

JAN 26 2022

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# A BILL FOR AN ACT

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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 new definitions to be appropriately inserted  
4 and to read as follows:

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 as follows:

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.

17       "Excavation" means any operation in which earth, rock, or  
18 other material in the ground is moved, removed, or otherwise

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1 displaced by means of tools, equipment, or explosives, including  
2 but not limited to the following: grading, trenching, digging,  
3 ditching, boring, drilling, auguring, tunneling, scraping cable  
4 or pipe plowing and driving, demolition, and dredging.

5 "Excavation" shall not include any operation in which earth,  
6 rock, or other material of less than twelve inches in the ground  
7 is moved, removed, or otherwise displaced by means of hand  
8 ~~tools[, equipment, or explosives]~~ as part of an existing  
9 principal place of residence for one or two families, or  
10 improving or constructing an appurtenance thereto, on a parcel  
11 of land two acres or less in size, zoned for residential use,  
12 which is used or occupied or is developed, devoted, intended, or  
13 permitted to be used or occupied as a principal place of  
14 residence for one or two families~~[,]~~, if the excavation is  
15 performed by the person who owns or occupies the property on  
16 which the excavation is being performed."

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

19 "[~~§~~]**§269E-9[~~§~~]** **Identification of subsurface installations**  
20 **by operator.** (a) Any operator who receives timely notification  
21 from the center of any proposed excavation work pursuant to  
22 section 269E-7(b) shall within five working days of that

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notification or before the start of the excavation work,  
whichever is later, or at a later time mutually agreeable to the  
operator and the excavator[+], in writing:

- (1) Advise the excavator that the operator does not  
operate any subsurface installations that may be  
affected by the excavation;
- (2) Advise the excavator of the approximate location of  
the operator's subsurface installations that may be  
affected by the excavation to the extent and degree of  
accuracy that the information is available in the  
records of the operator;
- (3) Make available to the excavator, for inspection and  
copying at the excavator's expense, information in  
that specific operator's or agency's records on the  
approximate location of that specific operator's or  
agency's subsurface installations that may be affected  
by the excavation to the extent and degree of accuracy  
that the information is available in that specific  
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

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1           installations that may be affected by the excavation  
2           to the extent and degree of accuracy that the  
3           information is available as determined through the use  
4           of standard locating techniques or based on the  
5           records of the operator.

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

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

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

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

21          "(f) If the damage to a subsurface installation [~~creates~~  
22          ~~an emergency situation,~~] causes the escape of any flammable,

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1 toxic, hazardous, or corrosive gas or liquid, the [excavator]  
2 person responsible shall:

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

5 (2) Minimize the hazard until the arrival of the enhanced  
6 911 emergency service authority or the operator."

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

9 "[~~f~~]**S269E-14**[~~f~~] **Penalties.** (a) An action for the  
10 enforcement of penalties pursuant to this chapter shall be  
11 brought before the commission by the State, county, excavator,  
12 locator, or any operator.

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

17 (1) Shall be subject to a civil penalty not to exceed  
18 \$5,000 per day for each day such violation, neglect,  
19 or failure continues, to be assessed by the commission  
20 after a hearing in accordance with chapter 91;  
21 provided that the maximum penalty for related

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violations arising out of the same act, omission, or occurrence shall not exceed \$100,000; and

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

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

(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.

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1 (d) If any penalties imposed pursuant to this section are  
2 not paid or complied with within such period as the commission  
3 may direct, the attorney general shall institute a civil action  
4 in circuit court for compliance of the same.

5 (e) In addition to civil penalties imposed, the  
6 nonprevailing party shall reimburse the prevailing party for  
7 legal fees and costs incurred by the prevailing party.

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

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

22 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: AMM N. V. i

BY REQUEST



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**Report Title:**

One Call Center; Excavation

**Description:**

Applies the existing advance warning requirements to excavators operating on residential properties and clarifies various excavation requirements and reporting procedures.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO ADVANCE WARNING FOR EXCAVATION.

PURPOSE: To apply the existing advance warning requirements to excavators operating on residential properties and clarify various excavation requirements and reporting procedures.

MEANS: Amend sections 269E-2, 269E-9, 269E-12(f), and 269E-14, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Excavators are currently required to call the One Call Center, as set forth in chapter 269E, HRS, prior to commencing excavation. This requirement provides the opportunity for the One Call Center to check for pipelines or similar infrastructure where an individual or organization plans to dig, in order to avoid accidentally hitting such infrastructure.

However, the current statute does not require excavators operating on residential properties (one to two family homes) to contact the One Call Center prior to excavation. As a result, underground utility infrastructure is frequently impacted in residential properties. In 2020, 68 percent of subsurface utility infrastructure "hits" occurred on residential property.

This exemption creates significant risk for homeowners who are digging on their property, contractors who are hired to do such work, and community members who use shared infrastructure. For example, breaching a water pipeline can result in long water outages, especially in concentrated residential areas. In the case of a gas leak, there may be risks of

physical harm to homeowners, neighbors, and those performing the excavation work.

Impact on the public: This measure would reduce risks of water outages, gas leaks, electrocution, and other harms that can be caused by digging into subsurface utility infrastructure. Additionally, facility operators would face less repair expense, both in terms of time and money.

Impact on the department and other agencies: This measure would allow the Public Utilities Commission to carry out its existing enforcement responsibilities more effectively, for the benefit of the public. Other state and county agencies, such as the Board of Water Supply, would benefit from reduced infrastructure risks and related logistical challenges.

GENERAL FUNDS:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-901.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.