

AMENDED IN ASSEMBLY AUGUST 19, 2016

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, and 4216.9 of, and to add Sections 4216.10, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.21, 4216.22, 4216.23, and 4216.24 to, the Government Code, *and to amend Section 955.5 of the Public Utilities 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 *terms for its purposes, including, among others, defining “working day”* for purposes of determining excavation start date and ~~time in the context of these provisions:~~ *time.*

~~The~~

This 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. The bill would, commencing November 1, 2017, establish, starting on November 1, 2017, a process for a excavator to request and obtain a continual excavation ticket for an area of continual excavation that is required to be valid for one year from the date of issuance and eligible for renewal.

This bill would amend the Natural Gas Pipeline Safety Act of 2011 to exclude from its provisions specific kinds of marking and locating of subsurface installations performed in compliance with this act.

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~~

This 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. The bill would require the board to coordinate education and outreach activities, develop standards, 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, commencing ~~January~~ July 1, 2018, 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 board to 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~~ *article*, the following definitions
- 6 apply:
- 7 (a) ~~“Approximate location of subsurface installations” means~~
- 8 ~~a strip of land not more than 24 inches on either side of the exterior~~
- 9 ~~surface of the subsurface installation. “Approximate location” does~~
- 10 ~~not mean depth.~~

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

3 (b) “Board” means the California Underground Facilities Safe
4 Excavation Board.

5 (c) “Area of continual excavation” means a location where
6 excavation is part of the normal business activities of that location,
7 including, but not limited to, agricultural operations and flood
8 control facilities.

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

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

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

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

34 (b)

35 (g) “Excavation” means any operation in which earth, rock, or
36 other material in the ground is moved, removed, or otherwise
37 displaced by means of tools, equipment, or explosives in any of
38 the following ways: grading, trenching, digging, ditching, drilling,
39 augering, tunneling, scraping, cable or pipe plowing and driving,
40 or any other way.

1 (e)

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

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

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

17 (e)

18 (j) “High priority subsurface installation” means high-pressure
19 natural gas pipelines with normal operating pressures greater than
20 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
21 pipelines, high-voltage electric supply lines, conductors, or cables
22 that have a potential to ground of greater than or equal to 60kv, or
23 hazardous materials pipelines that are potentially hazardous to
24 workers or the public if damaged.

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

31 (k) *“Inactive subsurface installation” means either of the*
32 *following:*

33 (1) *The portion of an underground subsurface installation that*
34 *is not active but is still connected to the subsurface installation,*
35 *or to any other subsurface installation, that is active or still carries*
36 *service.*

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

1 (l) “Legal excavation start date and time” means two working
 2 days, not including the date of notification, unless the excavator
 3 specifies a later date and time, which shall not be more than 14
 4 calendar days from the date of notification. For excavation in an
 5 area of continual excavation, “legal excavation start date and
 6 time” means two working days, not including the date of
 7 notification, unless the excavator specifies a later date and time,
 8 which shall not be more than six months from the date of
 9 notification.

10 ~~(g)~~
 11 (m) “Local agency” means a city, county, city and county, school
 12 district, or special district.

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

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

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

32 ~~(i)~~
 33 (p) “Qualified person” means a person who completes a training
 34 program in accordance with the requirements of ~~Title 8, Section~~
 35 ~~1509 of Title 8 of the California Code of Regulations, Section~~
 36 ~~1509, Regulations Injury and Illness Prevention Program~~, that
 37 meets the minimum *locators* training guidelines and practices of
 38 ~~Common Ground Alliance current Best Practices. published in the~~
 39 ~~most recent version of the Best Practices guide of the Common~~
 40 ~~Ground Alliance.~~

1 ~~(j)~~
2 (q) “Regional notification center” means a nonprofit association
3 or other organization of operators of subsurface installations that
4 provides advance warning of excavations or other work close to
5 existing subsurface installations, for the purpose of protecting
6 those installations from damage, removal, relocation, or repair.

7 ~~(k)~~
8 (r) “State agency” means every state agency, department,
9 division, bureau, board, or commission.

10 ~~(l)~~
11 (s) “Subsurface installation” means any underground pipeline,
12 conduit, duct, wire, or other structure, except nonpressurized
13 sewerlines, nonpressurized storm drains, or other nonpressurized
14 drain lines.

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

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

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

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

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

26 ~~(m)~~
27 (v) “Working day” for the purposes of determining excavation
28 start date and time means a weekday Monday through Friday, from
29 7:00 a.m. to 5:00 p.m., except for federal holidays and state
30 holidays, as defined in Section 19853, or as otherwise posted on
31 the Internet Web site of the regional notification center.

32 SEC. 3. Section 4216.1 of the Government Code is amended
33 to read:

34 4216.1. Every operator of a subsurface installation, except the
35 Department of Transportation, shall become a member of,
36 participate in, and share in the costs of, a regional notification
37 center. Operators of subsurface installations who are members of,
38 participate in, and share in, the costs of a regional notification
39 center, including, but not limited to, the Underground Service
40 Alert—Northern California or the Underground Service

1 Alert—Southern California are in compliance with this section
2 and Section 4216.9. *A regional notification center shall not charge*
3 *a fee to a person for notifying the regional notification center to*
4 *obtain a ticket or to renew a ticket.*

5 SEC. 4. Section 4216.2 of the Government Code is amended
6 to read:

7 4216.2. (a) Before notifying the appropriate regional
8 notification center, an excavator planning to conduct an excavation
9 shall delineate the area to be excavated. If the area is not delineated,
10 an operator may, at the operator's discretion, choose not to locate
11 and field mark until the area to be excavated has been delineated.

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

25 (c) When the excavation is proposed within 10 feet of a high
26 priority subsurface installation, the operator of the high priority
27 subsurface installation shall notify the excavator of the existence
28 of the high priority subsurface installation ~~prior to the legal~~
29 ~~excavation start date and time, and to~~ set up an onsite meeting
30 *prior to the legal excavation start date and time or* at a mutually
31 agreed upon time to determine actions or activities required to
32 verify the location and prevent damage to the high priority
33 subsurface installation. As part of the meeting, the excavator shall
34 discuss with the operator the method and tools that will be used
35 ~~during the excavation.~~ *excavation and the information the operator*
36 *will provide to assist in verifying the location of the subsurface*
37 *installation.* The excavator shall not begin excavating until after
38 the completion of the onsite meeting.

39 (d) Except in an emergency, every excavator covered by Section
40 4216.8 planning to conduct an excavation on private property that

1 does not require an excavation permit may contact the appropriate
2 regional notification center if the private property is known, or
3 reasonably should be known, to contain a subsurface installation
4 other than the underground facility owned or operated by the
5 excavator. Before notifying the appropriate regional notification
6 center, an excavator shall delineate the area to be excavated. Any
7 temporary marking placed at the planned excavation location shall
8 be clearly seen, functional, and considerate to surface aesthetics
9 and the local community. An excavator shall check if any local
10 ordinances apply to the placement of temporary markings.

11 (e) The regional notification center shall provide a ticket to the
12 person who contacts the center pursuant to this section and shall
13 notify any member, if known, who has a subsurface installation
14 in the area of the proposed excavation. A ticket shall be valid for
15 28 days from the date of issuance. If work continues beyond 28
16 days, the excavator shall renew the ticket either by accessing the
17 center's Internet Web site or by calling "811" by the end of the
18 28th day.

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

26 (g) Unless an emergency exists, an excavator shall not begin
27 excavation until the excavator receives a ~~positive~~ response from
28 all known *operators of* subsurface installations within the
29 delineated boundaries of the proposed area of ~~excavation.~~
30 *excavation pursuant to subdivision (a) of Section 4216.3 and until*
31 *the completion of any onsite meeting, if required by subdivision*
32 *(c).*

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

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

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

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

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

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

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

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

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

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

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

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

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

1 excavator shall redelineate the area to be remarked. If remarks are
2 requested, the operator shall have two working days, not including
3 the date of request, to remark the subsurface installation. If the
4 area to be remarked is not the full extent of the original excavation,
5 the excavator shall delineate the portion to be remarked and provide
6 a description of the area requested to be remarked on the ticket.
7 The excavator shall provide a description for the area to be
8 remarked that falls within the area of the original location request.

9 (c) Commencing January 1, 2018, every operator may supply
10 an electronic positive response through the regional notification
11 center before the legal excavation start date and time. The regional
12 notification center shall make those responses available to the
13 excavator.

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

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

29 SEC. 6. Section 4216.4 of the Government Code is amended
30 to read:

31 4216.4. (a) (1) Except as provided in paragraph (2), if an
32 excavation is within the tolerance zone of a subsurface installation,
33 the excavator shall determine the exact location of the subsurface
34 installations in conflict with the excavation using hand tools before
35 using any power-driven excavation or boring equipment within
36 the tolerance zone of the subsurface installations. In all cases the
37 excavator shall use reasonable care to prevent damaging subsurface
38 installations.

39 (2) (A) An excavator may use a vacuum excavation device to
40 expose subsurface installations within the tolerance zone if the

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

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

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

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

25 (c) (1) An excavator discovering or causing damage to a
26 subsurface installation, including all breaks, leaks, nicks, dents,
27 gouges, grooves, or other damage to subsurface installation lines,
28 conduits, coatings, or cathodic protection, shall immediately notify
29 the subsurface installation operator. The excavator may contact
30 the regional notification center to obtain the contact information
31 of the subsurface installation operator. If the operator is unknown
32 and the damage or discovery of damage occurs outside the working
33 hours of the regional notification center, the excavator may follow
34 the instructions provided by the regional notification center through
35 its Internet web site or the telephone line recorded message.

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

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

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

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

6 ~~SEC. 7. Section 4216.5 of the Government Code is amended~~
7 ~~to read:~~

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

14 ~~SEC. 8.~~

15 ~~SEC. 7. Section 4216.6 of the Government Code is amended~~
16 ~~to read:~~

17 4216.6. (a) (1) Any operator or excavator who negligently
18 violates this article is subject to a civil penalty in an amount not
19 to exceed ten thousand dollars (\$10,000).

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

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

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

33 (b) An action may be brought by the Attorney General, the
34 district attorney, or the local or state agency that issued the permit
35 to excavate, for the enforcement of the civil penalty pursuant to
36 this section in a civil action brought in the name of the people of
37 the State of California. If penalties are collected as a result of a
38 civil suit brought by a state or local agency for collection of those
39 civil penalties, the penalties imposed shall be paid to the general
40 fund of the agency. If more than one agency is involved in

1 enforcement, the penalties imposed shall be apportioned among
2 them by the court in a manner that will fairly offset the relative
3 costs incurred by the state or local agencies, or both, in collecting
4 these fees.

5 (c) The requirements of this article may also be enforced
6 following a recommendation of the California Underground
7 Facilities Safe Excavation Board by the following agencies, that
8 shall act to accept, amend, or reject the recommendations of the
9 board as follows:

10 (1) The Registrar of Contractors of the Contractors' State
11 License Board shall enforce the provisions of this article on
12 contractors, as defined in Article 2 (commencing with Section
13 7025) of Chapter 9 of Division 3 of the Business and Professions
14 ~~Code~~. *Code, and telephone corporations, as defined in Section*
15 *234 of the Public Utilities Code, when acting as a contractor, as*
16 *defined in Article 2 (commencing with Section 7025) of Chapter*
17 *9 of Division 3 of the Business and Professions Code. Nothing in*
18 *this section affects the California Public Utilities Commission's*
19 *existing authority over a public utility.*

20 (2) The Public Utilities Commission shall enforce the provisions
21 of this article on gas corporations, as defined in Section 222 of the
22 Public Utilities Code, and electrical corporations, as defined in
23 Section 218 of the Public Utilities Code, and water corporations,
24 as defined in Section 241 of the Public Utilities Code.

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

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

31 (e) The California Underground Facilities Safe Excavation
32 Board shall enforce the provisions of this article on persons other
33 than those listed in subdivisions (c) and (d).

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

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

1 (h) For purposes of subdivision (g), the following terms have
2 the following meanings:

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

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

12 ~~SEC. 9.~~

13 *SEC. 8.* Section 4216.7 of the Government Code is amended
14 to read:

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

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

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

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

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

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

19 (e) For the purposes of this section, "inaccurate field mark"
20 means a mark, or set of markings, made pursuant to Section 4216.3,
21 that did not correctly indicate the approximate location of a
22 subsurface installation affected by an excavation and includes the
23 actual physical location of a subsurface installation affected by an
24 excavation that should have been marked pursuant to Section
25 4216.3 but was not.

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

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

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

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

37 ~~SEC. 10.~~

38 *SEC. 9.* Section 4216.9 of the Government Code is amended
39 to read:

1 4216.9. (a) A permit to excavate issued by any local agency,
2 as defined in Section 4216, or any state agency, shall not be valid
3 unless the applicant has been provided an initial ticket by a regional
4 notification center pursuant to Section 4216.2. For purposes of
5 this section, “state agency” means every state agency, department,
6 division, bureau, board, or commission, including the Department
7 of Transportation.

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

10 *SEC. 10. Section 4216.10 is added to the Government Code,*
11 *to read:*

12 *4216.10. (a) In lieu of the notification and locate and field*
13 *mark requirements of Sections 4216.2 and 4216.3, an excavator*
14 *may contact a regional notification center to request a continual*
15 *excavation ticket for an area of continual excavation. The regional*
16 *notification center shall provide a ticket to the person who contacts*
17 *the center pursuant to this section and shall notify any member, if*
18 *known, who has a subsurface installation in the area of continual*
19 *excavation. The ticket provided to the excavator shall include the*
20 *contact information for notified operators.*

21 *(b) An operator shall provide a response to the excavator*
22 *pursuant to subdivision (a) of Section 4216.3.*

23 *(c) (1) When the area of continual excavation includes, or is*
24 *within 10 feet of, a high priority subsurface installation, the*
25 *operator of the high priority subsurface installation shall notify*
26 *the excavator of the existence of the high priority subsurface*
27 *installation to set up an onsite meeting prior to the legal excavation*
28 *start date and time or at a mutually agreed upon time to determine*
29 *actions or activities required to verify the location and to prevent*
30 *damage to the high priority subsurface installation during the*
31 *continual excavation time period. The onsite meeting shall be used*
32 *to develop a mutually agreed upon plan for an area of continual*
33 *excavation. Additional onsite meetings should also be held*
34 *following unexpected occurrences or prior to excavation activities*
35 *that may create conflicts with subsurface installations. As part of*
36 *the meeting, the excavator shall discuss with the operator the*
37 *method and tools that will be used during the excavation and the*
38 *information the operator will provide to assist in verifying the*
39 *location of the subsurface installation. The excavator shall not*
40 *begin excavating until after the completion of the onsite meeting*

1 *and information has been provided describing the activities that*
2 *can be safely conducted to prevent damage to the high priority*
3 *subsurface installation.*

4 (2) *When the area of continual excavation includes a subsurface*
5 *installation but does not include, or is not within 10 feet of, a high*
6 *priority subsurface installation, the excavator or the operator may*
7 *request an onsite meeting at a mutually agreed upon time to*
8 *determine actions or activities required to verify the location and*
9 *to prevent damage to the subsurface installation during the*
10 *continual excavation time period. The onsite meeting may be used*
11 *to develop a plan for an area of continual excavation. The operator*
12 *and excavator may mutually agree to conduct additional onsite*
13 *meetings following unexpected occurrences or prior to excavation*
14 *activities that may create conflicts with subsurface installations.*
15 *As part of the meeting, the excavator may discuss with the operator*
16 *the method and tools that will be used during the excavation and*
17 *the information the operator will provide to assist in verifying the*
18 *location of the subsurface installation. If an onsite meeting is*
19 *requested prior to the legal excavation start date and time, the*
20 *excavator shall not begin excavating until after the completion of*
21 *the onsite meeting and information has been provided describing*
22 *the activities that can be safely conducted to prevent damage to*
23 *the subsurface installation.*

24 (3) *The excavator and operator shall maintain records regarding*
25 *the plan of excavation, any locate and field mark and standby*
26 *activities, and any other information deemed necessary by the*
27 *excavator and operator. Excavation activities outside the scope*
28 *of the plan shall be undertaken subsequent to notification pursuant*
29 *to Section 4216.2.*

30 (d) *A ticket for an area of continual excavation shall be valid*
31 *for one year from the date of issuance. The excavator may renew*
32 *the ticket within two working days either by accessing the regional*
33 *notification center's Internet Web site or by calling "811."*

34 (e) *The board shall, in consultation with the regional notification*
35 *centers, develop through regulation a process by which the renewal*
36 *requirement for a continual excavation ticket may be modified or*
37 *eliminated for areas of continual excavation in which no subsurface*
38 *installations are present.*

39 (f) *This section shall become operative on November 1, 2017.*

1 SEC. 11. Section 4216.12 is added to the Government Code,
2 to read:

3 4216.12. (a) The California Underground Facilities Safe
4 Excavation Board is hereby created under, and shall be assisted
5 by the staff of, the Office of the State Fire Marshal.

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

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

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

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

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

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

17 SEC. 12. Section 4216.13 is added to the Government Code,
18 to read:

19 4216.13. (a) The board shall be composed of nine members,
20 of which seven shall be appointed by the Governor, one shall be
21 appointed by the Speaker of the Assembly, and one shall be
22 appointed by the Senate Committee on Rules.

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

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

31 (2) Three members shall have knowledge and experience in
32 contract excavation for employers who are not operators of
33 subsurface installations. Of the three members, one member shall
34 be a general engineering contractor, one member shall be a general
35 building contractor, and one member shall be a specialty contractor.
36 For the purposes of this section, the terms “general engineering
37 contractor,” “general building contractor,” and “specialty
38 contractor” shall have the meanings given in Article 4
39 (commencing with Section 7055) of Chapter 9 of Division 3 of
40 the Business and Professions Code.

1 (3) One member shall have knowledge and expertise in
 2 ~~subsurface installation location and marking, and shall not be under~~
 3 ~~the direct employment of an operator. performing or managing~~
 4 *agricultural operations in the vicinity of subsurface installations.*

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

8 (d) The member appointed by the Senate Committee on Rules
 9 shall have knowledge and expertise in ~~managing the underground~~
 10 ~~installations on one's own property, and may be drawn from~~
 11 ~~agricultural, commercial, or residential, or other, property sectors.~~
 12 *subsurface installation location and marking and shall not be*
 13 *under the direct employment of an operator.*

14 (e) The board may invite two directors of operations of regional
 15 notification centers to be nonvoting ex officio members of the
 16 board.

17 SEC. 13. Section 4216.14 is added to the Government Code,
 18 to read:

19 4216.14. (a) The term of a member of the board is four years.
 20 Of the first members of the board, four members, determined by
 21 lot, shall serve for two years so that the terms of the members shall
 22 be staggered.

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

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

28 (d) Upon the recommendation of the board, the Governor may
 29 remove a member appointed by the Governor for incompetence
 30 or misconduct.

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

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

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

39 SEC. 14. Section 4216.15 is added to the Government Code,
 40 to read:

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

4 SEC. 15. Section 4216.16 is added to the Government Code,
5 to read:

6 4216.16. The board may obtain funding for its operational
7 expenses from:

8 (a) A federal ~~or~~ state grant.

9 (b) A fee charged to members of the regional notification centers
10 not to exceed the reasonable regulatory cost incident to enforcement
11 of this article. *The board shall apportion the fee in a manner*
12 *consistent with formulas used by the regional notification centers.*
13 Revenues derived from the imposition of this fee shall be deposited
14 in the Safe Energy Infrastructure and Excavation Fund.

15 (c) Any other source.

16 (d) *The board shall not charge a fee to a person for notifying*
17 *the regional notification center to obtain a ticket or to renew a*
18 *ticket.*

19 SEC. 16. Section 4216.17 is added to the Government Code,
20 to read:

21 4216.17. (a) The board shall annually convene a meeting for
22 the following purposes:

23 (1) To understand the existing needs for education and outreach,
24 including to those groups with the highest awareness and education
25 needs, including, but not limited to, homeowners.

26 (2) To facilitate discussion on how to coordinate existing
27 education and outreach efforts with state and local government
28 agencies, California operators, regional notification centers, and
29 trade associations that fund outreach and education programs that
30 encourage safe excavation practices.

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

35 (b) In addition to state and local government agencies, California
36 operators, regional notification centers, and trade associations that
37 fund outreach and education programs that encourage safe
38 excavation practices, the meeting pursuant to subdivision (a) shall
39 include representatives of groups that may be the target of those
40 outreach and education efforts.

1 (c) Upon appropriation by the Legislature, the board shall grant
2 the use of the moneys in the Safe Energy Infrastructure and
3 Excavation Fund to fund public education and outreach programs
4 designed to promote excavation safety around subsurface
5 installations and targeted towards specific excavator groups, giving
6 priority to those with the highest awareness and education needs,
7 including, but not limited to, homeowners.

8 SEC. 17. Section 4216.18 is added to the Government Code,
9 to read:

10 4216.18. The board shall develop a standard or set of standards
11 relevant to safety practices in excavating around subsurface
12 installations and procedures and guidance in encouraging those
13 practices. When possible, standards should be informed by publicly
14 available data, including, but not limited to, that collected by state
15 and federal agencies and by the regional notification centers
16 pursuant to subdivision (g) of Section 4216.6, and the board should
17 refrain from using data about facility events not provided either
18 to a state or federal agency or as statewide information, as defined
19 in paragraph (2) of subdivision (h) of Section 4216.6. The standard
20 or set of standards are not intended to replace other relevant
21 standards, including the Best Practices of the Common Ground
22 Alliance, but are to inform areas currently without established
23 standards. The standard or set of standards shall address all of the
24 following:

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

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

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

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

39 (c) What constitutes reasonable care, as required by paragraph
40 (1) of subdivision (a) of Section 4216.4, in grading activities on

1 road shoulders and dirt roads which may include standards for
2 potholing.

3 SEC. 18. Section 4216.19 is added to the Government Code,
4 to read:

5 4216.19. (a) The board shall investigate possible violations
6 of this article.

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

10 ~~(c) In furthering the purposes of this article, to the extent that~~
11 ~~resources allow, the board may authorize staff allocated to it by~~
12 ~~the Office of the State Fire Marshal to use compliance audits,~~
13 ~~including field audits, and investigations of incidents.~~

14 ~~(d)~~

15 (c) In determining whether to pursue an investigation, the board
16 shall consider whether the parties have settled the matter and
17 whether further enforcement is necessary as a deterrent to maintain
18 the integrity of subsurface installations and to protect the safety
19 of excavators and the public.

20 (e)

21 (d) If the board, upon the completion of an investigation, finds
22 a probable violation of the article, the board ~~may~~ *shall* transmit
23 the investigation results and any recommended penalty to the state
24 or local agency ~~with jurisdiction over the activity or business~~
25 ~~undertaken in commission of the violation, pursuant to subdivision~~
26 ~~(e) of Section 4216.6, and may take action pursuant to subdivision~~
27 ~~(e) of Section 4216.6. *pursuant to subdivision (c) or (d) of Section*~~
28 ~~4216.6.~~

29 ~~(f)~~

30 (e) Sanctions shall be graduated and may include notification
31 and information letters, direction to attend relevant education, and
32 financial penalties. When considering the issuance of citations and
33 assessment of penalties, the board shall consider all of the
34 following:

35 (1) The type of violation and its gravity.

36 (2) The degree of culpability.

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

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

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

4 ~~(g)~~

5 (f) This section shall become operative on ~~January~~ *July* 1, 2018.

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 6 months after the investigation begins, whichever
13 comes first, during which time, applicable statutes of limitation
14 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. 20. Section 4216.22 is added to the Government Code,
23 to read:

24 4216.22. Consistent with all laws of this state, the board may
25 prescribe rules and regulations as may be necessary or proper to
26 carry out the purposes and intent of this act and to exercise the
27 powers and duties conferred upon it by this act.

28 SEC. 21. Section 4216.23 is added to the Government Code,
29 to read:

30 4216.23. (a) Notwithstanding Section 10231.5, the board shall
31 report to the Governor and the Legislature on or before February
32 1, 2018, and each year thereafter, on the activities of the board and
33 any recommendations of the board.

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

36 SEC. 22. Section 4216.24 is added to the Government Code,
37 to read:

38 4216.24. The Safe Energy Infrastructure and Excavation Fund
39 is hereby established in the State Treasury. Moneys deposited into
40 the fund shall be used, upon appropriation by the Legislature, to

1 cover the operational expenses of the board and for the purposes
2 specified in subdivision (b) of Section 4216.17, except as follows:

3 ~~(a) Revenues that revenues~~ derived from penalties imposed
4 pursuant to Section 4216.6 shall not be used for operational
5 expenses.

6 ~~(b) Revenues derived from the fee imposed pursuant to Section~~
7 ~~4216.16 shall not be used for the purposes specified in subdivision~~
8 ~~(b) of Section 4216.17.~~

9 *SEC. 23. Section 955.5 of the Public Utilities Code is amended*
10 *to read:*

11 955.5. (a) For purposes of this section, the following terms
12 have the following meanings:

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

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

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

21 (b) A gas corporation shall provide not less than three working
22 days’ notice to the administration of a school or hospital prior to
23 undertaking nonemergency excavation or construction of a gas
24 ~~pipeline pipeline~~, *excluding any work that only uses hand tools,*
25 *pneumatic hand tools, or vacuum technology for the purpose of*
26 *marking and locating a subsurface installation pursuant to Article*
27 *2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of*
28 *Title 1 of the Government Code*, if the work is located within 500
29 feet of the school or hospital. The notification shall include all of
30 the following:

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

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

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

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

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

O