

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 28, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 13, 2015

SENATE BILL

No. 661

Introduced by Senator Hill

February 27, 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, 4216.22, 4216.23, and 4216.24 to, the Government Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, 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, the Dig Safe Act of 2016, would define “working day” for purposes of determining excavation start date and time in the context of these provisions.

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 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 gas corporations, electrical corporations, water corporations, and operators of hazardous liquid pipeline facilities, as specified. The bill would also authorize a local governing board to enforce these provisions on local agencies under its jurisdiction.

This bill would create the California Underground Facilities Safe Excavation Board under, and assisted by the staff of, the Office of the State Fire ~~Marshal~~. *Marshal*. The bill would require the board to coordinate education and outreach activities, develop standards, ~~and investigate violations of~~, and enforce, as specified, the provisions described above. The bill would also authorize the board to prescribe rules and regulations as may be necessary or proper to carry out the purposes of these provisions and to exercise the power and duties conferred upon it.

The board would be composed of 9 members who would serve 4-year terms, and 2 nonvoting ex officio members who may be invited by the appointed members of the board. ~~The bill would authorize the board, to the extent that resources allow, commencing on bill, commencing~~

January 1, 2018, ~~to use compliance audits in furthering the purposes of these provisions.~~ *would require the board to investigate possible violations of the provisions described above, and would authorize the board to transmit the investigation results and any recommended penalty to the state or local agency with jurisdiction over the activity or business undertaken in the commission of the violation, as specified.* The bill would require the ~~advisory committee board to conduct~~ *convene* an annual meeting and, on or before February 1, 2018, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used, upon appropriation by the Legislature, to cover the operational expenses of the board and *for* educational and outreach purposes, except as specified.

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

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

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Dig Safe Act of 2016.
- 3 SEC. 2. Section 4216 of the Government Code is amended to
- 4 read:
- 5 4216. As used in this article the following definitions apply:
- 6 (a) “Approximate location of subsurface installations” means
- 7 a strip of land not more than 24 inches on either side of the exterior
- 8 surface of the subsurface installation. “Approximate location” does
- 9 not mean depth.
- 10 (b) “Excavation” means any operation in which earth, rock, or
- 11 other material in the ground is moved, removed, or otherwise
- 12 displaced by means of tools, equipment, or explosives in any of
- 13 the following ways: grading, trenching, digging, ditching, drilling,
- 14 augering, tunneling, scraping, cable or pipe plowing and driving,
- 15 or any other way.
- 16 (c) Except as provided in Section 4216.8, “excavator” means
- 17 any person, firm, contractor or subcontractor, owner, operator,
- 18 utility, association, corporation, partnership, business trust, public
- 19 agency, or other entity that, with their, or his or her, own employees
- 20 or equipment performs any excavation.

1 (d) “Emergency” means a sudden, unexpected occurrence,
2 involving a clear and imminent danger, demanding immediate
3 action to prevent or mitigate loss of, or damage to, life, health,
4 property, or essential public services. “Unexpected occurrence”
5 includes, but is not limited to, fires, floods, earthquakes or other
6 soil or geologic movements, riots, accidents, damage to a
7 subsurface installation requiring immediate repair, or sabotage.

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

15 (f) “Inquiry identification number” means the number that is
16 provided by a regional notification center to every person who
17 contacts the center pursuant to Section 4216.2. The inquiry
18 identification number shall remain valid for not more than 28
19 calendar days from the date of issuance, and after that date shall
20 require regional notification center revalidation.

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

23 (h) “Operator” means any person, corporation, partnership,
24 business trust, public agency, or other entity that owns, operates,
25 or maintains a subsurface installation. For purposes of Section
26 4216.1, an “operator” does not include an owner of real property
27 where subsurface facilities are exclusively located if they are used
28 exclusively to furnish services on that property and the subsurface
29 facilities are under the operation and control of that owner.

30 (i) “Qualified person” means a person who completes a training
31 program in accordance with the requirements of Title 8, California
32 Code of Regulations, Section 1509, Injury Prevention Program,
33 that meets the minimum training guidelines and practices of
34 Common Ground Alliance current Best Practices.

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

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

3 (l) “Subsurface installation” means any underground pipeline,
4 conduit, duct, wire, or other structure, except nonpressurized
5 sewerlines, nonpressurized storm drains, or other nonpressurized
6 drain lines.

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

12 SEC. 3. 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. Section 4216.2 of the Government Code is amended
24 to read:

25 4216.2. (a) Before notifying the appropriate regional
26 notification center, an excavator planning to conduct an excavation
27 shall delineate the area to be excavated. If the area is not delineated,
28 an operator may, at the operator’s discretion, choose not to locate
29 and field mark until the area to be excavated has been delineated.

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

1 date. *The contact information for operators notified shall be*
2 *available to the excavator.*

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. *As part of the meeting, the*
11 *excavator shall discuss with the operator the method and tools*
12 *that will be used during the excavation.* The excavator shall not
13 begin excavating until after the completion of the onsite meeting.

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

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

30 ~~(f)~~

31 (e) The regional notification center shall provide a ticket to the
32 person who contacts the center pursuant to this section and shall
33 notify any member, if known, who has a subsurface installation
34 in the area of the proposed excavation. A ticket shall be valid for
35 28 days from the date of issuance. If work continues beyond 28
36 days, the excavator shall renew the ticket either by accessing the
37 center's Internet Web site or by calling "811" by the end of the
38 28th day.

39 ~~(g)~~

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

8 ~~(h)~~

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

13 ~~(i)~~

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

17 ~~(j)~~

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

23 SEC. 5. Section 4216.3 of the Government Code is amended
24 to read:

25 4216.3. (a) (1) (A) Unless the excavator and operator
26 mutually agree to a later start date and time, or otherwise agree to
27 the sequence and timeframe in which the operator will locate and
28 field mark, an operator shall do one of the following before the
29 legal excavation start date and time:

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

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

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

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

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

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

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

12 (4) An operator shall amend, update, maintain, and preserve all
13 plans and records for its subsurface installations as that information
14 becomes known. If there is a change in ownership of a subsurface
15 installation, the records shall be turned over to the new operator.
16 Commencing January 1, 2017, records on abandoned subsurface
17 installations, to the extent that those records exist, shall be retained.

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

31 (c) ~~Every~~ *Commencing January 1, 2018, every* operator may
32 supply an electronic positive response through the regional
33 notification center before the legal excavation start date and time.
34 The regional notification center shall make those responses
35 ~~available~~: *available to the excavator*.

36 (d) The excavator shall notify the appropriate regional
37 notification center of the failure of an operator to identify
38 subsurface installations pursuant to subparagraph (A) or (B) of
39 paragraph (1) of subdivision (a), or subdivision (b). The notification
40 shall include the ticket issued by the regional notification center.

1 A record of all notifications received pursuant to this subdivision
2 shall be maintained by the regional notification center for a period
3 of not less than three years. The record shall be available for
4 inspection pursuant to subdivision-~~(h)~~ (f) of Section 4216.2.

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

11 SEC. 6. Section 4216.4 of the Government Code is amended
12 to read:

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

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

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

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

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

1 exact location of the installation. If the excavator has questions
2 about the markings that an operator has placed, the excavator may
3 contact the notification center to send a request to have the operator
4 contact the excavator directly. The regional notification center
5 shall provide the excavator with the contact telephone number of
6 the subsurface installation operator.

7 (c) (1) An excavator discovering or causing damage to a
8 subsurface installation, including all breaks, leaks, nicks, dents,
9 gouges, grooves, or other damage to subsurface installation lines,
10 conduits, coatings, or cathodic protection, shall immediately notify
11 the subsurface installation operator. The excavator may contact
12 the regional notification center to obtain the contact information
13 of the subsurface installation operator. ~~If high priority subsurface~~
14 ~~installations are damaged and the operator cannot be contacted~~
15 ~~immediately, the excavator shall call 911 emergency services. If~~
16 ~~the operator is unknown and the damage or discovery of damage~~
17 ~~occurs outside the working hours of the regional notification~~
18 ~~center, the excavator may follow the instructions provided by the~~
19 ~~regional notification center through its Internet web site or the~~
20 ~~telephone line recorded message.~~

21 (2) An excavator shall call 911 emergency services upon
22 discovering or causing damage to either of the following:

23 (A) A natural gas or hazardous liquid pipeline subsurface
24 installation in which the damage results in the escape of any
25 flammable, toxic, or corrosive gas or liquid.

26 (B) A high priority subsurface installation of any kind.

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

31 SEC. 7. Section 4216.5 of the Government Code is amended
32 to read:

33 4216.5. The requirements of this article apply to state agencies
34 and to local agencies that own or operate subsurface installations,
35 except as otherwise provided in Section 4216.1. A local agency
36 that is required to provide the services described in Section 4216.3
37 may charge a fee in an amount sufficient to cover the cost of
38 providing that service.

39 SEC. 8. Section 4216.6 of the Government Code is amended
40 to read:

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

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

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

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

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

29 (c) The requirements of this article may also be enforced
30 following a recommendation of the California Underground
31 Facilities Safe Excavation Board by the following agencies, that
32 shall act to accept, amend, or reject the recommendations of the
33 board as follows:

34 (1) The Registrar of Contractors of the Contractors' State
35 License Board shall enforce the provisions of this article on
36 contractors, as defined in Article 2 (commencing with Section
37 7025) of Chapter 9 of Division 3 of the Business and Professions
38 Code.

39 (2) The Public Utilities Commission shall enforce the provisions
40 of this article on gas corporations, as defined in Section 222 of the

1 Public Utilities Code, and electrical corporations, as defined in
2 Section 218 of the Public Utilities Code, and water corporations,
3 as defined in Section 241 of the Public Utilities Code.

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

8 (d) A local governing board may enforce the provisions of this
9 article on local agencies under the governing board's jurisdiction.

10 (e) The California Underground Facilities Safe Excavation
11 Board shall enforce the provisions of this article on persons other
12 than those listed in ~~subdivision~~ *subdivisions* (c) and (d).

13 (f) Moneys collected as a result of penalties imposed pursuant
14 to subdivisions (c) and (e) shall be deposited into the Safe Energy
15 Infrastructure and Excavation Fund.

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

20 (h) For purposes of subdivision (g), the following terms have
21 the following meanings:

22 (1) "Incident event" means the occurrence of excavator
23 downtime, damages, near misses, and violations.

24 (2) "Statewide information" means information submitted by
25 operators and excavators using the California Regional Common
26 Ground Alliance's Virtual Private Damage Information Reporting
27 Tool. Supplied data shall comply with the Damage Information
28 Reporting Tool's minimum essential information as listed in the
29 most recent version of the Best Practices guide of the Common
30 Ground Alliance.

31 SEC. 9. Section 4216.7 of the Government Code is amended
32 to read:

33 4216.7. (a) If a subsurface installation is damaged by an
34 excavator as a result of failing to comply with Section 4216.2 or
35 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing
36 to comply with the operator's requests to protect the subsurface
37 installation as specified by the operator before the start of
38 excavation, the excavator shall be liable to the operator of the
39 subsurface installation for resulting damages, costs, and expenses

1 to the extent the damages, costs, and expenses were proximately
2 caused by the excavator's failure to comply.

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

10 (c) If an operator of a subsurface installation without a
11 reasonable basis, as determined by a court of competent
12 jurisdiction, has failed to comply with the provisions of Section
13 4216.3, including, but not limited to, the requirement to field mark
14 the appropriate location of subsurface installations within two
15 working days of notification, as defined by subdivision ~~(y)~~ (m) of
16 Section 4216 and subdivision (b) of Section 4216.2, has failed to
17 comply with subdivision (c) of Section 4216.2, or has failed to
18 comply with subdivision (b) of Section 4216.4, the operator shall
19 be liable for damages to the excavator who has complied with
20 Section 4216.2, subdivisions (b) and (d) of Section 4216.3, and
21 Section 4216.4, including liquidated damages, liability, losses,
22 costs, and expenses, actually incurred by the excavator, resulting
23 from the operator's failure to comply with these specified
24 requirements to the extent the damages, costs, and expenses were
25 proximately caused by the operator's failure to comply.

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

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

38 (e) For the purposes of this section, "inaccurate field mark"
39 means a mark, or set of markings, made pursuant to Section 4216.3,
40 that did not correctly indicate the approximate location of a

1 subsurface installation affected by an excavation and includes the
2 actual physical location of a subsurface installation affected by an
3 excavation that should have been marked pursuant to Section
4 4216.3 but was not.

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

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

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

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

16 SEC. 10. Section 4216.9 of the Government Code is amended
17 to read:

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

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

27 SEC. 11. Section 4216.12 is added to the Government Code,
28 to read:

29 4216.12. (a) The California Underground Facilities Safe
30 Excavation Board is hereby created under, and shall be assisted
31 by the staff of, the Office of the State Fire ~~Marshall~~ *Marshal*.

32 (b) The board shall perform the following tasks:

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

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

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

38 (4) Enforce this article to the extent authorized by subdivision
39 (e) of Section 4216.6.

1 (c) Notwithstanding any other law, on and after January 1, 2019,
2 the board shall be subject to review by the appropriate policy
3 committees of the Legislature.

4 SEC. 12. Section 4216.13 is added to the Government Code,
5 to read:

6 4216.13. (a) The board shall be composed of nine members,
7 of which seven shall be appointed by the Governor, one shall be
8 appointed by the Speaker of the Assembly, and one shall be
9 appointed by the Senate Committee on Rules.

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

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

18 (2) Three members shall have knowledge and experience in
19 contract excavation for employers who are not operators of
20 subsurface installations. Of the three members, one member shall
21 be a general engineering contractor, one member shall be a general
22 building contractor, and one member shall be a specialty contractor.
23 For the purposes of this section, the terms “general engineering
24 contractor,” “general building contractor,” and “specialty
25 contractor” shall have the meanings given in Article 4
26 (commencing with Section 7055) of Chapter 9 of Division 3 of
27 the Business and Professions Code.

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

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

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

38 (e) The board may invite two directors of operations of regional
39 notification centers to be nonvoting ex officio members of the
40 board.

1 SEC. 13. Section 4216.14 is added to the Government Code,
2 to read:

3 4216.14. (a) The term of a member of the board is four years.
4 Of the first members of the board, four members, determined by
5 lot, shall serve for two years so that the terms of the members shall
6 be staggered.

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

9 (c) To the extent possible, the appointing power shall fill any
10 vacancy in the membership of the board within 60 days after the
11 vacancy occurs.

12 (d) Upon the recommendation of the board, the Governor may
13 remove a member appointed by the Governor for incompetence
14 or misconduct.

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

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

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

23 SEC. 14. Section 4216.15 is added to the Government Code,
24 to read:

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

28 SEC. 15. Section 4216.16 is added to the Government Code,
29 to read:

30 4216.16. The board may obtain funding for its operational
31 expenses from:

32 (a) A federal or state grant.

33 (b) A fee charged to members of the regional notification centers
34 not to exceed the reasonable regulatory cost incident to enforcement
35 of this article. Revenues derived from the imposition of this fee
36 shall be deposited in the Safe Energy Infrastructure and Excavation
37 Fund.

38 (c) Any other source.

39 SEC. 16. Section 4216.17 is added to the Government Code,
40 to read:

1 4216.17. (a) ~~In order to understand the needs for education~~
2 ~~and outreach, including those groups with the highest awareness~~
3 ~~and education needs, such as homeowners, and to facilitate~~
4 ~~discussion on how to coordinate those efforts, the~~*The* board shall
5 annually convene a meeting with state and local government
6 agencies, California operators, regional notification centers, and
7 trade associations that fund outreach and education programs that
8 encourage safe excavation practices: *for the following purposes:*

9 *(1) To understand the existing needs for education and outreach,*
10 *including to those groups with the highest awareness and education*
11 *needs, including, but not limited to, homeowners.*

12 *(2) To facilitate discussion on how to coordinate existing*
13 *education and outreach efforts with state and local government*
14 *agencies, California operators, regional notification centers, and*
15 *trade associations that fund outreach and education programs*
16 *that encourage safe excavation practices.*

17 *(3) To determine the areas in which additional education and*
18 *outreach efforts may be targeted through use, upon appropriation*
19 *by the Legislature, of the moneys in the Safe Energy Infrastructure*
20 *and Excavation Fund pursuant to subdivision (c).*

21 *(b) In addition to state and local government agencies,*
22 *California operators, regional notification centers, and trade*
23 *associations that fund outreach and education programs that*
24 *encourage safe excavation practices, the meeting pursuant to*
25 *subdivision (a) shall include representatives of groups that may*
26 *be the target of those outreach and education efforts.*

27 ~~(b) The board shall use the annual meeting described in~~
28 ~~subdivision (a) to determine the areas in which additional education~~
29 ~~and outreach efforts should be targeted. Upon appropriation~~

30 *(c) Upon appropriation by the Legislature, the board shall grant*
31 *the use of the moneys in the Safe Energy Infrastructure and*
32 *Excavation Fund to fund public education and outreach programs*
33 *designed to promote excavation safety around subsurface*
34 *installations and targeted towards specific excavator groups, giving*
35 *priority to those with the highest awareness and education needs,*
36 *such as including, but not limited to, homeowners.*

37 SEC. 17. Section 4216.18 is added to the Government Code,
38 to read:

39 4216.18. The board shall develop a standard or set of standards
40 relevant to safety practices in excavating around subsurface

1 installations and procedures and guidance in encouraging those
2 practices. When possible, standards should be informed by publicly
3 available data, ~~such as including, but not limited to,~~ that collected
4 by state and federal agencies and by the regional notification
5 centers pursuant to subdivision (g) of Section 4216.6, and the board
6 should refrain from using data about facility events not provided
7 either to a state or federal agency or as statewide information, as
8 defined in paragraph (2) of subdivision (h) of Section 4216.6. The
9 standard or set of standards are not intended to replace other
10 relevant standards, including the ~~best practices~~ *Best Practices* of
11 the Common Ground Alliance, but are to inform areas currently
12 without established standards. The standard or set of standards
13 shall address all of the following:

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

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

31 ~~(1) The type of violation and its gravity.~~

32 ~~(2) The degree of culpability.~~

33 ~~(3) The operator's or excavator's history of violations.~~

34 ~~(4) The operator's or excavator's history of work conducted
35 without violations.~~

36 ~~(5) The efforts taken by the violator to prevent violation, and,
37 once the violation occurred, the efforts taken to mitigate the safety
38 consequences of the violation.~~

39 ~~(6) That homeowners have high awareness and education needs,
40 and for this reason, financial penalties shall not be recommended~~

1 ~~except in cases in which a person's violations have been willful,~~
2 ~~repeated, and flagrant.~~

3 ~~(e)~~

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

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

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

17 ~~(d)~~

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

22 SEC. 18. Section 4216.19 is added to the Government Code,
23 to read:

24 4216.19. (a) The board shall investigate possible violations
25 of this article.

26 (b) The board may investigate reports of incident events, as
27 defined in paragraph (1) of subdivision (h) of Section 4216.6 and
28 complaints from affected parties and members of the public.

29 (c) *In furthering the purposes of this article, to the extent that*
30 *resources allow, the board may authorize staff allocated to it by*
31 *the Office of the State Fire Marshal to use compliance audits,*
32 *including field audits, and investigations of incidents.*

33 ~~(e)~~

34 (d) In determining whether to pursue an investigation, the board
35 shall consider whether the parties have settled the matter and
36 whether further enforcement is necessary as a deterrent to maintain
37 the integrity of subsurface installations and to protect the safety
38 of excavators and the public.

39 ~~(d) In furthering the purposes of this article, to the extent that~~
40 ~~resources allow, the board may authorize staff allocated to it by~~

1 ~~the Office of the State Fire Marshall to use compliance audits,~~
 2 ~~including field audits, and investigations of incidents and near~~
 3 ~~misses.~~

4 *(e) If the board, upon the completion of an investigation, finds*
 5 *a probable violation of the article, the board may transmit the*
 6 *investigation results and any recommended penalty to the state or*
 7 *local agency with jurisdiction over the activity or business*
 8 *undertaken in commission of the violation, pursuant to subdivision*
 9 *(c) of Section 4216.6, and may take action pursuant to subdivision*
 10 *(e) of Section 4216.6.*

11 *(f) Sanctions shall be graduated and may include notification*
 12 *and information letters, direction to attend relevant education,*
 13 *and financial penalties. When considering the issuance of citations*
 14 *and assessment of penalties, the board shall consider all of the*
 15 *following:*

16 *(1) The type of violation and its gravity.*

17 *(2) The degree of culpability.*

18 *(3) The operator's or excavator's history of violations.*

19 *(4) The operator's or excavator's history of work conducted*
 20 *without violations.*

21 *(5) The efforts taken by the violator to prevent violation and,*
 22 *once the violation occurred, the efforts taken to mitigate the safety*
 23 *consequences of the violation.*

24 ~~(e)~~

25 *(g) This section shall become operative on January 1, 2018.*

26 ~~SEC. 19.— Section 4216.20 is added to the Government Code,~~
 27 ~~to read:~~

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

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

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

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

38 ~~(b) If the board, upon the completion of an investigation, finds~~
 39 ~~a probable violation of the article, the board may transmit the~~
 40 ~~investigation results and any recommended penalty to the state or~~

1 ~~local agency with jurisdiction over the activity or business~~
2 ~~undertaken in commission of the violation, pursuant to subdivision~~
3 ~~(e) of Section 4216.6, and may take action pursuant to subdivision~~
4 ~~(e) of Section 4216.6.~~

5 ~~SEC. 20.~~

6 *SEC. 19.* Section 4216.21 is added to the Government Code,
7 to read:

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

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

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

22 ~~SEC. 21.~~

23 *SEC. 20.* Section 4216.22 is added to the Government Code,
24 to read:

25 4216.22. Consistent with all laws of this state, the board may
26 prescribe rules and regulations as may be necessary or proper to
27 carry out the purposes and intent of this act and to exercise the
28 powers and duties conferred upon it by this act.

29 ~~SEC. 22.~~

30 *SEC. 21.* Section 4216.23 is added to the Government Code,
31 to read:

32 4216.23. (a) Notwithstanding Section 10231.5, the board shall
33 report to the Governor and the Legislature on or before February
34 1, 2018, and each year thereafter, on the activities of the board and
35 any recommendations of the board.

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

38 ~~SEC. 23.~~

39 *SEC. 22.* Section 4216.24 is added to the Government Code,
40 to read:

1 4216.24. The Safe Energy Infrastructure and Excavation Fund
2 is hereby established in the State Treasury. Moneys deposited into
3 the fund shall be used, upon appropriation by the Legislature, to
4 cover the operational expenses of the board and for the purposes
5 specified in subdivision (b) of Section 4216.17, except as follows:
6 (a) Revenues derived from penalties imposed pursuant to Section
7 4216.6 shall not be used for operational expenses.
8 (b) Revenues derived from the fee imposed pursuant to Section
9 4216.16 shall not be used for the purposes specified in subdivision
10 (b) of Section 4216.17.

O