 *and propose for adoption, pursuant to Chapter 4 (commencing*
14 *with Section 18935) of Part 2.5, building standards requiring all*
15 *new nonresidential nonpressurized building sewers that connect*
16 *from building structures to the public right-of-way or applicable*
17 *utility easement to include the installation of tracer tape or wire*
18 *to aid in detection and tracing of these nonpressurized building*
19 *sewers.*

20 *(b) In researching, developing, and proposing building*
21 *standards under this section, the California Building Standard*
22 *Commission is authorized to expend funds from the Building*
23 *Standards Administration Special Revolving Fund, upon*
24 *appropriation pursuant to Section 18931.7.*

25 ~~SEC. 23.~~

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

28 *320.5. (a) The Safe Energy Infrastructure and Excavation Fund*
29 *is hereby established in the State Treasury. Moneys deposited into*
30 *the fund shall be used to cover the administrative expenses of the*
31 *California Underground Facilities Safe Excavation Advisory*
32 *Committee, upon appropriation by the Legislature. Additionally,*
33 *the moneys may be used as described in subdivision (b).*

34 *(b) Up to five hundred thousand dollars (\$500,000) of moneys*
35 *in the fund that are in excess of the moneys necessary for the*
36 *administrative expenses of the California Underground Facilities*
37 *Safe Excavation Advisory Committee may, upon appropriation*
38 *by the Legislature, be apportioned by the commission for the*
39 *following purposes:*

1 (1) The California Underground Facilities Safe Excavation
 2 Advisory Committee, to fund public education and outreach
 3 programs designed to promote excavation safety around subsurface
 4 installations and targeted toward specific excavator groups.

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

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

26 ~~SEC. 24.~~

27 *SEC. 27.* Section 911.2 is added to the Public Utilities Code,
 28 to read:

29 911.2. No later than February 1, 2019, the commission shall
 30 report to the Legislature and to the California Underground
 31 Facilities Safe Excavation Advisory Committee an analysis of
 32 excavation damage to commission-regulated pipeline facilities.
 33 The report shall include analyses of the types of damage and other
 34 information described in Section 971.

35 *SEC. 28.* *Section 955.5 of the Public Utilities Code is amended*
 36 *to read:*

37 955.5. (a) For purposes of this section, the following terms
 38 have the following meanings:

1 (1) “Gas pipeline” means an intrastate distribution line as
2 described in paragraph (1) of, or an intrastate transmission line as
3 described in paragraph (2) of, Section 950.

4 (2) “Hospital” means a licensed general acute care hospital as
5 defined in subdivision (a) of Section 1250 of the Health and Safety
6 Code.

7 (3) “School” means a public or private preschool, elementary,
8 or secondary school.

9 (b) A gas corporation shall provide not less than three working
10 days’ notice to the administration of a school or hospital prior to
11 undertaking nonemergency excavation or construction of a gas
12 ~~pipeline~~ *pipeline, excluding any work that only uses hand tools,*
13 *pneumatic hand tools, or vacuum technology for the purpose of*
14 *marking and locating a subsurface installation pursuant to Article*
15 *2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of*
16 *Title 1 of the Government Code, if the work is located within 500*
17 *feet of the school or hospital. The notification shall include all of*
18 *the following:*

19 (1) The name, address, telephone number, and emergency
20 contact information for the gas corporation.

21 (2) The specific location of the gas pipeline where the excavation
22 or construction will be performed.

23 (3) The date and time the excavation or construction is to be
24 conducted and when the work is expected to be completed.

25 (4) An invitation and a telephone number to call for further
26 information on what the school or hospital should do in the event
27 of a leak.

28 (c) The gas corporation shall maintain a record of the date and
29 time of any notification provided to the administration of a school
30 or hospital prior to undertaking nonemergency excavation or
31 construction of a gas pipeline and any subsequent contacts with
32 the administration of a school or hospital relative to the excavation
33 or construction and the actions taken, if any, in response to those
34 subsequent contacts. The gas corporation shall maintain these
35 records and make them available for inspection for no less than
36 five years from the date of the notification.

37 ~~SEC. 25.~~

38 *SEC. 29.* Section 971 is added to the Public Utilities Code, to
39 read:

1 971. (a) As a part of its damage prevention program carried
2 out pursuant to Section 192.614 of Part 192 of Title 49 of the Code
3 of Federal Regulations, each gas corporation shall collect data to
4 inform its outreach activities. Until January 1, 2020, the data shall
5 include all of the following:

6 (1) Damage to underground commission-regulated pipeline
7 facilities that occurred during the performance of landscaping
8 activities. Each gas corporation shall note in its investigation of
9 excavation damage incidents the approximate depth of the gas
10 facility at the time of damage, the type of excavator involved,
11 which may include “homeowner,” “licensed contractor,” or
12 “unlicensed contractor,” and whether the excavator had called the
13 regional notification center before performing the excavation.

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

16 (3) Damages to underground commission-regulated pipeline
17 facilities that occurred in the installation of temporary real estate
18 signposts. Each gas corporation shall note in its investigation of
19 excavation damage incidents the type of signpost installed and the
20 method of installation, including the types of tools used.

21 (4) Damage to underground commission-regulated pipeline
22 facilities that occurred during agricultural activities, including the
23 type of activity performed and the type of tool involved in the
24 damage.

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

26 (b) Until January 1, 2020, each gas corporation shall annually
27 report to the commission and to the California Underground
28 Facilities Safe Excavation Advisory Committee excavation damage
29 data and analyses contained in subdivision (a) in a format of the
30 commission’s choosing.

31 (c) As a part of its damage prevention program carried out
32 pursuant to Section 192.614 of Part 192 of Title 49 of the Code of
33 Federal Regulations, each gas corporation shall estimate
34 Californians’ use of regional notification centers, as defined in
35 Section 4216 of the Government Code, before conducting
36 agricultural activities. This estimation shall consider the use of
37 regional notification centers before conducting agricultural
38 activities that are both in the vicinity of its natural gas transmission
39 pipelines and not in the vicinity of its natural gas transmission
40 pipelines. Each gas corporation shall provide this estimate to the

1 commission and to the California Underground Facilities Safe
2 Excavation Advisory Committee on or before July 1, 2016. In
3 performing this estimation, each gas corporation shall do all of the
4 following:

5 (1) Estimate the amount and locations of agricultural activity
6 being performed by using relevant publicly available information,
7 such as maps prepared pursuant to the Farmland Mapping and
8 Monitoring Program of the California Natural Resources Agency,
9 information from the National Agricultural Statistics Service, and
10 information available from assessor parcel numbers.

11 (2) Determine the number and locations of notifications to
12 regional notification centers for excavation activities on agricultural
13 land by using information from its own mark and locate activities
14 and, to the extent the information is available, from the regional
15 notification centers or other sources.

16 (3) For notifications in the vicinity of its natural gas transmission
17 pipelines, determine the average number of notifications on
18 agricultural land per transmission pipeline mile per year as well
19 as a histogram to describe the number of transmission pipeline
20 intervals Y , in units of the best available precision, on which X
21 notifications occurred, where X increases from zero.

22 (4) Describe the methodology used for the development of any
23 estimates and identify sources of error in the estimation and a
24 confidence interval for the estimation.

25 ~~SEC. 26.~~

26 *SEC. 30.* Section 1702.5 of the Public Utilities Code is
27 amended to read:

28 1702.5. (a) The commission shall, in an existing or new
29 proceeding, develop and implement a safety enforcement program
30 applicable to gas corporations and electrical corporations that
31 includes procedures for monitoring, data tracking and analysis,
32 and investigations, as well as issuance of citations by commission
33 staff, under the direction of the executive director. The enforcement
34 program shall be designed to improve gas and electrical system
35 safety through the enforcement of applicable law, or order or rule
36 of the commission related to safety using a variety of enforcement
37 mechanisms, including the issuance of corrective actions, orders,
38 and citations by designated commission staff, and recommendations
39 for action made to the commission by designated commission staff.

1 (1) When considering the issuance of citations and assessment
2 of penalties, the commission staff shall take into account voluntary
3 reporting of potential violations, voluntary removal or resolution
4 efforts undertaken, the prior history of violations, the gravity of
5 the violation, and the degree of culpability.

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

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

11 (b) The commission shall develop and implement an appeals
12 process to govern the issuance and appeal of citations or resolution
13 of corrective action orders issued by the commission staff. The
14 appeals process shall provide the respondent a reasonable period
15 of time, upon receiving a citation, to file a notice of appeal, shall
16 afford an opportunity for a hearing, and shall require the hearing
17 officer to expeditiously provide a draft disposition.

18 (c) The commission shall, within a reasonable time set by the
19 commission, conclude a safety enforcement action with a finding
20 of violation, a corrective action order, a citation, a determination
21 of no violation, approval of the corrective actions undertaken by
22 the gas corporation or electrical corporation, or other action. The
23 commission may institute a formal proceeding regarding the alleged
24 violation, potentially resulting in additional enforcement action,
25 regardless of any enforcement action taken at the commission staff
26 level.

27 (d) The commission shall implement the safety enforcement
28 program for gas safety by July 1, 2014, and implement the safety
29 enforcement program for electrical safety no later than January 1,
30 2015.

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

37 (f) Notwithstanding any other law, moneys collected as a result
38 of the issuance of citations pursuant to this section shall be
39 deposited in the Safe Energy Infrastructure and Excavation Fund.

1 ~~SEC. 27.~~

2 *SEC. 31.* No reimbursement is required by this act pursuant
3 to Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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