

Amendment No. 330

Assembly Amendment to Assembly Bill No. 80 (BDR 40-483)

Proposed by: Assembly Committee on Health and Human Services**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the unfunded mandate requested by the affected local government to A.B. 80 (§§ 4, 6).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

AAK/WLK



Date: 4/14/2009

A.B. No. 80—Revises provisions relating to excavations. (BDR 40-483)



ASSEMBLY BILL NO. 80—COMMITTEE ON
HEALTH AND HUMAN SERVICES(ON BEHALF OF THE NEVADA LEAGUE OF
CITIES AND MUNICIPALITIES)

PREFILED DECEMBER 15, 2008

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to excavations. (BDR 40-483)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.CONTAINS UNFUNDED MANDATE (§§ 4, 6)
(REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 excavations; setting forth the duties of an operator of a sewer main with respect to a sewer service lateral connected to that sewer main; revising provisions relating to the operators of subsurface installations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 4 of this bill sets forth the duties and rights of an operator of a sewer main with respect to a sewer service lateral connected to that sewer main when he is notified of a proposed excavation or demolition by an association for operators. **Section 4** also authorizes an operator of a sewer main, which may be a local government, to require the person responsible for the excavation or demolition to reimburse any costs incurred by the operator to locate and identify the connection. ~~[in an amount not exceeding \$200 for each connection.]~~

~~Section 5 of this bill requires a person conducting an excavation or demolition to provide certain information to the operator of a sewer main upon the location and identification of a connection of a sewer service lateral to the sewer main.]~~

Section 6 of this bill requires the operator of a sewer main to maintain certain information relating to the locations of connections of sewer service laterals to the sewer main.

Section 7 of this bill establishes limitations on the duties and responsibilities of an operator of a sewer main with respect to a connection of a sewer service lateral to the sewer main.

Section 12 of this bill sets forth the duties of a person who connects a sewer service lateral to a sewer main. (NRS 455.131)

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 the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *“Sewer main” means a sewer line with a diameter that exceeds 6 inches.*

Sec. 3. *“Sewer service lateral” means a pipe or conduit that connects a building or other property to a sewer main.*

Sec. 4. ~~1-1~~ If an operator of a sewer main receives notice through an association for operators pursuant to paragraph (a) of subsection 1 of NRS 455.110:

~~(a) For a sewer service lateral that was connected to the sewer main before October 1, 2009;~~

~~(1) For a proposed excavation or demolition which will be conducted by trenching, the operator of the sewer main shall make available to the person responsible for the excavation or demolition, for the purposes of inspection and making copies, documents in the possession of the operator showing the location of the connection of the sewer service lateral to the sewer main, including, without limitation, maps, drawings and diagrams. If the operator possesses no such documents, the operator shall provide the person responsible for the excavation or demolition with written notice that the operator does not have any such documents in his possession. If the operator complies with the provisions of this subparagraph, the operator shall not have any other duty or requirement with respect to locating or identifying the connection of the sewer service lateral to the sewer main.~~

~~(2) 1. For a proposed excavation or demolition, [which will be conducted by a method not involving trenching,] the operator of the sewer main shall provide the person responsible for the excavation or demolition with the operator’s best available information regarding the location of the connection of the sewer service lateral to the sewer main. The operator shall convey the information to the person responsible for the excavation or demolition in such manner as is determined by the operator which may include any one or more of the following methods, without limitation:~~

~~(I) (a) Identification of the location of the connection of the sewer service lateral to the sewer main;~~

~~(II) (b) Providing copies of documents relating to the location of the sewer service lateral within [a reasonable period of time,] 2 working days; or~~

~~(III) Arranging to meet the person responsible for the excavation or demolition at the site of the proposed excavation or demolition to provide the best available information regarding the location of the connection of the sewer service lateral to the sewer main; or~~

~~(IV) (c) Placement of a triangular green marking along the sewer main, [] or the edge of the public right-of-way, pointing toward the real property served by the sewer service lateral to indicate that the location of the sewer service lateral is unknown.~~

~~(b) For a sewer service lateral that was connected to the sewer main on or after October 1, 2009, the operator of the sewer main shall locate and identify the sewer service lateral that is affected by the proposed excavation or demolition. The information to be provided pursuant to this paragraph by the operator to the person responsible for the excavation or demolition includes, without limitation, the locations at which the sewer service lateral:~~

~~(1) Is connected to the sewer main; and~~

~~(2) Exits the real property on which the sewer main is installed.]~~

2. ~~[The operator of the sewer main and the person who contacted the association for operators shall mutually agree to a reasonable amount of time within which the operator shall comply with subsection 1.]~~ The operator of a sewer main shall make its best efforts to comply with paragraph (a) or (c) of subsection 1 within 2 working days. If an operator of a sewer main cannot complete the requirements of paragraph (a) or (c) of subsection 1 within 2 working days, then the operator and the person responsible for the excavation or demolition must mutually agree upon a reasonable amount of time within which the operator must comply.

3. ~~[If an operator of a sewer main locates and identifies the connection of a sewer service lateral to the sewer main pursuant to subparagraph (2) of paragraph (a) of subsection 1, the operator may require the person who is responsible for the excavation or demolition to reimburse the operator for the costs incurred by the operator to locate and identify the connection in an amount that is not more than \$200 for each connection which is so located and identified.]~~ A government, governmental agency or political subdivision of a government that operates a sewer main may charge a person responsible for excavation or demolition in a public right-of-way for complying with this section in an amount that does not exceed the actual costs for the operator for compliance with this section. Costs assessed pursuant to this subsection are not subject to the provisions of NRS 354.59881 to 354.59889, inclusive.

4. If the operator of a sewer main has received the information required pursuant to NRS 455.131 or has otherwise identified the location of the sewer service lateral in the public right-of-way, then the operator of the sewer main shall be responsible thereafter to identify the location of the sewer service lateral from that information.

Sec. 5. ~~[A person conducting an excavation or demolition who locates and identifies the location of a connection of a sewer service lateral to a sewer main shall provide the operator of the sewer main with written information describing the location of the connection, including, without limitation, global positioning system coordinates which:~~

~~1. Are either identified by latitude and longitude using decimal degrees or are identified using coordinates of the Universal Transverse Mercator system; and~~

~~2. Specify for each coordinate whether the North American Datum of 1927, North American Datum of 1983 or the World Geodetic System 1984 was used.]~~ (Deleted by amendment.)

Sec. 6. An operator of a sewer main shall maintain all information relating to the locations of connections of sewer service laterals to the sewer main:

1. Developed by the operator pursuant to section 4 of this act; or

2. Provided to the operator pursuant to

~~(a) Subsection] subsection 2 of NRS 455.131. ~~or~~~~

~~(b) Section 5 of this act.]~~

Sec. 7. ~~[1. Except as otherwise provided by law or in sections 4 and 6 of this act, an operator of a sewer main shall not have pursuant to this chapter any duty with respect to a connection of a sewer service lateral to the sewer main if the operator of the sewer main is not the operator of the sewer service lateral.~~

~~2.]~~ An operator of a sewer main who is not otherwise required by law to be responsible for the maintenance, operation, ownership or repair [of a connection] of a sewer service lateral that connects to the sewer main does not assume any further duty with respect to a sewer service lateral pursuant to this chapter nor

1 *become responsible for the maintenance, operation, ownership or repair ~~[of the~~*
2 *~~connection]~~ of the sewer service lateral that connects to the sewer main solely*
3 *because the operator complied with the provisions of NRS 455.080 to 455.180,*
4 *inclusive, and sections 2 to 7, inclusive, of this act.*

5 **Sec. 8.** NRS 455.080 is hereby amended to read as follows:

6 455.080 As used in NRS 455.080 to 455.180, inclusive, *and sections 2 to 7,*
7 *inclusive, of this act,* unless the context otherwise requires, the words and terms
8 defined in NRS 455.082 to 455.105, inclusive, *and sections 2 and 3 of this act*
9 have the meanings ascribed to them in those sections.

10 **Sec. 9.** NRS 455.092 is hereby amended to read as follows:

11 455.092 "Excavation" means the movement or removal of earth, rock or other
12 material in or on the ground by use of mechanical equipment or by the placement
13 and discharge of explosives. The term includes augering, backfilling, *boring,*
14 digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and
15 tunneling.

16 **Sec. 10.** NRS 455.107 is hereby amended to read as follows:

17 455.107 1. Except as otherwise provided in subsection 2, possession of a
18 permit to conduct an excavation or demolition does not exempt a person from
19 complying with the provisions of NRS 455.080 to 455.180, inclusive ~~§~~, *and*
20 *sections 2 to 7, inclusive, of this act.*

21 2. A person is exempt from complying with the provisions of NRS 455.080 to
22 455.180, inclusive, *and sections 2 to 7, inclusive, of this act,* if he obtains the
23 written consent of all operators involved in the proposed excavation or demolition
24 before he receives a permit to conduct the excavation or demolition.

25 **Sec. 11.** NRS 455.130 is hereby amended to read as follows:

26 455.130 1. Except in an emergency or as otherwise provided in subsection 2
27 ~~§~~ *or section 4 of this act,* if an operator receives notice through an association for
28 operators pursuant to paragraph (a) of subsection 1 of NRS 455.110, the operator
29 shall:

30 (a) Locate and identify the subsurface installations and, if known, the number
31 of subsurface installations that are affected by the proposed excavation or
32 demolition to the extent and to the degree of accuracy that the information is
33 available in the records of the operator or can be determined by using techniques of
34 location that are commonly used in the industry, except excavating, within 2
35 working days or within a time mutually agreed upon by the operator and the person
36 who is responsible for the excavation or demolition;

37 (b) Remove or protect a subsurface installation as soon as practicable if the
38 operator decides it should be removed or protected; and

39 (c) Advise the person who contacted the association for operators of the
40 location of the subsurface installations of the operator that are affected by the
41 proposed excavation or demolition.

42 2. The operator shall notify the person who contacted the association for
43 operators if the operator has no subsurface installations that are affected by the
44 proposed excavation or demolition.

45 **Sec. 12.** NRS 455.131 is hereby amended to read as follows:

46 455.131 1. ~~Am~~ *Except as otherwise provided in subsection 2, an* operator
47 shall, for each subsurface installation that is installed on or after October 1, 2005,
48 which cannot be detected from or above the surface of the ground by means of
49 either the material used in constructing the subsurface installation or a conductor
50 within the subsurface installation, install a permanent device which designates or
51 provides a means of detecting a subsurface installation through the use of a
52 noninvasive method from or above the surface of the ground. Such a device
53 includes, without limitation, a tracer wire or a marker.

2. A person who connects a sewer service lateral to a sewer main ~~for or after October 1, 2009,~~ shall, at the option of the operator of the sewer main:

(a) Install a permanent device as described in subsection 1 of a type designated by the operator of the sewer main ~~for~~ at the connection of the sewer service lateral to the sewer main and where the sewer service lateral exits the public right-of-way and promptly provide the operator of the sewer main with the location of such permanent devices;

(b) ~~Provide~~ Promptly provide the operator of the sewer main with the location of the connection of the sewer service lateral to the sewer main and where the sewer service lateral exits the public right-of-way as described by global positioning system coordinates which:

(1) Are either identified by latitude and longitude using decimal degrees or are identified using coordinates of the Universal Transverse Mercator system; and

(2) Specify for each coordinate whether the North American Datum of 1927, North American Datum of 1983 or the World Geodetic System 1984 was used ~~for~~; or

(c) Provide to the operator of the sewer main notification of when the sewer service lateral is exposed so that the operator of the sewer main can identify the location of the sewer service lateral.

3. 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. 13. NRS 455.150 is hereby amended to read as follows:

455.150 Any person who substantially complies with the provisions of NRS 455.080 to 455.180, inclusive, and sections 2 to 7, inclusive, of this act is not liable for the cost of repairing any damage to a subsurface installation which results from his excavation or demolition.

Sec. 14. 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, the Regulatory Operations Staff of 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 sections 2 to 7, inclusive, 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, the Regulatory Operations Staff of the Public Utilities Commission of Nevada, 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 sections 2 to 7, inclusive, 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.

Sec. 15. NRS 455.180 is hereby amended to read as follows:

455.180 The provisions of NRS 455.080 to 455.170, inclusive, *and sections 2 to 7, inclusive, of this act* do not affect any civil remedies provided by law for personal injury or property damage and do not create a new civil remedy for any personal injury or property damage.

Sec. 16. 1. On or before December 31, 2010, each operator of a sewer main shall submit a report to the Director of the Legislative Counsel Bureau for transmission to the 76th Session of the Nevada Legislature which provides:

(a) The number of sewer service lateral connections that the operator of the sewer main has identified between October 1, 2009, and September 30, 2010;

(b) The method that the operator of the sewer main used to locate such sewer service lateral connections; and

(c) The costs accrued by the operator of the sewer main to locate such sewer service lateral connections.

2. As used in this section:

(a) "Operator" has the meaning ascribed to it in NRS 455.096.

(b) "Sewer main" has the meaning ascribed to it in section 2 of this act.

(c) "Sewer service lateral" has the meaning ascribed to it in section 3 of this act.

Sec. 17. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.