

Senate Bill No. 119

Passed the Senate September 10, 2015

Secretary of the Senate

Passed the Assembly September 8, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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 18940.8 to the Health and Safety Code, and to amend 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, 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, 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 2 nonvoting ex officio 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 building 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, 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 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 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.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Dig Safe Act of 2015.

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

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

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

(c) Electronic positive response is a means to communicate the status of responses to an excavator's notice of excavation via the one-call center and provides the safety benefit that an excavator has an easy means to know whether or not all of the utilities within the excavation area have marked their subsurface installations.

(d) The delineation by an excavator of the area to be excavated in advance of the field location and marking by subsurface facility

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

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

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

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

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

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

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

(k) While an operator has two working days after an excavator’s call to the one-call center to mark its subsurface installations, failure of that operator to do so does not relieve the excavator of

the safety responsibility to wait until the operator has marked before commencing excavation.

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

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

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

(o) The Department of Transportation controls access to the state right-of-way by the traveling public, excavators, and contractors through the encroachment permit process authorized in Article 2 (commencing with Section 670) of Chapter 3 of Division 1 of the Streets and Highways Code. Recognizing that the public is not always aware where the state right-of-way exists, and that the Department of Transportation operates subsurface installations in the state right-of-way, the Department of Transportation shall facilitate clear communication channels with those working around the state right-of-way, with utility companies, and with the regional notification centers to promote safety and to prevent damage to subsurface installations.

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

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

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

(s) The exemption that permits homeowners to conduct excavation on their property with heavy machinery or when there

is a utility easement on his or her property does not have a basis in safety.

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

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

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

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

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

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

(z) The advisory committee should not be funded through the General Fund, but should be funded through fines levied on gas

and electric corporations for safety violations, instead of having those fines go to the General Fund.

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

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

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

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

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

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

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

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

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

(g) (1) “Excavation” means any operation in which earth, rock, pavement, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives

in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, gouging, crushing, jack hammering, saw cutting, or any other way.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The exclusion of the activities in paragraph (2) from the definition of “excavation” shall not be used to discourage a person

planning to perform those activities from voluntarily notifying a regional notification center pursuant to Section 4216.2, and does not relieve an operator of a subsurface installation from the obligation to locate and field mark pursuant to Section 4216.3 following the notification. The exclusion of activities in paragraph (2) does not relieve a person performing those activities from a duty of reasonable care to prevent damage to subsurface installations, and failure to exercise reasonable care may result in liability for damage to a subsurface installation that is proximately caused by those activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) “Subsurface installation” means any underground or submerged duct, pipeline, or structure, including, but not limited

to, a conduit, duct, line, pipe, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

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

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

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

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

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

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

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

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

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

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

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator’s intent to excavate at least two working

days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to respond. However, an excavator and an operator may mutually agree to a different notice and start date.

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

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

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

(f) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall update the ticket either by accessing the

center's Internet Web site or by calling "811" by the end of the 28th day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a request for remarks that can be for all or a portion of the excavation. Excavation shall cease in the area to be remarked. If the delineation markings are no longer reasonably visible, the excavator shall redelineate the area to be remarked. If remarks are requested, the operator shall have two working days, not including the date of request, to remark the subsurface installation. If the area to be remarked is not the full extent of the original excavation, the excavator shall delineate the portion to be remarked and provide a description of the area requested to be remarked on the ticket. The excavator shall provide a description for the area to be remarked that falls within the area of the original location request.

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

(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. A record of all notifications received pursuant to this subdivision

shall be maintained by the regional notification center for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (h) of Section 4216.2.

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

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

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

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

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

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

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. If the excavator has questions

about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If an operator of a subsurface installation without a reasonable basis, as determined by a court of competent jurisdiction, has failed to comply with the provisions of Section 4216.3, including, but not limited to, the requirement to field mark the appropriate location of subsurface installations within two working days of notification, as defined by subdivision (y) of Section 4216 and subdivision (b) of Section 4216.2, has failed to comply with subdivision (c) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable for damages to the excavator who has complied with Section 4216.2, subdivisions (b) and (d) of Section 4216.3, and

Section 4216.4, including liquidated damages, liability, losses, costs, and expenses, actually incurred by the excavator, resulting from the operator's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the operator's failure to comply.

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

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

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

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

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

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

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

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

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

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

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

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

liabilities and responsibilities contained in the regional notification center law.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The advisory committee may invite two directors of operations of regional notification centers to be nonvoting ex officio members of the advisory committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A federal or state grant.

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

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

(e) Any other source.

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

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

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

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

4216.18. (a) The advisory committee shall develop a standard or set of standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices. When possible, standards should be informed by publicly available data, such as that collected by state and federal agencies and by the regional notification centers pursuant to subdivision (d) of Section 4216.6, and the advisory committee should refrain from using data about facility events not provided either to a state or federal agency or as statewide information, as defined in paragraph (2) of subdivision (e) of Section 4216.6. The standard or set of standards are not intended to replace other relevant standards, including the best practices of the Common Ground Alliance, but are to inform areas currently

without established standards. The standard or set of standards shall address all of the following:

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

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

(A) The type of violation and its gravity.

(B) The degree of culpability.

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

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

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

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

(3) What constitutes reasonable care, as required by paragraph (1) of subdivision (a) of Section 4216.4, in using hand tools around subsurface installations within the tolerance zone, considering the need to balance worker safety in trenches with the protection of subsurface installations. As part of determining reasonable care, the advisory committee shall consider the appropriate additional excavating depth an excavator should make if either of the following occur:

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

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

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

(b) On or before December 31, 2017, the advisory committee shall, in consultation with the Department of Food and Agriculture and after an agricultural stakeholder process, make recommendations for long-term treatment of agricultural activities that include determining whether the notification requirements of Section 4216.2, the locate and field mark requirements of Section 4216.3, and the excavation requirements of Section 4216.4 are appropriate for all types of agricultural activities, or whether they could be modified in ways to promote participation in safe agricultural practices around high priority subsurface installations.

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

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

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

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

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

(2) The recommendations shall address the following questions:

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

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

(C) What is the benefit of the requirement in subdivision (c) of Section 4216.2 for an onsite meeting in advance of the performance of agricultural activities in the vicinity of high priority subsurface installations? Under what circumstances is an onsite meeting appropriate in advance of the performance of agricultural activities, and how far in advance of the performance of agricultural activities does the onsite meeting requirement retain its benefit? What is the most convenient and expedient means to initiate an onsite meeting in advance of the performance of agricultural activities?

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

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

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

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

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

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

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

4216.20. (a) Upon the completion of an investigation of a possible violation of this article, the advisory committee shall

inform the following parties of the result of the investigation, including any findings of probable violation:

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

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

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

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

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

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

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

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

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

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

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

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

17921.11. (a) During the next regularly scheduled intervening code cycle that commences on or after January 1, 2016, or during a subsequent code adoption cycle, the department shall develop and propose for adoption by the California Building Standards Commission, pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, building standards requiring all new residential nonpressurized building sewers that connect from building structures to the public right-of-way or applicable utility easement to include the installation of tracer tape or wire to aid in detection and tracing of these nonpressurized building sewers.

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

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

18940.8. (a) During the next regularly scheduled intervening code cycle that commences on or after January 1, 2016, or during a subsequent code adoption cycle, the commission shall develop and propose for adoption, pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, building standards requiring all new 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 tape or wire to aid in detection and tracing of these nonpressurized building sewers.

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

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

320.5. (a) The Safe Energy Infrastructure and Excavation Fund is hereby established in the State Treasury. Moneys deposited into the fund shall be used to cover the administrative expenses of the California Underground Facilities Safe Excavation Advisory

Committee, upon appropriation by the Legislature. Additionally, the moneys may be used as described in subdivision (b).

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

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

(2) The commission, to further a gas and electric safety and enforcement workforce development program consistent with its equal employment program. No moneys shall be used to fulfill existing state and federal training requirements or for ongoing operations, but moneys may be used for the purpose of education in emergent safety issues and in best practices pertaining to gas and electric utility inspections, audits, accident investigations, and data tracking and analysis. The commission may only apportion moneys for this purpose upon commission approval of a safety and enforcement workforce development program at a meeting of the commission. No more than one hundred fifty thousand dollars (\$150,000) of the Safe Energy Infrastructure and Excavation Fund may be used for this purpose.

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

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

911.2. No later than February 1, 2019, the commission shall 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 report shall include analyses of the types of damage and other information described in Section 971.

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

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

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

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

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

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

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

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

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

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

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

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

971. (a) As a part of its damage prevention program carried out pursuant to Section 192.614 of Part 192 of Title 49 of the Code

of Federal Regulations, each gas corporation shall collect data to inform its outreach activities. Until January 1, 2020, the data shall include all of the following:

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

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

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

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

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

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

(c) As a part of its damage prevention program carried out pursuant to Section 192.614 of Part 192 of Title 49 of the Code of Federal Regulations, each gas corporation shall estimate Californians’ use of regional notification centers, as defined in Section 4216 of the Government Code, before conducting agricultural activities. This estimation shall consider the use of regional notification centers before conducting agricultural activities that are both in the vicinity of its natural gas transmission pipelines and not in the vicinity of its natural gas transmission pipelines. Each gas corporation shall provide this estimate to the commission and to the California Underground Facilities Safe Excavation Advisory Committee on or before July 1, 2016. In

performing this estimation, each gas corporation shall do all of the following:

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

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

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

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

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

1702.5. (a) The commission shall, in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electrical corporations 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. The enforcement program shall be designed to improve gas and electrical system safety through the enforcement of applicable law, or order or rule of the commission related to safety using a variety of enforcement mechanisms, including the issuance of corrective actions, orders, and citations by designated commission staff, and recommendations for action made to the commission by designated commission staff.

(1) When considering the issuance of citations and assessment of penalties, the commission staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution

efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability.

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

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

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

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

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

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

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

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor