

SENATE BILL NO. 27—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF NEVADA)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to excavations in areas containing subsurface installations. (BDR 40-224)

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

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

AN ACT relating to excavations; revising provisions governing excavations conducted in areas that are known or reasonably should be known to contain a subsurface installation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits a person, except a person responsible for an emergency excavation or demolition under certain circumstances, from beginning an excavation or demolition that is to be conducted in an area that is known or reasonably should be known to contain a subsurface installation, unless the person: (1) notifies the appropriate association for persons who own, operate or maintain a subsurface installation; and (2) cooperates with the operator in locating and identifying the subsurface installation. (NRS 455.110) Existing law defines “emergency” to mean a sudden, unexpected occurrence that involves clear and imminent danger and requires immediate action to prevent or mitigate loss of life or damage to health, property or essential public services. (NRS 455.090) **Section 6.5** of this bill revises this definition by clarifying that an immediate action includes, without limitation: (1) the use of non-mechanical equipment and methods that are standard in the industry to determine the severity or spread of an underground leak; or (2) the locating of a subsurface installation by the operator of the subsurface installation using non-mechanical equipment within the area of a proposed excavation under certain circumstances.

Existing law defines “excavation” to mean the movement or removal of earth, rock or other material in or on the ground which is accomplished using mechanical equipment or by the placement and discharge of explosives. (NRS 455.092)



Section 7 of this bill expands the definition of excavation to include the movement or removal of earth, rock or other material in or on the ground using non-mechanical equipment by: (1) a contractor; or (2) any person, other than a contractor, if the movement or removal of such material occurs more than 12 inches below the surface of the original groundline. **Sections 2 and 3** of this bill define the terms "contractor" and "non-mechanical equipment," respectively. **Sections 4-6, 8 and 10-12** of this bill make conforming changes indicating the placement of **sections 2 and 3** within the Nevada Revised Statutes. **Section 9** of this bill makes a conforming change by replacing the term "hand tools" with the defined term "non-mechanical equipment."

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 and 3 of this act.

Sec. 2. *"Contractor" has the meaning ascribed to it in NRS 624.020.*

Sec. 3. *"Non-mechanical equipment" means equipment operated solely by human power, including, without limitation, a hammer or other device used to drive stakes or rods into the ground, mattock, pickaxe, shovel or spade.*

Sec. 4. NRS 455.040 is hereby amended to read as follows:

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

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

3. Such persons, in addition to any judgment that may be rendered against them, are liable and subject to a fine not exceeding the sum of \$250 for each violation of the provisions of NRS 455.010 to 455.180, inclusive, *and sections 2 and 3 of this act* which judgments and fines must be adjudged and collected as provided for by law.



1 **Sec. 5.** NRS 455.050 is hereby amended to read as follows:
2 455.050 1. Suits commenced under the provisions of NRS
3 455.010 to 455.180, inclusive, *and sections 2 and 3 of this act* must
4 be filed in the name of the State of Nevada.

5 2. All judgments collected must be paid into the county
6 treasury for county purposes.

7 3. All fines collected must be paid into the State Permanent
8 School Fund.

9 **Sec. 6.** NRS 455.080 is hereby amended to read as follows:

10 455.080 As used in NRS 455.080 to 455.180, inclusive, *and*
11 *sections 2 and 3 of this act*, unless the context otherwise requires,
12 the words and terms defined in NRS 455.082 to 455.105, inclusive,
13 *and sections 2 and 3 of this act* have the meanings ascribed to them
14 in those sections.

15 **Sec. 6.5.** NRS 455.090 is hereby amended to read as follows:

16 455.090 1. "Emergency" means a sudden, unexpected
17 occurrence that involves clear and imminent danger and requires
18 immediate action to prevent or mitigate loss of life or damage to
19 health, property or essential public services.

20 2. *As used in this section, "immediate action" includes,*
21 *without limitation:*

22 (a) *The use of non-mechanical equipment and methods that*
23 *are standard in the industry to determine the severity or spread of*
24 *an underground leak; or*

25 (b) *The locating of a subsurface installation by the operator of*
26 *the subsurface installation using non-mechanical equipment*
27 *within the area of a proposed excavation if:*

28 (1) *The excavation is imminent;*

29 (2) *The excavator has complied with provisions of NRS*
30 *455.080 to 455.180, inclusive, and sections 2 and 3 of this act; and*

31 (3) *The operator has been unable to locate its subsurface*
32 *installation.*

33 **Sec. 7.** NRS 455.092 is hereby amended to read as follows:

34 455.092 1. "Excavation" means the movement or removal of
35 earth, rock or other material in or on the ground by ~~fuse~~ :

36 (a) *Use of mechanical equipment ;*

37 (b) *Use of non-mechanical equipment by:*

38 (1) *A contractor; or*

39 (2) *Any person, other than a contractor, if at any point the*
40 *movement or removal of such material occurs more than 12*
41 *inches below the surface of the original groundline; or ~~by the~~*

42 (c) *The placement and discharge of explosives.*

43 2. The term includes augering, backfilling, boring, digging,
44 ditching, drilling, grading, plowing-in, ripping, scraping, trenching
45 and tunneling.



Sec. 8. NRS 455.107 is hereby amended to read as follows:

455.107 1. Except as otherwise provided in subsection 2, possession of a permit to conduct an excavation or demolition does not exempt a person from complying with the provisions of NRS 455.080 to 455.180, inclusive, ~~[H]~~, *and sections 2 and 3 of this act.*

2. A person is exempt from complying with the provisions of NRS 455.080 to 455.180, inclusive, *and sections 2 and 3 of this act* if the person obtains the written consent of all operators involved in the proposed excavation or demolition before the person receives a permit to conduct the excavation or demolition.

Sec. 9. NRS 455.137 is hereby amended to read as follows:

455.137 1. Except as otherwise provided in subsection 2, the person responsible for an excavation or demolition shall, before using any mechanical equipment, determine the exact location of a subsurface installation that is affected by the excavation or demolition by excavating with ~~[hand-tools]~~ *non-mechanical equipment* or by any other method agreed upon by the person responsible for the excavation or demolition and the operator within the approximate location of the subsurface installation as designated by markings made in accordance with NRS 455.133.

2. A person may use mechanical equipment for the removal of pavement if there are no subsurface installations contained in the pavement.

3. If the exact location of a subsurface installation cannot be determined by using ~~[hand-tools]~~ *non-mechanical equipment*, the person responsible for an excavation or demolition shall request the operator to provide additional information to locate the installation. The operator shall, within 1 working day, provide any information that is available to the operator to enable the person responsible for the excavation or demolition to determine the exact location of the installation.

Sec. 10. 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 and 3 of this act* is not liable for the cost of repairing any damage to a subsurface installation which results from the person's excavation or demolition.

Sec. 11. 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. Except as otherwise provided in subsection 4, in addition to any other penalty provided by law, any person who willfully or repeatedly violates a provision of NRS 455.080 to 455.180, inclusive, *and sections 2 and 3 of this act* is liable for a civil penalty:

(a) Not to exceed \$2,500 per day for each violation; and

(b) Not to exceed \$250,000 for any related series of violations within a calendar year.

3. Except as otherwise provided in subsections 2 and 4, any person who negligently violates any such provision is liable for a civil penalty:

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

(b) Not to exceed \$50,000 for any related series of violations within a calendar year.

4. The maximum civil penalty imposed pursuant to this section may be tripled for each violation that involves contact with, or that occurs less than 24 horizontal inches from a high consequence subsurface installation, regardless of the depth of the location of the high consequence subsurface installation. The amount of any civil penalty imposed pursuant to this section and the propriety of any settlement or compromise concerning a penalty shall be determined by the Public Utilities Commission of Nevada.

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 and 3 of this act* before and after the violation;

(c) Any history of previous violations of the provisions of NRS 455.080 to 455.180, inclusive, *and sections 2 and 3 of this act* by the person charged with the violation;

(d) The willfulness or negligence of the person charged with the violation in failing to comply with the provisions of NRS 455.080 to 455.180, inclusive ~~[§]~~, *and sections 2 and 3 of this act*;

(e) The timeliness of notification of the violation to the Public Utilities Commission of Nevada by the person charged with the violation;

(f) The cooperation of the person charged with the violation in the investigation and repair of any damage caused by the violation; and

(g) Whether an interruption of services occurred as a result of the violation.



6. Except as otherwise provided in this subsection, 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. If the Regulatory Operations Staff of the Public Utilities Commission of Nevada initiates the action, a civil penalty recovered pursuant to this section must be deposited in the State General Fund.

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. 12. 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 and 3 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. 13. This act becomes effective on July 1, 2023.

