

SENATE BILL NO. 396—COMMITTEE ON
HUMAN RESOURCES AND EDUCATION

MARCH 19, 2007

Referred to Committee on Human Resources and Education

SUMMARY—Revises provisions relating to subsurface installations. (BDR 40-1386)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to subsurface installations; revising provisions relating to the notification required before beginning an excavation or demolition under certain circumstances; revising provisions governing certain complaints relating to the conduct of an excavation or demolition; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill amends the definition of “approximate location of a subsurface installation” to mean a strip of land not more than 24 inches on either side of the exterior surface of a subsurface installation, instead of 30 inches as defined by existing law. (NRS 455.082) **Section 7** of this bill delays the effective date of the change until July 1, 2008. **Section 6** of this bill requires the Public Utilities Commission of Nevada to report to the Legislative Commission before the next regular session of the Legislature concerning the effects of the change.

Existing law requires a person to give notice to the appropriate association of operators of an excavation or demolition at least 2 working days, but not more than 14 calendar days, before the excavation or demolition. (NRS 455.110) **Section 3** of this bill extends the time frame to not more than 28 calendar days before the excavation or demolition.

Existing law authorizes certain persons to file a complaint to enjoin certain activities or practices of an operator or a person who is about to conduct an excavation or demolition and authorizes the court to issue a temporary restraining order under certain circumstances. (NRS 455.160) **Section 4** of this bill adds the Regulatory Operations Staff of the Public Utilities Commission of Nevada, the Attorney General, an operator or a person conducting an excavation or demolition to the list of persons authorized to file a complaint.



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

Section 1. NRS 455.082 is hereby amended to read as follows:
455.082 "Approximate location of a subsurface installation"
means a strip of land not more than ~~30~~ 24 inches on either side of
the exterior surface of a subsurface installation. The term does not
include the depth of the subsurface installation.

Sec. 2. (Deleted by amendment.)

Sec. 3. 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~~ 28
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,
whiskers 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. 4. NRS 455.160 is hereby amended to read as follows:
455.160 1. ~~{A-commissioner}~~ *The Regulatory Operations
Staff* of the Public Utilities Commission of Nevada, *the Attorney
General, an operator, a person conducting an excavation or
demolition*, or the district attorney of a county or the city attorney of



1 a city in which there is an excavation or demolition or a proposed
2 excavation or demolition which he believes may cause death,
3 serious physical harm or serious property damage may file a
4 complaint in the district court for the county seeking to enjoin the
5 activity or practice of an operator or a person who is responsible for
6 the excavation or demolition.

7 2. Upon the filing of a complaint pursuant to subsection 1, the
8 court may issue a temporary restraining order before holding an
9 evidentiary hearing. ~~[A temporary restraining order may be issued~~
10 ~~for no longer than 5 days.]~~

11 **Sec. 5.** NRS 455.170 is hereby amended to read as follows:

12 455.170 1. An action for the enforcement of a civil penalty
13 pursuant to this section may be brought before the Public Utilities
14 Commission of Nevada by the Attorney General, a district attorney,
15 a city attorney, ~~legal counsel for~~ **the Regulatory Operations Staff**
16 **of** the Public Utilities Commission of Nevada, the governmental
17 agency that issued the permit to conduct an excavation or
18 demolition, an operator or a person conducting an excavation or
19 demolition.

20 2. Any person who willfully or repeatedly violates a provision
21 of NRS 455.080 to 455.180, inclusive, is liable for a civil penalty:

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

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

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

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

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

30 4. The amount of any civil penalty imposed pursuant to this
31 section and the propriety of any settlement or compromise
32 concerning a penalty must be determined by the Public Utilities
33 Commission of Nevada upon receipt of a complaint by the Attorney
34 General, ~~an employee~~ **the Regulatory Operations Staff** of the
35 Public Utilities Commission of Nevada, ~~who is engaged in~~
36 ~~regulatory operations,~~ a district attorney, a city attorney, the agency
37 that issued the permit to excavate or the operator or the person
38 responsible for the excavation or demolition.

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

42 (a) The gravity of the violation;

43 (b) The good faith of the person charged with the violation in
44 attempting to comply with the provisions of NRS 455.080 to
45 455.180, inclusive, before and after notification of a violation; and



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(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.

Sec. 6. The Public Utilities Commission of Nevada shall, on or before December 31, 2008, submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission concerning the effects of the revision of the definition of "approximate location of a subsurface installation" set forth in NRS 455.082, as amended by section 1 of this act. The report must include, without limitation, the number of occurrences of contact with, exposure of or damage to a subsurface installation resulting from any excavation or demolition in this State on and after July 1, 2008, as compared to similar occurrences before July 1, 2008.

Sec. 7. 1. This section and sections 2 to 6, inclusive, of this act become effective on October 1, 2007.

2. Section 1 of this act becomes effective on July 1, 2008.

