
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.



1 "Excavation" means any operation in which earth, rock, or
2 other material in the ground is moved, removed, or otherwise
3 displaced by means of tools, equipment, or explosives, including
4 but not limited to the following: grading, trenching, digging,
5 ditching, boring, drilling, auguring, tunneling, scraping cable
6 or pipe plowing and driving, demolition, and dredging.

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

17 SECTION 2. Section 269E-9, Hawaii Revised Statutes, is
18 amended by amending its title and subsection (a) to read as
19 follows:

20 "[~~§~~269E-9~~§~~] Identification of subsurface installations
21 by operator. (a) Any operator who receives timely notification



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

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

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

14 (3) Make available to the excavator, for inspection and
15 copying at the excavator's expense, information in
16 that specific operator's or agency's records on the
17 approximate location of that specific operator's or
18 agency's subsurface installations that may be affected
19 by the excavation to the extent and degree of accuracy
20 that the information is available in that specific
21 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 chapter and the civil penalties in section 269E-14."

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,



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 as follows:

9 1. By amending its title and subsections (a) through (c)
10 to read:

11 "[+]§269E-14[+] **Penalties.** (a) An action for the
12 enforcement of penalties pursuant to this chapter shall be
13 brought before the commission by the State, county, excavator,
14 locator, or any operator.

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

19 (1) Shall be subject to a civil penalty not to exceed
20 \$5,000 per day for each day ~~such~~ the violation,

21 neglect, or failure continues, to be assessed by the



1 commission after a hearing in accordance with chapter
2 91; provided that the maximum penalty for related
3 violations arising out of the same act, omission, or
4 occurrence shall not exceed \$100,000; and

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

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

17 (1) The gravity of the violation;

18 (2) Whether the excavator, locator, or operator charged
19 with the violation attempted in good faith to comply
20 with this chapter, before and after notification of
21 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.

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



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. (SD1)

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

