



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-778 Excavations: subsurface installations. (2023-2024)

SHARE THIS:  

Date Published: 09/23/2024 02:00 PM

Senate Bill No. 778

CHAPTER 447

An act to amend Sections 4216, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.10, 4216.13, 4216.18, and 4216.19 of the Government Code, relating to excavations.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 778, Ochoa Bogh. Excavations: subsurface installations.

Existing law, commonly referred to as the Dig Safe 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 requires an excavator planning to conduct an excavation to notify the regional notification center of their intent before beginning excavation. Existing law requires the regional notification center, in response to this notification, to provide the excavator with a ticket and to notify certain operators who have a subsurface installation in the proposed excavation area. Should a ticket obtained by an excavator expire, existing law requires an excavator to contact the regional notification center, cease all excavation, and wait a minimum of 2 working days before restarting excavation. Existing law authorizes an excavator to use a vacuum excavation device to expose subsurface installations within the tolerance zone if specified conditions are met, including that the excavator has contacted any operator whose subsurface installations may be in conflict with the excavation. Existing law requires an operator to take one of several 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, marking the number of subsurface installations. Existing law prohibits an excavator from beginning excavation until the excavator receives a 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 the procedure an excavator must follow should a ticket expire. The bill would also revise requirements for an excavator to use vacuum equipment. 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.

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

This bill would revise those provisions by, among other things, requiring 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 in an annual report by regional notification centers and made available to the board upon request, as specified.

This bill would revoke the requirement that regional notification centers compile and make available the above-described annual reports. The bill would specify the types of events that the board may investigate.

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 Dig Safe Act of 2016. Existing law requires the Governor to appoint 7 of the board members and the Senate Committee on Rules to appoint one board member. Existing law imposes certain eligibility requirements upon board members, as specified.

This bill would revise the knowledge and experience requirements for 3 of the members appointed by the Governor. The bill would also allow that the board member appointed by the Senate Committee on Rules be employed by an operator.

The bill would also make other conforming changes and nonsubstantive 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, 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.

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

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 obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3.
- (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, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification. For excavation in an area of continual excavation, "legal excavation start date and time" means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification.

(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, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the internet 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 is not delineated, an operator may, at the operator's discretion, choose not to locate and field mark until the area to be excavated has been delineated.

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to fulfill their obligations under subparagraph (A) of paragraph (1) of subdivision (a) of Section 4216.3. 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. 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) (1) Unless an emergency exists, an excavator shall not begin excavation until all operators of subsurface installations that are listed on the ticket have fulfilled their obligations under 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).

(2) The excavator may begin excavation before the legal excavation start date and time if all of the conditions in paragraph (1) have been satisfied.

(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 immediately cease excavation, contact the regional notification center, and get a new ticket pursuant to subdivision (b), and may not resume excavation until the conditions in subdivision (g) have been satisfied.

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.

(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 electronic positive 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) An excavator may use a vacuum excavation device 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.

(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.

(C) 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.

(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 provide relevant existing additional information 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) An excavator shall immediately call 911 emergency services upon discovering or causing damage to one of the following:

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

(B) A high priority subsurface installation of any kind, except that the excavator does not need to call 911 if all of the following conditions are satisfied:

(i) The excavator is the operator of the high priority subsurface installation.

(ii) The damage was discovered by the operator during operations and maintenance activities.

(iii) The damage does not meet the circumstances in subparagraph (A).

(2) An excavator shall immediately notify the operator upon discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection. In the event of damage to a subsurface excavation described in paragraph (1), the excavator must contact the operator immediately after calling 911 emergency services. 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.

(3) Except as provided in subparagraph (A), an excavator shall notify the regional notification center within 48 hours of discovering or causing damage to any subsurface installation pursuant to paragraph (2).

(A) An excavator does not need to notify the regional notification center of damage discovered by the excavator if all of the following conditions are satisfied:

(i) The excavator is the operator of the subsurface installation.

(ii) The damage was discovered by the operator during operations and maintenance activities.

(iii) The damage does not meet the circumstances in subparagraph (A) of paragraph (1).

(B) Nothing in this section preempts or impedes the board's authority to impose more restrictive notification windows.

(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.

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 4216.10 of the Government Code is amended to read:

4216.10. (a) In lieu of the notification and locate and field mark requirements of Sections 4216.2 and 4216.3, an excavator may contact a regional notification center to request a continual excavation ticket for an area of continual excavation. 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 continual excavation. The ticket provided to the excavator shall include the contact information for notified operators.

(b) An operator shall fulfill its obligations pursuant to subdivision (a) of Section 4216.3.

(c) (1) When the area of continual excavation includes, or is 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 to prevent damage to the high priority subsurface installation during the continual excavation time period. The onsite meeting shall be used to develop a mutually agreed upon plan for excavation activities that may be conducted within 25 feet of each side of the subsurface installation. Additional onsite meetings should also be held following unexpected occurrences or prior to excavation activities that may create conflicts with subsurface installations. 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 and information has been provided describing the activities that can be safely conducted to prevent damage to the high priority subsurface installation.

(2) When the area of continual excavation includes a subsurface installation but does not include, or is not within 10 feet of, a high priority subsurface installation, the excavator or the operator may request an onsite meeting at a mutually agreed upon time to determine actions or activities required to verify the location and to prevent damage to the subsurface installation during the continual excavation time period. The onsite meeting may be used to develop a plan for excavation activities that may be conducted within five feet of each side of the subsurface installation. The operator and excavator may mutually agree to conduct additional onsite meetings following unexpected occurrences or prior to excavation activities that may create conflicts with subsurface installations. As part of the meeting, the excavator may 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. If an onsite meeting is requested prior to the legal excavation start date and time, the excavator shall not begin excavating until after the completion of the onsite meeting and information has been provided describing the activities that can be safely conducted to prevent damage to the subsurface installation.

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

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

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

(f) This section shall become operative on July 1, 2020.

SEC. 9. 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 have knowledge and experience in general engineering contracting work and one member shall have knowledge and experience in specialty contracting work. For the purposes of this section, the terms "general engineering contracting" and "specialty contracting" 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.

(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. 10. Section 4216.18 of the Government Code is amended to read:

4216.18. The board shall develop a standard or set of standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices. When possible, standards should be informed by publicly available data, including, but not limited to, that collected by state and federal agencies and by the regional notification centers. The standard or set of standards are not intended to replace other relevant standards, including the Best Practices of the Common Ground Alliance, but are to inform areas currently without established standards. The standard or set of standards shall address all of the following:

(a) Evidence necessary for excavators and operators to demonstrate compliance with Sections 4216.2, 4216.3, 4216.4, and 4216.10.

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

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

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

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

SEC. 11. Section 4216.19 of the Government Code is amended to read:

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

(b) The board may investigate reports of occurrences of excavator downtime, damages, near misses, and complaints of violations from affected parties and members of the public.

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

(d) If the board, upon the completion of an investigation, finds a probable violation of the article, the board shall transmit the investigation results and any recommended penalty to the state or local agency pursuant to subdivision (c) or (d) of Section 4216.6.

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

(1) The type of violation and its gravity.

(2) The degree of culpability.

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

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

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

SEC. 12. 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.