

立法會
Legislative Council

LC Paper No. LS84/01-02

**Paper for the House Committee Meeting
on 26 April 2002**

**Legal Service Division Report on
Land (Miscellaneous Provisions) (Amendment) Bill 2002**

I. SUMMARY

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| 1. Object of the Bill | To improve the regulation of excavation in unleased land. |
| 2. Comments | <p>(a) The regulation will be strengthened by empowering the relevant Authority to enforce an excavation permit against the permittee as well as all contractors and sub-contractors connected with the work and charging for the economic cost on on-street excavations not completed on time.</p> <p>(b) The excavation permit system will be extended to Government departments which carry out excavation work.</p> <p>(c) The fine for any breach of permit conditions will be increased from \$5,000 to \$50,000 to take account of inflation over the years.</p> |
| 3. Public Consultation | The utilities and the construction industry have been consulted and have voiced some concern. |
| 4. Consultation with LegCo Panel(s)/ Committee(s) | The most recent consultation was with the Panel on Planning, Lands and Works between January and March 2002. Concern was raised on various issues. |
| 5. Conclusion | <p>(a) The Bill includes some controversial issues and should be examined carefully by a Bills Committee.</p> <p>(b) The legal and drafting aspects are still being scrutinised.</p> |

II. REPORT

Object of the Bill

To improve the regulation of excavation in unleased land by -

- (a) prescribing a fee (including the economic cost in some cases) for excavation permits; and
- (b) widening the scope of enforcement of excavation permit conditions.

LegCo Brief Reference

2. WB(W)249/38/02[TC13/2001] dated 10 April 2002 issued by the Works Bureau .

Date of First Reading

3. 24 April 2002.

Comments

4. At present, excavation permits are required if excavations are to be carried out on streets maintained by the Highways Department (HyD) or other unleased government lands maintained by the Lands Department. These permits are issued free of charge.

5. According to the LegCo Brief, the Administration finds the present regulatory control unsatisfactory because -

- (a) it is not in line with the user-pays principle; and
- (b) the permittees have no incentive to complete their work as soon as possible.

6. The Bill sets out to address these problems and to generally strengthen the present controls by the following major proposals -

- (a) Where a person employs a contractor to carry out excavation work, he would himself need a principal excavation permit and his contractor as well as any other subcontractors would each be deemed to have been issued with a secondary permit on similar terms and conditions so that enforcement against any breaches can be made against any of them;
- (b) A permittee may also nominate his contractor as a nominated permittee, thereby making him liable also for any breaches of permit conditions;
- (c) Administrative costs for the permits will be charged on a full cost recovery basis; and
- (d) For excavation on streets, HyD will be empowered to charge an additional economic cost depending on whether the street concerned is a "strategic street", "sensitive street" or "remaining street" based on the likely traffic impact an excavation can cause. The economic cost will only be charged on an extension of the permit and may be refunded if the extension is not the fault of the permittee or his contractors or the excavation is completed before the extended expiry date.

7. The maximum fine for making or maintaining an excavation without a permit or in breach of a permit condition will also be increased from \$5,000 to \$50,000 to reflect the inflation over the past 30 years. Liability to 6 months imprisonment will remain the same.

8. It is also proposed that the control regime be extended so as to bind the Government in so far as it relates to excavations in unleased land which is a street maintained by the HyD. Government departments which carry out such excavations will therefore have to apply for a permit, pay the prescribed fees and bound by its conditions. However, any non-compliant department will, instead of being made liable to criminal proceedings, be made subject to a reporting mechanism to the Secretary for Works.

Public Consultation

9. Paragraph 15 of LegCo sets out the concerns of the utilities and the construction industry when consulted by the Administration and the latter's response.

Consultation with LegCo Panel(s)/Committee(s)

10. The Public Accounts Committee has been monitoring the subject since it was first brought up by the Director of Audit in his report issued in October 1991. Since then,

the Administration has consulted the Panel on Planning, Lands and Works on various occasions.

11. The latest consultation was with the Panel at its meetings on 15 January, 20 February and 8 March 2002. Concerns were expressed by Panel members over -

- (a) the high level of economic cost for traffic delay, especially to a "strategic road";
- (b) whether criminal sanction is appropriate for breach of permit conditions and the differential treatment for non-compliant government departments;
- (c) whether a one-stop application mechanism can be established;
- (d) the conflict of the different roles of HyD as the issuing authority, the enforcement authority and a permittee; and
- (e) whether any appeal mechanism would be effective and fair.

Conclusion

12. The proposals in the Bill have attracted a lot of concern and much debate since their inception. A Bills Committee would be necessary to examine in detail the proposals in the light of the various issues that have been raised by the affected parties and by Members on various occasions.

13. The legal and drafting aspects of the Bill are still being scrutinised.

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