

## Senate Bill No. 865

### CHAPTER 307

An act to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.6, 4216.12, and 4216.17 of the Government Code, relating to excavations.

[Approved by Governor September 29, 2020. Filed with  
Secretary of State September 29, 2020.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 865, Hill. Excavations: subsurface installations.

Existing law, the Dig Safe Act of 2016, creates the California Underground Facilities Safe Excavation Board within the Office of the State Fire Marshal. The act subjects the board to review by the appropriate policy committees of the Legislature.

This bill would provide that the board is also known as the “Dig Safe Board” and would make conforming changes to references in the act. The bill would require the board, on and after January 1, 2022, to be within the Office of Energy Infrastructure Safety within the Natural Resources Agency, as established pursuant to the California Energy Infrastructure Safety Act. The bill would require policy committee review at least once every 3 years.

The act requires the board to perform various duties relating to the protection of subsurface installations. The act generally requires an operator of a subsurface installation to become a member of, participate in, and share in the costs of, a regional notification center. The act requires a record of all notifications by an excavator or operator to the regional notification center to be maintained for a period of not less than 3 years and available for inspection as specified. The act requires an operator to maintain certain records on subsurface installations. The act establishes prescribed notification procedures for an excavator who discovers or damages a subsurface installation.

This bill would require a regional notification center to provide notification records to the board quarterly and provide notifications of damage to the board within 5 business days of receipt at the regional notification center. The bill would require that, commencing January 1, 2023, all new subsurface installations, except for specified oil and gas flowlines 3 inches or less in diameter that are located within the administrative boundaries of an oil field, be mapped using a geographic information system and maintained as permanent records of the operator. The bill would require the excavator to notify the regional notification center within 48 hours of discovering or causing damage.

The act subjects any operator or excavator who violates the act to a civil penalty. The act authorizes enforcement by certain entities, including specified agencies following a recommendation of the board against

contractors, telephone corporations, gas corporations, electrical corporations, water corporations, operators of hazardous liquid pipeline facilities, and local agencies, as specified. The act authorizes the board to enforce its provisions on prescribed persons not subject to enforcement by the specified agencies, commencing on July 1, 2020.

This bill would also authorize enforcement of the act by the specified agencies through their own investigations. The bill would authorize the board to collect penalties imposed on persons subject to its jurisdiction.

The act requires the board, upon appropriation by the Legislature, to grant the use of the moneys in the Safe Energy Infrastructure and Excavation Fund to fund prescribed public education and outreach programs designed to promote excavation safety around subsurface installations.

This bill would delete those education and outreach program provisions and, instead, require the board, for violations that are neither egregious nor persistent, to offer violators the option of completing an educational course in lieu of paying a fine. The bill would make moneys in the fund available to the board to fund the educational course, subject to appropriation by the Legislature.

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

SECTION 1. Section 4216 of the Government Code is amended to read: 4216. As used in this article, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) “Legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification. For excavation in an area of continual excavation, “legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification.

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

(n) (1) “Locate and field mark” means to indicate the existence of any owned or maintained subsurface installations by using the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the

Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association. If there is a conflict between the marking practices in the guidelines and this article, this article shall control.

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

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

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

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

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

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

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

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

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

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

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

(v) “Working day” for the purposes of determining excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the internet website of the regional notification center.

SEC. 2. Section 4216.1 of the Government Code is amended to read:

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

and share in the costs of, a regional notification center. Operators of subsurface installations who are members of, participate in, and share in, the costs of a regional notification center, including, but not limited to, the Underground Service Alert—Northern California or the Underground Service Alert—Southern California are in compliance with this section and Section 4216.9. A regional notification center shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

SEC. 3. Section 4216.2 of the Government Code is amended to read:

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

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

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

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be clearly seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

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

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

(g) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation pursuant to subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c).

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

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

SEC. 4. Section 4216.3 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (1) (A) On and after January 1, 2021, every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time. Upon a showing of good cause by an operator, the board may extend the time by which the operator is required to comply with this requirement. The board shall not grant an

extension beyond December 31, 2021. The board shall determine which facts or circumstances constitute good cause.

(B) The regional notification center shall make the responses required by subparagraph (A) available to the excavator.

(2) The regional notification centers shall annually report to the board regarding their continual technological development in their roles of facilitating communication between excavators and operators in a manner that enhances safety, accountability, and efficiency.

(d) (1) On or before January 1, 2021, the board shall adopt regulations to implement subparagraph (A) of paragraph (1) of subdivision (c). The initial adoption, amendment, or repeal of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6, and the board is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1. After the initial adoption, amendment, or repeal of an emergency regulation pursuant to this section, the board shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1.

(2) It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, to authorize the board to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

(e) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. The regional notification center shall maintain a record of all notifications received pursuant to this subdivision for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.

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

SEC. 5. Section 4216.4 of the Government Code is amended to read:

4216.4. (a) (1) Except as provided in paragraph (2), if an excavation is within the tolerance zone of a subsurface installation, the excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations. In all cases the excavator shall use reasonable care to prevent damaging subsurface installations.

(2) (A) An excavator may use a vacuum excavation device to expose subsurface installations within the tolerance zone if the operator has marked the subsurface installation, the excavator has contacted any operator whose

subsurface installations may be in conflict with the excavation, and the operator has agreed to the use of a vacuum excavation device. An excavator shall inform the regional notification center of their intent to use a vacuum excavation device when obtaining a ticket.

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

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

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

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

(c) (1) An excavator 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 the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its internet website or the telephone line recorded message.

(2) An excavator shall call 911 emergency services upon discovering or causing damage to either of the following:

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

(B) A high priority subsurface installation of any kind.

(3) An excavator discovering or causing damage shall notify the regional notification center within 48 hours of discovering or causing the damage.

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

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

SEC. 6. Section 4216.6 of the Government Code is amended to read:

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

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

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

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

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

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

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

(2) The Public Utilities Commission shall enforce this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code.

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

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

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

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

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available in an annual report by regional notification centers and posted on the internet websites of the regional notification centers and shall be made available to the board upon request.

(h) For purposes of subdivision (g), the following terms have the following meanings:

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

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

SEC. 7. Section 4216.12 of the Government Code is amended to read:

4216.12. (a) The Dig Safe Board is hereby created under, and shall be assisted by the staff of, the Office of the State Fire Marshal until January 1, 2022. On and after January 1, 2022, the board shall be within the Office of Energy Infrastructure Safety within the Natural Resources Agency pursuant to Part 7.3 (commencing with Section 15470) of Division 3 of Title 2.

(b) The board shall perform the following tasks:

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

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

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

(4) Enforce this article to the extent authorized by subdivision (e) of Section 4216.6.

(c) Notwithstanding any other law, on and after January 1, 2020, the board shall be subject to review by the appropriate policy committees of the Legislature at least once every three years.

SEC. 8. Section 4216.17 of the Government Code is amended to read:

4216.17. (a) The board shall annually convene a meeting for the following purposes:

(1) To understand the existing needs for education and outreach, including to those groups with the highest awareness and education needs, including, but not limited to, homeowners.

(2) To facilitate discussion on how to coordinate existing education and outreach efforts with state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices.

(b) In addition to state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices, the meeting pursuant to subdivision (a) shall include representatives of groups that may be the target of those outreach and education efforts.

(c) For violations that are neither egregious nor persistent, the board shall offer violators the option of completing an educational course in lieu of paying a fine. To develop the programming for the educational option, the board may contract with a third party or create the curriculum itself.

(d) Upon appropriation by the Legislature, moneys in the Safe Energy Infrastructure and Excavation Fund shall be available to the board to fund the educational course developed pursuant to subdivision (c).