

CHAPTER.....

AN ACT relating to subsurface installations; requiring an operator of a subsurface installation to install under certain circumstances a permanent device which designates or provides a means of detecting the subsurface installation; requiring an operator who marks the approximate location of a subsurface installation to use the identifying criteria and colors for such markings which are set forth in the regulations of the Public Utilities Commission of Nevada; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the requirements for marking subsurface installations. A subsurface installation includes a pipeline, conduit, cable, duct, wire, sewer line, storm drain, other drain line or other structure that is located underground. (NRS 455.101) Existing law requires an operator of subsurface installations who marks the location of a subsurface installation to use certain designations and colors for the markings. (NRS 455.133)

This bill requires an operator of subsurface installations to install a permanent device to detect the installation from the ground surface through a noninvasive method under certain circumstances. The permanent device is required on installations placed in the subsurface on or after October 1, 2005. If the subsurface installation is constructed through the use of a material or a conductor capable of being detected from the ground surface, the operator is not required to install a permanent device.

This bill also requires an operator who marks the location of a subsurface installation to use the identifying criteria and colors for such markings which are set forth in regulation by the Public Utilities Commission of Nevada. In adopting such regulations, the Public Utilities Commission is required to use nationally accepted standards for the identifying criteria and colors for marking subsurface installations.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 455 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An operator shall, for each subsurface installation that is installed on or after October 1, 2005, which cannot be detected from or above the surface of the ground by means of either the material used in constructing the subsurface installation or a conductor within the subsurface installation, install a permanent device which designates or provides a means of detecting a subsurface installation through the use of a noninvasive method from or above the surface of the ground. Such a device includes, without limitation, a tracer wire or a marker.

2. As used in this section:

(a) *“Above ground marker” is a marker which is installed flush with the surface of the ground or which protrudes above the surface of the ground above a subsurface installation and includes information concerning the subsurface installation.*

(b) *“Electronic marker” is a marker which is buried at various depths below or near the surface of the ground above a subsurface installation and which contains a passive antenna that:*

(1) Can be identified with detection equipment; and

(2) Does not require an internal power source.

(c) *“Marker” is a device that physically designates the location of a subsurface installation at intermittent locations along or above the subsurface installation and includes, without limitation, an above ground marker or electronic marker.*

(d) *“Tracer wire” is a locating wire which is installed in conjunction with a subsurface installation and is connected to a transmitter that carries a signal which is read by a receiver above the surface of the ground for the detection of the location of the subsurface installation.*

Sec. 2. NRS 455.040 is hereby amended to read as follows:

455.040 1. The notice served pursuant to subsection 2 of NRS 455.030 must require the person or persons to appear before the justice of the peace of the township where the hole, excavation, shaft or other condition exists, or any municipal judge who may be acting in his place, at a time to be stated therein, not less than 3 days nor more than 10 days from the service of the notice, and show, to the satisfaction of the court, that the provisions of NRS 455.010 to 455.180, inclusive, *and section 1 of this act*, or the standards established by the Commission on Mineral Resources for the abatement of dangerous conditions have been complied with, or if he or they fail to appear, judgment will be entered against him or them for double the amount required to abate the condition.

2. All proceedings had therein must be as prescribed by law in civil cases.

3. Such persons, in addition to any judgment that may be rendered against them, are liable and subject to a fine not exceeding the sum of \$250 for each violation of the provisions of NRS 455.010 to 455.180, inclusive, *and section 1 of this act* which judgments and fines must be adjudged and collected as provided for by law.

Sec. 3. NRS 455.080 is hereby amended to read as follows:

455.080 As used in NRS 455.080 to 455.180, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 455.082 to 455.105, inclusive, have the meanings ascribed to them in those sections.

Sec. 4. NRS 455.107 is hereby amended to read as follows:

455.107 1. Except as otherwise provided in subsection 2, possession of a permit to conduct an excavation or demolition does not exempt a person from complying with the provisions of NRS 455.080 to 455.180, inclusive ~~H~~, *and section 1 of this act*.

2. A person is exempt from complying with the provisions of NRS 455.080 to 455.180, inclusive, *and section 1 of this act* if he obtains the written consent of all operators involved in the proposed excavation or demolition before he receives a permit to conduct the excavation or demolition.

Sec. 5. NRS 455.110 is hereby amended to read as follows:

455.110 1. Except as otherwise provided in subsection 2, a person shall not begin an excavation or demolition if the excavation or demolition is to be conducted in an area that is known or reasonably should be known to contain a subsurface installation, except a subsurface installation owned or operated by the person conducting the excavation or demolition, unless he:

(a) Notifies the appropriate association for operators pursuant to NRS 455.120, at least 2 working days but not more than 14 calendar days before excavation or demolition is scheduled to commence. The notification may be written or provided by telephone and must state the name, address and telephone number of the person who is responsible for the excavation or demolition, the starting date of the excavation or demolition, anticipated duration and type of excavation or demolition to be conducted, the specific area of the excavation or demolition and whether explosives are to be used.

(b) Cooperates with the operator in locating and identifying its subsurface installation by:

(1) Meeting with its representative as requested; and

(2) Making a reasonable effort that is consistent with the practice in the industry to mark with white paint, *flags, stakes, whisksers* or another method that is agreed to by the operator and the person who is responsible for the excavation or demolition, the proposed area of the excavation or demolition.

2. A person responsible for emergency excavation or demolition is not required to comply with the provisions of subsection 1 if there is a substantial likelihood that loss of life, health or property will result before the provisions of subsection 1 can be fully complied with. The person shall notify the operator of the action he has taken as soon as practicable.

Sec. 6. NRS 455.133 is hereby amended to read as follows:

455.133 1. An operator who marks the approximate location of a subsurface installation shall make a reasonable effort to make the markings in a manner that is consistent with the practice in the industry. The operator shall use the ~~following~~ *identifying criteria*

and colors *set forth in the regulations of the Public Utilities Commission of Nevada* for the markings . ‡

~~—1. Safety red must be used for electrical power, distribution and transmission installations, conduit for traffic signals and street lights and municipal electric installations.~~

~~—2. High visibility safety yellow must be used for gas distribution and transmission installations, oil distribution and transmission installations and installations containing or transporting dangerous materials, products or steam.~~

~~—3. Safety alert orange must be used for telephone and telegraph installations, police and fire communication installations and cable television installations. The letter “F” in safety alert orange must be used for fiber optic communication lines.~~

~~—4. Safety precaution blue must be used for water installations and slurry pipelines.~~

~~—5. Safety green must be used for sewer installations.]~~

2. In adopting regulations setting forth the criteria and colors to be used pursuant to this section, the Public Utilities Commission of Nevada shall use nationally accepted standards for the identifying criteria and colors for marking subsurface installations.

Sec. 7. NRS 455.170 is hereby amended to read as follows:

455.170 1. An action for the enforcement of a civil penalty pursuant to this section may be brought before the Public Utilities Commission of Nevada by the Attorney General, a district attorney, a city attorney, legal counsel for the Public Utilities Commission of Nevada, the governmental agency that issued the permit to conduct an excavation or demolition, an operator or a person conducting an excavation or demolition.

2. Any person who willfully or repeatedly violates a provision of NRS 455.080 to 455.180, inclusive, *and section 1 of this act* is liable for a civil penalty:

(a) Not to exceed \$1,000 per day for each violation; and

(b) Not to exceed \$100,000 for any related series of violations within a calendar year.

3. Any person who negligently violates any such provision is liable for a civil penalty:

(a) Not to exceed \$200 per day for each violation; and

(b) Not to exceed \$1,000 for any related series of violations within a calendar year.

4. The amount of any civil penalty imposed pursuant to this section and the propriety of any settlement or compromise concerning a penalty must be determined by the Public Utilities Commission of Nevada upon receipt of a complaint by the Attorney General, an employee of the Public Utilities Commission of Nevada who is engaged in regulatory operations, a district attorney, a city

attorney, the agency that issued the permit to excavate or the operator or the person responsible for the excavation or demolition.

5. In determining the amount of the penalty or the amount agreed upon in a settlement or compromise, the Public Utilities Commission of Nevada shall consider:

(a) The gravity of the violation;

(b) The good faith of the person charged with the violation in attempting to comply with the provisions of NRS 455.080 to 455.180, inclusive, *and section 1 of this act* before and after notification of a violation; and

(c) Any history of previous violations of those provisions by the person charged with the violation.

6. A civil penalty recovered pursuant to this section must first be paid to reimburse the person who initiated the action for any cost incurred in prosecuting the matter.

7. Any person aggrieved by a determination of the Public Utilities Commission of Nevada pursuant to this section may seek judicial review of the determination in the manner provided by NRS 703.373.

