

Senate Bill No. 1359

Passed the Senate August 29, 2006

Secretary of the Senate

Passed the Assembly August 24, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4216, 4216.2, 4216.3, 4216.4, and 4216.7 of the Government Code, relating to excavation around subsurface installations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1359, Torlakson. Subsurface installations: excavations.

(1) Existing law requires planned excavations near subsurface installations to be conducted in a specified manner that protects the subsurface installations from damage. Existing law requires an excavator to determine the exact location of subsurface installations using specified tools. If the excavator still cannot locate the exact position of the installation, existing law then requires the excavator to request the operator to provide specified additional information to help determine the exact location of the installation. Existing law provides that an excavator who has failed to comply with regulations, as provided, is liable for any damages unless the owner or operator has not complied with regulations, as provided.

This bill would require the operator, if the excavation is within 10 feet of a high-priority subsurface installation, as defined, to notify the excavator of the installation, as specified, and to hold an onsite meeting with the operator to verify the location of the installation. This bill would allow only a qualified person, as defined, to perform subsurface installation locating activities, require a qualified person performing subsurface installation locating activities to use specified locating activities and devices, and require the operator to maintain plans for the subsurface installations. This bill also would require the regional notification center to provide an excavator with the operator's contact information and require an excavator to immediately notify the operator or 911 emergency services, if the operator cannot be contacted, when an excavator discovers or causes damage to a subsurface installation. This bill would also provide that any operator who fails to provide the position of a subsurface installation will be liable for any resulting costs, as specified, that the excavator may encounter as a result of the discrepancy. This

bill would provide that an excavator will be liable for any resulting costs, as specified, for damages to a subsurface installation, for which the operator provided the position of, that are caused by the excavator.

(2) Existing law authorizes an excavator to determine the exact location of subsurface installations that are in conflict with the excavation before using any vacuum excavation devices or power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, provided there is an express written mutual agreement, as specified, and with a specified exception. If there is no express agreement, the excavator is required to use hand tools to determine the location of subsurface installations, as specified.

This bill would instead provide that, if documented notice of the intent to use vacuum excavation devices, or power-operated or power-driven excavating or boring equipment has been provided to the subsurface installation operator or operators and it is mutually agreeable to the operator or operators of the subsurface installation and the excavator, the excavator may use vacuum excavation devices or power-operated or power-driven excavating or boring tools within the approximate location of the subsurface installation.

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

SECTION 1. Section 4216 of the Government Code is amended to read:

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

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

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

(c) Except as provided in Section 4216.8, “excavator” means any person, firm, contractor or subcontractor, owner, operator,

utility, association, corporation, partnership, business trust, public agency, or other entity which, with their, or his or her, own employees or equipment performs any excavation.

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

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

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

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

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

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

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

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

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

SEC. 2. Section 4216.2 of the Government Code is amended to read:

4216.2. (a) (1) Except in an emergency, any person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days, but not more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(2) When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, as such date and time are authorized pursuant to paragraph (1) of subdivision (a) of Section 4216.2. The excavator and operator or its representative shall conduct an onsite meeting at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installations prior to start time.

(b) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator and, if practical, the

excavator shall delineate with white paint or other suitable markings the area to be excavated.

(c) The regional notification center shall provide an inquiry identification number to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. An inquiry identification number may be validated for more than 28 days when mutually agreed between the excavator and any member operator so notified that has a subsurface installation in the area of the proposed excavation; and, it may be revalidated by notification to the regional notification center by the excavator prior to the time of its expiration.

(d) A record of all notifications by excavators and operators to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(e) As used in this section, the delineation is practical when any of the following conditions exist:

(1) When delineating a prospective excavation site with white paint could not be misleading to those persons using affected streets and highways.

(2) When the delineation could not be misinterpreted as a traffic or pedestrian control.

(3) Where an excavator can determine the exact location of an excavation prior to the time an area has been field marked pursuant to Section 4216.3.

(4) Where delineation could not be construed as duplicative.

(f) Where an excavator makes a determination that it is not practical to delineate the area to be excavated, the excavator shall contact the regional notification center to advise the operators that the excavator shall identify the area to be excavated in another manner sufficient to enable the operator to determine the area of the excavation to be field marked pursuant to Section 4216.3.

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

4216.3. (a) (1) Any operator of a subsurface installation who receives timely notification of any proposed excavation work in accordance with Section 4216.2 shall, within two working days of that notification, excluding weekends and holidays, or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the operator and the excavator, locate and field mark the approximate location and, if known, the number of subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available either in the records of the operator or as determined through the use of standard locating techniques other than excavating, otherwise advise the person who contacted the center of the location of the operator's subsurface installations that may be affected by the excavation, or advise the person that the operator does not operate any subsurface installations that would be affected by the proposed excavation.

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

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

(4) Operators of high priority subsurface installations shall maintain and preserve all plans and records for its subsurface installations.

(b) Every operator of a subsurface installation who field marks the location of a subsurface installation shall make a reasonable effort to make field markings in conformance with the uniform color code of the American Public Works Association.

(c) If, at any time during an excavation for which there is a valid inquiry identification number, an operator's field markings are no longer reasonably visible, the excavator shall contact the appropriate regional notification center. The regional notification center shall contact any member, if known, who has a subsurface installation in the area of the excavation. Upon receiving timely notification or renotification pursuant to this subdivision, the operator shall re-locate and re-mark, within two working days, those subsurface installations that may be affected by the

excavation to the extent necessary, in conformance with this section.

(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to comply with this section. The notification shall include the inquiry identification number issued by the regional notification center. A record of all notifications received pursuant to this subdivision shall be maintained by the regional notification center for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (d) of Section 4216.2.

SEC. 4. Section 4216.4 of the Government Code is amended to read:

4216.4. (a) When the excavation is within the approximate location of subsurface installation, the excavator shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as provided by the operators in accordance with Section 4216.3 before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement. If documented notice of the intent to use vacuum excavation devices, or power-operated or power-driven excavating or boring equipment, has been provided to the subsurface installation operator or operators and it is mutually agreeable with the operator or operators and the excavator, the excavator may utilize vacuum excavation devices, or power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth.

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. The regional notification center shall provide the excavator with the contact phone number of the subsurface installation operator.

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

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

4216.7. (a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2 or 4216.4, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator prior to the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages, costs, and expenses to the extent the damages, costs, and expenses were proximately caused by the excavator's failure to comply.

(b) If the operator of a subsurface installation has failed to comply with the regional notification center system requirements of Section 4216.1, that operator shall forfeit his or her claim for damages to his or her subsurface installation, arising from the excavation, against an excavator who has complied with the requirements of Section 4216.2 to the extent damages were proximately caused by the operator's failure to comply.

(c) If an operator of a subsurface installation has failed to comply with the provisions of Section 4216.3, has failed to comply with paragraph (2) of subdivision (a) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable to the excavator who has complied with Sections 4216.2 and 4216.4 for damages, costs, and expenses resulting from the operator's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the operator's failure to comply.

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

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

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

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

Approved _____, 2006

Governor