
A BILL FOR AN ACT

RELATING TO ADVANCE WARNING FOR EXCAVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 269E-2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to be appropriately
4 inserted and to read:

5 "Locator" means any utility locating company, whether
6 employed in-house by an operator or contracted third-party
7 locator retained or hired to locate a subsurface installation.

8 "Release" means the escape of any flammable, toxic,
9 hazardous, or corrosive gas or liquid due to damage to a
10 subsurface installation resulting from excavation."

11 2. By amending the definitions of "emergency" and
12 "excavation" to read:

13 "Emergency" means a release or sudden, unexpected
14 occurrence involving a clear and imminent danger, demanding
15 immediate action to prevent or mitigate loss of or damage to
16 life, health, property, or essential public services.



"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, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging.

"Excavation" shall not include any operation in which earth, rock, or other material of less than twelve inches in the ground is moved, removed, or otherwise displaced by means of hand tools~~[, equipment, or explosives]~~ as part of an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families."

SECTION 2. Section 269E-9, Hawaii Revised Statutes, is amended to read as follows:

"[+]§269E-9[+] Identification of subsurface installations by operator. (a) Any operator who receives timely notification from the center of any proposed excavation work pursuant to



1 section 269E-7(b) shall within five working days of that
2 notification or before the start of the excavation work,
3 whichever is later, or at a later time mutually agreeable to the
4 operator and the excavator[+], in writing:

5 (1) Advise the excavator that the operator does not
6 operate any subsurface installations that may be
7 affected by the excavation;

8 (2) Advise the excavator of the approximate location of
9 the operator's subsurface installations that may be
10 affected by the excavation to the extent and degree of
11 accuracy that the information is available in the
12 records of the operator;

13 (3) Make available to the excavator, for inspection and
14 copying at the excavator's expense, information in
15 that specific operator's or agency's records on the
16 approximate location of that specific operator's or
17 agency's subsurface installations that may be affected
18 by the excavation to the extent and degree of accuracy
19 that the information is available in that specific
20 operator's or agency's records; or



(4) Locate and field mark in conformance with the American Public Works Association Uniform Color Code the approximate location and the number of subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available as determined through the use of standard locating techniques or based on the records of the operator.

The operator shall promptly notify the center when the operator has fulfilled the requirements of this section. After receiving this notification from all affected operators, the center shall promptly provide notice to the excavator that all affected operators have fulfilled the requirements of this section.

Any locator acting on behalf of an operator and failing to perform the duties imposed by this chapter shall be subject to the liabilities in this section and the civil penalties in section 269E-14.

(b) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number."



SECTION 3. Section 269E-12, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If the damage to a subsurface installation [~~creates an emergency situation,~~] causes the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the [~~excavator~~] person responsible shall:

(1) Immediately notify the enhanced 911 emergency service and the operator of the facility; and

(2) Minimize the hazard until the arrival of the enhanced 911 emergency service authority or the operator."

SECTION 4. Section 269E-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a), (b), and (c) to read:

"(a) An action for the enforcement of penalties pursuant to this chapter shall be brought before the commission by the State, county, excavator, locator, or any operator.

(b) Any excavator, locator, or operator who negligently violates, neglects, or fails in any particular instance to conform to or comply with any requirement of this chapter or any order or rule of the commission:



1 (1) Shall be subject to a civil penalty not to exceed
2 \$5,000 per day for each day such violation, neglect,
3 or failure continues, to be assessed by the commission
4 after a hearing in accordance with chapter 91;
5 provided that the maximum penalty for related
6 violations arising out of the same act, omission, or
7 occurrence shall not exceed \$100,000; and

8 (2) May be required, at the expense of the violator, to
9 participate in an educational program conducted by the
10 center; provided that any excavator who negligently
11 violates section 269E-7(a) shall be required, at the
12 expense of the excavator, to participate in an
13 educational program conducted by the center.

14 (c) Upon written application filed within fifteen days
15 after service of an order imposing a civil penalty pursuant to
16 this section, the commission may remit or mitigate such penalty
17 upon such terms as it deems proper. In determining whether such
18 penalty should be remitted or mitigated, the commission may
19 consider:

20 (1) The gravity of the violation;



(2) Whether the excavator, locator, or operator charged with the violation attempted in good faith to comply with this chapter, before and after notification of the violation; and

(3) Any history of previous violations of this chapter by the operator, locator, or excavator."

2. By amending subsection (f) to read:

"(f) Notwithstanding any other law to the contrary, this chapter shall not affect any remedies, civil or criminal, otherwise provided by law. This chapter, and compliance therewith, shall not be construed as altering or mitigating any liabilities, responsibilities, or obligations imposed by law, rule, agreement, or contract, or as affording any immunity or protection from claims for injuries or damages relating to the excavation. This chapter does not expressly transfer, and shall not be deemed to imply the transfer of, any liability between operators, locators, and excavators. No insurance policy shall provide coverage for any civil penalties imposed under this chapter."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on January 1, 2050.

2



Report Title:

One Call Center; Excavation; Residential Properties; Locators

Description:

Applies the existing advance warning requirements to excavators operating on residential properties and locators. Specifies the situations that trigger the requirement to notify emergency services and minimize a hazard. Effective 1/1/2050. (HD1)

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