

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:

1 With certain exceptions, existing law prohibits a person from beginning an
2 excavation or demolition that is to be conducted in an area that is known or
3 reasonably should be known to contain a subsurface installation, unless the person:
4 (1) notifies the appropriate association for persons who own, operate or maintain a
5 subsurface installation; and (2) cooperates with the operator in locating and
6 identifying the subsurface installation. (NRS 455.110) Existing law defines
7 “excavation” to mean the movement or removal of earth, rock or other material in
8 or on the ground which is accomplished using mechanical equipment or by the
9 placement and discharge of explosives. (NRS 455.092) **Section 7** of this bill
10 expands the definition of excavation to include the movement or removal of earth,
11 rock or other material in or on the ground using non-mechanical equipment by: (1)
12 a contractor; or (2) any person, other than a contractor, if the movement or removal
13 of such material occurs more than 12 inches below the surface of the original
14 groundline. **Sections 2 and 3** of this bill define the terms “contractor” and “non-
15 mechanical equipment,” respectively. **Sections 4-6, 8 and 10-12** of this bill make
16 conforming changes indicating the placement of **sections 2 and 3** within the
17 Nevada Revised Statutes. **Section 9** of this bill makes a conforming change by
18 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:

1 **Section 1.** Chapter 455 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *“Contractor” has the meaning ascribed to it in*
4 *NRS 624.020.*

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

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

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

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

25 3. Such persons, in addition to any judgment that may be
26 rendered against them, are liable and subject to a fine not exceeding
27 the sum of \$250 for each violation of the provisions of NRS
28 455.010 to 455.180, inclusive, *and sections 2 and 3 of this act*
29 which judgments and fines must be adjudged and collected as
30 provided for by law.

31 **Sec. 5.** NRS 455.050 is hereby amended to read as follows:

32 455.050 1. Suits commenced under the provisions of NRS
33 455.010 to 455.180, inclusive, *and sections 2 and 3 of this act* must
34 be filed in the name of the State of Nevada.

35 2. All judgments collected must be paid into the county
36 treasury for county purposes.

37 3. All fines collected must be paid into the State Permanent
38 School Fund.

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

40 455.080 As used in NRS 455.080 to 455.180, inclusive, *and*
41 *sections 2 and 3 of this act*, unless the context otherwise requires,
42 the words and terms defined in NRS 455.082 to 455.105, inclusive,



1 *and sections 2 and 3 of this act* have the meanings ascribed to them
2 in those sections.

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

4 455.092 1. "Excavation" means the movement or removal of
5 earth, rock or other material in or on the ground by ~~use~~ :

6 (a) *Use of mechanical equipment ;*

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

8 (1) *A contractor; or*

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

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

13 2. The term includes augering, backfilling, boring, digging,
14 ditching, drilling, grading, plowing-in, ripping, scraping, trenching
15 and tunneling.

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

17 455.107 1. Except as otherwise provided in subsection 2,
18 possession of a permit to conduct an excavation or demolition does
19 not exempt a person from complying with the provisions of NRS
20 455.080 to 455.180, inclusive ~~§~~, *and sections 2 and 3 of this act.*

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

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

27 455.137 1. Except as otherwise provided in subsection 2, the
28 person responsible for an excavation or demolition shall, before
29 using any mechanical equipment, determine the exact location of a
30 subsurface installation that is affected by the excavation or
31 demolition by excavating with ~~hand-tools~~ *non-mechanical*
32 *equipment* or by any other method agreed upon by the person
33 responsible for the excavation or demolition and the operator within
34 the approximate location of the subsurface installation as designated
35 by markings made in accordance with NRS 455.133.

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

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



1 the excavation or demotion to determine the exact location of the
2 installation.

3 **Sec. 10.** NRS 455.150 is hereby amended to read as follows:
4 455.150 Any person who substantially complies with the
5 provisions of NRS 455.080 to 455.180, inclusive, *and sections 2*
6 *and 3 of this act* is not liable for the cost of repairing any damage to
7 a subsurface installation which results from the person's excavation
8 or demolition.

9 **Sec. 11.** NRS 455.170 is hereby amended to read as follows:
10 455.170 1. An action for the enforcement of a civil penalty
11 pursuant to this section may be brought before the Public Utilities
12 Commission of Nevada by the Attorney General, a district attorney,
13 a city attorney, the Regulatory Operations Staff of the Public
14 Utilities Commission of Nevada, the governmental agency that
15 issued the permit to conduct an excavation or demolition, an
16 operator or a person conducting an excavation or demolition.

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

- 22 (a) Not to exceed \$2,500 per day for each violation; and
- 23 (b) Not to exceed \$250,000 for any related series of violations
24 within a calendar year.

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

- 28 (a) Not to exceed \$1,000 per day for each violation; and
- 29 (b) Not to exceed \$50,000 for any related series of violations
30 within a calendar year.

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

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

- 42 (a) The gravity of the violation;
- 43 (b) The good faith of the person charged with the violation in
44 attempting to comply with the provisions of NRS 455.080 to



1 455.180, inclusive, *and sections 2 and 3 of this act* before and after
2 the violation;

3 (c) Any history of previous violations of the provisions of NRS
4 455.080 to 455.180, inclusive, *and sections 2 and 3 of this act* by
5 the person charged with the violation;

6 (d) The willfulness or negligence of the person charged with the
7 violation in failing to comply with the provisions of NRS 455.080 to
8 455.180, inclusive ~~{}~~, *and sections 2 and 3 of this act*;

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

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

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

17 6. Except as otherwise provided in this subsection, a civil
18 penalty recovered pursuant to this section must first be paid to
19 reimburse the person who initiated the action for any cost incurred
20 in prosecuting the matter. If the Regulatory Operations Staff of the
21 Public Utilities Commission of Nevada initiates the action, a civil
22 penalty recovered pursuant to this section must be deposited in the
23 State General Fund.

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

28 **Sec. 12.** NRS 455.180 is hereby amended to read as follows:
29 455.180 The provisions of NRS 455.080 to 455.170, inclusive,
30 *and sections 2 and 3 of this act* do not affect any civil remedies
31 provided by law for personal injury or property damage and do not
32 create a new civil remedy for any personal injury or property
33 damage.

34 **Sec. 13.** This act becomes effective on July 1, 2023.

