

NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. B. NO. 9-29, H.D.1

FIRST REGULAR SESSION, 1994

AN ACT

To prevent underground and above ground utility damage to Commonwealth Utilities Corporation property; to impose penalties and fines; and for other purposes.

BE IT ENACTED BY THE NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Short Title. This Act may be known and cited as the "Commonwealth Utility Damage Prevention Act of 1994."

Section 2. Purpose. The purpose of this Act is to prevent underground and above ground utility damage in the Commonwealth to assure the safety and effectiveness of utility services.

Section 3. Findings. The Legislature finds that too frequently there is wanton disregard for underground utilities and sometimes above ground utilities when excavation is undertaken in the proximity of public utility conduits or wires, resulting in cut wires or broken pipes and subsequent utility cut-off. The welfare of residents suffers when essential utilities are damaged. Further, the repair to these damaged utilities is an unnecessary expense and inconvenience to the service provider.

Section 4. Definitions as defined in this Act.

(a) "Damage" includes the substantial weakening of structural or lateral support in an underground or above ground utility; penetration or destruction of any protective coating, housing and other protective device of an underground or above ground utility; and the partial or complete severance of an underground or above ground utility.

(b) "Demolish" or "demolition" means any operation by which a structure or mass material is wrecked, razed, moved or removed by means of any tools, equipment or discharge of explosive.

(c) "Excavate" or "excavation" means an operation for the purpose of the movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by discharge of explosives; including auguring, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes.

(d) "Mechanized equipment" means equipment operated by means of mechanized power, including trenchers, bulldozers, power shovels, augers, back hoes, scrapers, drills, cable and pipe plows and other equipment used for plow-in cable or pipe.

(e) "Person" means any individual, any corporation, partnership, association or any other entity organized or doing business under the laws of the Commonwealth of the Northern Mariana Islands.

(f) "Utility" means any line, system or facility used for producing, storing, conveying, transmitting or distributing communications, electricity, water or sewage.

(g) "Operator" means those government agencies or private businesses responsible for operating the public utilities of the Commonwealth of the Northern Mariana Islands, specifically including the Commonwealth Utilities Corporation and Micronesian Telecommunication Corporation.

(h) "Working day" means every day except Saturday, Sunday and Commonwealth and legal holidays.

Section 5. Excavation and Demolition Permits. A permit issued pursuant to law, authorizing excavation or demolition operations, shall not be deemed to relieve a person from the responsibility of complying with the provisions of this Act.

Section 6. Duty to Ascertain Location of Underground Utilities. Except as provided in Section 9 of this Act, no person may excavate in a street, road, highway, public space, a private easement of an operator, or near the location of a utility installed on the premises of a customer served by such utility, or demolish a building without having first ascertained the location of all underground utilities that would be affected by the proposed excavation or demolition.

Section 7. Notice of Intent to Excavate or Demolish. Except as provided in Section 9 of this Act, before commencing any excavation or demolition operation designated in Section 6 of this Act, each person responsible for that excavation or demolition shall serve written notice or intent to excavate or demolish at least five (5) but not more than seven (7) full working days on all operators as defined by this Act. In the event that a street, road or highway is to be excavated, each person responsible for the excavation shall notify the Department of Public Works. The written notice shall contain the name, address and telephone number of the person filing the notice of intent and, if different, the person responsible for the excavation or demolition operation to be conducted, the location of the proposed excavation or demolition, and whether or not explosives are to be used.

Section 8. Response to Notice of Intent to Excavate or Demolish.

(a) Each operator notified in accordance with Section 7 of this Act, shall not less than five (5) working days in advance of the proposed excavation or demolition (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operation), supply by use of maps when appropriate, the following

information to the person responsible for the excavation or demolition:

(1) The approximate location and description of all its underground and above ground utilities which may be damaged as a result of the excavation or demolition.

(2) The location and description of all utility markers indicating the approximate location of the underground utilities.

(3) Any other information that would assist that person in locating and thereby avoiding damage to the underground utilities, including the provision of adequate temporary markings indicating the approximate location of the underground utility in locations where permanent utility markers do not exist.

(b) For purposes of this Section, the approximate location of underground utilities is defined as a strip of land at least three (3) feet wide but not wider than the width of the utility plus 1.5 feet on either side of the utility.

Section 9. Emergency Excavation or Demolition. Compliance with the notice requirements of Section 7 of this Act is not required of persons responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health, or property, provided, however, that those persons give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area where that excavation or demolition is to be performed and request emergency assistance from each operator so identified in locating and providing immediate protection to its underground utilities. An "Imminent danger to life, property" means whenever there is a substantial likelihood that loss of life, health or property will result before the procedure under this Chapter can be fully complied with.

Section 10 Precautions to Avoid Damage. In addition to the notification requirements of Section 7 of this Act, each person responsible for any excavation or demolition designated in Section 5 of this Act shall:

(1) Plan the excavation or demolition to avoid damage to or minimize interfering with underground or above ground utilities in and near the construction area.

(2) Maintain a clearance between an underground utility and the cutting edge of a point of any mechanized equipment, taking into account the known limit of controlling such cutting edge or point, as may be reasonably necessary to avoid damage to any utility.

(3) Provide such support for underground utilities in and near the construction area, including during backfill operations, as may be reasonable for the protection of such utilities.

Section 11. Excavation or Demolition Damage. Each person responsible for any excavation or demolition operation designated in Section 4 of this Act that results in any damage to an underground utility shall, immediately upon discovery of the damage, notify the operator of such

utility or the location and nature of the damage and shall allow the operator reasonable time to accomplish repairs necessary to restore the utility to its normal operating condition before completing the excavation or demolition in the immediate area of such utility.

Section 12. Damage; Cost of Repairing. Any person who damages a utility line is liable for the payment of all costs incurred by the operator to restore the utility to its original condition. Any person who duly notifies the operator as provided by this Act in Section 7 shall not be liable to the operator for any damages or civil penalties, provided, however, that the excavation or demolition takes place at least seven (7) days after the acknowledgment of receipt of the notification by the operator.

Section 13. Civil Penalties. Any person who violates any provision of this Act shall be subject to a civil penalty not less than five thousand dollars (\$5,000) and not to exceed Ten Thousand Dollars (\$10,000) for each such violation. Actions to recover the penalty provided for in this Section shall where appropriate be brought by the Attorney General at the request of any affected person in the Commonwealth of the Northern Mariana Islands. All penalties recovered in any such actions shall be paid into the General Fund. This Act does not affect any civil remedies for personal injury or property (including underground utilities) damage except as otherwise specifically provided for in this Act.

Section 14. Severability. If any Section of this Act should be declared invalid by a court of competent jurisdiction, the remainder of this Act shall not be affected thereby.

Section 15. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker of the House

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 22nd day of June, 1994

/s/ Froilan C. Tenorio
FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands