

JULY 29, 2015  
SACRAMENTO, CALIFORNIA







# CONTRACTORS STATE LICENSE BOARD

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**Contractors State License Board, John C. Hall Hearing Room  
9821 Business Park Drive, Sacramento, CA 95827**

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# AGENDA ITEM A

## Call to Order Establishment of Quorum

Roll is called by the Board Chair or, in his/her absence, by the Board Vice Chair or, in his/her absence, by a Board member designated by the Board Chair.

Eight members constitute a quorum at a CSLB Board meeting, per Business and Professions Code section 7007.

### Board Member Roster

KEVIN J. ALBANESE

ROBERT LAMB

AGUSTIN BELTRAN

ED LANG

LINDA CLIFFORD

MARLO RICHARDSON

DAVID DE LA TORRE

FRANK SCHETTER

DAVID DIAS

PAUL SCHIFINO

SUSAN GRANZELLA

JOHNNY SIMPSON

JOAN HANCOCK

NANCY SPRINGER

PASTOR HERRERA JR.





## **AGENDA ITEM B**

### Chair's Introductory Remarks and Board Member Comments

The Board Chair will review the scheduled Board actions and make appropriate announcements.

Board members may not discuss or take action on issues not on the agenda.





## AGENDA ITEM C

# Public Comment Session - Items Not on the Agenda

(Note: Individuals may appear before the CSLB to discuss items not on the agenda; however, the CSLB can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)). Public comments will be taken on agenda items at the time the item is heard and prior to the CSLB taking any action on said items. Total time allocated for public comment may be limited at the discretion of the Board Chair.

### BOARD AND COMMITTEE MEETING PROCEDURES

To maintain fairness and neutrality when performing its adjudicative function, the Board should not receive any substantive information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending administrative or criminal action.

- (1) If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be requested to refrain from making such comments.
- (2) If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action:
  - (a) The Board may designate either its Registrar or a board employee to review whether the proper procedure or protocol was followed and to report back to the Board once the matter is no longer pending; or,
  - (b) If the matter involves complaints against the Registrar, once the matter is final or no longer pending, the Board may proceed to hear the complaint in accordance with the process and procedures set forth in Government Code section 11126(a).
- (3) If a person becomes disruptive at the Board meeting, the Chair will request that the person leave the meeting or be removed if the person refuses to cease the disruptive behavior.



## AGENDA ITEM D

# Review and Approval of June 18–19, 2015, Board Meeting Minutes







# CONTRACTORS STATE LICENSE BOARD

## BOARD MEETING MINUTES

**Thursday, June 18, 2015**

### **A. CALL TO ORDER – ESTABLISHMENT OF QUORUM**

Board Chair David Dias called the meeting of the Contractors State License Board (CSLB) to order at 1:30 p.m. on Thursday, June 18, 2015, in the Assembly Hall at the Sheet Metal Workers' Local 104 Training Facility, 4350 Central Place, Suite A, Fairfield, CA 94534. Roll call was taken and a quorum established. Board Member Augie Beltran led the Board in the Pledge of Allegiance.

#### **Board Members Present**

David Dias, Chair

Ed Lang, Vice Chair

Augie Beltran, Secretary

Paul Schifino

Joan Hancock

Johnny Simpson

David De La Torre

Marlo Richardson

Frank Schetter

Kevin J. Albanese

Pastor Herrera Jr.

Linda Clifford

Susan Granzella

Nancy Springer

Bob Lamb

#### **CSLB Staff Present**

Cindi Christenson, Registrar

Cindy Kanemoto, Chief Deputy Registrar

Karen Robinson, Chief of Licensing

Laura Zuniga, Chief of Legislation

Rick Lopes, Chief of Public Affairs

David Fogt, Chief of Enforcement

Christina Delp, Chief Deputy of Enforcement

Erin Echard, Executive Assistant

Ashley Caldwell, Public Affairs Staff

Kristy Schieldge, Legal Counsel

### **B. CHAIR'S INTRODUCTORY REMARKS AND BOARD MEMBER COMMENTS**

Board Chair David Dias welcomed new board members David De La Torre and Marlo Richardson. Mr. Dias also announced the reappointments of Board Members Joan Hancock and Frank Schetter.

### **C. PUBLIC COMMENT SESSION – ITEMS NOT ON THE AGENDA**

There was no public comment.

### **D. REGISTRAR'S REPORT**

#### **1. Procedures Regarding CSLB Personnel's Interaction with Immigration and Customs Enforcement (ICE) Update**

Registrar Cindi Christenson reported on the completion of an updated procedural memo to address the Board's mission of consumer protection and noted that CSLB will not use ICE officers in stings.



**2. Update on Sunset Review Process**

Ms. Christenson updated the Board on the Sunset Review process, whereby the Legislature reviews the Board’s functions every four years.

**3. Proposal for a Board Meeting Regarding Presentation of CSLB Operations**

Staff will prepare and present a CSLB operations workshop for all Board Members at a future board meeting.

**E. ENFORCEMENT**

**1. Review and Possible Approval of April 27, 2015 Enforcement Committee Meeting Summary Report**

**MOTION:** Approve the April 27, 2015 Enforcement Committee Meeting Summary Report. Bob Lamb moved; Linda Clifford seconded. The motion carried unanimously, 15-0.

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Recusal</b>	<b>Absent</b>
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**2. Enforcement Program Update**

Chief of Enforcement David Fogt presented highlights from the Intake and Mediation Centers, Investigative Centers, Case Management, Statewide Investigative Fraud Team, Public Works Unit, as well as general complaint-handling statistics. Mr. Fogt also provided an update on electrician certification enforcement training provided to investigators employed by the International Brotherhood of Electrical Workers and Western Electrical Contractors Association. Chief Deputy of Enforcement Christina Delp presented a status update on the 2015-16 strategic plan goals and objectives.



**3. Discussion and Possible Action Regarding Proposed Changes to Minimum Peace Officer Training Standards**

David Fogt presented the Enforcement Committee’s recommendation to eliminate the current 17-week SIBC course requirement and allow for appointment of Peace Officers with the statutory minimum of the 60-hour Penal Code 832 course. The recommendation complies with the Governor’s directive to reduce unnecessary training expenses and will aid CSLB in recruiting and retaining Peace Officers.

**MOTION:** Approve the Proposed Changes to Minimum Peace Officer Training Requirements. Bob Lamb moved; Linda Clifford seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**F. PUBLIC AFFAIRS**

**1. Review and Possible Approval of April 27, 2015 Public Affairs Committee Meeting Summary Report**

**MOTION:** Approve the April 27, 2015 Public Affairs Committee Meeting Summary Report. Augie Beltran moved; Bob Lamb seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				



Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**2. Public Affairs Program Update**

Chief of Public Affairs Rick Lopes provided highlights on video/digital services, publication/graphic design projects, and employee relations; updated the Board on social media statistics; and reviewed media relations highlights. He also reported that Senior Scam Stopper Seminars continue to be held throughout the state and that Public Affairs hired a new information officer who is now responsible for producing live meeting webcasts.

**G. LICENSING**

**1. Review and Possible Approval of April 27, 2015 Licensing Committee Meeting Summary Report**

**MOTION:** Approve the April 27, 2015 Licensing Committee Meeting Summary Report. Bob Lamb moved; Linda Clifford seconded. The motion carried 14-0, with one abstention.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock					X
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				





Johnny Simpson	X				
Nancy Springer	X				

**2. Licensing Program Update**

Chief of Licensing Karen Robinson provided updates on the application workload, workers' compensation, criminal background, licensing information center, and judgment units.

Public Comment:

Phil Vermeulen requested that CSLB implement a system that would flag workers' compensation violations by classification.

**3. Testing Program Update**

Ms. Robinson provided highlights from both the examination administration and examination development units and reported that the eight test centers administer 46 different exams and that new exams are in development.

**4. Discussion and Possible Action Regarding Proposals for Satisfactory or Acceptable Forms of Supporting Documentation for Experience Pursuant to Title 16, California Code of Regulations Section 824.**

Ms. Robinson informed the Board that the Experience Verification Unit is required by law to investigate at least 3 percent of applications received.

Applicants for licensure must have a minimum of four years work experience as a journeyman, foreman, supervising employee, or contractor in the classification for which the applicant is applying within the last 10 years. All claimed experience reported on a Certification of Work Experience must be supportable by documentation satisfactory to CSLB, as contained in the following table.

(See Attachment A)

**MOTION:** Approve Table of Acceptable Supporting Experience Documentation. Bob Lamb moved; Nancy Springer seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				



Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**H. LEGISLATIVE**

**1. Review and Possible Approval of April 27, 2015 Legislative Committee Meeting Summary Report**

**MOTION:** Approve April 27, 2015 Legislative Committee Meeting Summary Report. Bob Lamb moved; Augie Beltran seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**2. Legislative Program Update**

No report given.

**3. Review, Discussion and Possible Action Regarding Positions on AB 507 (Olsen), AB 750 (Low), AB 1060 (Bonilla), SB 119 (Hill), SB 465 (Hill), SB 560 (Monning), SB 561 (Monning), SB 799 (Committee on Business, Professions and Economic Development)**

- AB 507 – BreEZe System: Annual Report – “Watch”



- AB 750 – Business and Professions: Licenses – “Support”

**MOTION:** Table AB 750 (Low). Augie Beltran moved; Kevin J. Albanese seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

- AB 1060 – Professions and Vocations – “Watch”
- SB 119 – Protection of Subsurface Installations – “Watch”

**Public Comment:**

Jose Mejia urged CSLB to move forward with a “Watch” position on SB 119, since, following a meeting with industry experts that concluded the day before, additional amendments are being made.

**MOTION:** Approve “Watch” position on SB 119 (Hill). Linda Clifford moved; Augie Beltran seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				



Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

- SB 465 – Contractors State License Board – “Support”
- SB 560 – Notice to Appear Authority – “Sponsor/Support”

**MOTION:** Approve “Sponsor/Support” position on SB 560 (Monning). Linda Clifford moved; Augie Beltran seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

- SB 561 – Home Improvement Salesperson Registration – “Sponsor/Support”

Public Comment:

Phil Vermeulen expressed his support for a one-time only HIS registration. He also noted that contractors should be responsible for reporting to CSLB when they no longer contract with an individual Home Improvement Salesperson.

Richard Markuson commented that this bill could present a conflict of interest if Home Improvement Salespersons represent multiple contractors. Mr. Markuson suggested the enactment of a minimum qualification.



**MOTION:** Approve “Sponsor/Support” position on SB 561 (Monning). Bob Lamb moved; Kevin J. Albanese seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

- SB 799 – Business and Professions – “Support”

**MOTION:** Approve Support position on SB 799. Bob Lamb moved; David Dias seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				



**I. REVIEW AND DISCUSSION REGARDING BUSINESS AND PROFESSIONS CODE SECTION 7031**

The Board discussed the role it should take, if any, in modifying B&P code section 7031 to address disgorgement when a contractor experiences a lapse in licensure. Registrar Christenson advised the Board that its primary mission is consumer protection and that recognition of this mission stopped a bill on this same issue that the Board sponsored previously from moving forward. Instead, it was recommended that staff work with industry to resolve problems related to disgorgement. The Board discussed the need to address the issue sooner as opposed to later since courts are interpreting brief gaps in licensure as constituting unlicensed practice, leading to substantial financial losses for contractors who lose payment not only for the work performed during the brief lapse but for the entire contract. Staff counsel, Kristy Shieldge, also advised the Board, in particular the licensees, that supporting legislation to modify B&P §7031 could lead to possible conflicts of interest. After thorough deliberation, the Board concurred that industry should lead the effort to fix section 7031.

The Board then discussed the appropriate level of participation for the Registrar and staff in working with industry. Concern was raised that Registrar and staff led discussions could lead to perceptions that the Board was directing the efforts.

Public Comment:

Ken Grossbart stated that B&P code section 7031 as currently written acts as an egregious and harsh law that extends the possibility of undue enrichment to consumers and punishes some contractors.

Richard Markuson, representing Pacific Advocates, volunteered to bring together the key members of industry to consider needed changes to B&P Code section 7031, and would also invite the CSLB Registrar and staff to participate in the discussion.

David Kalb, of Riverview Consulting, said that he would like to see strong CSLB involvement in any proposed meeting on the issue of disgorgement.

Former CSLB Registrar Steve Sands noted his agreement that industry should carry any legislative bill on the issue.

**MOTION:** Direct the Registrar to participate in an industry-facilitated meeting on disgorgement and report factual information back to the Board. David De La Torre moved; Bob Lamb seconded. The motion carried, 14-1.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				



David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino		X			
Johnny Simpson	X				
Nancy Springer	X				

**J. EXECUTIVE**

**1. Review and Possible Approval of March 16, 2015 Board Meeting Minutes**

**MOTION:** Approve March 16, 2015 Board Meeting Minutes. Augie Beltran moved; Kevin J. Albanese seconded. The motion carried unanimously, 15-0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**2. Administration Update Regarding Personnel and Facilities**

No report given.

**3. Information Technology Update**

No report given.



**4. Budget Update**

No report given.

**5. Strategic Plan Update**

**a. 2014-15 Update**

**b. 2015-16 Review**

**MOTION:** Approve 2015-16 Strategic Plan Objectives. Ed Lang moved; Susan Granzella seconded. The motion carried unanimously, 15-0.

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Recusal</b>	<b>Absent</b>
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**6. Election of Board Officers**

Nomination Committee members Joan Hancock and Bob Lamb provided the recommended slate of officers for Board consideration:

- Ed Lang, Chair
- Undecided, Vice Chair
- Linda Clifford, Secretary

Open nominations:

- Kevin J. Albanese, Secretary
- Augie Beltran, Vice Chair





- Kevin J Albanese, Vice Chair
- Kevin J. Albanese, Chair

**MOTION:** Elect Kevin J. Albanese for Secretary. Augie Beltran moved; David De La Torre seconded. The motion failed, 5–10.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford		X			
David De La Torre	X				
David Dias		X			
Susan Granzella		X			
Joan Hancock		X			
Pastor Herrera Jr.		X			
Robert Lamb		X			
Ed Lang		X			
Marlo Richardson	X				
Frank Schetter		X			
Paul Schifino	X				
Johnny Simpson		X			
Nancy Springer		X			

**MOTION:** Elect Linda Clifford for Secretary. Bob Lamb moved; Joan Hancock seconded. The motion carried unanimously, 15–0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				



**MOTION:** Elect Kevin J. Albanese for Vice Chair. Joan Hancock moved; Linda Clifford seconded. The motion failed, 6–8, with one recusal.

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Recusal</b>	<b>Absent</b>
Kevin J. Albanese	X				
Agustin Beltran		X			
Linda Clifford	X				
David De La Torre	X				
David Dias		X			
Susan Granzella		X			
Joan Hancock	X				
Pastor Herrera Jr.		X			
Robert Lamb		X			
Ed Lang		X			
Marlo Richardson	X				
Frank Schetter				X	
Paul Schifino	X				
Johnny Simpson		X			
Nancy Springer		X			

**MOTION:** Elect Augie Beltran for Vice Chair. Bob Lamb moved; Nancy Springer seconded. The motion carried, 9–5, with one recusal.

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Recusal</b>	<b>Absent</b>
Kevin J. Albanese		X			
Agustin Beltran	X				
Linda Clifford		X			
David De La Torre		X			
David Dias	X				
Susan Granzella	X				
Joan Hancock		X			
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter				X	
Paul Schifino		X			
Johnny Simpson	X				
Nancy Springer	X				



**MOTION:** Elect Kevin J. Albanese for Chair. Susan Granzella moved; Pastor Herrera Jr. seconded. The motion failed, 6–8, with one recusal.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran		X			
Linda Clifford	X				
David De La Torre	X				
David Dias		X			
Susan Granzella	X				
Joan Hancock		X			
Pastor Herrera Jr.	X				
Robert Lamb		X			
Ed Lang		X			
Marlo Richardson	X				
Frank Schetter				X	
Paul Schifino		X			
Johnny Simpson		X			
Nancy Springer		X			

**MOTION:** Elect Ed Lang for Chair. Joan Hancock moved; Bob Lamb seconded. The motion carried unanimously, 15–0.

NAME	Aye	Nay	Abstain	Recusal	Absent
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Ed Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino	X				
Johnny Simpson	X				
Nancy Springer	X				

**7. Tentative Board Meeting Schedule**

- September 3, 2015 – San Diego



- December 2015 – Sacramento (includes CSLB overview workshop)
- March 2016 – San Jose (includes strategic planning session)
- June 2016 – Southern California (includes joint meeting with NSCB)

**K. FUTURE AGENDA ITEMS**

Kevin J. Albanese requested discussion of workers’ compensation violations at the next Licensing/Enforcement Committee Meetings.

**L. ADJOURNMENT**

The Board recessed at 6:07 p.m.

Public Visitors

Eileen Scrodin  
Phil Vermeulen  
Richard Markuson  
Marcus McCarther  
Marvin Hemfield  
Steve Sands  
Geno Cuccia

Jose Mejia  
Ken Grossbart  
David Kalb  
Jeanette Benz  
Benny Yee  
Jan Sands  
Tracy Thurfall

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**Friday, June 19, 2015**

**A. CALL TO ORDER – ESTABLISHMENT OF QUORUM**

Board Chair Dave Dias opened the meeting at 9:00 am. Mr. Dias welcomed Nevada State Contractors Board Members and staff. Roll Call was taken and a quorum established. Nevada Board President Guy Wells offered opening remarks and thanked CSLB for hosting the annual joint meeting.

**B. PUBLIC COMMENT SESSION – ITEMS NOT ON THE AGENDA**

Former CSLB Board Member Benny Yee spoke about obtaining experience for workers employed under a licensee.

**C. DISCUSSION WITH NEVADA STATE CONTRACTORS BOARD**

An open discussion followed among CSLB and NSCB Board Members regarding:

- Economic Forecasts for Construction
- Solar Construction and Related Enforcement Trends
- Tiered General Contractors



- Multi-State Partnering Accomplishments
- Public Affairs, Enforcement, and Licensing Goals and Objectives

**D. ADJOURNMENT**

Board Chair David Dias adjourned the Board meeting at 11:44 a.m.

\_\_\_\_\_  
David Dias, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cindi Christenson, Registrar

\_\_\_\_\_  
Date



**Attachment A**

**ACCEPTABLE SUPPORTING EXPERIENCE DOCUMENTATION**

Applicants for licensure with the Contractors State License Board (CSLB) must have had, within the last 10 years, a minimum of four (4) years of work experience as a journeyman, foreman, supervising employee, or contractor in the classification for which the applicant is applying. All claimed experience must be supportable by documentation satisfactory to CSLB, including as contained in the following list of acceptable experience documentation that may support an applicant's claimed experience, as reported on a Certification of Work Experience.

<b>TABLE OF ACCEPTABLE SUPPORTING EXPERIENCE DOCUMENTATION</b>			
<b>DOCUMENTATION</b>	<b>EMPLOYED BY A CONTRACTOR</b>	<b>NON-LICENSED SELF-EMPLOYMENT</b>	<b>OWNER-BUILDER (B – General Building classification only)</b>
<b>Wage or Tax Documentation and Paycheck Stubs</b> <ul style="list-style-type: none"> <li>Copies of applicant's state or federal income tax forms showing income from construction activities (W-2 from an employer, 1099 from a contractor, Schedule C for self-employment, etc.)</li> <li>End-of-year paycheck stubs showing gross earnings and hourly/salary rates</li> <li>Wage transcripts can be obtained from the Internal Revenue Service at (800) 829-1040</li> </ul>	✓	✓ (tax documents only)	
<b>Employer Contact Information</b> <ul style="list-style-type: none"> <li>To verify employment period and scope of work performed</li> </ul>	✓		
<b>Duty Statement</b> <ul style="list-style-type: none"> <li>If employer had a specific duty statement outlining scope of work performed</li> </ul>	✓		
<b>Out-of-State Proof of Employer's Licensure</b> <ul style="list-style-type: none"> <li>Proof of employer's out-of-state license status, classification, and personnel of record</li> </ul>	✓		

<p style="text-align: center;"><b>DOCUMENTATION</b> (continued)</p>	<p style="text-align: center;"><b>EMPLOYED BY A CONTRACTOR</b></p>	<p style="text-align: center;"><b>NON- LICENSED SELF- EMPLOYMENT</b></p>	<p style="text-align: center;"><b>OWNER- BUILDER</b> (B – General Building classification only)</p>
<p><b>Notarized Certification of Work Experience</b></p> <ul style="list-style-type: none"> <li>• Notarized Certification of Work Experience written in or translated into English and notarized in the country of origin</li> </ul>	✓		
<p><b>Permits/Inspections</b></p> <ul style="list-style-type: none"> <li>• Copies of city and/or county building permits, regardless of whether pulled by applicant or homeowner, including permit applications, permits, and final inspection reports</li> <li>• Accompanied by statement detailing the work the applicant performed</li> <li>• For homeowner permits, include applicant’s contract/invoice with a detailed scope of work</li> <li>• For B – General Building permits, reflect the square footage of the project and support work in structural framing/rough carpentry and at least two (2) additional unrelated trades – each job must include at least two (2) unrelated trades, other than framing/rough carpentry, but every job does not need to include framing/rough carpentry</li> <li>• Copies of permits for plumbing, electrical, roofing, etc. for specific classifications, as applicable</li> </ul>		✓	✓
<p><b>Contracts</b></p> <ul style="list-style-type: none"> <li>• Copies of complete and signed contracts that have been entered into and performed, including client contact information, description of work performed, and project start and end dates</li> <li>• Accompanied by a statement indicating a reasonable estimate of the actual time spent to complete the project</li> </ul>		✓	

<p style="text-align: center;"><b>DOCUMENTATION</b> (continued)</p>	<p style="text-align: center;"><b>EMPLOYED BY A CONTRACTOR</b></p>	<p style="text-align: center;"><b>NON- LICENSED SELF- EMPLOYMENT</b></p>	<p style="text-align: center;"><b>OWNER- BUILDER</b> (B – General Building classification only)</p>
<p><b>Itemized Bills, Work Orders, and Invoices</b></p> <ul style="list-style-type: none"> <li>• Similar to Contracts above, if documents relate to work performed in the classification for which applicant is applying</li> </ul>		✓	
<p><b>Canceled Checks</b></p> <ul style="list-style-type: none"> <li>• Copies of both sides of canceled checks from jobs applicant has performed</li> <li>• Accompanied by a letter or Certification of Work Experience from person who paid the check describing work performed</li> </ul>		✓	
<p><b>Copies of Deeds and Proofs of Sale</b></p> <ul style="list-style-type: none"> <li>• For work done on applicant's own properties</li> <li>• Accompanied by a statement detailing work done on the properties and dates of projects</li> </ul>			✓
<p><b>Material Receipts</b></p> <ul style="list-style-type: none"> <li>• To support other documentation (including permits, contracts, invoices, canceled checks, etc.)</li> <li>• Accompanied by letters or Certifications of Work Experience from individuals for whom applicant performed the work and applied the materials</li> </ul>		✓	✓
<p><b>Education</b></p> <ul style="list-style-type: none"> <li>• Sealed official transcripts for evaluation of college degrees/units in related construction trade</li> <li>• Transcripts for degree earned outside of the United States must be translated into English and evaluated by an accredited evaluation service that does business within the United States</li> <li>• Granted maximum of three (3) years of experience credit</li> </ul>	✓	✓	✓



<p style="text-align: center;"><b>DOCUMENTATION</b> (continued)</p>	<p style="text-align: center;"><b>EMPLOYED BY A CONTRACTOR</b></p>	<p style="text-align: center;"><b>NON- LICENSED SELF- EMPLOYMENT</b></p>	<p style="text-align: center;"><b>OWNER- BUILDER</b> (B – General Building classification only)</p>
<p><b>Apprenticeship Certificate of Completion</b></p> <ul style="list-style-type: none"> <li>• Proof of formal apprenticeships in related construction trade, including those administered by unions and vocational or accredited schools</li> <li>• Granted maximum of three (3) years of experience credit</li> </ul>	✓	✓	✓
<p><b>Union Journeyman Book or Letter From Union Supporting Applicant’s Journey-Level Status</b></p> <ul style="list-style-type: none"> <li>• Copies of hour printouts maintained by unions</li> <li>• To support applicant’s claimed experience, as reported on a Certification of Work Experience, and/or journey-level status</li> </ul>	✓	✓	✓
<p><b>Military Training:</b></p> <ul style="list-style-type: none"> <li>• Copy of applicant’s DD214 or military discharge papers if applicant’s military training is related to the classification for which he/she is applying</li> <li>• Military service during a national emergency extends 10-year period in which experience is calculated</li> <li>• To obtain additional information on this and other military benefits for which applicant may qualify, please visit CSLB’s website at <a href="http://www.cslb.ca.gov">www.cslb.ca.gov</a> or email <a href="mailto:VeteransInfo@cslb.ca.gov">VeteransInfo@cslb.ca.gov</a></li> </ul>	✓	✓	✓
<p><b>Electrician Certification:</b></p> <ul style="list-style-type: none"> <li>• Copy of the Department of Industrial Relations Division of Apprenticeship Standards’ Certified Electrician card</li> <li>• To support applicant’s claimed C-10 journey-level status</li> </ul>	<p style="text-align: center;">✓</p> <p style="text-align: center;">(Employed by C-10 licensee only)</p>		

<p style="text-align: center;"><b>DOCUMENTATION</b> (continued)</p>	<p style="text-align: center;"><b>EMPLOYED BY A CONTRACTOR</b></p>	<p style="text-align: center;"><b>NON- LICENSED SELF- EMPLOYMENT</b></p>	<p style="text-align: center;"><b>OWNER- BUILDER</b> (B – General Building classification only)</p>
<p><b>Chlorofluorocarbon (CFC) Certification:</b></p> <ul style="list-style-type: none"> <li>• Copy of either Type II or Universal CFC Certification, pursuant to Section 608 of the Clean Air Act of 1990 and as required by the Environmental Protection Agency (EPA)</li> <li>• To support applicant's claimed C-20 or C-38 journey-level experience, as documented on a Certification of Work Experience</li> </ul>	<p>✓</p> <p>(Employed by C-20 or C-38 licensee only)</p>		
<p><b>Work Experience and Division of Occupational Safety and Health (DOSH) Registration:</b></p> <ul style="list-style-type: none"> <li>• Specific C-22 experience, exam waiver, and DOSH Registration requirements are contained in California Code of Regulations section 832.22 and 833</li> <li>• Required to support applicant's claimed C-22 journey-level experience, as documented on a Certification of Work Experience</li> </ul>	<p>✓</p> <p>(Employed by C-22 or Asbestos Certification licensee only)</p>		

**NOTE:** Nothing in this document shall prohibit CSLB from requesting additional supporting experience documentation, as it deems necessary.

## AGENDA ITEM E

Legislative



## **AGENDA ITEM E-1**

# Review, Discussion, and Possible Action Regarding SB 465 (Hill)





### Settlement Disclosure

SB 465 (Hill) was amended on July 1, 2015, to require licensees and insurance companies to report to the Contractors State License Board (CSLB) all civil action settlements or administrative actions resulting in a settlement worth \$50,000 or more, and all binding arbitration awards or settlements of \$25,000 or more.

Senator Hill introduced this language in response to the apartment balcony collapse in Berkeley earlier this summer. According to Sen. Hill, “Currently, state law does not require contractors to report defect settlement cases to the CSLB. Such disclosure requirements are routine for such professionals as doctors, architects, and engineers. This bill would empower the CSLB, like other boards, to be made aware of licensee behavior for which they may need to take swift action to promote public health and safety. The bill additionally increases transparency so that consumers have the tools necessary to make an informed decision about the quality of the contractor they hire.”

“The bill,” he explained, “also establishes greater accountability for contractors by ensuring the public has critical information about licensees. According to the *San Francisco Chronicle*, the company responsible for that project [Berkeley apartment complex] reportedly paid out \$26.5 million in construction defect settlements in just three years, yet the CSLB, the state agency tasked with protecting consumers from possibly lethal construction, remained ignorant of such settlements. This is because licensees are not required by law to report the result of incidents that are not handled directly by the CSLB, to the Registrar. As a result, information that can be used to help consumers protect themselves from possible fraud or misrepresentation is not known.”

SB 465 faced significant opposition and failed to pass out of the Assembly Business & Professions Committee. Both the Chair of that Committee, Assemblymember Susan Bonilla, and Senator Hill have requested that CSLB work on this issue with interested parties and develop a supportable alternative. The Legislature will take up this issue again next year. The Board needs to consider how to best implement this request from the Legislature.

While all parties agreed that a settlement is not an indication of fault or liability, and is often considered a cost of doing business, SB 465 faced opposition from several industry and insurance groups. A brief summary of these concerns follows:

- The general contractor is always named on a settlement, regardless of which party caused the underlying problem.



- Construction defect complaints do not require the homeowner to verify the allegations in the complaint, and therefore result in a significant number of settlements.
- This requirement will result in tens of thousands of reports being submitted to CSLB, but will provide little meaningful information.
- It is not clear how CSLB will review and prioritize settlement reports.
- The types of claims that require reporting are overly broad and do not necessarily related to the quality of the work.

**Staff Recommendation:** Authorize CSLB staff to conduct stakeholder meetings with interested parties and report back to the Board through the Enforcement Committee.



AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN SENATE APRIL 21, 2015

**SENATE BILL**

**No. 465**

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**Introduced by Senator Hill**

February 25, 2015

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An act to amend Sections ~~7000.5, 7011, and 7071.6 of, and to repeal Section 7067.5 of, Section 7124.6 of, and to add Sections 7071.18 and 7071.20 to, the Business and Professions Code, relating to professions and vocations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 465, as amended, Hill. ~~Contractors' State License Board: licensees: bond requirement. Contractors: discipline.~~

*Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law requires the board, with the approval of the Director of Consumer Affairs, to appoint a registrar of contractors to serve as the executive officer and secretary of the board.*

*This bill would require a licensee to report to the registrar within 90 days of the date that the licensee has knowledge of the conviction of the licensee of any felony or any other crime substantially related to the qualifications, functions, and duties of a licensed contractor, or any civil action settlement or administrative action resulting in a settlement worth \$50,000 or more, or a binding arbitration or administrative action resulting in binding arbitration worth \$25,000 or more, resulting from specified acts. Failure to comply with this requirement would be grounds for disciplinary action. The bill would also require any insurer providing professional liability insurance to a licensee or a state or local government agency that self-insures that licensee to, within 30*

**SB 465**

*days of payment of all or any portion of a civil action settlement or binding arbitration award against the licensee, report to the registrar the name of the licensee, the amount of value of the settlement or binding arbitration award, the amount paid, and the identity of the payee. The bill would make these provisions operative if the Legislature appropriates moneys from the Contractors' License Fund for these purposes and grants sufficient hiring authority to the board.*

*The bill would require the registrar to make available to the public all civil action settlements, binding arbitration awards, and administrative actions reported to it pursuant to these provisions.*

~~Under existing law, the Contractors' State License Law, the Contractors' State License Board is responsible for the licensure and regulation of contractors and is required to appoint a registrar of contractors. Existing law repeals these provisions establishing the board and requiring it to appoint a registrar on January 1, 2016.~~

~~This bill would extend these repeal dates to January 1, 2020.~~

~~Existing law requires every applicant for an original license, the reactivation of an inactive license, or the reissuance or reinstatement of a revoked license to evidence financial solvency, as specified, and requires the registrar to deny the application of any applicant who fails to comply with that requirement. Existing law, as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, requires the applicant or licensee to file or have on file a contractor's bond in the sum of \$12,500.~~

~~This bill would repeal that evidence of financial solvency requirement and would instead require that bond to be in the sum of \$15,000.~~

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

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

- 1 *SECTION 1. Section 7071.18 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *7071.18. (a) Notwithstanding any other law, a licensee shall*
- 4 *report to the registrar in writing the occurrence of any of the*
- 5 *following within 90 days after the licensee obtains knowledge of*
- 6 *the event:*
- 7 *(1) The conviction of the licensee for any felony.*

1 (2) *The conviction of the licensee for any other crime that is*  
2 *substantially related to the qualifications, functions, and duties of*  
3 *a licensed contractor.*

4 (3) *Any civil action settlement or administrative action resulting*  
5 *in a settlement against the licensee in any action involving fraud,*  
6 *deceit, misrepresentation, breach or violation of contract,*  
7 *negligence, incompetence, or recklessness by the licensee in the*  
8 *practice of contracting, if the amount or value of the settlement is*  
9 *fifty thousand dolla s (\$50,000) or greater.*

10 (4) *A binding arbitration award or administrative action*  
11 *resulting in a binding arbitration award against the licensee in*  
12 *any action involving fraud, deceit, misrepresentation, breach or*  
13 *violation of contract, negligence, incompetence, or recklessness*  
14 *by the licensee in the practice of contracting, if the amount or*  
15 *value of the settlement is twenty-five thousand dollars (\$25,000)*  
16 *or greater.*

17 (b) *Failure of a licensee to report to the registrar pursuant to*  
18 *subdivision (a) shall be grounds for disciplinary action.*

19 (c) *For the purposes of this section, "conviction" means a plea*  
20 *or verdict of guilty in a criminal proceeding, or a conviction*  
21 *following a plea of nolo contendere.*

22 (d) *This section shall become operative only if the Legislature*  
23 *appropriates moneys from the Contractors' License Fund for the*  
24 *purposes of this section and grants sufficient hiring authority to*  
25 *the board.*

26 SEC. 2. *Section 7071.20 is added to the Business and*  
27 *Professions Code, to read:*

28 7071.20. (a) *Within 30 days of payment of all or any portion*  
29 *of a civil action settlement or arbitration award against a licensee,*  
30 *as described in Section 7017.18, the insurer providing professional*  
31 *liability insurance to the licensee shall report to the registrar the*  
32 *name of the licensee, the amount of value of the settlement or*  
33 *binding arbitration award, the amount paid, and the identity of*  
34 *the payee.*

35 (b) *Within 30 days of payment of all or any portion of a civil*  
36 *action settlement or arbitration award against a licensee, as*  
37 *described in Section 7017.18, a state or local government agency*  
38 *that self-insures shall report to the registrar the name of the*  
39 *licensee, the amount of value of the settlement or binding*  
40 *arbitration award, the amount paid, and the identity of the payee.*

**SB 465**

1 (c) *This section shall become operative only if the Legislature*  
2 *appropriates moneys from the Contractors' License Fund for the*  
3 *purposes of this section and grants sufficient hiring authority to*  
4 *the board.*

5 SEC. 3. *Section 7124.6 of the Business and Professions Code*  
6 *is amended to read:*

7 7124.6. (a) The registrar shall make available to members of  
8 the public the date, nature, and status of all complaints on fil  
9 against a licensee that do either of the following:

10 (1) Have been referred for accusation.

11 (2) Have been referred for investigation after a determination  
12 by board enforcement staff that a probable violation has occurred,  
13 and have been reviewed by a supervisor, and regard allegations  
14 that if proven would present a risk of harm to the public and would  
15 be appropriate for suspension or revocation of the contractor's  
16 license or criminal prosecution.

17 (b) The board shall create a disclaimer that shall accompany  
18 the disclosure of a complaint that shall state that the complaint is  
19 an allegation. The disclaimer may also contain any other  
20 information the board determines would be relevant to a person  
21 evaluating the complaint.

22 (c) A complaint resolved in favor of the contractor shall not be  
23 subject to disclosure.

24 (d) Except as described in subdivision (e), the registrar shall  
25 make available to members of the public the date, nature, and  
26 disposition of all legal actions.

27 (e) Disclosure of legal actions shall be limited as follows:

28 (1) Citations shall be disclosed from the date of issuance and  
29 for five years after the date of compliance if no additional  
30 disciplinary actions have been filed against the licensee during the  
31 five-year period. If additional disciplinary actions were filed against  
32 the licensee during the five-year period, all disciplinary actions  
33 shall be disclosed for as long as the most recent disciplinary action  
34 is subject to disclosure under this section. At the end of the  
35 specified time period, those citations shall no longer be disclosed.

36 (2) Accusations that result in suspension, stayed suspension, or  
37 stayed revocation of the contractor's license shall be disclosed  
38 from the date the accusation is filed and for seven years after the  
39 accusation has been settled, including the terms and conditions of  
40 probation if no additional disciplinary actions have been file

1 against the licensee during the seven-year period. If additional  
2 disciplinary actions were filed against the licensee during the  
3 seven-year period, all disciplinary actions shall be posted for as  
4 long as the most recent disciplinary action is subject to disclosure  
5 under this section. At the end of the specified time period, those  
6 accusations shall no longer be disclosed.

7 (3) All revocations that are not stayed shall be disclosed  
8 indefinitely from the effective date of the revocation.

9 (f) *The registrar shall make available to the public all civil  
10 action settlements, binding arbitration awards, and administrative  
11 actions reported to it pursuant to Section 7071.18.*

12 SECTION 1. ~~Section 7000.5 of the Business and Professions  
13 Code is amended to read:~~

14 ~~7000.5. (a) There is in the Department of Consumer Affairs  
15 a Contractors' State License Board, which consists of 15 members.~~

16 ~~(b) Notwithstanding any other provision of law, the repeal of  
17 this section renders the board subject to review by the appropriate  
18 policy committees of the Legislature.~~

19 ~~(c) This section shall remain in effect only until January 1, 2020,  
20 and as of that date is repealed, unless a later enacted statute, that  
21 is enacted before January 1, 2020, deletes or extends that date.~~

22 SEC. 2. ~~Section 7011 of the Business and Professions Code is  
23 amended to read:~~

24 ~~7011. (a) The board, by and with the approval of the director,  
25 shall appoint a registrar of contractors and fix his or her  
26 compensation.~~

27 ~~(b) The registrar shall be the executive officer and secretary of  
28 the board and shall carry out all of the administrative duties as  
29 provided in this chapter and as delegated to him or her by the  
30 board.~~

31 ~~(c) For the purpose of administration of this chapter, there may  
32 be appointed a deputy registrar, a chief reviewing and hearing  
33 office, and, subject to Section 159.5, other assistants and  
34 subordinates as may be necessary.~~

35 ~~(d) Appointments shall be made in accordance with the  
36 provisions of civil service laws.~~

37 ~~(e) This section shall remain in effect only until January 1, 2020,  
38 and as of that date is repealed, unless a later enacted statute, that  
39 is enacted before January 1, 2020, deletes or extends that date.~~

1 SEC. 3.— Section 7067.5 of the Business and Professions Code  
2 is repealed.

3 SEC. 4.— Section 7071.6 of the Business and Professions Code  
4 is amended to read:

5 7071.6. (a) ~~¶~~The board shall require as a condition precedent  
6 to the issuance, reinstatement, reactivation, renewal, or continued  
7 maintenance of a license, that the applicant or licensee file or have  
8 on file a contractor’s bond in the sum of fifteen thousand dollars  
9 (\$15,000).

10 (b) ~~¶~~Excluding the claims brought by the beneficiaries specific-  
11 in subdivision (a) of Section 7071.5, the aggregate liability of a  
12 surety on claims brought against a bond required by this section  
13 shall not exceed the sum of seven thousand five hundred dollars  
14 (\$7,500). The bond proceeds in excess of seven thousand five  
15 hundred dollars (\$7,500) shall be reserved exclusively for the  
16 claims of the beneficiaries specified in subdivision (a) of Section  
17 7071.5. However, nothing in this section shall be construed so as  
18 to prevent any beneficiary specified in subdivision (a) of Section  
19 7071.5 from claiming or recovering the full measure of the bond  
20 required by this section.

21 (c) ~~¶~~No bond shall be required of a holder of a license that has  
22 been inactivated on the official records of the board during the  
23 period the license is inactive.

24 (d) ~~¶~~Notwithstanding any other law, as a condition precedent to  
25 licensure, the board may require an applicant to post a contractor’s  
26 bond in twice the amount required pursuant to subdivision (a) until  
27 the time that the license is renewed, under the following conditions:

28 (1) ~~¶~~The applicant has either been convicted of a violation of  
29 Section 7028 or has been cited pursuant to Section 7028.7.

30 (2) ~~¶~~If the applicant has been cited pursuant to Section 7028.7,  
31 the citation has been reduced to a final order of the r gistrar.

32 (3) ~~¶~~The violation of Section 7028, or the basis for the citation  
33 issued pursuant to Section 7028.7, constituted a substantial injury  
34 to the public.

## **AGENDA ITEM E-2**

# Review, Discussion, and Possible Action Regarding SB 467 (Hill)





**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE ANALYSIS**

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**Bill Number:** SB 467 (Hill)  
**Status/Location:** Amended 7/1/15 – Assembly Floor  
**Sponsor:** Author  
**Subject:** Sunset Extension  
**Code Section:** Business & Professions §7000.5, 7011, 7071.6 and 7067.5

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**Summary:**

As it pertains to the Contractors State Licensed Board, this bill:

1. Extends the sunset date for the Contractors State License Board (CSLB) and the authorization for the appointment of a Registrar from January 1, 2016 to January 1, 2020.
2. Eliminates the existing requirement that applicants demonstrate evidence of financial solvency by possessing operating capital of \$2,500.
3. Increases the amount of the contractor's bond licensees are required to maintain, from \$12,500 to \$15,000.

Comments:

CSLB is responsible for the implementation and enforcement of the Contractors State License Law -- the laws and regulations related to the licensure, practice, and discipline of the construction industry in California. All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost (labor and materials) of one or more contracts on the project is \$500 or more.

CSLB licenses approximately 290,000 contractors in 44 license classifications and two certifications. CSLB issues some 17,000 licenses each year, and more than 120,000 licenses are renewed each year. A license may be issued to an individual, partnership, corporation, limited liability company, or joint venture. All licenses must have a qualifying individual (also referred to as "qualifier"), who is the person listed on CSLB records who satisfies the experience and examination requirements for a license. The Board also registers some 9,800 home improvement salespersons who sell home improvement goods and services.

In its 2014 Sunset Review Report to the Legislature, CSLB identified several new issues for the Legislature's consideration, two of which are now included in this bill -- elimination of the capital requirement and a corresponding increase in the amount of the contractor's bond.

**Fiscal Impact for CSLB:**

No additional costs, as the bill continues the program as is.

**Staff Recommendation and Comments:**

**SUPPORT.** This bill continues CSLB's existing structure and implements two of CSLB's suggested statutory changes. CSLB does not verify the existing capital requirement, and believes it offers no additional consumer protection. The corresponding increase in the amount of the contractor's bond will provide an enhanced level of consumer protection

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**Date:** July 15, 2015

AMENDED IN ASSEMBLY JULY 1, 2015  
AMENDED IN ASSEMBLY JUNE 29, 2015  
AMENDED IN SENATE APRIL 21, 2015

**SENATE BILL**

**No. 467**

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**Introduced by Senator Hill**

February 25, 2015

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An act to amend Sections 201, 5000, ~~and 5015.6~~ 5015.6, 7000.5, 7011, and 7071.6 of, ~~and~~ to add Sections 312.2, 328, and 5100.5 to, *and to repeal Section 7067.5 of*, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Hill. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards, bureaus, commissions, divisions, and other agencies within the Department of Consumer Affairs. Existing law authorizes the department to levy a pro rata share of the department's administrative expenses against any of these constituent agencies at the discretion of the Director of Consumer Affairs and with the approval of the Department of Finance.

This bill would eliminate the requirement that the levy described above be at the discretion of the Director of Consumer Affairs and with the approval of the Department of Finance, and would instead require the levy to be approved by the Legislature.

Existing law requires an agency within the department to investigate a consumer accusation or complaint against a licensee and, where appropriate, the agency is authorized to impose disciplinary action against a licensee. Under existing law, an agency within the department

## SB 467

may refer a complaint to the Attorney General or Office of Administrative Hearings for further action.

This bill would require the Attorney General to submit a report to the department, the Governor, and the appropriate policy committees of the Legislature, on or before January 1, 2018, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Attorney General pertaining to accusation matters relating to consumer complaints against a person whose profession or vocation is licensed by an agency within the department.

Existing law creates the Division of Investigation within the department and requires investigators who have the authority of peace officers to be in the division to investigate the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws.

This bill would, in order to implement the Consumer Protection Enforcement Initiative of 2010, require the Director of Consumer Affairs, through the Division of Investigation, to implement “Complaint Prioritization Guidelines” for boards to utilize in prioritizing their complaint and investigative workloads and to determine the referral of complaints to the division and those that are retained by the health care boards for investigation.

Under existing law, the California Board of Accountancy within the department is responsible for the licensure and regulation of accountants and is required to designate an executive office. Existing law repeals these provisions on January 1, 2016.

This bill would extend the repeal date to January 1, 2020.

Existing law authorizes the California Board of Accountancy, after notice and hearing, to revoke, suspend, or refuse to renew any permit or certificate, as specified, or to censure the holder of that permit or certificate for unprofessional conduct.

This bill would additionally authorize the board, after notice and hearing, to permanently restrict or limit the practice of a licensee or impose a probationary term or condition on a license for unprofessional conduct. This bill would authorize a licensee to petition the board for reduction of penalty or reinstatement of the privilege, as specified, and would provide that failure to comply with any restriction or limitation imposed by the board is grounds for revocation of the license.

*Under existing law, the Contractors’ State License Law, the Contractors’ State License Board is responsible for the licensure and*

regulation of contractors and is required to appoint a registrar of contractors. Existing law repeals these provisions establishing the board and requiring it to appoint a registrar on January 1, 2016.

This bill would extend these repeal dates to January 1, 2020.

Existing law requires every applicant for an original license, the reactivation of an inactive license, or the reissuance or reinstatement of a revoked license to evidence financial solvency, as specified, and requires the registrar to deny the application of any applicant who fails to comply with that requirement. Existing law, as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, requires the applicant or licensee to file or have on file a contractor's bond in the sum of \$12,500.

This bill would repeal that evidence of financial solvency requirement and would instead require that bond to be in the sum of \$15,000.

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

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

1 SECTION 1. Section 201 of the Business and Professions Code  
2 is amended to read:

3 201. (a) (1) A charge for the estimated administrative expenses  
4 of the department, not to exceed the available balance in any  
5 appropriation for any one fiscal year, may be levied in advance on  
6 a pro rata share basis against any of the boards, bureaus,  
7 commissions, divisions, and agencies, with the approval of the  
8 Legislature.

9 (2) The department shall submit a report of the accounting of  
10 the pro rata calculation of administrative expenses to the  
11 appropriate policy committees of the Legislature on or before July  
12 1, 2015, and on or before July 1 of each subsequent year.

13 (b) The department shall conduct a one-time study of its current  
14 system for prorating administrative expenses to determine if that  
15 system is the most productive, efficient, and cost-effective manner  
16 for the department and the agencies comprising the department.  
17 The study shall include consideration of whether some of the  
18 administrative services offered by the department should be  
19 outsourced or charged on an as-needed basis and whether the  
20 agencies should be permitted to elect not to receive and be charged  
21 for certain administrative services. The department shall include

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1 the findings in its report pursuant to paragraph (2) of subdivision  
2 (a) that it is required to submit on or before July 1, 2015.

3 SEC. 2. Section 312.2 is added to the Business and Professions  
4 Code, to read:

5 312.2. (a) The Attorney General shall submit a report to the  
6 department, the Governor, and the appropriate policy committees  
7 of the Legislature on or before January 1, 2018, and on or before  
8 January 1 of each subsequent year that includes, at a minimum,  
9 all of the following for the previous fiscal year for each constituent  
10 entity within the department represented by the Licensing Section  
11 and Health Quality Enforcement Section of the Office of the  
12 Attorney General:

13 (1) The number of accusation matters referred to the Attorney  
14 General.

15 (2) The number of accusation matters rejected for filing by the  
16 Attorney General.

17 (3) The number of accusation matters for which further  
18 investigation was requested by the Attorney General.

19 (4) The number of accusation matters for which further  
20 investigation was received by the Attorney General.

21 (5) The number of accusations filed by each constituent entity.

22 (6) The number of accusations a constituent entity withdraws.

23 (7) The number of accusation matters adjudicated by the  
24 Attorney General.

25 (b) The Attorney General shall also report all of the following  
26 for accusation matters adjudicated within the previous fiscal year  
27 for each constituent entity of the department represented by the  
28 Licensing Section and Health Quality Enforcement Section:

29 (1) The average number of days from the Attorney General  
30 receiving an accusation referral to when an accusation is filed by  
31 the constituent entity.

32 (2) The average number of days to prepare an accusation for a  
33 case that is rereferred to the Attorney General after further  
34 investigation is received by the Attorney General from a constituent  
35 entity or the Division of Investigation.

36 (3) The average number of days from an agency filing an  
37 accusation to the Attorney General transmitting a stipulated  
38 settlement to the constituent entity.

1 (4) The average number of days from an agency filing an  
2 accusation to the Attorney General transmitting a default decision  
3 to the constituent entity.

4 (5) The average number of days from an agency filing an  
5 accusation to the Attorney General requesting a hearing date from  
6 the Office of Administrative Hearings.

7 (6) The average number of days from the Attorney General's  
8 receipt of a hearing date from the Office of Administrative  
9 Hearings to the commencement of a hearing.

10 (c) A report to be submitted pursuant to subdivision (a) shall  
11 be submitted in compliance with Section 9795 of the Government  
12 Code.

13 SEC. 3. Section 328 is added to the Business and Professions  
14 Code, to read:

15 328. In order to implement the Consumer Protection  
16 Enforcement Initiative of 2010, the director, through the Division  
17 of Investigation, shall implement "Complaint Prioritization  
18 Guidelines" for boards to utilize in prioritizing their respective  
19 complaint and investigative workloads. The guidelines shall be  
20 used to determine the referral of complaints to the division and  
21 those that are retained by the health care boards for investigation.

22 SEC. 4. Section 5000 of the Business and Professions Code is  
23 amended to read:

24 5000. (a) There is in the Department of Consumer Affairs the  
25 California Board of Accountancy, which consists of 15 members,  
26 7 of whom shall be licensees, and 8 of whom shall be public  
27 members who shall not be licentiates of the board or registered by  
28 the board. The board has the powers and duties conferred by this  
29 chapter.

30 (b) The Governor shall appoint four of the public members, and  
31 the seven licensee members as provided in this section. The Senate  
32 Committee on Rules and the Speaker of the Assembly shall each  
33 appoint two public members. In appointing the seven licensee  
34 members, the Governor shall appoint individuals representing a  
35 cross section of the accounting profession.

36 (c) This section shall remain in effect only until January 1, 2020,  
37 and as of that date is repealed, unless a later enacted statute, that  
38 is enacted before January 1, 2020, deletes or extends that date.

39 (d) Notwithstanding any other provision of law, the repeal of  
40 this section renders the board subject to review by the appropriate

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1 policy committees of the Legislature. However, the review of the  
2 board shall be limited to reports or studies specified in this chapter  
3 and those issues identified by the appropriate policy committees  
4 of the Legislature and the board regarding the implementation of  
5 new licensing requirements.

6 SEC. 5. Section 5015.6 of the Business and Professions Code  
7 is amended to read:

8 5015.6. The board may appoint a person exempt from civil  
9 service who shall be designated as an executive officer and who  
10 shall exercise the powers and perform the duties delegated by the  
11 board and vested in him or her by this chapter.

12 This section shall remain in effect only until January 1, 2020,  
13 and as of that date is repealed, unless a later enacted statute, that  
14 is enacted before January 1, 2020, deletes or extends that date.

15 SEC. 6. Section 5100.5 is added to the Business and Professions  
16 Code, to read:

17 5100.5. (a) After notice and hearing the board may, for  
18 unprofessional conduct, permanently restrict or limit the practice  
19 of a licensee or impose a probationary term or condition on a  
20 license, which prohibits the licensee from performing or engaging  
21 in any of the acts or services described in Section 5051.

22 (b) A licensee may petition the board pursuant to Section 5115  
23 for reduction of penalty or reinstatement of the privilege to engage  
24 in the service or act restricted or limited by the board.

25 (c) The authority or sanctions provided by this section are in  
26 addition to any other civil, criminal, or administrative penalties or  
27 sanctions provided by law, and do not supplant, but are cumulative  
28 to, other disciplinary authority, penalties, or sanctions.

29 (d) Failure to comply with any restriction or limitation imposed  
30 by the board pursuant to this section is grounds for revocation of  
31 the license.

32 (e) For purposes of this section, both of the following shall  
33 apply:

34 (1) "Unprofessional conduct" includes, but is not limited to,  
35 those grounds for discipline or denial listed in Section 5100.

36 (2) "Permanently restrict or limit the practice of" includes, but  
37 is not limited to, the prohibition on engaging in or performing any  
38 attestation engagement, audits, or compilations.

39 SEC. 7. Section 7000.5 of the Business and Professions Code  
40 is amended to read:



1 7000.5. (a) There is in the Department of Consumer Affairs  
2 a Contractors' State License Board, which consists of 15 members.

3 (b) Notwithstanding any other provision of law, the repeal of  
4 this section renders the board subject to review by the appropriate  
5 policy committees of the Legislature.

6 (c) This section shall remain in effect only until January 1, 2016,  
7 2020, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before January 1, 2016, 2020, deletes or extends  
9 that date.

10 *SEC. 8. Section 7011 of the Business and Professions Code is*  
11 *amended to read:*

12 7011. (a) The board, by and with the approval of the director,  
13 shall appoint a registrar of contractors and fix his or her  
14 compensation.

15 (b) The registrar shall be the executive officer and secretary of  
16 the board and shall carry out all of the administrative duties as  
17 provided in this chapter and as delegated to him or her by the  
18 board.

19 (c) For the purpose of administration of this chapter, there may  
20 be appointed a deputy registrar, a chief reviewing and hearing  
21 office, and, subject to Section 159.5, other assistants and  
22 subordinates as may be necessary.

23 (d) Appointments shall be made in accordance with the  
24 provisions of civil service laws.

25 (e) This section shall remain in effect only until January 1, 2016,  
26 2020, and as of that date is repealed, unless a later enacted statute,  
27 that is enacted before January 1, 2016, 2020, deletes or extends  
28 that date.

29 *SEC. 9. Section 7067.5 of the Business and Professions Code*  
30 *is repealed.*

31 ~~7067.5. Every applicant for an original license, or for the~~  
32 ~~reactivation of an inactive license, or for the reissuance or~~  
33 ~~reinstatement of a revoked license shall possess and every such~~  
34 ~~applicant, other than one applying under Section 7029 unless~~  
35 ~~required by the registrar, shall evidence financial solvency. The~~  
36 ~~registrar shall deny the application of any applicant who fails to~~  
37 ~~comply with this section. For purposes of this section financial~~  
38 ~~solvency shall mean that the applicant's operating capital shall~~  
39 ~~exceed two thousand five hundred dollars (\$2500).~~

1 The applicant shall provide answers to questions contained in a  
2 standard form of questionnaire as required by the registrar relative  
3 to his financial ability and condition and signed by the applicant  
4 under penalty of perjury.

5 In any case in which further financial information would assist  
6 the registrar in an investigation, the registrar may obtain such  
7 information or may require any licensee or applicant under  
8 investigation pursuant to this chapter to provide such additional  
9 financial information as the registrar may deem necessary.

10 The financial information required by the registrar shall be  
11 confidential and not a public record, but, where relevant, shall be  
12 admissible as evidence in any administrative hearing or judicial  
13 action or proceeding.

14 The registrar may destroy any financial information which has  
15 been on file for a period of at least three years.

16 *SEC. 10. Section 7071.6 of the Business and Professions Code*  
17 *is amended to read:*

18 7071.6. (a) The board shall require as a condition precedent  
19 to the issuance, reinstatement, reactivation, renewal, or continued  
20 maintenance of a license, that the applicant or licensee file or have  
21 on file a contractor's bond in the sum of ~~twelve~~ *fifteen* thousand  
22 ~~five hundred~~ dollars (~~\$12,500~~): (*\$15,000*).

23 (b) Excluding the claims brought by the beneficiaries specific  
24 in subdivision (a) of Section 7071.5, the aggregate liability of a  
25 surety on claims brought against a bond required by this section  
26 shall not exceed the sum of seven thousand five hundred dollars  
27 (\$7,500). The bond proceeds in excess of seven thousand five  
28 hundred dollars (\$7,500) shall be reserved exclusively for the  
29 claims of the beneficiaries specified in subdivision (a) of Section  
30 7071.5. However, nothing in this section shall be construed so as  
31 to prevent any beneficiary specified in subdivision (a) of Section  
32 7071.5 from claiming or recovering the full measure of the bond  
33 required by this section.

34 (c) No bond shall be required of a holder of a license that has  
35 been inactivated on the official records of the board during the  
36 period the license is inactive.

37 (d) Notwithstanding any other provision of law, as a condition  
38 precedent to licensure, the board may require an applicant to post  
39 a contractor's bond in twice the amount required pursuant to

1 subdivision (a) until the time that the license is renewed, under the  
2 following conditions:

3 (1) The applicant has either been convicted of a violation of  
4 Section 7028 or has been cited pursuant to Section 7028.7.

5 (2) If the applicant has been cited pursuant to Section 7028.7,  
6 the citation has been reduced to a final order of the registrar.

7 (3) The violation of Section 7028, or the basis for the citation  
8 issued pursuant to Section 7028.7, constituted a substantial injury  
9 to the public.

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## AGENDA ITEM E-3

# Review, Discussion, and Possible Action Regarding SB 119 (Hill)





**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE ANALYSIS**

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**Bill Number:** SB 119 (Hill)  
**Status/Location:** Amended 07/01/15 – Assembly Appropriations Committee  
**Sponsor:** Author  
**Subject:** Protection of Subsurface Installations  
**Code Section:** Government Code Section 4216

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**Summary:**

Existing Law:

1. Requires that every operator of a subsurface installation (except CalTrans) become a member of, participate in, and fund a regional notification center.
2. Requires a person planning any excavation to contact the appropriate notification center before work begins.
3. Provides that a willful or deliberate violation of the regional notification system requirements by a licensee of the Contractors State License Board (CSLB) constitutes a cause for disciplinary action by CSLB.

*The July 2, 2015, amendments delete the section that would have been added to the Contractors State License Law regarding the enforcement of violations by contractors of the dig alert requirements. CSLB already has disciplinary authority for these violations.*

This Bill:

1. Contains several findings and declarations of the Legislature regarding the need for increased communication between subsurface installation operators and excavators; states that exemptions allowing excavation without first calling a regional notification center should be permitted only if procedures exist so that the excavation occurs without compromising safety; and that the existing exemption that permits private property owners to dig on their own property without notification does not have a basis in safety.
2. The findings further state that California should have an advisory committee, composed of excavation stakeholders, to perform the following three major tasks:
  - a) Coordinate the diverse education and outreach efforts undertaken by state and local agencies, operators, and excavators and issue grants for targeted efforts;
  - b) Study excavation questions and develop standards that clarify best practices; and
  - c) Investigate potential violations of the one-call law that inform both the standards it is to develop and potential enforcement actions.
3. Makes various revisions to the Regional Notification Center System, including the definitions of relevant terms.

4. Provides that an excavator who damages a subsurface installation because of inaccurate marking shall not be liable for damages.
5. Limits the existing exemption for property owners to, instead, provide the exemption only when the work does not require a permit, the property has no easement or right of way, and the work involves only non-mechanized hand tools.
6. Exempts from the definition of “excavation,” until January 1, 2020, landscape maintenance activity performed with hand tools at a depth of no more than 12 inches, as well as plowing, cultivating, planting, harvesting, or similar operations in connection with agricultural activities, unless the activity disturbs the soil to a depth of 16 inches or more.
7. Requires the excavator, for an excavation within the approximate location of a subsurface installation, to determine the exact location of the installations within the tolerance zone using hand tools before using any power-driven excavation or boring equipment within the approximate location of the installations. Further requires the excavator to use reasonable care to prevent damage to subsurface installations.
8. Requires the Occupational Safety and Health Standards Board to revise its regulations to clarify best practices by excavators.
9. **Creates the California Underground Facilities Safe Excavation Advisory Committee (Committee), under the CSLB and assisted by CSLB’s staff.** The Committee would be tied to CSLB’s sunset date and review process.
10. Provides that dig alert requirements can be enforced, following a recommendation by the Committee, as follows:
  - a) CSLB, on contractors.
  - b) The Public Utilities Commission (PUC), on gas and electrical corporations.
  - c) The Office of the State Fire Marshal, on operators of hazardous liquid pipeline facilities.
11. Requires the Committee to coordinate education and outreach activities that encourage safe excavation practice.
12. Requires the Committee to develop standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging these practices. Provides that the standards shall address all of the following:
  - (a) Evidence necessary to demonstrate compliance with the law.
  - (b) Guidance for recommended sanctions against excavators and operators for violations. Provides that guidance shall include the circumstances under which an investigation will be transmitted for formal disciplinary action, and may allow for a decision to not send complaint forward if the investigation was triggered by a complaint, the parties have settled, and the Committee has determined no further action is needed. Further requires recommendations for graduated sanctions.
  - (c) What constitutes reasonable care in conducting deep excavations within the tolerance zone.
  - (d) What constitutes reasonable care in grading activities on road shoulders and dirt roads, which may include standards for potholing.



13. Beginning January 1, 2017, requires the Committee to investigate possible violations of the law, including complaints from affected parties and members of the public. Authorizes staff to use compliance audits, including field audits, and investigations of incidents and near-misses.
14. Provides that the Committee shall have nine members, as follows:
  - a) Four appointed by the Governor, three of whom shall have knowledge and experience in the operation of subsurface installations (including one with a municipal utility), and one with knowledge and expertise in subsurface installation location and marking.
  - b) Three members (one "A" licensee, one "B" licensee and one "C" licensee) appointed by CSLB, who shall have knowledge and experience in contract excavation for employers who are not operators of subsurface installations.
  - c) One member appointed by the Assembly Speaker, who has knowledge and expertise in safety matters representing the workers employed by contract excavators.
  - d) One member appointed by the Senate Rules Committee, who has knowledge and expertise in managing the underground installations on one's own property, and may be drawn from agricultural, commercial, residential, or other property sectors.
  - e) Authorizes the Committee to invite one director of operations of a regional notification center to be a nonvoting ex officio member.
15. Provides for two-year terms for Committee members.
16. States that the Committee may obtain funding for its operational expenses from:
  - a) The Safe Energy Infrastructure and Excavation Fund.
  - b) A federal or state grant.
  - c) A fee charged to members of the regional notification centers not to exceed the reasonable regulatory cost incident to enforcement of these requirements.
  - d) A filing or administrative fee to hear a complaint.
  - e) Any other source.
17. Requires the Committee to annually convene a meeting with state and local agencies, California operators, regional notification centers, and trade associations that fund outreach programs that encourage safe excavation practices. Further provides that at that meeting the Committee shall determine areas in which additional education and outreach efforts should be targeted.
18. Upon completion of an investigation, requires the Committee to inform the following parties of the results, including any findings of possible violations:
  - (a) The party or parties whose activities were the subject of the investigation.
  - (b) The complainant, if the investigation was initiated as the result of a complaint.
  - (c) Any excavator and operator whose activities or subsurface installations were involved in the incident.
19. Provides that if the Committee finds a probable violation of the article, it shall transmit the investigation results and any recommended penalty to the state or local agency with jurisdiction over the activity or business undertaken in commission of the violation.
20. For an investigation of a violation regarding the delineating and tolerance zone requirements, prohibits a complainant from seeking action in court for damages

until the investigation is complete, or for at least 120 days after the investigation begins, whichever occurs first.

21. If a complainant files an action or damages based upon these requirements, after the completion of an investigation in which the person was found to have not violated the requirements, the complainant shall also notify the Committee when the action is filed.
22. Requires the Committee to annually report to the Legislature and Governor.

Comments:

The author has been conducting stakeholder meetings on this topic over the last year. According to the author, nationwide data suggests that excavation in California is more dangerous than in other states, largely because some excavators and owners of underground facilities fail to follow the state's excavation safety laws. Between 2002 and 2011, excavation activities accounted for more than 25 percent of pipeline-related fatalities in the United State.

**Fiscal Impact for CSLB:**

What follows is a rough estimate of the fiscal impact of this legislation for CSLB, based on the available language and information from the author's office.

- *Create the Underground Facility Safe Excavation Advisory Committee. The advisory committee shall exist under the purview of the Contractor's State License Board, and shall be staffed by CSLB employees.* This new workload would require the creation of a new unit within CSLB. Total annual direct and indirect costs of the Committee, with benefits, would be approximately \$2,175,000 initially, and \$1,850,000 ongoing.
- *Committee composed of nine members.* CSLB assumes that Committee Members would meet approximately five times a year, plus an annual stakeholders meeting. Total annual costs for Board Members (including \$100 a day, plus per diem and travel per board member) would be approximately \$50,000.
- Initial Information Technology costs of \$65,000 initially.
- Attorney General costs of approximately \$1,050,000 initially and ongoing.
- One additional CSLB enforcement representative to handle the Committee's recommended disciplinary actions at an initial cost of \$135,000, and \$127,000 ongoing.
- Total (Committee and CSLB workload) approximate annual costs (initial and ongoing): \$3,500,000 (initial) and \$3,100,000 (ongoing).

**Board Position and Comments:**

**WATCH.** The author has worked on this issue for the last few years, and in that time different members of the Legislature have introduced a number of bills. CSLB has an existing program to enforce violations of the dig alert requirements, handled under

Business and Professions Code section 7110, which provides that a willful or deliberate violation of the excavation requirements constitutes a cause for disciplinary action.

The author's office has conducted a series of stakeholder meetings on this issue, which continue. CSLB has participated, along with numerous contractor groups, utilities, and other interested parties.

Excavation work is regulated by CSLB's existing C-12 Earthwork and Paving classification, and excavation safety and regional notification requirements are covered on all relevant CSLB licensing examinations (27 of the 45 exams), including the Law and Business examination.

Support & Opposition:

Support (as of 7/1/15):

Associated General Contractors of California  
AT&T (support, if amended)  
California Legislative Conference of the Plumbing, Heating and Piping Industry  
DigAlert (support, if amended)  
National Electrical Contractors Association  
Sacramento Municipal Utility District (support, if amended)  
San Diego Gas & Electric Company (support, if amended)  
Southern California Contractors Association  
Southern California Gas Company (support, if amended)  
United Contractors  
Western Line Contractors

Oppose: (as of 6/1/15):

California Association of Winegrape Growers  
LA County Board of Supervisors (oppose, unless amended)  
Western State Petroleum Association (oppose, unless amended)

Legislative History:

AB 811 (Lowenthal, Chapter 250, Statutes of 2013) required that regional notification centers compile an annual report. When introduced, the bill would have required licensed contractors to pass an additional certification exam in order to legally perform excavations, though those provisions were amended out of the bill.

AB 1514 (Lowenthal, 2012) would have increased the penalties for a violation of the notification requirements.

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**Date:** July 15, 2015



AMENDED IN ASSEMBLY JULY 1, 2015  
AMENDED IN ASSEMBLY JUNE 16, 2015  
AMENDED IN SENATE JUNE 1, 2015  
AMENDED IN SENATE MAY 12, 2015  
AMENDED IN SENATE MAY 5, 2015  
AMENDED IN SENATE APRIL 20, 2015  
AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 119**

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**Introduced by Senator Hill**

January 14, 2015

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An act to add Section 7110.7 to the Business and Professions Code, to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections 4216.10, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add Sections 320.5 and 971 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

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

~~Existing law vests the Contractors' State License Board with all functions and duties relating to the administration of the Contractors' State License Law. Existing law authorizes the issuance of licenses to applicants for contractors' licenses by written examination under rules and regulations adopted by the board.~~

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~~This bill would require the board to adopt a program to enforce violations of provisions relating to excavation. The bill would authorize the board to require a contractor to undergo training, levy a fine, and suspend a contractor's license for a violation.~~

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

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

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

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also authorize, in any action for reimbursement or indemnification for

a claim arising from damage to a subsurface installation in which a court finds that the excavator complied with those provisions, the excavator to be awarded reasonable attorney's fees and expenses.

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

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

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

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

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

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

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

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

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

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

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

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

The bill would make other conforming changes.

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

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



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

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

1 SECTION 1. The Legislature finds and declares *all of the*  
2 following:

3 ~~(a) Discussions that have taken place since Article 2~~  
4 ~~(commencing with Section 4216) of Chapter 3.1 of Division 5 of~~  
5 ~~Title 1 of the Government Code was added by Chapter 928 of the~~  
6 ~~Statutes of 1989 have led to widespread agreement that many of~~  
7 ~~the provisions of the article should be clarified~~

8 *(a) For the state's "one-call" law to be effective, it needs greater*  
9 *clarity and effective enforcement, and it must foster communication*  
10 *between operators of subsurface installations and the various types*  
11 *of excavators in California.*

12 (b) Regional notification centers, or "one-call" centers, have  
13 developed means of electronic communication that improve the  
14 efficiency of the "one-call" process, and statutory barriers to using  
15 new methods of notification should be eliminated

16 (c) Electronic positive response is a means to communicate the  
17 status of responses to an excavator's notice of excavation via the  
18 one-call center and provides the safety benefit that an excavator  
19 has an easy means to know whether or not all of the utilities within  
20 the excavation area have marked their underground ~~facilities.~~  
21 *installations.*

22 (d) The delineation by an excavator of the area to be excavated  
23 in advance of the field location and marking by subsurface facility  
24 operators of their ~~facilities~~ *installations* aids the excavator in  
25 understanding where ~~underground facilities~~ *subsurface installations*  
26 were marked, and thus improves safety. This practice was  
27 recommended by the National Transportation Safety Board in its  
28 1997 study "Protecting Public Safety through Excavation Damage  
29 Prevention" and is a best practice of the Common Ground Alliance.

30 (e) Continuing an excavation after an excavation "ticket" has  
31 expired does not promote safety, and excavators should renew  
32 their ticket with the one-call center before expiration. Continuing  
33 excavation when markings are no longer visible does not promote  
34 safety, and excavators should stop work until the subsurface  
35 installations are remarked.

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1 ~~(f) The benefits of eliminating old field marks once an~~  
2 ~~excavation project is complete are more than just aesthetic;~~  
3 ~~eliminating old field marks helps prevent confusion for the next~~  
4 ~~excavator to dig in that area.~~

5 ~~(g)~~

6 ~~(f) Increased communication between subsurface installation~~  
7 ~~operators and excavators before breaking ground has safety~~  
8 ~~benefits~~

9 ~~(h)~~

10 ~~(g) Construction sites often have many parties conducting~~  
11 ~~different, ongoing work, and so the inherent safety risks associated~~  
12 ~~with that work can be increased by a failure of these parties to~~  
13 ~~effectively communicate. Excavators, operators of subsurface~~  
14 ~~facilities, installations, and locators have a responsibility to~~  
15 ~~communicate with other parties before entering these worksites,~~  
16 ~~which may require advance schedule coordination, and also have~~  
17 ~~a responsibility to observe the safety requirements set for those~~  
18 ~~worksites.~~

19 ~~(i)~~

20 ~~(h) Abandoned subsurface installations can be mistaken for~~  
21 ~~active subsurface installations that are marked, and thus present a~~  
22 ~~safety risk to excavators and the public. Safety will be improved~~  
23 ~~if subsurface facility operators identify these subsurface~~  
24 ~~installations when their existence is known.~~

25 ~~(j)~~

26 ~~(i) The ability of an operator of subsurface facilities installations~~  
27 ~~to locate and mark affected facilities installations can be seriously~~  
28 ~~impaired by a lack of high-quality records of those facilities,~~  
29 ~~installations, and thus operators should keep records of their~~  
30 ~~facilities for as long as they are in the ground, whether or not they~~  
31 ~~are in use.~~

32 ~~(k)~~

33 ~~(j) Failure by an operator of subsurface facilities installations~~  
34 ~~to mark the facilities installations within the required~~  
35 ~~two-working-day period is a serious breach of duty.~~

36 ~~(l)~~

37 ~~(k) While a utility an operator has two working days after an~~  
38 ~~excavator's call to the one-call center to mark its underground~~  
39 ~~facilities, subsurface installations, failure of that utility operator~~  
40 ~~to do so does not relieve the excavator of the safety responsibility~~

1 to wait until the ~~utility~~ operator has marked before commencing  
2 excavation.

3 ~~(m)~~

4 ~~(l)~~ Mismarks by an operator place excavators and the public at  
5 great safety risk, and so operators who mismark their ~~facilities~~  
6 *installations* are entitled to no award for any damages to those  
7 ~~facilities~~. *installations*.

8 ~~(n)~~

9 ~~(m)~~ ~~Facilities~~ *Installations* that are embedded in pavement  
10 require more extensive communication *among operators, locators,*  
11 *and excavators* to prevent ~~them~~ *the installations* from being  
12 damaged.

13 ~~(o)~~

14 ~~(n)~~ Exemptions that allow a class of persons to excavate without  
15 calling 811 ~~shall be made not based on convenience, but rather~~  
16 *are to be* permitted only if alternative procedures allow the  
17 excavation to take place without compromising safety.

18 ~~(p)~~

19 ~~(o)~~ More communication is needed between the Department of  
20 Transportation and the regional notification centers, including the  
21 sharing of ~~facility location~~ *subsurface installation* information, so  
22 that excavators may be alerted of possible Department of  
23 Transportation subsurface installations in the area of planned  
24 excavation ~~and of and, if the excavation is to take place in a~~  
25 *Department of Transportation right-of-way*, the need to seek a  
26 Department of Transportation encroachment permit.

27 ~~(q)~~

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

36 ~~(r)~~

37 ~~(q)~~ Prevention of boring through sewer laterals with natural gas  
38 and other subsurface installation services may be achieved through  
39 reasonable care in the use of trenchless excavating technologies.

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1 Indication of the location of sewer laterals can aid in prevention  
2 of these cross-bores.

3 (s)

4 (r) The exemption that permits private property owners to dig  
5 on their property without calling a regional notification center to  
6 have the area marked for ~~underground facilities~~ *subsurface*  
7 *installations* does not have a basis in safety.

8 (t)

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

13 (u)

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

18 (v)

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

28 (w)

29 (v) Gas corporations have ready access to information about  
30 damages that occur on their subsurface installations and should  
31 collect relevant data to inform future discussions regarding the  
32 risk of notification exemptions.

33 (x)

34 (w) Other states have experienced a dramatic improvement in  
35 safety after implementing centralized administrative oversight of  
36 one-call laws.

37 (y)

38 (x) California should have an advisory committee, composed  
39 of excavation stakeholders, subject to oversight by the Legislature  
40 and the Department of Finance, to perform three major tasks, which

1 are to coordinate the diverse education and outreach efforts  
2 undertaken by state and local agencies, operators, and excavators  
3 throughout the state and issue grants for targeted efforts, to study  
4 excavation questions and develop standards that clarify best  
5 practices, and to investigate potential violations of the one-call  
6 law that inform both the standards it is to develop and potential  
7 enforcement actions. Due to the size of the state, and in order to  
8 reduce costs, the advisory committee should meet in northern and  
9 southern California.

10 (z)

11 (y) The advisory committee should not be funded through the  
12 General Fund, but should be funded through fines levied on gas  
13 and electric corporations for safety violations, instead of having  
14 those fines go to the General Fund

15 SEC. 2. Section 7110.7 is added to the Business and Professions  
16 Code, to read:

17 7110.7. (a) The Contractors' State License Board shall adopt  
18 a program to enforce violations by contractors of subdivision (a)  
19 of Section 4216.2 of the Government Code.

20 (b) The Contractors' State License Board shall require  
21 contractors to undergo a training program relating to compliance  
22 with subdivision (a) of Section 4216.2 of the Government Code,  
23 as determined by the board, for an initial violation. The training  
24 program shall be conducted by a regional notification center, as  
25 defined in Section 4216 of the Government Code, or by a training  
26 program approved by a regional notification center.

27 (c) If the contractor does not submit evidence of completion of  
28 a training program within 30 days of being notified of the  
29 requirement to do so, or fails to provide a reasonable explanation  
30 for his or her delay in scheduling that training in writing, the  
31 contractor shall be subject to further disciplinary action.

32 (d) A subsequent violation within one calendar year of the first  
33 violation, failure to attend training, or failure to pay fines ultimately  
34 may result in suspension of the contractor's license.

35 (e) The board shall determine a graduated scale of fines  
36 consistent with Section 7099.2.

37 SEC. 3.

38 SEC. 2. Section 4216 of the Government Code is amended to  
39 read:

40 4216. As used in this article the following definitions apply

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

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

6 (c) “Advisory Committee” means the California Underground  
7 Facilities Safe Excavation Advisory Committee.

8 (d) “Delineate” means to mark in white the location or path of  
9 the proposed excavation using the guidelines in Appendix B of  
10 the “Guidelines for Excavation Delineation” published in Best  
11 Practices Version 11.0 by the Common Ground Alliance. If there  
12 is a conflict between the marking practices in those guidelines and  
13 other provisions of this article, this article shall control.  
14 “Delineation” also includes physical identification of the area to  
15 be excavated using pink marking, if an excavator makes a  
16 determination that standard delineation may be misleading to those  
17 persons using affected streets and highways, or be misinterpreted  
18 as a traffic or pedestrian control, and the excavator has contacted  
19 the regional notification center to advise the operators that the  
20 excavator will physically identify the area to be excavated using  
21 pink markings.

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

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

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

33 (g)(1) “Excavation” means any operation in which earth, rock,  
34 pavement, or other material below the existing grade is moved,  
35 removed, or otherwise displaced by means of tools, equipment, or  
36 explosives in any of the following ways: grading, trenching,  
37 digging, ditching, drilling, augering, tunneling, scraping, cable or  
38 pipe plowing and driving, gouging, crushing, jack hammering,  
39 saw cutting, or any other way.

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

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

6 (B) Landscape maintenance activity that is performed with hand  
7 tools at a depth of more than 12 inches. Landscape maintenance  
8 activity includes all of the following:

9 (i) Aeration, dethatching, and cutting of vegetation, including  
10 lawn edging.

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

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

13 (C) Subparagraph (B) shall become inoperative on January 1,  
14 2020.

15 (3) The exclusion of the activities in paragraph (2) from the  
16 definition of “excavation” shall not be used to discourage a person  
17 planning to perform those activities from voluntarily notifying a  
18 regional notification center pursuant to Section 4216.2, and does  
19 not relieve an operator of a subsurface installation from the  
20 obligation to locate and field mark pursuant to Section 4216.3  
21 following the notification *The exclusion of activities in paragraph*  
22 *(2) does not relieve a person performing those activities from a*  
23 *duty of reasonable care to prevent damage to subsurface*  
24 *installations.*

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

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

33 (j) “High priority subsurface installation” means high-pressure  
34 natural gas pipelines with normal operating pressures greater than  
35 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
36 pipelines, high-voltage electric supply lines, conductors, or cables  
37 that have a potential to ground of greater than or equal to 60kv, or  
38 hazardous materials pipelines that are potentially hazardous to  
39 workers or the public if damaged.

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1 (k) “Inactive subsurface installation” means both of the  
2 following:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

30 (y)“Working day” for the purposes of determining excavation  
31 start date and time means a weekday Monday through Friday, from  
32 7:00 a.m. to 5:00 p.m., except for federal holidays and state  
33 holidays, as defined in Section 19853 of the Government Code.

34 ~~SEC. 4.~~

35 *SEC. 3.* Section 4216.1 of the Government Code is amended  
36 to read:

37 4216.1. Every operator of a subsurface installation, except the  
38 Department of Transportation, shall become a member of,  
39 participate in, and share in the costs of, a regional notificatio  
40 center. Operators of subsurface installations who are members of,

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

6 ~~SEC. 5.~~

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

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

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

24 (c) When the excavation is proposed within 10 feet of a high  
25 priority subsurface installation, the operator of the high priority  
26 subsurface installation shall notify the excavator of the existence  
27 of the high priority subsurface installation prior to the legal  
28 excavation start date and time, and set up an onsite meeting at a  
29 mutually agreed upon time to determine actions or activities  
30 required to verify the location and prevent damage to the high  
31 priority subsurface installation. The excavator shall not begin  
32 excavating until after the completion of the onsite meeting.

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

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

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

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

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

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

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

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

36 ~~(k) When the excavation is complete, the excavator shall~~  
37 ~~eliminate or camouflage any temporary markings that remain for~~  
38 ~~45 days or more, unless a local ordinance indicates otherwise.~~

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1     ~~SEC. 6.~~

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

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

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

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

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

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

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

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

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

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

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

1 the area to be remarked is not the full extent of the original  
2 excavation, the excavator shall delineate the portion to be remarked.  
3 If the delineation markings are no longer reasonably visible, the  
4 excavator shall redelineate the area to be remarked. If remarks are  
5 requested, the operator shall have two working days, not including  
6 the date of request, to remark the subsurface installation.  
7 Excavation shall cease in the area where the remarks are requested.  
8 If the area to be remarked is not the full extent of the original  
9 excavation, the excavator shall delineate the portion to be remarked  
10 and provide a description of the area requested to be remarked on  
11 the ticket. The excavator shall provide a description for the area  
12 to be remarked that falls within the area of the original location  
13 request.

14 (c) Every operator may supply an electronic positive response  
15 through the regional notification center before the legal excavation  
16 start date and time. The regional notification center shall make  
17 those responses available.

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

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

33 ~~SEC. 7.~~

34 *SEC. 6.* Section 4216.4 of the Government Code is amended  
35 to read:

36 4216.4. (a)(1) Except as provided in paragraph (2), if an  
37 excavation is within the approximate location of a subsurface  
38 installation, the excavator shall ~~expose with hand tools to the depth~~  
39 ~~of the excavation~~ *determine the exact location of the subsurface*  
40 *installations within the tolerance zone, including any applicable*

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1 ~~clearance requirements, for the full length of the project. zone~~  
2 ~~using hand tools before using any power-driven excavation or~~  
3 ~~boring equipment within the approximate location of the subsurface~~  
4 ~~installations. In all cases the excavator shall use reasonable care~~  
5 ~~to prevent damaging subsurface installations.~~

6 (2)(A) An excavator may use a vacuum excavation device to  
7 expose subsurface installations within the tolerance zone if the  
8 operator has marked the subsurface installation, the excavator has  
9 contacted any operator whose subsurface installations may be in  
10 conflict with the excavation, and the operator has agreed to the  
11 use of a vacuum excavation device. An excavator shall inform the  
12 regional notification center of his or her intent to use a vacuum  
13 excavation device when obtaining a ticket.

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

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

28 (c) An excavator discovering or causing damage to a subsurface  
29 installation, including all breaks, leaks, nicks, dents, gouges,  
30 grooves, or other damage to subsurface installation lines, conduits,  
31 coatings, or cathodic protection, shall immediately notify the  
32 subsurface installation operator. The excavator may contact the  
33 regional notification center to obtain the contact information of  
34 the subsurface installation operator. If high priority subsurface  
35 installations are damaged and the operator cannot be contacted  
36 immediately, the excavator shall call 911 emergency services.

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

1     ~~SEC. 8.~~

2     *SEC. 7.* Section 4216.5 of the Government Code is amended  
3 to read:

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

10    ~~SEC. 9.~~

11    *SEC. 8.* Section 4216.6 of the Government Code is amended  
12 to read:

13    4216.6. (a)(1) Any operator or excavator who negligently  
14 violates this article is subject to a civil penalty in an amount not  
15 to exceed ten thousand dollars (\$10,000).

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

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

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

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

1 (c) The requirements of this article may also be enforced  
2 following a recommendation of the California Underground  
3 Facilities Safe Excavation Advisory Committee by a state or local  
4 agency, which may include the Attorney General or a district  
5 attorney, with jurisdiction over the activity or business undertaken  
6 in commission of the violation. The following agencies shall act  
7 to accept, amend, or reject the recommendations of the advisory  
8 committee as follows:

9 (1) The registrar of the Contractors' State License Board shall  
10 enforce ~~paragraph (1) of subdivision (a) of Section 4216.2 as~~  
11 ~~specified in Section 7110.7~~ the provisions of this article on  
12 contractors, as defined in Article 2 of Chapter 9 of Division 3 of  
13 the Business and Professions Code.

14 (2) The Public Utilities Commission ~~may enforce subdivisions~~  
15 ~~(a) and (b) of Section 4216.3 against operators of natural gas and~~  
16 ~~electric underground infrastructure, unless those operators are~~  
17 ~~municipal utilities.~~ shall enforce the provisions of this article on  
18 gas corporations, as defined in Section 222 of the Public Utilities  
19 Code, and electrical corporations, as defined in Section 218 of the  
20 Public Utilities Code.

21 (3) The Office of the State Fire Marshal ~~may enforce~~  
22 ~~subdivisions (a) and (b) of Section 4216.3 against operators of~~  
23 ~~hazardous liquid pipelines, unless those operators are municipal~~  
24 ~~utilities.~~ shall enforce the provisions of this article on operators  
25 of hazardous liquid pipeline facilities, as defined in Section 60101  
26 of Chapter 601 of Subtitle VIII of Title 49 of the United States  
27 Code.

28 (d) Statewide information provided by operators and excavators  
29 regarding facility events shall be compiled and made available in  
30 an annual report by regional notification centers and posted on the  
31 Internet Web sites of the regional notification centers

32 (e) For purposes of subdivision (d), the following terms have  
33 the following meanings:

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

36 (2) "Statewide information" means information submitted by  
37 operators and excavators using the California Regional Common  
38 Ground Alliance's Virtual Private Damage Information Reporting  
39 Tool. Supplied data shall comply with the Damage Information



1 Reporting Tool’s minimum essential information as listed in Best  
2 Practices Version 11.0 by the Common Ground Alliance.

3 ~~SEC. 10.~~

4 *SEC. 9.* Section 4216.7 of the Government Code is amended  
5 to read:

6 4216.7. (a) If a subsurface installation is damaged by an  
7 excavator as a result of failing to comply with Section 4216.2 or  
8 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing  
9 to comply with the operator’s requests to protect the subsurface  
10 installation as specified by the operator before the start of  
11 excavation, the excavator shall be liable to the operator of the  
12 subsurface installation for resulting damages, costs, and expenses  
13 to the extent the damages, costs, and expenses were proximately  
14 caused by the excavator’s failure to comply.

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

22 (c) If an operator of a subsurface installation has failed to  
23 comply with the provisions of Section 4216.3, including, but not  
24 limited to, the requirement to field mark the appropriate location  
25 of subsurface installations within two working days of notification  
26 has failed to comply with paragraph (2) of subdivision (a) of  
27 Section 4216.2, or has failed to comply with subdivision (b) of  
28 Section 4216.4, the operator shall be liable to the excavator who  
29 has complied with Sections 4216.2 and 4216.4 for damages,  
30 including liquidated damages, liability, losses, costs, and expenses  
31 resulting from the operator’s failure to comply with these specific  
32 requirements to the extent the damages, costs, and expenses were  
33 proximately caused by the operator’s failure to comply.

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

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

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

12 (f) For the purposes of this section, "inaccurate field mark"  
13 means a mark, or set of markings, made pursuant to Section 4216.3,  
14 that did not correctly indicate the approximate location of a  
15 subsurface installation affected by an excavation and includes the  
16 actual physical location of a subsurface installation affected by an  
17 excavation that should have been marked pursuant to Section  
18 4216.3 but was not.

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

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

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

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

30 ~~SEC. 11.~~

31 *SEC. 10.* Section 4216.8 of the Government Code is amended  
32 to read:

33 4216.8. This article does not apply to either of the following  
34 persons:

35 (a) An owner of residential real property, not engaged as a  
36 contractor or subcontractor licensed pursuant to Article 5  
37 (commencing with Section 7065) of Chapter 9 of Division 3 of  
38 the Business and Professions Code, who, as part of improving his  
39 or her principal residence or an appurtenance thereto, is performing  
40 or is having an excavation performed using hand tools that does

1 not require a permit issued by a state or local agency. A person  
2 described in this subdivision is not an “excavator” as defined in  
3 subdivision (h) of Section 4216, however this subdivision shall  
4 not discourage a person from voluntarily notifying a regional  
5 notification center pursuant to Section 4216.2, and does not relieve  
6 an operator of a subsurface facility from the obligation to locate  
7 and field mark pursuant to Section 4216.3 following the  
8 notification *This subdivision does not relieve a person performing*  
9 *excavation activities from a duty of reasonable care to prevent*  
10 *damage to subsurface installations.*

11 (b) Any person or private entity that leases or rents power  
12 operated or power-driven excavating or boring equipment,  
13 regardless of whether an equipment operator is provided for that  
14 piece of equipment or not, to a contractor or subcontractor licensed  
15 pursuant to Article 5 (commencing with Section 7065) of Chapter  
16 9 of Division 3 of the Business and Professions Code, if the signed  
17 rental agreement between the person or private entity and the  
18 contractor or subcontractor contains the following provision:

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

27  
28 ~~SEC. 12.~~

29 *SEC. 11.* Section 4216.9 of the Government Code is amended  
30 to read:

31 4216.9. (a) A permit to excavate issued by any local agency,  
32 as defined in Section 4216, or any state agency, shall not be valid  
33 unless the applicant has been provided an initial ticket by a regional  
34 notification center pursuant to Section 4216.2. For purposes of  
35 this section, “state agency” means every state agency, department,  
36 division, bureau, board, or commission, including the Department  
37 of Transportation.

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

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1     ~~SEC. 13.~~

2     ~~SEC. 12.~~ Section 4216.10 is added to the Government Code,  
3 to read:

4     4216.10. If the operator of a high-priority subsurface  
5 installation finds that the depth of the subsurface installation subject  
6 to agricultural activities described in subparagraph (A) of paragraph  
7 (2) of subdivision (g) of Section 4216 is insufficient to safely  
8 perform those activities, the operator of the high-priority subsurface  
9 installation shall send notification, by registered mail, to the  
10 landowner of the potential hazard and, within \_\_\_ days of that  
11 notification, shall access the site at a date agreed upon by the  
12 operator and the landowner to identify with permanent markers  
13 the location and depth of the high-priority subsurface installation.

14     ~~SEC. 14.~~

15     ~~SEC. 13.~~ Section 4216.12 is added to the Government Code,  
16 to read:

17     4216.12. (a)¶The California Underground Facilities Safe  
18 Excavation Advisory Committee is hereby created under, and shall  
19 be assisted by the staff of, the Contractors' State License Board  
20 in the Department of Consumer Affairs.

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

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

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

25     (3)¶Investigate possible violations of this article, as described  
26 in Section 4216.19.

27     (c) *Notwithstanding any other law, the repeal of this section*  
28 *renders the advisory committee subject to review by the*  
29 *appropriate policy committees of the Legislature.*

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

34     ~~SEC. 15.~~

35     ~~SEC. 14.~~ Section 4216.13 is added to the Government Code,  
36 to read:

37     4216.13. (a)¶The advisory committee shall be composed of  
38 nine members, of which ~~five~~ *four* shall be appointed by the  
39 Governor, ~~two~~ *three* shall be appointed by the Contractors' State  
40 License Board, one shall be appointed by the Speaker of the

1 Assembly, and one shall be appointed by the Senate Committee  
2 on Rules.

3 (b) ~~Three~~ *four* members appointed by the Governor shall be  
4 appointed, as follows:

5 (1) ~~Three~~ members shall have knowledge and expertise in the  
6 operation of subsurface installations. Of those three members, one  
7 shall have knowledge and expertise in the operation of the  
8 subsurface installations of a municipal utility. *At least one of the*  
9 *three members shall have knowledge and experience in the*  
10 *operation of high priority subsurface installations.*

11 (2) ~~One~~ member shall have knowledge and expertise in  
12 subsurface installation location and marking and shall not be under  
13 the direct employment of an operator.

14 (3) ~~One member shall have knowledge and expertise in operating~~  
15 ~~a regional notification center.~~

16 (c) ~~Two~~ *three* members appointed by the Contractors' State  
17 License Board shall have knowledge and experience in contract  
18 excavation for employers who are not operators of subsurface  
19 installations. *Of the three members, one member shall be a general*  
20 *engineering contractor, one member shall be a general building*  
21 *contractor, and one member shall be a specialty contractor. For*  
22 *the purposes of this section, the terms "general engineering*  
23 *contractor," "general building contractor," and "specialty*  
24 *contractor" shall have the meanings given in Article 4*  
25 *(commencing with Section 7055) of Chapter 9 of Division 3 of the*  
26 *Business and Professions Code.*

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

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

34 (f) *The advisory committee may invite one director of operations*  
35 *of a regional notification center to be a nonvoting ex officio*  
36 *member of the advisory committee.*

37 ~~SEC. 16.~~

38 *SEC. 15.* Section 4216.14 is added to the Government Code,  
39 to read:

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1 4216.14. (a) The term of a member of the advisory committee  
2 is two years. Of the first members of the advisory committee, four  
3 members, determined by lot, shall serve for one year so that the  
4 terms of the members shall be staggered.

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

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

10 (d) Upon the recommendation of the advisory committee, the  
11 Governor may remove a member appointed by the Governor for  
12 incompetence or misconduct.

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

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

19 (g) A member of the advisory committee shall not serve more  
20 than two consecutive years as the chairperson of the advisory  
21 committee.

22 ~~SEC. 17.~~

23 *SEC. 16.* Section 4216.15 is added to the Government Code,  
24 to read:

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

29 ~~SEC. 18.~~

30 *SEC. 17.* Section 4216.16 is added to the Government Code,  
31 to read:

32 4216.16. The advisory committee may obtain funding for its  
33 operational expenses from:

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

36 (b) A federal or state grant.

37 (c) A fee charged to members of the regional notification centers  
38 not to exceed the reasonable regulatory cost incident to enforcement  
39 of this article.

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

3 (e) Any other source.

4 ~~SEC. 19.~~

5 *SEC. 18.* Section 4216.17 is added to the Government Code,  
6 to read:

7 4216.17. (a) In order to understand the needs for education  
8 and outreach, and to facilitate discussion on how to coordinate  
9 those efforts, the advisory committee shall annually convene a  
10 meeting with state and local government agencies, California  
11 operators, regional notification centers, and trade associations that  
12 fund outreach and education programs that encourage safe  
13 excavation practices.

14 (b) The advisory committee shall use the annual meeting  
15 described in subdivision (a) to determine the areas in which  
16 additional education and outreach efforts should be targeted. The  
17 advisory committee shall grant the use of the moneys that may be  
18 apportioned to it by the Public Utilities Commission pursuant to  
19 paragraph (1) of subdivision (b) of Section 320.5 of the Public  
20 Utilities Code to fund public education and outreach programs  
21 designed to promote excavation safety around ~~underground~~  
22 *facilities subsurface installations* and target towards specific  
23 excavator groups.

24 ~~SEC. 20.~~

25 *SEC. 19.* Section 4216.18 is added to the Government Code,  
26 to read:

27 4216.18. ~~On or before December 31, 2016, the~~ *The* advisory  
28 committee shall develop a standard or set of standards ~~that~~  
29 ~~addresses the evidence necessary~~ *relevant to safety practices in*  
30 *excavating around subsurface installations and procedures and*  
31 *guidance in encouraging those practices. The standard or set of*  
32 *standards are not intended to replace other relevant standards,*  
33 *including the best practices of the Common Ground Alliance, but*  
34 *are to inform areas currently without established standards. The*  
35 *standard or set of standards shall address all of the following:*

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

38 (b) *Guidance for recommended sanctions against excavators*  
39 *and operators for violations of the article designed to improve*  
40 *safety. Sanctions may include notification and information letters,*

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1 *direction to attend relevant education, and financial penalties.*  
2 *The guidance shall state the circumstances under which the*  
3 *investigation and a recommendation for sanction shall be*  
4 *transmitted to a state or local agency, which may include the*  
5 *Attorney General or a district attorney, for enforcement pursuant*  
6 *to subdivision (b) of Section 4216.20 and may allow for a decision*  
7 *not to transmit if the investigation was initiated by a complaint,*  
8 *the parties have settled the matter, and the advisory committee*  
9 *has determined that further enforcement is not necessary as a*  
10 *deterrent to maintain the integrity of subsurface installations and*  
11 *to protect the safety of excavators and the public.*  
12 *Recommendations for sanctions shall be graduated and shall*  
13 *consider all of the following:*

- 14 *(1) The type of violation and its gravity.*
- 15 *(2) The degree of culpability.*
- 16 *(3) The operator's or excavator's history of violations.*
- 17 *(4) The operator's or excavator's history of work conducted*  
18 *without violations.*
- 19 *(5) The efforts taken by the violator to prevent violation, and,*  
20 *once the violation occurred, the efforts taken to mitigate the safety*  
21 *consequences of the violation.*

22 *(c) What constitutes reasonable care, as required by paragraph*  
23 *(1) of subdivision (a) of Section 4216.4, in conducting deep*  
24 *excavations within the tolerance zone, considering the need to*  
25 *balance the protection of subsurface installations by the use of*  
26 *hand tools within the tolerance zone with the safety concerns of*  
27 *trench work.*

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

32 ~~SEC. 21.~~

33 ~~SEC. 20.~~ Section 4216.19 is added to the Government Code,  
34 to read:

35 4216.19. (a) The advisory committee shall investigate possible  
36 violations of this article, including complaints from affected parties  
37 and members of the public.

38 (b) In furthering the purposes of this article, the advisory  
39 committee may authorize staff to use compliance audits, including  
40 field audits, and investigations of incidents and near-misses.



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

2 ~~SEC. 22.~~

3 *SEC. 21.* Section 4216.20 is added to the Government Code,  
4 to read:

5 4216.20. (a) Upon the completion of an investigation of a  
6 possible violation of this article, the advisory committee shall  
7 inform the following parties of the result of the investigation,  
8 including any findings of probable violation

9 (1) The party or parties whose activities were the subject of the  
10 investigation.

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

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

15 (b) If the advisory committee, upon the completion of an  
16 investigation, finds a probable violation of the article, the advisory  
17 committee shall *may* transmit the investigation results and any  
18 recommended penalty to the state or local agency with jurisdiction  
19 over the activity or business undertaken in commission of the  
20 violation.

21 ~~SEC. 23.~~

22 *SEC. 22.* Section 4216.21 is added to the Government Code,  
23 to read:

24 4216.21. (a) For an investigation that the advisory committee  
25 undertakes as a result of a complaint of a violation of Sections  
26 4216.2, 4216.3, or 4216.4, the complainant shall not file an action  
27 in court for damages based on those violations until the  
28 investigation is complete, or for 120 days after the investigation  
29 begins, whichever comes first, during which time, applicable  
30 statutes of limitation shall be tolled.

31 (b) If a complainant files an action in court against a person for  
32 damages based upon violations of Sections 4216.2, 4216.3, or  
33 4216.4, after the completion of an advisory committee investigation  
34 in which the person was found not to have violated the article, the  
35 complainant shall also notify the advisory committee when the  
36 action is filed

37 (c) This section only applies to a claim for damages to a  
38 subsurface installation.

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1 ~~SEC. 24.~~

2 *SEC. 23.* Section 4216.22 is added to the Government Code,  
3 to read:

4 4216.22. (a) ~~Notwithstanding~~ Section 10231.5, the advisory  
5 committee shall report to the Governor and the Legislature on or  
6 before February 1, 2017, and each year thereafter, on the activities  
7 of the advisory committee and any recommendations of the  
8 advisory committee.

9 (b) ~~A~~ report to be submitted pursuant to subdivision (a) shall  
10 be submitted in compliance with Section 9795.

11 ~~SEC. 25.~~

12 *SEC. 24.* Section 320.5 is added to the Public Utilities Code,  
13 to read:

14 320.5. (a) ~~The~~ Safe Energy Infrastructure and Excavation Fund  
15 is hereby established in the State Treasury. Moneys deposited into  
16 the fund shall be used to cover the administrative expenses of the  
17 California Underground Facilities Safe Excavation Advisory  
18 Committee, upon appropriation by the Legislature. Additionally,  
19 the moneys may be used as described in subdivision (b).

20 (b) ~~Up to fi e~~ hundred thousand dollars (\$500,000) of moneys  
21 in the fund that are in excess of the moneys necessary for the  
22 administrative expenses of the California Underground Facilities  
23 Safe Excavation Advisory Committee may, upon appropriation  
24 by the Legislature, be apportioned by the commission for the  
25 following purposes:

26 (1) ~~The~~ California Underground Facilities Safe Excavation  
27 Advisory Committee, to fund public education and outreach  
28 programs designed to promote excavation safety around  
29 ~~underground facilities~~ *subsurface installations* and targeted toward  
30 specific excavator groups.

31 (2) ~~The~~ commission, to further a workforce development  
32 program, which shall be consistent with its equal employment  
33 opportunity program, that recruits and trains safety staff to perform  
34 the highest quality gas and electric utility inspections, audits,  
35 accident investigations, and data tracking and analysis. Moneys  
36 used for training purposes may not be used to fulfill existing federal  
37 or state training requirements but, instead, shall only be used for  
38 training in addition to those requirements. The commission may  
39 only apportion moneys for this purpose upon commission approval  
40 of the workforce development program at a meeting of the

1 commission. No more than one hundred fifty thousand dollars  
2 (\$150,000) of the Safe Energy Infrastructure and Excavation Fund  
3 may be used for this purpose.

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

6 ~~SEC. 26.~~

7 *SEC. 25.* Section 971 is added to the Public Utilities Code, to  
8 read:

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

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

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

25 (3) Any other information that the commission shall require.

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

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

34 ~~SEC. 27.~~

35 *SEC. 26.* Section 1702.5 of the Public Utilities Code is amended  
36 to read:

37 1702.5. (a) The commission shall, in an existing or new  
38 proceeding, develop and implement a safety enforcement program  
39 applicable to gas corporations and electrical corporations that  
40 includes procedures for monitoring, data tracking and analysis,

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1 and investigations, as well as issuance of citations by commission  
2 staff, under the direction of the executive director. The enforcement  
3 program shall be designed to improve gas and electrical system  
4 safety through the enforcement of applicable law, or order or rule  
5 of the commission related to safety using a variety of enforcement  
6 mechanisms, including the issuance of corrective actions, orders,  
7 and citations by designated commission staff, and recommendations  
8 for action made to the commission by designated commission staff.

9 (1) When considering the issuance of citations and assessment  
10 of penalties, the commission staff shall take into account voluntary  
11 reporting of potential violations, voluntary removal or resolution  
12 efforts undertaken, the prior history of violations, the gravity of  
13 the violation, and the degree of culpability.

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

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

19 (b) The commission shall develop and implement an appeals  
20 process to govern the issuance and appeal of citations or resolution  
21 of corrective action orders issued by the commission staff. The  
22 appeals process shall provide the respondent a reasonable period  
23 of time, upon receiving a citation, to file a notice of appeal, shall  
24 afford an opportunity for a hearing, and shall require the hearing  
25 officer to expeditiously provide a draft disposition.

26 (c) The commission shall, within a reasonable time set by the  
27 commission, conclude a safety enforcement action with a finding  
28 of violation, a corrective action order, a citation, a determination  
29 of no violation, approval of the corrective actions undertaken by  
30 the gas corporation or electrical corporation, or other action. The  
31 commission may institute a formal proceeding regarding the alleged  
32 violation, potentially resulting in additional enforcement action,  
33 regardless of any enforcement action taken at the commission staff  
34 level.

35 (d) The commission shall implement the safety enforcement  
36 program for gas safety by July 1, 2014, and implement the safety  
37 enforcement program for electrical safety no later than January 1,  
38 2015.

39 (e) This section does not apply to an exempt wholesale  
40 generator, a qualifying small power producer, or qualifying

1 cogenerator, as defined in Section 796 of Title 16 of the United  
2 States Code and the regulations enacted pursuant thereto. Nothing  
3 in this section affects the commission's authority pursuant to  
4 Section 761.3.

5 ~~(f) Moneys~~ *Notwithstanding any other law, moneys* collected  
6 as a result of the issuance of citations pursuant to this section shall  
7 be deposited in the Safe Energy Infrastructure and Excavation  
8 Fund.

9 ~~SEC. 28.~~

10 *SEC. 27.* No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.



# AGENDA ITEM F

## Future Agenda Items







**AGENDA ITEM G**

Tentative

2015-16 Board Meeting Schedule

September 3, 2015 ..... San Diego  
December 2015..... To Be Determined



## **AGENDA ITEM H**

Adjournment