

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Fifth Session
March 4, 2009**

The Committee on Health and Human Services was called to order by Vice Chair Peggy Pierce at 1:38 p.m. on Wednesday, March 4, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Debbie Smith, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Ty Cobb
Assemblyman Mo Denis
Assemblyman John Hambrick
Assemblyman Joseph (Joe) P. Hardy
Assemblywoman Sheila Leslie
Assemblywoman April Mastroluca
Assemblywoman Bonnie Parnell
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst

Darlene Rubin, Committee Secretary

Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City, Nevada

Nancy Boland, District II, Vice Chair, Board of Commissioners, Esmeralda County, Silver Peak, Nevada

Lynn Forsberg, Public Works Director, Elko County, Elko, Nevada

Darren Schulz, Deputy Public Works Director, Carson City, Carson City, Nevada

Robert F. Joiner, Government Affairs Manager, City of Sparks, Sparks, Nevada

Fred Schmidt, Carson City, Nevada, representing Clark County Water Reclamation District, Las Vegas, Nevada

Karen Pearl, Executive Director, Nevada Telecommunications Association, Reno, Nevada

Bjorn Selinder, Fallon, Nevada, representing Churchill, Eureka, and Elko Counties, Nevada

Kevin Quilici, President/Owner, Quilici Construction, Reno, Nevada; representing Associated General Contractors, Reno, Nevada

Dave Noble, Assistant General Counsel, Utilities Hearing Officer, General Counsel Division, Public Utilities Commission of Nevada, Carson City, Nevada

Deborah Gallo, Director/Government and State Regulatory Affairs Southwest Gas Corporation, Las Vegas, Nevada; and representing Paiute Pipeline, Carson City, Nevada

Brian McAnallen, Director, Government Affairs, Embarq, Las Vegas, Nevada

Judy Stokey, Director, Government Affairs, NV Energy, Las Vegas, Nevada

Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada

Tom Hollis, Henderson, Nevada, representing National Utility Contractors Association of America, Las Vegas, Nevada

Richard Peel, Henderson, Nevada, representing Subcontractor Legislative Coalition, Henderson, Nevada

Doug Williams, President, The Plumber, Inc. Las Vegas, Nevada

Arthur White, Owner, Roadrunner Plumbing, Las Vegas, Nevada

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada
Barney Rabold, Deputy Director of Utility Services, City of Henderson, Henderson, Nevada

Vice Chair Pierce:

[Roll called.] There are eight members present; we have a quorum. We have two bills on today's agenda. We will begin with Assembly Bill 32, sponsored on behalf of Esmeralda County.

Assembly Bill 32: Provides that no government, governmental agency or political subdivision of a government may be required to identify or mark the approximate location of certain sewer service laterals. (BDR 40-454)

Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City, Nevada:

With me today are Esmeralda County Commissioner, Nancy Boland, and Lynn Forsberg, Public Works Director, Elko County. I would like to provide you with a brief background of what we believe to be the issues related to locating and marking sewer laterals, and the need for Assembly Bill 32. Then I would ask Commissioner Boland to tell you about their specific concerns, and Mr. Forsberg to tell you about the practical aspects of what it takes to identify and mark sewer laterals in a small rural water system.

Assembly Bill 32 addresses a long standing and controversial issue as to whether or not the Public Utilities Commission (PUC) has jurisdiction to require counties, cities, and other governmental entities to locate and mark sewer laterals that were not installed or are operated or maintained by that governmental entity. The Legislature has heard this issue before, when the definition of underground utilities to include service laterals was discussed and was then eventually amended out of Senate Bill No. 396 of the 74th Session. Beginning in January 2008, the Public Utilities Commission of Nevada (PUCN) staff sought a ruling to require governmental entities to locate marked sewer laterals. That culminated in the adoption of temporary regulations by the Commission on October 23, 2008, and those temporary regulations were subsequently withdrawn by the PUCN during the Legislative Commission hearing on December 16, 2008. The Nevada Association of Counties (NACO) and the counties themselves opposed the regulation on the basis that the PUCN lacked jurisdiction. The jurisdictional argument really has to do with who actually owns, maintains, and operates sewer laterals. Local governmental entities accept the responsibility for marking the components of their sewer

systems that they actually own, operate, and maintain, including the sewer mains. They provided clear evidence, in my opinion, that they do not own, maintain, or operate the sewer laterals that actually connect individual homes and businesses to the sewer mains. Yet, the PUCN concluded that despite local ordinances to the contrary, the governmental entities are in fact the operators of the sewer laterals, reasoning that the laterals are nothing more than an extension of the sewer system itself.

Beyond the jurisdictional argument, NACO and the counties opposed the regulations on the basis of its cost. The regulations adopted and subsequently withdrawn would have cost the counties and municipalities millions of dollars in start-up and annual costs, which in turn would have been passed on to the rate payers—the residents and business owners. Also, the regulations were applicable statewide, which would have been devastating to many rural counties who were financially strapped; those are the entities that provide basic waste water collection and treatment for their residents. The Division of Environmental Protection objected to the regulations because of what they saw as an additional financial burden they would have placed on sewer utilities, which were already under orders from the Division to make remedial repairs to their systems such as lining ponds and repairing leaky collection systems.

Now is certainly not the time to place additional mandates on the counties which would result in increased sewer rates for county residents already struggling in this difficult economy. NACO agrees that knowing the location of underground utilities is an important safety measure, especially during excavations, and we also acknowledge that where there is significant underground work taking place, all reasonable efforts should be made to locate and mark sewer laterals.

Historically, the risk to damaging a sewer lateral during a trenching operation was minimized because sewer laterals are generally located at a lower elevation than other utilities and other service connections, and excavators generally took care and caution in digging around those areas where the sewer laterals might be located. In those rare instances where a sewer lateral was damaged, it usually could be repaired quickly and the potential public health threat abated.

With the advent of directional underground boring, the risk of hitting a sewer lateral was increased, and the public safety threat resulting from that is one of a gas leak, which could be a more serious situation. We certainly understand that. But, it is NACO's position that the counties should not have to incur the costs as a result of excavators choosing to use techniques that reduce their costs but increase the risk to damaging sewer laterals or other underground utilities. Furthermore, we really see no compelling reason to impose these

costs or requirements on communities in Hawthorne, Virginia City, or the town of Montello, or other rural areas where there have not been any major problems that we are aware of, and the risk of one occurring in the future is very minimal. NACO believes that it would not be fair or cost-effective or even necessary to require counties to locate and identify sewer laterals which they do not own, do not operate or maintain, and many of which were installed by others decades ago. We understand the PUCN's interest in wanting to locate and mark sewer laterals; however, I have to be quite frank in stating that we just do not feel that the PUCN gave adequate consideration to the larger jurisdictional issues that we are concerned about, including the counties' authority to adopt ordinances regarding sewer laterals, or even the counties' concerns regarding the costs. We also feel that the PUCN may actually have an inherent conflict in *Nevada Revised Statutes* (NRS) 704.001, which states the intent and policy of the Legislature indicates that the purpose of the PUC's regulation of public utilities is to balance the interest of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates. The fact of the matter is that the PUCN has no such obligation to government-owned utilities; that is why NACO is joining Esmeralda County in introducing A.B. 32.

Assemblyman Stewart:

Can you tell us exactly how you would locate and identify the sewer laterals? I understand you cannot do it from above, and a metal detector would not work because there is no metal there.

Jeff Fontaine:

I am going to rely on some of the experts to answer that, but, generally speaking, if it has not been previously identified, excavation would be required. There are some techniques such as inserting small TV cameras down the sewer mains to try to find the point of connection of the lateral to the main, but that only provides one point; we need two points to find where the sewer lateral goes.

Assemblyman Stewart:

Digging down could possibly cause damage to the sewer line and cause more problems.

Jeff Fontaine:

Correct.

Assemblywoman Leslie:

I hesitate to wade into these waters. Every session we have a "Sewer Bill Day." My bottom line question is, if the counties do not do it, who do you suggest? Somebody has to do it.

Jeff Fontaine:

I think that this is really a cooperative effort and a "one size fits all" approach just does not fit in this state. You will hear from some of the rural utilities that work with an excavator on a cooperative basis, they do share information, and that may not necessarily be the case in Clark County. We agree that someone has to take the responsibility for doing this. I had to find my own sewer lateral when I was doing some work at my home. We are not suggesting that home owners and business owners should have that responsibility, but I think it is going to depend on the situation and location, and quite frankly, I believe, the excavator has some responsibility in this matter as well.

Assemblywoman Leslie:

Are you suggesting that there be one plan for the urban counties and a different plan for rural counties, or that the counties come up with a plan and have it accepted by the PUCN? I just want to make sure somebody is responsible.

Jeff Fontaine:

Possibly. I think that whatever this Committee decides, there has to be enough flexibility to allow those counties that have limited resources to work with the situation that they have versus those that may have some more resources.

Assemblywoman Leslie:

I am sympathetic to that argument, but I would like to hear some solutions, or some specific ideas about how we could accommodate that and still protect public safety.

Chairwoman Smith:

I want to hear whether you think this is a problem. I am a little frustrated because this issue has received considerable attention for some time, but I just do not feel there is a real movement to acknowledge that this is an issue, that it is a potential safety and health hazard, and if we have not been able to do something in the past, we will not move to any solution just by saying "No" on the bill. I would like your comments on that.

Jeff Fontaine:

I think that is why we are all here today. I think we all recognize that this is an issue that has been long standing, has been controversial, and needs to come to some resolution. What we are saying by having Esmeralda County introduce

A.B. 32 is that we want the Legislature to hear this issue because, quite frankly, we think that you have a broader scope in terms of recognizing the impact on the counties, as well as the utilities, and can give this an evaluation that we think it needs. The situation that we are frustrated with is related to the PUCN, and no disrespect to them, we feel that the issues here are broader than the jurisdiction of the PUCN.

Nancy Boland, District II, Vice Chair, Board of Commissioners, Esmeralda County, Silver Peak, Nevada:

Mr. Fontaine expressed much of what I was going to say so I will simply add to it on the local ordinances. [Ms. Boland read from prepared testimony ([Exhibit C](#)), excerpted here.] Most of these ordinances also allow the home owner, or the person requesting the service to be installed, to choose their installer. They are not obligated to have the utility workers do that. Our ordinance reads that way. The ordinances also read that the utility has no authority on the private side of the property line, so that is important to remember. Most of the marking is an issue for the older installations because after 2005, everybody was obligated to mark. That is one thing to consider. If some of these utilities did not think they were the operator, maybe they did not mark, but I think A.B. 32 puts that onus on them; that they should be responsible for anything they have put in the ground or they were operating at that time. Many of these government-run sewer systems have the infrastructure that was put in place before 2005, and there may not be laterals on the plans if they were not installed by the utility.

Another factor that needs to be considered is that these small government-operated sewer utilities already have to meet standards and rules by funding agencies like the United States Department of Agriculture (USDA), and most of our ordinances are modeled after the funding agreements we had to sign with them.

Vice Chair Pierce:

Do sewer laterals laid down after 2005 have markers?

Nancy Boland:

That is correct. That change was made pursuant to NRS Chapter 455.

Assemblyman Stewart:

How are they marked?

Nancy Boland:

They are marked either by a below-ground marker that is detectable with a metal detector or an above-surface indicator to show the location.

Lynn Forsberg, Public Works Director, Elko County, Elko, Nevada:

[Mr. Forsberg read from prepared testimony ([Exhibit D](#)), excerpted here.]

Thank you for hearing us today. Elko County has found itself in a position similar to many rural counties. We operate three waste water systems that are diverse from each other and spread far apart. Montello was mentioned today, that is one of our fair towns. We also operate systems in Mountain City and in Jackpot. Montello and Mountain City are roughly 200 miles apart, so it takes a lot of time when we embark from Elko, usually about a 120-mile drive one-way. Most of those laterals, as Mr. Fontaine pointed out earlier, are several decades old. In the case of Mountain City, for instance, there was a population of 200 in the 1960s, now there are only 22 active connections. If we have to locate sewer laterals for an excavator, we would have to locate several inactive sewer laterals. If they dig them up and break them they would still need to be repaired to prevent damage to the main lines and to prevent dirt infiltration.

Vice Chair Pierce:

I watched a video about this last night. When a bore has gone through a sewer lateral and sewage comes out in the water, does it show on the surface at some point?

Lynn Forsberg:

When something has been broken underground the sewage usually will not show up for several days because it will still run into the old lateral unless it is totally plugged. It might be the citizen who is using the lateral who calls and says they have sewage backing up into the basement. It could be several days or weeks or overnight.

Vice Chair Pierce:

When someone notices sewage backing up they call Roto-Rooter, and that is the point at which the lateral is bored and breakage occurs. Is that about the only time the lateral can be broken, or are there other times?

Lynn Forsberg:

I believe that is correct. That is about the only time the lateral is disturbed, because when we do other excavations, such as for water services or the like, we follow the "Call Before You Dig" procedure and give 48 hours notice. If it is the gas company or power company, they mark those locations and then we have to excavate those locations before we can go past them. It is a careful way of doing things.

Assemblyman Hardy:

How many sewer laterals have been broken in the last 5 years in Elko County?

Lynn Forsberg:

No sewer laterals have been broken due to utilities coming through. There is not a lot of activity out in the rural areas with utilities.

Assemblyman Hardy:

Your fiscal note to mark everything would obviously be far and above any repair costs that have been instituted in the last five years?

Lynn Forsberg:

That is correct.

Assemblyman Denis:

I have a rental property where we had a fence installed between two properties. After a year we noticed that the grass was really green in a certain spot and it was dead everywhere else. My neighbor called the plumber who determined the problem was that when the fence was installed, the contractor had put the fence pole on top of the old clay sewer and it collapsed. How do we know how many times something like that happens? I do not know if the plumber has to report that type of damage.

Lynn Forsberg:

I am sure those types of situations occur that are not reported, but they tend to happen on private property, not public property. If we see someone digging in our right-of-way we check it out. However, in the case of a remote town, a couple hours distant from us, there are lots of things that happen that we do not know about.

Darren Schulz, Deputy Public Works Director, Carson City, Carson City, Nevada:

I want to reserve my comments for Assembly Bill 80 to be heard next.

Robert F. Joiner, Government Affairs Manager, City of Sparks, Sparks, Nevada:

We do support this bill as well as Assembly Bill 80. We obviously have more comments on A.B. 80, as we do want to work toward a solution.

Chairwoman Smith:

Has the City of Sparks been marking laterals since 2005? There seems to be a bit of a disconnect between the perception of sewer mains and sewer laterals in the way everyone is interpreting the law.

Robert Joiner:

We have been requiring new developments to locate mains and the lateral locations, but that has only been in the last several years, perhaps since 2005

or 2006. As Mr. Forsberg did a great job of indicating, we do not get involved with private utilities or private property.

Assemblywoman Smith:

I am just trying to clarify; you have actually been marking laterals, or just requiring them to be submitted on plans?

Robert Joiner:

We require marking them on the plans, so that we know where they are as they come off of our main.

Assemblywoman Smith:

But not marking them at the location?

Robert Joiner:

I do not believe so. However, we have a process we could propose to do that.

Vice Chair Pierce:

When you say, "marked down the location," are you talking about markers on the lateral or something above-ground on the surface?

Robert Joiner:

I believe that would be processed through our Information Technology (IT) division using Global Position System (GPS) to locate our utilities, and we could require the same process of the private developers as those facilities go in.

Assemblywoman Leslie:

I am still trying to get to the bottom line in this bill. If government should not be required to identify or mark these, then who should be? Is it the utility, is that your position?

Robert Joiner:

Yes, that is what we have always indicated, and the same was true when I was formerly employed here in Carson City. In fact, a problem here with a certain utility may have caused this whole thing. It was a private subcontractor who felt the responsibility should be put back on the local government. But our belief has been that the person doing the excavation should be responsible for how they proceed with that excavation, and giving them license to be irresponsible is not something we would support.

Assemblywoman Leslie:

But this is still about identifying and marking, right?

Robert Joiner:

I thought this bill was to leave government off the hook completely.

Assemblywoman Leslie:

But then who is on the hook? That is the part I am missing.

Robert Joiner:

The way it has been done to this point is that we indicate where the main is located to the person working in a public right-of-way. As they proceed to do their work, they should do so cautiously so they do not cause damage. They have an indication of where the lateral might be from looking at the private utility at the private structure. But as we have indicated, there are myriad angles that can be taken from that to physical locations, so that person needs to be careful to locate the lateral as they proceed. That is our position.

Assemblywoman Leslie:

That is why I always reassign this bill.

Assemblyman Cobb:

As I read the bill it suggests that we are only dealing with public right-of-way in areas that are not owned by Nevada Department of Transportation (NDOT). Is there any group that this definition would subsume that goes beyond the utilities, the PUCN?

Robert Joiner:

I am not familiar with that.

Assemblyman Cobb:

So unless there is another group outside of that, this bill would only pertain to PUCs?

Robert Joiner:

That is correct as far as I know, but I may not be the one to ask.

Fred Schmidt, Carson City, Nevada, representing Clark County Water Reclamation District, Las Vegas, Nevada:

Our position on this bill is neutral. We believe that A.B. 32, as proposed, reflects the current understanding and interpretation of the law by the governments who are operators, and we have been operating under that law for over two decades. We do not oppose the bill; however, we will testify later. We have worked toward changing the current practices and that is reflected in our draft of Assembly Bill 80, which we are here to sponsor and support.

Karen Pearl, Executive Director, Nevada Telecommunications Association, Reno, Nevada:

I am here in opposition to this bill. I will withhold my testimony until later.

Bjorn Selinder, Fallon, Nevada, representing Churchill, Eureka, and Elko Counties, Nevada:

I think it is obvious, based on the testimony, that the biggest concern at least from a rural community's perspective is the potential burden that will be placed upon the subscribers to the sewer utility. I think if we can get past that whole issue, there may some resolution to this, based on what I have heard from Mr. Schmidt. In the meantime, on behalf of Churchill, Eureka, and Elko Counties, we register our support of A.B. 32.

Kevin Quilici, President/Owner, Quilici Construction, Reno, Nevada; representing Associated General Contractors, Reno, Nevada:

I am here to express my support for this bill. Although we do realize it is a hardship for many of the cities and municipalities to locate the laterals, from the contractors' point of view we need something to help us find these lines. It has been stated that it is not that hard to find the lines, just to "dig gingerly." However, to find the lateral, half the street could be dug up before boring starts, and the permitting costs for cutting the streets is astronomical. As part of the Associated General Contractors (AGC), we are looking for something to help us so we can find these laterals, to avoid adding huge amounts to our contracts or increasing our operational costs significantly.

Vice Chair Pierce:

We will now hear from opponents of this bill.

Dave Noble, Assistant General Counsel, General Counsel Division, Public Utilities Commission of Nevada:

The Commission is opposed to A.B. 32 for several reasons. First and foremost, I think the question asked by Assemblywoman Leslie—who is going to mark the laterals?—leads to the only other option under existing law with the proposed amendments, and that would be the homeowner. The reason for that is the excavator is specifically exempted from marking the laterals; that is not their duty, it is the operator's duty. According to the ordinances that many of the municipalities have passed, the property owner owns, operates, and maintains those laterals, thus, according to law, the property owner is the only one who would be on the hook for marking those laterals. There are 66 sewer system operators in the State of Nevada. There are 700,000 sewer laterals in the state. According to A.B. 32, all 700,000 property owners would have to join the Association of Operators and be ready, willing and able to mark the laterals within 48 hours of receiving a notice that there is going to be an excavation in

front of their property. The Commission does not believe that is logical or sensible for the State of Nevada.

Furthermore, this presents a huge step back for the State of Nevada with regard to the marking of subsurface installations prior to excavation. The current system is very simple and straight forward, and it assigns responsibilities to the excavators and operators to efficiently mark the location of subsurface installations and excavate in an efficient and prudent manner. If property owners are going to be marking laterals, there is a high likelihood that those laterals will not be marked. Most property owners in this state, perhaps as high as 99 percent, do not know the location of their laterals, so they are not going to be marked or they are going to be mismarked. Then what will happen is that the excavator will try to locate them and incur the additional costs that will ultimately be borne by the rate payers—rate payers pay for everything eventually. When those laterals are hit, sewage goes into the ground, as well as the potential for hitting unknown cross-bores into the laterals. There was an instance in Carson City several years ago where a slow back-up of sewage into the crawl space of a residence resulted in the residence having to be demolished. That was the subject of a lawsuit between Carson City and Southwest Gas and the property owner that was eventually settled out of court, but there was a ruling by the First District Court judge on a motion for summary judgment that shed some light on what that judge thought was the law. He was assigning at least initial responsibility to Carson City.

Other things can happen as well; it may involve the cross-boring of a gas line. That has not happened to date in the State of Nevada, though it has happened on numerous occasions throughout the nation. For example, a homeowner may call a Roto-Rooter service to fix a back up. As the pipes are being cleaned, a gas line could be pierced. If the plumber is quick enough, he will get out of there before there is an explosion. That is not always the case, however, and critical injuries and even death have resulted, and generally, the residence explodes and becomes splinters in seconds. That is not typical, rather atypical, but when it happens it is catastrophic.

From the Commission's standpoint, we believe that A.B. 32 is not the direction we think the state should be going, and we hope the Committee agrees.

With regard to reporting of damages, I believe a prior witness explained that there had not been any damages over the last five years. In part that is because the ordinances passed by the municipalities said it is the responsibility of the property owner to fix the laterals, so the property owner is going to fix the laterals but is not going to report it to the municipalities. When the Commission took up this issue over the last 1 1/2 years, there was testimony

on what happens when there are no marks of sewer laterals. I believe it was the City of Sparks' representative who, before the PUC, said that when there is excavation using the trench method, the excavator goes down the street, breaks every lateral, caps them, and does their placement of the underground facility, then rebuilds the lateral and covers it. One of the questions asked was: Is there any effort to have a record of the locations of those laterals so if there is a future excavation in that area, they can be adequately marked? The answer was, "No." The problem perpetuates, and I think there will be a lot of discussion with the ensuing bill, A.B. 80, and I think that is the proper place to address it. As to A.B. 32, the Commission is opposed.

Chairwoman Smith:

What made the PUC get involved in this case in the interim? This bill really is about who has the authority to say what happens.

Dave Noble:

This issue came up in the Senate Bill No. 396 of the 74th Session. The original language had a clarifying provision that said sewer laterals are subsurface installations. The reason was, these municipalities were arguing that sewer laterals do not come under the framework of NRS 455. In the original hearing of the bill, there was some concern raised about it and I believe Ms. Gallo offered to remove that provision in order to move S.B. No. 396 along, in order to act on the other provisions which gave the Commission increased enforcement authority. Even though that was removed, the issue kept coming up. I believe it was the Clark County Water Reclamation District and the City of Las Vegas that were concerned that the Commission would address the issue in rulemaking. I believe Assemblywoman Leslie asked me the question—contained in the Assembly Health and Human Services Committee minutes of April 30, 2007—what is the status, what would the Commission do? I said then it was an issue, and it continues to be an issue. We hope that the stakeholders will come to a resolution of that matter, but if not, the Commission is going to deal with it in rulemaking. It also came up four or five days later, in a Subcommittee, chaired by Assemblyman Hardy, and what I had said then was that the Commission would withhold addressing the issue of sewer laterals until after October 1, 2007, in order to allow the stakeholders an opportunity to address the matter.

During the Commission's rulemaking in S.B. No. 396 of the 74th Session, the Commission was alerted that the stakeholders had not come to a resolution. We started to address it in that rulemaking, and several parties correctly pointed out that "sewer laterals" was not in the language of S.B. No. 396, so there would be a noticing issue. Therefore, we opened up a separate investigation rulemaking to address that issue of sewer laterals, as

Docket No. 08-01009. We started with an investigation that culminated in a report filed on May 30, 2008. The Commission approved that the following week and we moved forward with a rulemaking. During that rulemaking the question was: To what extent should sewer system operators mark the laterals? The Commission adopted a temporary regulation that came before the Legislative Commission. In December, Chairman Townsend requested that the PUCN withdraw that regulation in order to allow the Legislature to address the matter. He thought that given the dollar amounts and how big an issue this had become, it would be appropriate to allow the Legislature to weigh in on it, even though he admitted that he had been given a legal opinion by the Legislative Counsel Bureau (LCB) that the Commission was within its legal authority to adopt that regulation. If you like, I can also provide you with the report that the Commission adopted which is 13 pages long. It gives a very succinct background of the Legislative history, as well as the arguments of all the parties and the statutory framework that the Commission used to decide to go forward.

Assemblywoman Smith:

I do not think there has ever been an opinion from LCB, but I actually have been discussing this issue with our legal counsel and got her input on this. She has said there is reason to believe that the PUC could have some jurisdiction, based on the existing statute. I think it gives everyone even more reason to get this issue resolved so that we do not have to keep going down this path.

Assemblyman Stewart:

You brought up the issue of public safety when you said that a Roto-Rooter service might hit a gas line and blow up a house. If the lateral is marked at my house and the sewer plugs up what difference will it make?

Dave Noble:

If there is an excavation in front of your house, in which the sewer lateral has been marked, and the excavator is doing a trench excavation, they will hand dig around that lateral to expose it. The excavator is not allowed to use heavy machinery. They must hand dig within a marking tolerant zone of 24 inches to locate that lateral and make sure that when they place their equipment in the ground they do not break it. When they bore for that excavation, the excavator will "pothole" the area and expose the lateral, then make sure that when the boring machinery goes into the area they can look down to see that it does not hit the lateral.

Assemblyman Stewart:

Do you really think a Roto-Rooter service is going to do that?

Dave Noble:

Excavation and Roto-Rooter services are distinctly different. The typical Roto-Rooter serviceman will never call the Association of Operators to do the Roto-Rooter service. We are talking only about excavation, and Roto-Rooter is not engaged in excavation activities.

Vice Chair Pierce:

The sewer line is the lateral. Then, later, a tube for utilities to go through is placed by boring through everything, including your lateral. The utility goes through your lateral, and if the plumbing service sends equipment down and cuts through the utility that is in the middle of the lateral, sometimes there is an explosion.

Assemblywoman Spiegel:

Surely Nevada is not the first state to deal with this issue, and it sounds like you have done extensive work on the issue. Do you know how other states have resolved the matter of who does take ownership of this?

Dave Noble:

The marking of sewer laterals is currently a hot topic issue throughout the nation, as most every state is tackling it in one form or another. Usually, unfortunately, states have been more reactive than proactive, and they have reacted to huge safety and health problems, for instance when houses blow up and people are killed. There have been in excess of 16 different incidents in about 10 to 15 states over the last 5 years. The resolution has actually been across the board for the 50 states. The states that have addressed it most recently were of the mind that the responsibility to mark the location of those laterals should be borne by the sewer system operator. I have yet to see one where it was the homeowner's responsibility. In some cases they have said that the excavator was responsible, or they have come up with a very convoluted system in that if laterals are placed after a certain date, the sewer system operator will mark those. However, for everything before that, it is a free-for-all. In the states contiguous to Nevada, California currently is looking at it, but they have not acted on it. In Arizona, they have ruled that the sewer system operators could not contract away those responsibilities, but I believe they also have a certain date on moving forward when all those laterals will be marked. Utah has stated that the operators need not mark or locate underground facilities that they do not own, including sewer laterals. That is the most backward implementation I have seen. Idaho and Oregon have both said that the sewer system operator must mark the sewer laterals at least in the public right-of-way.

Assemblywoman Leslie:

I live in a very old neighborhood; my house is almost 100 years old, so I had to have my lateral replaced. We got gas service very late in my neighborhood, as well. Whenever something like that happens on my street, all the neighbors come out but nobody ever knows where anything is. I can attest that it is really a problem in the very old neighborhoods because things were never marked. I am glad you brought up the safety issues because I think that needs to be first and foremost in repairing infrastructure.

I am not sympathetic to Washoe County or to Clark County, but I am sympathetic to some of the testimony we heard about areas like Elko, these very small communities with limited populations, when they ask for flexibility about this issue. Do you have any ideas about what that could look like?

Dave Noble:

There are several things. First to address the cost issue, there are federal grants available to operators of systems with 10,000 or fewer customers. I believe one example would be the town of McDermitt, which received a United States Department of Agriculture (USDA) grant to completely map their system. This is an issue where we are seeing many articles about the infrastructure of the United States falling apart. Sewer and water are two of the most significant systems and there has been a push to map and clean and fix existing systems. From a monetary standpoint that is at least available for the smaller operators.

With regard to flexibility, I think the proposed amendment that the Committee has for A.B. 80 has a mechanism whereby the excavator and the operator do a "meet and greet" and work out a solution; if the operator does not know where the laterals are, maybe there is a working agreement that they can come up with that helps keep the cost down. The excavator may end up having to locate them anyway and then pass that information on to the operator, or there may be a sharing of costs. There are many ways to deal with this when it comes to the smaller operations.

Vice Chair Pierce:

Can we save that for A.B. 80? You used the word numerous, and then the number 16. Are you talking about 16 explosions? Are you talking about 16 places where laterals were bored through? What does that number signify?

Dave Noble:

It came from reading a slide show presentation from Northern Pipe Line. I do not believe they are here today because of their attendance at an excavator conference in Arizona. They provided a list from the slide show of the most recent incidents of explosions. With regard to cross-bores, those number in the

thousands across the nation. Judging from the snapshots I have seen, there were 20 in one neighborhood, 5 in another, and so on. It was a very large problem that various communities encountered and state legislators addressed. I have no figures on the number of incidents in the State of Nevada.

Karen Pearl:

I am reserving most of my comments for A.B. 80. However, I want to introduce myself and state that I represent 11 of the 13 local telephone companies in the State of Nevada, the providers of last resort. With the exception of AT&T in northern Nevada and Embarq in Clark County, most of my members are very small telephone companies. They all go along with NRS Chapter 455 as well as the *Nevada Administrative Code* (NAC) 455, and with some questions that Assemblywoman Leslie raised, as well as comments made by Mr. Fontaine. The Association believes that NRS Chapter 455 and NAC 455 are related to all providers or operators of utilities, whether they are publicly or privately owned, and agrees with the argument that there are not enough resources to comply with the "One Call Rule," which is to call before you dig. One of my companies, Beehive Telephone, has four employees in Nevada; they run the entire company on the Nevada side, including going out and doing locates for facilities. Another is Filer Mutual Telephone with no employees in Nevada. So if they get a call from the "One Call" center, they have to bring someone in from Idaho. I understand Mr. Fontaine's argument that the PUCN does not have jurisdiction over the municipalities, and the utilities go by rate of return with their rate cases, but none of these companies within the last ten years, that I am aware of, have ever asked for a rate case to recover costs for "Call Before You Dig." Therefore, while I understand there are probably going to be more problems with sewer laterals, by the same token, my small companies are following the rules in NRS and NAC and we do not see any problem other than helping the public maintain their safety in this.

**Deborah Gallo, Director/Government Affairs, Southwest Gas Corporation,
Las Vegas, Nevada; and representing Paiute Pipeline Corporation,
Carson City, Nevada:**

Paiute Pipeline Corporation is our federal transmission pipeline. I echo most everything Mr. Noble said, and I think what Assemblywoman Leslie said is very important to keep in mind. We cannot lose sight of the fact that what we are talking about is public safety and worker safety for the employees of the excavators and contractors and utilities, and that is the focus of this law. It is national, as Mr. Noble said, and there is damage prevention legislation in every state in the United States. Also, there is a lot of reporting that has to be done to the federal government; I think it is a result of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) on damage prevention. The focus in Nevada has been on preventing dig-ins. I will reserve

most of my comments for A.B. 80; however, I just want to clear up one thing. When talking about explosions and excavations, what happens is, if gas is involved, it travels the path of least resistance, so it will follow to a breach through a storm drain or sewer lateral. If a Roto-Rooter service is used there would be a spark only if gas is involved and had been breached.

Assemblyman Hardy:

How many breaches or explosions have we had in Nevada?

Deborah Gallo:

I cringe every time you use the word "explosion." As far as I know, we have had no explosions. I think one or two people have referenced a previous incident in Carson City, however I do not believe it was an explosion.

Assemblyman Hardy:

To recap your testimony, you do not know of any incident where a sewer lateral was involved with a gas leak that led to an explosion?

Deborah Gallo:

Correct.

Brian McAnallen, Director Government Affairs, Embarq, Las Vegas, Nevada:

I just want to associate my comments with those presented by Karen Pearl, from the Nevada Telecommunications Association. We do not have anything else to add to this bill. We may on A.B. 80, but I want to go on record opposing this bill because it does not answer the question of who is on the hook, as Assemblywoman Leslie mentioned earlier.

Judy Stokey, Director, Government Affairs, NV Energy, Las Vegas, Nevada:

I also want to echo what you have already heard. I will reserve my comments for A.B. 80, on which I think we can come to a resolution, but we are opposed to A.B. 32.

Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada:

Primarily we are cable television operators in the right-of-way. We are also telephone operators in the right-of-way. I continue to echo Ms. Leslie's concerns about who is responsible for water in and waste water out. That is the clarification I would like to see brought forth. I will reserve the rest of my testimony for A.B. 80.

Tom Hollis, Henderson, Nevada, representing National Utility Contractors Association of America, Las Vegas, Nevada:

The National Utility Contractors Association (NUCA) of Las Vegas is in opposition of A.B. 32. It is based on the fact that a system, which is intended to insure the safety of the public as well as utility workers, is already in place in the form of NRS Chapter 455 and NAC 455. The National Utility Contractors Association believes it is necessary for all entities in conjunction with underground utilities to be involved in this process. The law only succeeds if there is a cooperative effort to improve safety through compliance. It is our understanding that reports of property damage, serious injuries, and fatalities have already been submitted to the PUC. In summary, the Nevada Utilities Contractors Association does not feel it is necessary to create any new laws, however, enforcement of the existing laws is warranted, and NUCA fully supports that effort on behalf of its members and the general public.

Vice Chair Pierce:

Is there anyone who is neutral on this?

Richard Peel, Henderson, Nevada, representing Subcontractor Legislative Coalition, Henderson, Nevada:

Our Coalition is comprised of a number of trade organizations, specifically subcontractors, as well as labor groups. Mr. Noble spoke on the things that we feel are impacting subcontractors who do this type of work. We do have two plumbing subcontractors here today from our group who would like to give their input as to how this type of legislation will impact a plumber who is doing excavation work on a particular residence or other location.

Doug Williams, President, The Plumber, Inc., Las Vegas, Nevada:

I am a 30-year plumbing contractor in the State of Nevada, and I am also past president of the Plumbing-Heating-Cooling Contractors. I am on the Nevada Board of Plumbing Examiners, and the Associated Builders and Contractors. The existing law has been in place for many years; however, I can tell you that laterals have not been marked correctly. Many times I have excavated where the sewer lines were supposed to be only to discover that not only is there a sewer line, but there may be a water line, a gas line, or fiber optics. To take any of the responsibility away from the original installers or utility would be, in my opinion, ludicrous. I think it would be opening up plumbing contractors—who can barely get insurance as it is—to some great risks and some great costs, and ultimately these costs always get passed on to our customers.

Arthur White, Owner, Roadrunner Plumbing, Las Vegas, Nevada:

In the north there are probably 14 sewer laterals, in Las Vegas there are significantly many more. I can understand why, in rural areas, bringing this gentleman who gets "... 19 hours a week..." up to a 40 hour week, it is important to have all the sewer laterals marked and located prior to excavation. In Las Vegas, it is imminently important, that we as plumbing contractors staunchly oppose this bill.

Vice Chair Pierce:

Are there any questions? [None.] I will close the hearing on A.B. 32 and open the hearing on Assembly Bill 80. It looks as though we will not be able to get through the entire hearing today so we will schedule another hearing.

Assembly Bill 80: Revises provisions relating to excavations. (BDR 40-483)

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:

It is my intention to direct most of the comments to Mr. Schmidt and Mr. Rabold; however, before I do so I would like to indicate why the League brought this bill forward. You have heard a lot already about the Public Utilities Commission (PUCN) activities during the interim, and some of local government's opinions as to how that affects us. Obviously, this is a huge issue, and if what the PUC had proposed had been implemented, it would have had a devastating effect on many local budgets. Because we think it is very important that there be a legislative resolution to this issue, we brought forward A.B. 80, which we feel does propose some solutions to the problem and we have offered some things we believe are generous from our perspective.

Fred Schmidt, Carson City, Nevada, representing Clark County Water Reclamation District, Las Vegas, Nevada:

I have been working under contract with the Clark County Water Reclamation District to assist them through this process and have been involved in each and all of the PUC proceedings since the last Legislative Session. In that capacity I have spoken on behalf of an organization we call the Southern Nevada Sewer Entities, which not only comprises the Clark County Water Reclamation District, but also the City of Las Vegas, City of Henderson, and City of North Las Vegas' sewer operations. We have tried to coalesce and speak with one voice as much as possible, on behalf of the over half million customers in southern Nevada. Here with me is Barney Rabold, who is an actual operator of one of these systems. He is an engineer, and I thought that it would be important for you to try to understand the issue from someone who actually operates a sewer collection system and how it works.

I also thought it would be helpful for the Committee to understand what I consider a basic misconception about differences among utilities. We have what we call the "wet" utilities—typically government entities—and the "dry" utilities—which are typically the regulated utilities under the PUC. The "wet" utilities, among them water, act much like a gas or electric utility, in that they sell or deliver a commodity or product to a customer and push its product through a series of infrastructure and lines to a home.

A sewer is very different. A sewer is a collection system, and the sewer systems in the State of Nevada have been established as essentially a series of mains and treatment facilities, and sometimes some pumping stations. Primarily, we collect waste from homes or businesses and push it out through the system. That distinction is important to understand because there are essentially no meters on sewer systems; there are meters on virtually all other utility systems. All other utility systems put their meters at the sidewalk or at the home itself, so there is a responsibility on the utility company for the infrastructure, all the way up to and including that meter.

Sewer systems, not only in Nevada but throughout the nation, were never developed that way. They have all been developed in a different way where the product is put into a system that was—to correct the statement of the last gentleman who spoke—not installed by the utilities. None of them were. They were all installed by developers and contractors and then the sewer system collector agreed to a connection point at the main. It is also different because of the elevation difference; the depth of these utilities. Typically, a sewer utility is much deeper than all other utilities, which is why you do not have very many incidents. None of us like to hear about an explosion or a death, and let me assure you our main purpose in coming forward with A.B. 80 is that we believe public safety is paramount in our operations; not just for sewer laterals but for our entire operations, 24/7. It is the most important aspect of what we do as a government utility operator. We care about safety; that is why our people are out there working hard every day to operate their systems and operate them effectively.

Historically, of all the systems that were installed and developed, the sewers were not marked, and they were not located by anyone at the time they were done, so it is a problem. It is a problem that begs for a solution. We thought we would try and have that solution aired out at the PUC or at the Common Ground Alliance (CGA). We found when we attempted to participate in those meetings, it was perceived that the governments operated the sewer systems exclusive of everyone else. The costs to us are paramount, but they are not a big concern to others. Why? Because the other utilities may save some money if costs are shifted to us. We think a solution is necessary but in order to do

that, we need flexibility, time, recognition of our systems and how they function, and recognition of our budgets and how they operate.

We have not been able to get recognized or heard by the PUC in a manner that we believe respects what we need to do, and so we come to you and appeal to you as the Legislature. We told the PUC when they adopted the temporary regulation that the manner in which it was developed, the manner in which we were required to comply, was physically and literally impossible. We explained that, and we submitted voluminous documents; many of those documents are not reflected anywhere in that 13-page report. With all due respect to the PUC, maybe they did the best they could, but if that is the best job, we are not going to be able to resolve this out there. We need to resolve it in here.

Mr. Noble told me on several occasions that he could not solve some of our problems. For example, if we mark something on private property and we do not have an easement or a right on that private property from the property owner, and someone gets hurt or there is damage, who is liable? Mr. Noble cannot solve that problem, he told me, because there is no indication in the statute that anyone other than the person who took the action would be responsible. So if we are going to have to start marking laterals, we need recognition in the statute that it does not imply or make us liable for a lot of other things. When I walk through the bill section by section, after Mr. Rabold's presentation, I will explain why each section is there and what its purpose is and what we were intending to do. We are open to discussing sections of the bill. We spent a lot of time developing it. I worked with attorneys from Clark County, from the cities in southern Nevada, and also from each of the cities in Washoe County. In fact, we had significant assistance from Mr. Benton, one of your former Legislative Counsel Bureau (LCB) attorneys from Carson City, who helped us draft this bill. We did not do this lightly, and we hope you will take it as seriously as we do, even though it is an unfortunate and messy issue. So, let me turn it over to Mr. Rabold and let him explain to you what an operation is like and what our concerns are regarding identifying where each sewer lateral is in the State of Nevada.

Barney Rabold, Deputy Director of Utility Services, City of Henderson, Nevada:

Thank you for the opportunity to be here. I would like to present a short presentation to go through the details of how sewer lateral locating and marking occurs, and some of the challenges that we face. [Mr. Rabold gave a PowerPoint presentation ([Exhibit E](#)).]

Why do we locate? As Mr. Schmidt has said, we are concerned about the safety of our customers and the public. We are also concerned about the safety

of our utility employees. Not only do we own water and waste water utilities, we dig in the area where other utilities are, so we see this from both sides.

We have some challenges when we talk about locating sewer laterals. First, the sewer laterals are typically non-metallic pipe, which does not give us any indication from the surface where they are and there are no permanent visible markers associated with the sewer laterals. A long-standing and common practice, locally and nationally, is that sewer laterals are not owned by sewer agencies, they are owned by the owner of the building or the facility being served.

We have had two decades of consistent practice in what we are doing now. What has changed? We believe that what has changed is the increased use and reliance on other utilities and excavators using trenchless technology and the blind-boring type of excavation. It is a problem that we do not locate any of our utilities relative to depth in the soil. We only locate them on the horizontal plane. The borers tend to go up and down with some difficulty of control, but they are at varying depths, and there is still a risk of puncturing the sewer laterals. Also, the operators do not have visibility. They do not use cameras, they are going from point to point, and it is very difficult to confirm what has happened in those areas.

I want to talk a little about Henderson, because that is where I work, and we have prepared examples of impacts and costs on this just to give you an idea of what we face ([Exhibit E](#)). Remember this, Henderson has about 82,000 sewer accounts; that is only about 15-1/2 percent of all the sewer accounts in the Las Vegas valley area. We are a small portion of the valley, but we are a full service city.

I will be glad to take any questions.

Vice Chair Pierce:

I will take the Committee's questions first because we are about to lose a number of our members to their Education Committee meeting. We are not going to be able to finish this today.

Assemblywoman Smith:

Would you clarify the \$200 fee again for me in this bill?

Fred Schmidt:

The \$200 provision is contained in section 4; subsection 3, on page 3. That section represents our belief that the cost causer should pay for the cost that is being incurred. We do not have any of this money in our budgets today.

We have made an effort to identify the cost of locating each initial lateral; as Mr. Rabold said, he had crews go out and do that. We also did a survey of contractors' publications, issued a request for proposal (RFP); and we found sample projects in federal areas in California where there was an effort to go and locate an area which had not previously been located. Those bids and those estimates, although they ranged a bit, averaged out to be about \$200 per lateral for existing laterals that were not previously located.

Assemblywoman Smith:

So you are talking about when someone calls and needs the lateral located, you would charge \$200?

Fred Schmidt:

The charge would allow us reimbursement for some of what Mr. Rabold has quoted. At \$200 per lateral, it would cost approximately \$100 million for 525,000 laterals in southern Nevada.

Assemblywoman Smith:

My confusion is that we are not talking about charging someone when they connect for a location; we are talking about charging when we actually go out and do the location. Correct?

Fred Schmidt:

We are talking about not charging the customers except for the initial locate. Once we locate and have identified them, as the rest of the bill identifies, we use a Global Positioning System (GPS) and enter the data in the computer system, and then the cost is minimal.

Assemblywoman Smith:

I think we have a difference in the cost that you presented, and the cost that came on your fiscal note, and we can talk about that off-line.

Fred Schmidt:

The fiscal note was intended to be the ongoing cost needed if the GPS is not used for every system.

Assemblywoman Smith:

We can talk about that later, I just wanted to make sure we were on the same page.

Fred Schmidt:

I should note that it is a cost up to \$200. I am sure people are bothered by that because they assume government might charge a full \$200. That is not our

intent. The intent was to make sure we could at least recover the average cost. I would hope that it is not charged if all that is being done is the initial locate, and it is done based on the maps and/or a triangle, like one of our options.

Assemblywoman Smith:

I had actually clarified that with our staff as well, about whether it is a fee or how it fits or does not fit into a two-thirds requirement. The answer is that it does not fit, because it is up to what the cost is and it is just basically a pass-through.

Fred Schmidt:

We asked the LCB not to refer to a fee when drafting the bill. We also assumed that it might cause people who have been against new costs or taxes to be against the bill. We only want to recover legitimate costs that are being opposed by the new requirement.

Assemblywoman Spiegel:

Mr. Rabold, from page 5 of your presentation ([Exhibit E](#)), you said the pipes are non-metallic; is that also true of very old pipes where the houses are significantly older?

Barney Rabold:

You are exactly right. Henderson is a relatively new community, so we do not have metallic sewer lines, but there are examples of cast iron or ductile iron pipe that have been used for sewers that can be hooked up for laterals.

Assemblywoman Spiegel:

Do you know if the process of locating is different and is more or less expensive for some of these older pipes that might be made out of cast iron or ductile?

Barney Rabold:

I mentioned we used locate techniques for our water and other utilities in the City of Henderson. We use metallic detectors across the top of the ground, and assuming the sewer lines are not buried too deep, they can be detected with metallic detectors.

Assemblyman Stewart:

How many disaster incidents have you had in the last five years?

Barney Rabold:

I have been with the City of Henderson for four years. To my knowledge, we have had no disasters involving penetrations of sewer lines or sewer laterals. We have had some penetrations. We had a communication cable go through

one of our sewer lines that resulted in some damage, but no major disaster. It was noted and fixed.

Vice Chair Pierce:

Mr. Schmidt, you can proceed with the rest of your presentation.

Fred Schmidt:

On Page 2, sections 2 and 3 of the bill, the purpose here is to be more specific with definitions that are not in the current law under *Nevada Revised Statutes* (NRS) Chapter 455, and to specifically add and define "sewer service lateral," so that there is no ambiguity about what it is. Section 4 requires the operator of the sewer main to take the responsibility. That has not been the case to date, and it is a major change in practice. My firm has done a full review of all 50 states, and it is not the case in the majority of the states. But, it is an evolving issue, as Mr. Noble has pointed out, and we are trying to show a public interest in safety by taking the lead and agreeing that we are probably the most logical entity to try marking sewer laterals.

Under section 4, subsection 1, paragraph (a), there are several means of identifying and locating existing laterals, and we have tried to provide some flexibility, recognizing that not everyone is going to be able to acquire or buy or even own one of these camera trucks, and that sometimes it is just going to be based on existing records. There are circumstances where the laterals have clean-outs, and you may be able to use a clean-out if you can access or know where it is, particularly if it is close to the public right-of-way, as opposed to up near the house where we do not have access. We essentially are saying that there should be two standards: a standard for trenching through an area, which historically has not been a problem or caused issues with regard to safety; and a second, higher standard for boring. We believe that it is the prevalence of boring as a cost-saving measure by our dry utilities in installing their lines that has caused the public safety issue or danger to increase over past practices. As others have explained, when boring underground, it is not always known where it is going, or if a sewer line has been hit. Thus, where boring is involved, we tried to develop a higher standard which is reflected in subparagraph (2) of paragraph (a), and is also reflected later on when we talk about new service areas. You will note that the flexibility is contained in the four sub-subparagraphs. Each of those are different manners in which other states have tried to address this, and we have looked at other states to utilize language or systems that they used where a system has not been located using a GPS.

Section 4, subsection 1, paragraph (b) is essentially asking for, by October 1, 2009 a mandatory new requirement for inter-connections. So from

that point forward, there would be full physical data and then be the responsibility of our operators to maintain that data and records, so that we would not have any doubt where all those sewer laterals are that are installed after October 2009.

Subsection (2) of section 4 is intended to address the experience that Mr. Rabold had when he tried to put this in place. We were not able to locate the laterals within 48 hours. Our desire is to do it, because the local governments do not want to slow down or stop construction projects, and we want them to be completed as timely as possible; however, in some instances we need more time. Where we can locate the sewer laterals within 48 hours we will. Where we need a bit more time, but the excavator or contractor still needs the information, we need the flexibility that is shown in section 2.

Section 4, subsection 3 is the cost recovery section. It is up to or not more than \$200, and as I indicated earlier, there were numerous efforts made to determine and identify that cost, not just pick a number out of thin air.

Section 5 is the requirement related to putting in GPS systems and having the excavator do this when they are putting in new sewer systems. This will improve our recordkeeping. Most of the language under section 5 regards how a system is defined and used in the North American Datum, and it is probably much more detailed than I would be able to describe or explain, but the language was run by your LCB, and they thought it was fine. What it means, for those of you that have systems, it is just a GPS. And believe it or not, a GPS can locate a pinpoint on a map so we will know where the beginning and ending points are on a sewer lateral. There are no two identical points like that if there is a lateral at a different location.

Section 6 is intended to place the new burden on us to maintain the records that I referred to. Section 7 is probably one of the most critical parts of the legislation. This is the part which is not in the law today and I do not believe the PUCN can help us unless we add it to the law.

Section 7 makes clear that if we are doing all the things under the first part, we essentially are not taking on a new liability for the city because we are in what is otherwise private property—the pipe that runs under the street and up to a house or business. Subsection 2 is to make clear that no other responsibility is implied or required by the marking efforts we do. Subsection 1 ensures we are not creating any ownership interest.

Under section 9, we made a small change to the definition of "excavation" to highlight "boring" because it is now a new and much more common practice

and what we believe is causing the public safety issues that you hear about. This is intended to broaden the term "excavation" to encompass "boring."

Section 12 makes clear that new development does have obligations to install a GPS device as an option. When we first talked about GPS, we realized that would not necessarily work for all contractors. Although many and most contractors have sophisticated equipment to do that, the Homebuilders Association told us that many of their smaller contractors would prefer marker balls as an option, by placing a marker ball at the time they put the sewer lateral into the line. So to accommodate the Homebuilders Association, and the fact that all contractors would not be able to provide the GPS information when they install, we have section 12, subsection 2 which allows for that type of device under paragraph (a), but then under paragraph (b), it would require the GPS for all others. That makes sure that there are points on a lateral for all new installations after October 1, 2009 so that they are all located, and then the bill also makes very clear that the sewer operators now take responsibility for that.

Given where we have been in the state on this issue, this is a huge step for us, and we hope that you will support A.B. 80. We understand there are some concerns about some of the language or the way it might be interpreted or applied; we are more than willing to work with others. We put this language out in October 2008. We introduced it publically at a PUC hearing, we were asked to introduce it, and we received no written response or comments. We received no suggestions for amendments or changes, and the very first amendment we have seen to this bill was about three hours ago—even though I personally asked the CEO of the gas company, and I personally spoke to numerous others who were interested and I am sure will testify today. That is an example of why we need you to help us get through this problem and not just punt this to the PUC or to others. We need the Legislature to be sensitive to the problems we have had in trying to come to grips with this issue. We hope that you will help us implement this process in a manner that we can actually comply with and will not cause a rate shock on your constituents and our sewer customers.

David Fraser:

I would like to thank these two gentlemen for the thorough review of both the bill and the issue. I echo what has been said, that this is an issue of tremendous importance to our members, and we certainly hope you see the importance of having a legislative resolution to this issue.

Vice Chair Pierce:

We have lost most of our Committee, so I think we will have to continue this on another day. You have given us all a lot to think about.

Chairwoman Smith:

We will continue this hearing on a future date. What I want to stress is that we do intend to resolve this or we would not be here. We would have just not heard the bills if it was our desire to punt this to the PUC. The one thing I will say is that while we are waiting for scheduling another hearing, I hope you will all be talking to each other and working on some resolution, because the longer this drags on the more it costs our constituents. The more meetings that have to be held, and if we have to go yet another Interim with people running around the state having to have meetings and doing studies, and so on, is very costly to our taxpayers and our rate payers, so we need to get this figured out for safety sake and to be prudent. We will put out another hearing date quickly, and as most of you know, I am not afraid to be here in the evenings so if that is what it takes, we will work through this as necessary and get this bill processed. I look forward to working with everyone and having everyone at the table so that we can have all your concerns addressed. I am very sensitive to all of the issues involved. I have spent my time out in rural Nevada so I absolutely understand the needs there are different than the needs in Clark County and Washoe County. Let us get this figured out; everybody may not be happy, but at least we will be able to have a resolution and you can all maybe have your piece of it that helps solve the problem. I will turn this back over to the Vice Chair, and we will notify you as soon as we have another date set.

Vice Chair Pierce:

Is there anyone in the public who would like to comment? Anyone in Las Vegas? [None.] Thank you very much and I will close the hearing on A.B. 80. The meeting is adjourned. [at 3:46 p.m.]

RESPECTFULLY SUBMITTED:

Darlene Rubin
Committee Secretary

APPROVED BY:

Assemblywoman Debbie Smith, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: March 4, 2009

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 32	C	Nancy Boland, Esmeralda County Commissioner District 2, Silver Peak, Nevada	Written Testimony
A.B. 32	D	Lynn Forsberg, Public Works Director, Elko County Public Works, Elko, Nevada	Written Testimony
A.B. 80	E	Barney Rabold, Deputy Director of Utility Services, City of Henderson, Nevada	Power Point