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SENATE BILL NO. 778

AMENDED IN ASSEMBLY JUNE 15, 2023
AMENDED IN SENATE MAY 01, 2023
AMENDED IN SENATE APRIL 12, 2023

CALIFORNIA LEGISLATURE — 2023 – 2024 REGULAR SESSION

Introduced by Senator Ochoa Bogh
February 17, 2023

An act to amend Sections 4216, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, ~~and 4216.7~~ 4216.7, and 4216.13 of the Government Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Ochoa Bogh. Excavations: subsurface installations.

Existing law, commonly referred to as the Safe Dig Act, establishes a regional notification system to provide certain entities, defined as operators, that own, operate, and maintain subsurface installations with advance warning of nearby excavations or other work for the purpose of protecting those installations from damage, removal, relocation, or repair. Existing law establishes the California Underground Facilities Safe Excavation Board, also known as the Dig Safe Board, [composed of 9 members](#), for the enforcement and administration of the Safe Dig Act. [Existing law requires the Governor to appoint 7 of the board members.](#)

[This bill would revise the knowledge and experience requirements for 3 of the members appointed by the Governor.](#)

Existing law requires certain entities, before beginning excavation, to delineate the area to be excavated and to notify the appropriate regional notification center, which, in response to that contact, is required to provide the excavator with a ticket and to notify certain operators who have a subsurface installation in the proposed excavation area. Existing law requires an

operator to take one of specified actions before the legal excavation start date and time, including locating and field marking within the delineated area and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. Existing law prohibits an excavator from beginning excavation until the excavator receives an electronic positive response from all known operators of subsurface installations, as specified. Existing law also establishes emergency and notification procedures for an excavator who discovers or causes damage to a subsurface installation.

This bill, among other changes, would revise requirements for notifying operators of subsurface installations within a proposed area of excavation, would specify conditions under which an excavator is required to contact the regional notification to request a return ~~trip~~, trip ticket, and would revise requirements for an excavator to use vacuum equipment. The bill would ~~authorize an operator, under certain circumstances, to choose not to locate and field mark an area to be excavated.~~ require an operator to contact the excavator by electronic positive response if the area delineated by the excavator does not match the ticket description. The bill would revise the requirements related to subsurface installation operator responses that an excavator must receive before beginning excavation, and the emergency and notification procedures when an excavator discovers or causes damage to a subsurface installation. The bill would revise the meaning of “inaccurate field mark” for purposes of exempting from liability an excavator who damages a subsurface installation due to an inaccurate field mark.

Existing law authorizes a local agency that is required to provide specified services to charge a fee to cover the cost of providing the service.

This bill would revise services for which a local agency may charge a fee. The bill would require a local agency to consider specified factors with respect to charging fees, including whether the fee could deter an excavator from contacting the regional notification center. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

Existing law requires statewide information provided by operators and excavators regarding incident events to be compiled and made available in an annual report by regional notification centers and made available, as specified.

This bill would instead require the board to compile and make that information available in an annual report, as specified. The bill would require the California Regional Common Ground Alliance to provide statewide information to the board by April 15 each year. The bill would make other technical and conforming changes, including deleting obsolete provisions relating to the adoption of regulations by the board.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 4216 of the Government Code is amended to read:

4216.

As used in this article, the following definitions apply:

(a) "Active subsurface installation" means a subsurface installation currently in use or currently carrying service.

(b) "Board" means the California Underground Facilities Safe Excavation Board, also known as the "Dig Safe Board."

(c) "Area of continual excavation" means a location where excavation is part of the normal business activities of agricultural operations and flood control facilities.

(d) "Delineate" means to mark in white the location or path of the proposed excavation using the guidelines in Appendix B of the "Guidelines for Excavation Delineation" published in the most recent version of the Best Practices guide of the Common Ground Alliance. If there is a conflict between the marking practices in those guidelines and other provisions of this article, this article shall control. "Delineation" also includes physical identification of the area to be excavated using alternative marking methods, including, but not limited to, flags, stakes, whiskers, or a combination of these methods, if an excavator makes a determination that standard delineation may be misleading to those persons using affected streets and highways, or be misinterpreted as a traffic or pedestrian control, and the excavator has contacted the regional notification center to advise the operators that the excavator will physically identify the area to be excavated using alternative marking methods.

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

(f) (1) "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. (2) "Unexpected occurrence" includes, but is not limited

to, a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.

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

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

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

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

(k) "Inactive subsurface installation" means either of the following:

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

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

(l) "Legal excavation start date and time" means two working days, not including the date of ~~notification or weekends or holidays~~, notification, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification or once the excavator has received a response from all known operators, as specified in subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3. For excavation in an area of continual excavation, "legal excavation start date and time" means two working days, not including the date of ~~notification or weekends or holidays~~, notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification or once the excavator has received a response from all known operators, as specified in subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3.

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

(n) (1) "Locate and field mark" means to indicate the existence of any owned or maintained subsurface installations by using the guidelines in Appendix B of the "Guidelines for Operator

Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association. If there is a conflict between the marking practices in the guidelines and this article, this article shall control. (2) “Locate and field mark” does not require an indication of the depth.

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

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

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

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

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

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

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

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

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

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

(v) “Working day” for the purposes of determining legal excavation start date and time means a weekday Monday through Friday, except for federal holidays and state holidays, as defined in

Section 19853, or as otherwise posted on the internet website of the regional notification center.

SEC. 2.

Section 4216.2 of the Government Code is amended to read:

4216.2.

(a) Before notifying the appropriate regional notification center, an excavator planning to conduct an excavation shall delineate the area to be excavated. If the area delineated does not match the ticket description, the operator shall contact the excavator by electronic positive response to advise of the discrepancy and may choose not to locate and field mark until the area delineated and ticket description match. ~~The operator shall contact the excavator to advise of the discrepancy and shall provide an electronic positive response.~~

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

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

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. If the area is not delineated, an operator may, at the operator's discretion, choose not to locate and field mark until the area has been delineated. Any temporary marking placed at the planned excavation location shall be clearly

seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

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

(f) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers. A regional notification center shall provide notification records to the board quarterly and shall provide notifications of damage to the board within five business days of receipt at the regional notification center.

(g) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives an electronic positive response ~~from, or has otherwise confirmed response directly from,~~ from all known operators of subsurface installations that are listed on the ticket pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c).

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

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

~~(j)(1)An excavator shall contact the regional notification center to request a return trip for any of the following reasons: (A)The excavator was unable to find the utility based on the markings an operator has placed pursuant to subdivision (b) of Section 4216.4. (B)Standby observation of the excavation activities, including, but not limited to, high-priority installations and postevent restorations. (C)The electronic positive response indicates a resend ticket is requested by the excavator for reasons including, but not limited to, incorrect location information, no access to the locate and field mark area, the excavation area is not delineated, or the delineated area does not match the location request. (2)A return trip requested pursuant to subparagraph (A) or (B) of paragraph (1) shall occur within one business day, or on a mutually agreed upon and documented date. A return trip requested pursuant to subparagraph (C) of paragraph (1) shall occur within two working days, not counting the date of notification. (3)If an operator requires a representative to be onsite to monitor the excavation activity, the operator shall notify the excavator of the requirement during or before the onsite field meeting required pursuant to~~

~~subdivision (c). The excavator shall allow the operator an opportunity to provide the scheduling of personnel to be onsite. That time for which the onsite personnel is provided shall not exceed two working days from the date the requirement is identified by the operator, unless otherwise mutually agreed to by both the operator and excavator.~~

(j) An excavator shall contact the regional notification center to request a return trip ticket if the electronic positive response to the original ticket indicates resend ticket requested. An operator shall have two working days, not including the date of notification, to respond to the excavator's return trip ticket request.

(k) Notwithstanding subdivision (b) of Section 4216.4, an excavator may request a return trip ticket to better determine the location of subsurface installations in conflict with the excavation. The operator shall respond within one working day, not including the date of notification, or on a mutually agreed upon and documented time.

~~(k)~~

(l) If an operator requires a representative to be onsite to monitor the excavation activity, the operator shall notify the excavator of the requirement during or before the onsite field meeting as identified in subdivision (c). The excavator shall allow the operator an opportunity to provide the scheduling of personnel to be onsite. That time for which the onsite personnel is provided shall not exceed two working days from the date the requirement is identified by the operator, unless otherwise mutually agreed to by the operator and excavator.

SEC. 3.

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

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

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

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

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

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

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

excavator aware that there are abandoned subsurface installations within that delineated work area.

(D) Notwithstanding any other provision of this paragraph and subdivision (e), if excavation or work type is pavement grinding that is limited to removal of a portion of the solid pavement of a road or sidewalk surface, an operator may choose to either locate and field mark or provide information on the location of subsurface installations known to be below the pavement.

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

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

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

(5) Commencing January 1, 2023, all new subsurface installations shall be mapped using a geographic information system and maintained as permanent records of the operator. This paragraph shall not apply to oil and gas flowlines three inches or less in diameter that are located within the administrative boundaries of an oil field as designated by the Geologic Energy Management Division. For purposes of this paragraph, the following terms have the following meanings:

(A) "Flowline" means any pipeline that connects an oil, gas, or natural gas liquids well with a gathering line or header.

(B) "Gathering line" means a pipeline that transports liquid hydrocarbons between any of the following: multiple wells, a testing facility, a treating and production facility, a storage facility, or a custody transfer facility.

(C) "Header" means a chamber from which liquid or gas is distributed to or from smaller pipelines.

(6) Nothing in this section shall be interpreted to preempt the Professional Land Surveyors' Act, as described in Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

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

- (c) (1) (A) Every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time.
- (B) The regional notification center shall make the responses required by subparagraph (A) available to the excavator.
- (2) The regional notification centers shall annually report to the board regarding their continual technological development in their roles of facilitating communication between excavators and operators in a manner that enhances safety, accountability, and efficiency.
- (d) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. The regional notification center shall maintain a record of all notifications received pursuant to this subdivision for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.
- (e) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

SEC. 4.

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

- (a) (1) Except as provided in paragraph (2), if an excavation is within the tolerance zone of a subsurface installation, the excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations. In all cases the excavator shall use reasonable care to prevent damaging subsurface installations.
- (2) (A) ~~Subject to subparagraph (B), an~~ An excavator may use a vacuum excavation device ~~that is designed, engineered, and purpose-built for vacuum excavation purposes~~ to expose subsurface installations within the tolerance zone if the excavator has informed the regional notification center of their intent to use a vacuum excavation device when obtaining a ticket and the operator has agreed to the use of a vacuum excavation device. An operator not agreeing to the use of a vacuum excavation device shall include that information on their electronic positive response. ~~An operator that fails to respond to a request to use a vacuum excavation device shall be deemed in agreement with its use.~~
- ~~(B) For an excavator to use vacuum equipment to expose subsurface installations within the tolerance zone, the following requirements shall apply:~~
- ~~(i) Vacuum equipment used shall be designed, engineered, and purpose built for vacuum excavation work.~~
- ~~(ii) Trained and competent persons shall operate the vacuum equipment.~~
- ~~(iii) Vacuum equipment personnel shall know and adhere to all operator requirements for any marked subsurface installations being exposed to determine the exact location of~~

~~subsurface installations in conflict with the excavation. If the operator has any requirements for the use of vacuum equipment at the site of the planned excavation, those requirements shall be provided by the operator before excavation or the operator shall furnish an observer during excavation.~~

~~(C)~~

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

~~(D)~~

(C) Beginning July 1, 2020, an excavator may use power-operated or boring equipment, as determined by the board, prior to determining the exact location of subsurface installations. The board shall adopt regulations to implement this paragraph on or before July 1, 2020.

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

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. **The operator shall respond to the excavator within one working day.** If the excavator has questions about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.

(c) (1) ~~Except as provided in paragraph (2), an~~ An excavator discovering or causing excavation-related damage to a subsurface installation that may endanger life or cause serious bodily harm or damage to property, including escape of any flammable, toxic, or corrosive gas or liquid, shall do the following:

(A) The excavator shall immediately call 911 emergency services.

(B) After calling 911 emergency services, the excavator shall immediately notify the subsurface installation operator and comply with any guidance provided to secure the scene.

The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its internet website or the telephone line recorded message.

(C) Within two hours of discovering or causing damage to any subsurface installation, the excavator shall notify the board of the damage through the web portal on the regional notification center's internet website or the board's internet website.

(2) ~~(A) Except as provided in subparagraph (B), if~~ If an excavator discovers or causes damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves,

~~corrosion~~, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, that does not immediately endanger life or cause serious bodily harm or damage to property, ~~all~~ both of the following apply:

~~(i)~~

(A) The excavator ~~shall, within one hour,~~ shall immediately notify the subsurface installation operator. The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its internet website or the telephone line recorded message.

~~(ii) Except as provided in subparagraphs (C) and (D), within two hours of discovering or causing damage, the excavator shall notify the board of the damage through the web portal on the regional notification center's internet website or the board's internet website.~~

~~(iii) An excavator discovering any damage to a subsurface installation is not required to notify the board of the damage.~~

~~(B) This paragraph does not apply to an excavator who is the owner or operator of the damaged facility.~~

(B) Within 48 hours of discovering or causing damage, the excavator shall notify the regional notification center.

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

SEC. 5.

Section 4216.5 of the Government Code is amended to read:

4216.5.

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

(b) A local agency that chooses to recover its costs via a fee shall consider whether the fee could deter an excavator from contacting the regional notification center.

(c) A local agency shall consider recouping its costs via existing permit fees instead of a separate fee related to responding to a ticket.

(d) A local agency shall consider not charging a fee to an excavator covered by Section 4216.8 to encourage the excavator to create a ticket as specified in subdivision (d) of Section 4216.2.

SEC. 6.

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

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

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

(3) Any operator or excavator who knowingly and willfully violates any of the provisions of this article in a way that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of any flammable, toxic, or corrosive gas or liquid is subject to a civil penalty in an amount not to exceed one hundred thousand dollars (\$100,000).

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

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

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

(c) This article may also be enforced by the following agencies, either following a recommendation of the Dig Safe Board that the agency shall act to accept, amend, or reject, or through the agency's own investigations, as follows:

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

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

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

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

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

(e) Commencing July 1, 2020, the Dig Safe Board shall enforce this article on persons other than those listed in subdivisions (c) and (d). The board shall not initiate an enforcement action pursuant to this subdivision for a violation that occurred prior to July 1, 2020. As the enforcing body for persons other than those listed in subdivisions (c) and (d), the board may collect any monetary penalties imposed upon those persons.

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

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available in an annual report by the board and posted on the internet website of the board. The California Regional Common Ground Alliance shall provide the statewide information to the board by April 15 of each year.

(h) For purposes of subdivision (g), the following terms have the following meanings: (1) "Incident event" means the occurrence of excavator downtime, damages, near misses, and violations.

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

SEC. 7.

Section 4216.7 of the Government Code is amended to read:

4216.7.

(a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2, 4216.4, or 4216.10 or subdivision (b) of Section 4216.3, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator before the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages, costs, and expenses to the extent the damages, costs, and expenses were proximately caused by the excavator's failure to comply.

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

(c) If an operator of a subsurface installation without a reasonable basis, as determined by a court of competent jurisdiction, has failed to comply with the provisions of Section 4216.3, including, but not limited to, the requirement to field mark the appropriate location of subsurface installations within two working days of notification, as defined by subdivision (v) of Section 4216 and subdivision (b) of Section 4216.2, has failed to comply with subdivision (c) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable for damages to the excavator who has complied with Section 4216.2, subdivisions (b) and (e) of Section 4216.3, and Section 4216.4, including liquidated damages, liability, losses, costs, and expenses, actually incurred by the excavator, resulting from the operator's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the operator's failure to comply.

(d) (1) An excavator who damages a subsurface installation due to an inaccurate field mark by an operator, or by a third party under contract to perform field marking for the operator, shall not be liable for damages, replacement costs, or other expenses arising from damages to the subsurface installation if the excavator complied with Section 4216.10 or Sections 4216.2 and 4216.4.

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

(e) For the purposes of this section:

(1) "Approximate location" means a strip of land not more than 24 inches on either side of the exterior surface of the subsurface installation. It does not mean depth.

(2) "Inaccurate field mark" means a mark, or set of markings, made pursuant to Section 4216.3 or 4216.10, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.

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

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

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

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

(g) A court or arbitrator shall award reasonable attorney's costs and fees, including expert witness fees, to an excavator if either of the following apply:

(1) The court or arbitrator determines that an excavator is not liable for damages to a subsurface installation for a reason described in subdivision (d).

(2) The excavator makes an offer to settle the matter that is not accepted and the plaintiff fails to obtain a more favorable judgment or award.

SEC. 8.

Section 4216.13 of the Government Code is amended to read:

4216.13.

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

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

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

(2) Three members shall have knowledge and experience in contract excavation for employers who are not operators of subsurface installations. Of the three members, one member shall be ~~a general engineering contractor, one member shall be a general building contractor, and one member shall be a specialty contractor.~~ *from the general engineering contractor industry, one member shall be from the specialty contractor industry, and one member shall be from either the general engineering contractor industry or the specialty contractor industry.* For the purposes of this section, the terms "general engineering ~~contractor,~~" "~~general building contractor,~~" *contractor*" and "specialty contractor" shall have the meanings given in Article 4 (commencing with Section 7055) of Chapter 9 of Division 3 of the Business and Professions Code.

(3) One member shall have knowledge and expertise in performing or managing agricultural operations in the vicinity of subsurface installations.

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

(d) The member appointed by the Senate Committee on Rules shall have knowledge and expertise in subsurface installation location and marking and shall not be under the direct employment of an operator.

(e) The board may invite two directors of operations or other appropriate representatives of regional notification centers to be nonvoting ex officio members of the board.

~~SEC. 8.~~ SEC. 9.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.