

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN ASSEMBLY JUNE 16, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 20, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 119

Introduced by Senator Hill

January 14, 2015

An act to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections ~~4216.10~~, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add Sections 320.5 and 971 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Hill. Protection of subsurface installations.

Existing law requires every operator of a subsurface installation, except the Department of Transportation, to become a member of, participate in, and share in the costs of, a regional notification center. Existing law requires any person who plans to conduct any excavation to contact the appropriate regional notification center before

commencing that excavation, as specified. Existing law defines a subsurface installation as any underground pipeline, conduit, duct, wire, or other structure. Existing law requires an operator of a subsurface installation, who receives notification of proposed excavation work, within 2 working days of that notification, excluding weekends and holidays, to mark the approximate location and number of subsurface installations that may be affected by the excavation or to advise that no subsurface installations operated by him or her would be affected. Existing law requires an operator of a subsurface installation that has failed to comply with these provisions to be liable to the excavator for damages, costs, and expenses.

This bill would declare the need to clarify and revise these provisions. The bill would define and redefine various terms relating to a regional notification center. The bill would expand the definition of a subsurface installation, to include an underground structure or submerged duct, pipeline, or structure, except as specified.

The bill would require an excavator planning to conduct an excavation to delineate the area to be excavated before notifying the appropriate regional notification center of the planned excavation, as provided. The bill would require an operator, before the legal start date and time of the excavation, to locate and field mark, within the area delineated for excavation, its subsurface installations. The bill would require an operator to maintain and preserve all plans and records for any subsurface installation owned by that operator as that information becomes known, as specified.

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also authorize, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which a court finds that the excavator complied with those provisions, the excavator to be awarded reasonable attorney's fees and expenses.

The bill would delete the existing exemptions pertaining to an owner of real property and would instead exempt an owner of residential real property who, as part of improving his or her principal residence, is performing, or is having performed, an excavation using hand tools that does not require a permit, as specified.

~~The bill would require the operator of a high-priority subsurface installation to make specified notifications to a landowner if agricultural activities cannot safely be performed due to the depth of the subsurface installations and to mark the location and depth of those installations, as specified.~~

The bill would also require the Public Utilities Commission and the Office of the State Fire Marshal to enforce the requirement to locate and field mark subsurface installations and lines against operators of natural gas and electric underground infrastructure and hazardous liquid pipelines, unless these operators are municipal utilities.

This bill would create the California Underground Facilities Safe Excavation Advisory Committee under, and assisted by the staff of, the Contractors' State License Board, in the Department of Consumer Affairs. The bill would require the committee to coordinate education and outreach activities, develop standards, and investigate violations of the provisions described above, as specified.

The advisory committee would be composed of 9 members who would serve 2-year terms, and one nonvoting ex officio member who may be invited by the appointed members of the committee. The bill would authorize the advisory committee, commencing on January 1, 2017, to use compliance audits in furthering the purposes of these provisions. The bill would require the advisory committee to conduct an annual meeting on or before February 1, 2017, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the advisory committee, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

The Natural Gas Pipeline Safety Act of 2011, within the Public Utilities Act, designates the Public Utilities Commission as the state authority responsible for regulating and enforcing intrastate gas pipeline transportation and pipeline facilities pursuant to federal law, including the development, submission, and administration of a state pipeline safety program certification for natural gas. Existing federal law requires each operator of a buried gas pipeline to carry out a program to prevent damage to that pipeline from excavation activities, as specified.

The bill would require each gas corporation, as part of its damage prevention program, to collect specified information to inform its outreach activities and to report this information to the Public Utilities Commission, as specified.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the requirements described above are within the act, a violation of these requirements would impose a state-mandated local program by creating a new crime.

Existing law requires the Public Utilities Commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

The bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) For the state's "one-call" law to be effective, it needs greater
- 4 clarity and effective enforcement, and it must foster communication

1 between operators of subsurface installations and the various types
2 of excavators in California.

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

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

13 (d) The delineation by an excavator of the area to be excavated
14 in advance of the field location and marking by subsurface facility
15 operators of their installations aids the excavator in understanding
16 where subsurface installations were marked, and thus improves
17 safety. This practice was recommended by the National
18 Transportation Safety Board in its 1997 study “Protecting Public
19 Safety through Excavation Damage Prevention” and is a best
20 practice of the Common Ground Alliance.

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

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

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

39 (h) Abandoned subsurface installations can be mistaken for
40 active subsurface installations that are marked, and thus present a

1 safety risk to excavators and the public. Safety will be improved
2 if subsurface facility operators identify these subsurface
3 installations when their existence is known.

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

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

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

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

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

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

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

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

1 *Insufficient information exists on how to best achieve safety when*
2 *conducting agricultural activities around subsurface installations.*

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

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

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

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

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

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

33 (~~v~~)

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

38 (~~w~~)

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

4 ~~(x)~~

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

17 ~~(y)~~

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

22 SEC. 2. Section 4216 of the Government Code is amended to
23 read:

24 4216. As used in this article the following definitions apply:

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

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

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

32 (d) “Delineate” means to mark in white the location or path of
33 the proposed excavation using the guidelines in Appendix B of
34 the “Guidelines for Excavation Delineation” published in Best
35 Practices Version 11.0 by the Common Ground Alliance. If there
36 is a conflict between the marking practices in those guidelines and
37 other provisions of this article, this article shall control.
38 “Delineation” also includes physical identification of the area to
39 be excavated using pink marking, if an excavator makes a
40 determination that standard delineation may be misleading to those

1 persons using affected streets and highways, or be misinterpreted
2 as a traffic or pedestrian control, and the excavator has contacted
3 the regional notification center to advise the operators that the
4 excavator will physically identify the area to be excavated using
5 pink markings.

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

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

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

17 (g) (1) “Excavation” means any operation in which earth, rock,
18 pavement, or other material ~~below the existing grade~~ *in the ground*
19 is moved, removed, or otherwise displaced by means of tools,
20 equipment, or explosives in any of the following ways: grading,
21 trenching, digging, ditching, drilling, augering, tunneling, scraping,
22 cable or pipe plowing and driving, gouging, crushing, jack
23 hammering, saw cutting, or any other way.

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

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

29 ~~(B)~~

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

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

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

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

37 (B) *Operator maintenance activities that are performed with*
38 *hand tools around an operator’s facilities that traverse from above*
39 *the ground to below ground in areas known, or reasonably*

1 *believed, to contain only the operator’s facilities. Operator*
2 *maintenance activities include all of the following:*

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

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

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

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

15 (C) ~~Subparagraph (B)~~ (A) shall become inoperative on January
16 1, 2020.

17 (3) The exclusion of the activities in paragraph (2) from the
18 definition of “excavation” shall not be used to discourage a person
19 planning to perform those activities from voluntarily notifying a
20 regional notification center pursuant to Section 4216.2, and does
21 not relieve an operator of a subsurface installation from the
22 obligation to locate and field mark pursuant to Section 4216.3
23 following the notification. The exclusion of activities in paragraph
24 (2) does not relieve a person performing those activities from a
25 duty of reasonable care to prevent damage to subsurface
26 ~~installations:~~ *installations, and failure to exercise reasonable care*
27 *may result in liability for damage to a subsurface installation that*
28 *is proximately caused by those activities.*

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

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

37 (j) “High priority subsurface installation” means high-pressure
38 natural gas pipelines with normal operating pressures greater than
39 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
40 pipelines, high-voltage electric supply lines, conductors, or cables

1 that have a potential to ground of greater than or equal to 60kv, or
2 hazardous materials pipelines that are potentially hazardous to
3 workers or the public if damaged.

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

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

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

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

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

18 (n) (1) “Locate and field mark” means to indicate the existence
19 of any owned or maintained subsurface installations by using the
20 guidelines in Appendix B of the “Guidelines for Operator Facility
21 Field Delineation” published in Best Practices Version 11.0 by the
22 Common Ground Alliance and in conformance with the uniform
23 color code of the American Public Works Association. If there is
24 a conflict between the marking practices in the guidelines and this
25 article, this article shall control.

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

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

30 (p) “Operator” means any person, corporation, partnership,
31 business trust, public agency, or other entity that owns, operates,
32 or maintains a subsurface installation. For purposes of Section
33 4216.1, an “operator” does not include an owner of real property
34 where subsurface installations are exclusively located if they are
35 used exclusively to furnish services on that property and the
36 subsurface facilities are under the operation and control of that
37 owner.

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

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

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

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

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

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

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

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

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

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

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

33 (y) “Working day” for the purposes of determining excavation
34 start date and time means a weekday Monday through Friday, from
35 7:00 a.m. to 5:00 p.m., except for federal holidays and state
36 holidays, as defined in Section 19853 of the Government Code.

37 SEC. 3. Section 4216.1 of the Government Code is amended
38 to read:

39 4216.1. Every operator of a subsurface installation, except the
40 Department of Transportation, shall become a member of,

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

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

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

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

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 set up an onsite meeting at a
30 mutually agreed upon time to determine actions or activities
31 required to verify the location and prevent damage to the high
32 priority subsurface installation. The excavator shall not begin
33 excavating until after the completion of the onsite meeting.

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

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

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

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

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

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

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

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

37 SEC. 5. Section 4216.3 of the Government Code is amended
38 to read:

39 4216.3. (a) (1) (A) Unless the excavator and operator
40 mutually agree to a later start date and time, or otherwise agree to

1 the sequence and timeframe in which the operator will locate and
2 field mark, an operator shall do one of the following before the
3 legal excavation start date and time:

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

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

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

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

15 (C) An operator shall indicate with an "A" inside a circle the
16 presence of any abandoned subsurface ~~installations~~ *installations*,
17 *if known*, within the delineated area. The markings are to make an
18 excavator aware that there are abandoned subsurface installations
19 within that delineated work area.

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

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

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

33 (b) If the field marks are no longer reasonably visible, an
34 excavator shall renotify the regional notification center with a
35 request for remarks that can be for all or a portion of the
36 excavation. Excavation shall cease in the area to be remarked. If
37 the area to be remarked is not the full extent of the original
38 excavation, the excavator shall delineate the portion to be remarked.
39 If the delineation markings are no longer reasonably visible, the
40 excavator shall redelineate the area to be remarked. If remarks are

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

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

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 (h) 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 approximate location of a subsurface
33 installation, the excavator shall determine the exact location of the
34 subsurface installations within the tolerance zone using hand tools
35 before using any power-driven excavation or boring equipment
36 within the ~~approximate location~~ *tolerance zone* of the subsurface
37 installations. In all cases the excavator shall use reasonable care
38 to prevent damaging subsurface 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*
13 *around 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) An excavator discovering or causing damage to a subsurface
26 installation, including all breaks, leaks, nicks, dents, gouges,
27 grooves, or other damage to subsurface installation lines, conduits,
28 coatings, or cathodic protection, shall immediately notify the
29 subsurface installation operator. The excavator may contact the
30 regional notification center to obtain the contact information of
31 the subsurface installation operator. If high priority subsurface
32 installations are damaged and the operator cannot be contacted
33 immediately, the excavator shall call 911 emergency services.

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

38 SEC. 7. Section 4216.5 of the Government Code is amended
39 to read:

1 4216.5. The requirements of this article apply to state agencies
 2 and to local agencies that own or operate subsurface installations,
 3 except as otherwise provided in Section 4216.1. A local agency
 4 that is required to provide the services described in Section 4216.3
 5 may charge a fee in an amount sufficient to cover the cost of
 6 providing that service.

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

9 4216.6. (a) (1) Any operator or excavator who negligently
 10 violates this article is subject to a civil penalty in an amount not
 11 to exceed ten thousand dollars (\$10,000).

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

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

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

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

37 (c) The requirements of this article may also be enforced
 38 following a recommendation of the California Underground
 39 Facilities Safe Excavation Advisory Committee by a state or local
 40 agency, which may include the Attorney General or a district

1 attorney, with jurisdiction over the activity or business undertaken
2 in commission of the violation. The following agencies shall act
3 to accept, amend, or reject the recommendations of the advisory
4 committee as follows:

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

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

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

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

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

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

25 (2) "Statewide information" means information submitted by
26 operators and excavators using the California Regional Common
27 Ground Alliance's Virtual Private Damage Information Reporting
28 Tool. Supplied data shall comply with the Damage Information
29 Reporting Tool's minimum essential information as listed in Best
30 Practices Version 11.0 by the Common 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 has failed to
11 comply with the provisions of Section 4216.3, including, but not
12 limited to, the requirement to field mark the appropriate location
13 of subsurface installations within two working days of notification,
14 has failed to comply with paragraph (2) of subdivision (a) of
15 Section 4216.2, or has failed to comply with subdivision (b) of
16 Section 4216.4, the operator shall be liable to the excavator who
17 has complied with Sections 4216.2 and 4216.4 for damages,
18 including liquidated damages, liability, losses, costs, and expenses
19 resulting from the operator's failure to comply with these specified
20 requirements to the extent the damages, costs, and expenses were
21 proximately caused by the operator's failure to comply.

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

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

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

39 (f) For the purposes of this section, "inaccurate field mark"
40 means a mark, or set of markings, made pursuant to Section 4216.3,

1 that did not correctly indicate the approximate location of a
2 subsurface installation affected by an excavation and includes the
3 actual physical location of a subsurface installation affected by an
4 excavation that should have been marked pursuant to Section
5 4216.3 but was not.

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

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

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

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

17 SEC. 10. Section 4216.8 of the Government Code is amended
18 to read:

19 4216.8. This article does not apply to either of the following
20 persons:

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

1 activities from a duty of reasonable care to prevent damage to
 2 subsurface ~~installations~~. *installations, and failure to exercise*
 3 *reasonable care may result in liability for damage to a subsurface*
 4 *installation that is proximately caused by those activities.*

5 (b) Any person or private entity that leases or rents power
 6 operated or power-driven excavating or boring equipment,
 7 regardless of whether an equipment operator is provided for that
 8 piece of equipment or not, to a contractor or subcontractor licensed
 9 pursuant to Article 5 (commencing with Section 7065) of Chapter
 10 9 of Division 3 of the Business and Professions Code, if the signed
 11 rental agreement between the person or private entity and the
 12 contractor or subcontractor contains the following provision:
 13

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

22 SEC. 11. Section 4216.9 of the Government Code is amended
 23 to read:

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

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

33 ~~SEC. 12. Section 4216.10 is added to the Government Code,~~
 34 ~~to read:~~

35 ~~4216.10. If the operator of a high-priority subsurface~~
 36 ~~installation finds that the depth of the subsurface installation subject~~
 37 ~~to agricultural activities described in subparagraph (A) of paragraph~~
 38 ~~(2) of subdivision (g) of Section 4216 is insufficient to safely~~
 39 ~~perform those activities, the operator of the high-priority subsurface~~
 40 ~~installation shall send notification, by registered mail, to the~~

1 landowner of the potential hazard and, within ____ days of that
2 notification, shall access the site at a date agreed upon by the
3 operator and the landowner to identify with permanent markers
4 the location and depth of the high-priority subsurface installation.

5 ~~SEC. 13.~~

6 *SEC. 12.* Section 4216.12 is added to the Government Code,
7 to read:

8 4216.12. (a) The California Underground Facilities Safe
9 Excavation Advisory Committee is hereby created under, and shall
10 be assisted by the staff of, the Contractors' State License Board
11 in the Department of Consumer Affairs.

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

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

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

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

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

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

25 ~~SEC. 14.~~

26 *SEC. 13.* Section 4216.13 is added to the Government Code,
27 to read:

28 4216.13. (a) The advisory committee shall be composed of
29 nine members, of which four shall be appointed by the Governor,
30 three shall be appointed by the Contractors' State License Board,
31 one shall be appointed by the Speaker of the Assembly, and one
32 shall be appointed by the Senate Committee on Rules.

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

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

1 (2) 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.

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

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

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

22 (f) The advisory committee may invite one director of operations
23 of a regional notification center to be a nonvoting ex officio
24 member of the advisory committee.

25 ~~SEC. 15.~~

26 *SEC. 14.* Section 4216.14 is added to the Government Code,
27 to read:

28 4216.14. (a) The term of a member of the advisory committee
29 is two years. Of the first members of the advisory committee, four
30 members, determined by lot, shall serve for one year so that the
31 terms of the members shall be staggered.

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

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

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

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

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

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

10 ~~SEC. 16.~~

11 *SEC. 15.* Section 4216.15 is added to the Government Code,
12 to read:

13 4216.15. The advisory committee shall meet at least once every
14 three months. The advisory committee shall hold meetings in
15 Sacramento and Los Angeles, and in other locations in the state it
16 deems necessary.

17 ~~SEC. 17.~~

18 *SEC. 16.* Section 4216.16 is added to the Government Code,
19 to read:

20 4216.16. The advisory committee may obtain funding for its
21 operational expenses from:

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

24 (b) A federal or state grant.

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

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

30 (e) Any other source.

31 ~~SEC. 18.~~

32 *SEC. 17.* Section 4216.17 is added to the Government Code,
33 to read:

34 4216.17. (a) In order to understand the needs for education
35 and outreach, *including of those groups with the highest awareness*
36 *and education needs, such as homeowners*, and to facilitate
37 discussion on how to coordinate those efforts, the advisory
38 committee shall annually convene a meeting with state and local
39 government agencies, California operators, regional notification

1 centers, and trade associations that fund outreach and education
 2 programs that encourage safe excavation practices.

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

14 ~~SEC. 19:~~

15 *SEC. 18.* Section 4216.18 is added to the Government Code,
 16 to read:

17 4216.18. (a) The advisory committee shall develop a standard
 18 or set of standards relevant to safety practices in excavating around
 19 subsurface installations and procedures and guidance in
 20 encouraging those practices. The standard or set of standards are
 21 not intended to replace other relevant standards, including the best
 22 practices of the Common Ground Alliance, but are to inform areas
 23 currently without established standards. The standard or set of
 24 standards shall address all of the following:

25 (a)

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

28 (b)

29 (2) Guidance for recommended sanctions against excavators
 30 and operators for violations of the article designed to improve
 31 safety. Sanctions may include notification and information letters,
 32 direction to attend relevant education, and financial penalties. The
 33 guidance shall state the circumstances under which the
 34 investigation and a recommendation for sanction shall be
 35 transmitted to a state or local agency, which may include the
 36 Attorney General or a district attorney, for enforcement pursuant
 37 to subdivision (b) of Section 4216.20 and may allow for a decision
 38 not to transmit if the investigation was initiated by a complaint,
 39 the parties have settled the matter, and the advisory committee has
 40 determined that further enforcement is not necessary as a deterrent

1 to maintain the integrity of subsurface installations and to protect
2 the safety of excavators and the public. Recommendations for
3 sanctions shall be graduated and shall consider all of the following:

- 4 ~~(1)~~
- 5 (A) The type of violation and its gravity.
- 6 ~~(2)~~
- 7 (B) The degree of culpability.
- 8 ~~(3)~~
- 9 (C) The operator's or excavator's history of violations.
- 10 ~~(4)~~
- 11 (D) The operator's or excavator's history of work conducted
12 without violations.
- 13 ~~(5)~~
- 14 (E) The efforts taken by the violator to prevent violation, and,
15 once the violation occurred, the efforts taken to mitigate the safety
16 consequences of the violation.

17 ~~(e)~~
18 (3) What constitutes reasonable care, as required by paragraph
19 (1) of subdivision (a) of Section 4216.4, in conducting deep
20 excavations within the tolerance zone, considering the need to
21 balance the protection of subsurface installations by the use of
22 hand tools within the tolerance zone with the safety concerns of
23 trench work.

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

29 *(b) The advisory committee shall develop and recommend a*
30 *standard or set of standards requiring all new subsurface*
31 *installations, nonpressurized sewerlines, nonpressurized storm*
32 *drains, and other nonpressurized lines to include the installation*
33 *of tracer tape or wire to aid in detection and tracing of these*
34 *subsurface installations, nonpressurized sewerlines, nonpressurized*
35 *storm drains, and other nonpressurized lines for adoption by the*
36 *California Building Standards Commission as mandatory building*
37 *standards.*

38 ~~SEC. 20.~~

39 *SEC. 19.* Section 4216.19 is added to the Government Code,
40 to read:

1 4216.19. (a) The advisory committee shall investigate possible
2 violations of this article, including complaints from affected parties
3 and members of the public.

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

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

9 ~~SEC. 21.~~

10 *SEC. 20.* Section 4216.20 is added to the Government Code,
11 to read:

12 4216.20. (a) Upon the completion of an investigation of a
13 possible violation of this article, the advisory committee shall
14 inform the following parties of the result of the investigation,
15 including any findings of probable violation:

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

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

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

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

28 ~~SEC. 22.~~

29 *SEC. 21.* Section 4216.21 is added to the Government Code,
30 to read:

31 4216.21. (a) For an investigation that the advisory committee
32 undertakes as a result of a complaint of a violation of Sections
33 4216.2, 4216.3, or 4216.4, the complainant shall not file an action
34 in court for damages based on those violations until the
35 investigation is complete, or for 120 days after the investigation
36 begins, whichever comes first, during which time, applicable
37 statutes of limitation shall be tolled.

38 (b) If a complainant files an action in court against a person for
39 damages based upon violations of Sections 4216.2, 4216.3, or
40 4216.4, after the completion of an advisory committee investigation

1 in which the person was found not to have violated the article, the
2 complainant shall also notify the advisory committee when the
3 action is filed.

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

6 ~~SEC. 23.~~

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

9 4216.22. (a) Notwithstanding Section 10231.5, the advisory
10 committee shall report to the Governor and the Legislature on or
11 before February 1, 2017, and each year thereafter, on the activities
12 of the advisory committee and any recommendations of the
13 advisory committee.

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

16 ~~SEC. 24.~~

17 *SEC. 23.* Section 320.5 is added to the Public Utilities Code,
18 to read:

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

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

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

35 (2) The commission, to further a workforce development
36 program, which shall be consistent with its equal employment
37 opportunity program, that recruits and trains safety staff to perform
38 the highest quality gas and electric utility inspections, audits,
39 accident investigations, and data tracking and analysis. Moneys
40 used for training purposes may not be used to fulfill existing federal

1 or state training requirements but, instead, shall only be used for
 2 training in addition to those requirements. The commission may
 3 only apportion moneys for this purpose upon commission approval
 4 of the workforce development program at a meeting of the
 5 commission. No more than one hundred fifty thousand dollars
 6 (\$150,000) of the Safe Energy Infrastructure and Excavation Fund
 7 may be used for this purpose.

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

10 ~~SEC. 25.~~

11 *SEC. 24.* Section 971 is added to the Public Utilities Code, to
 12 read:

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

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

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

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

35 ~~(3)~~

36 (4) Any other information that the commission shall require.

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

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

6 ~~SEC. 26.~~

7 *SEC. 25.* Section 1702.5 of the Public Utilities Code is amended
8 to read:

9 1702.5. (a) The commission shall, in an existing or new
10 proceeding, develop and implement a safety enforcement program
11 applicable to gas corporations and electrical corporations that
12 includes procedures for monitoring, data tracking and analysis,
13 and investigations, as well as issuance of citations by commission
14 staff, under the direction of the executive director. The enforcement
15 program shall be designed to improve gas and electrical system
16 safety through the enforcement of applicable law, or order or rule
17 of the commission related to safety using a variety of enforcement
18 mechanisms, including the issuance of corrective actions, orders,
19 and citations by designated commission staff, and recommendations
20 for action made to the commission by designated commission staff.

21 (1) When considering the issuance of citations and assessment
22 of penalties, the commission staff shall take into account voluntary
23 reporting of potential violations, voluntary removal or resolution
24 efforts undertaken, the prior history of violations, the gravity of
25 the violation, and the degree of culpability.

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

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

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

38 (c) The commission shall, within a reasonable time set by the
39 commission, conclude a safety enforcement action with a finding
40 of violation, a corrective action order, a citation, a determination

1 of no violation, approval of the corrective actions undertaken by
 2 the gas corporation or electrical corporation, or other action. The
 3 commission may institute a formal proceeding regarding the alleged
 4 violation, potentially resulting in additional enforcement action,
 5 regardless of any enforcement action taken at the commission staff
 6 level.

7 (d) The commission shall implement the safety enforcement
 8 program for gas safety by July 1, 2014, and implement the safety
 9 enforcement program for electrical safety no later than January 1,
 10 2015.

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

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

20 ~~SEC. 27:~~

21 *SEC. 26.* No reimbursement is required by this act pursuant to
 22 Section 6 of Article XIII B of the California Constitution because
 23 the only costs that may be incurred by a local agency or school
 24 district will be incurred because this act creates a new crime or
 25 infraction, eliminates a crime or infraction, or changes the penalty
 26 for a crime or infraction, within the meaning of Section 17556 of
 27 the Government Code, or changes the definition of a crime within
 28 the meaning of Section 6 of Article XIII B of the California
 29 Constitution.