

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 454

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

1 RELATING TO UNDERGROUND FACILITIES DAMAGE PREVENTION; AMENDING SECTION
2 55-2201, IDAHO CODE, TO REVISE LEGISLATIVE INTENT; AMENDING SECTION
3 55-2202, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING CHAPTER 22, TITLE
4 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2203, IDAHO CODE,
5 TO ESTABLISH A DAMAGE PREVENTION BOARD IN THE DIVISION OF BUILDING
6 SAFETY; AMENDING CHAPTER 22, TITLE 55, IDAHO CODE, BY THE ADDITION OF
7 A NEW SECTION 55-2204, IDAHO CODE, TO PROVIDE FOR A DAMAGE PREVENTION
8 BOARD FUND; AMENDING SECTION 55-2203, IDAHO CODE, TO REDESIGNATE THE
9 SECTION, TO CLARIFY NOTIFICATION REQUIREMENTS PRIOR TO EXCAVATION AND
10 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2204, IDAHO CODE,
11 TO REDESIGNATE THE SECTION AND TO PROVIDE FOR JURISDICTION BY THE DAMAGE
12 PREVENTION BOARD OVER CERTAIN PERSONS; AMENDING SECTION 55-2205, IDAHO
13 CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 55-2206, IDAHO CODE,
14 TO REDESIGNATE THE SECTION, TO CLARIFY CERTAIN RESPONSIBILITIES, TO
15 PROVIDE FOR LIABILITY FOR THE COST OF REPAIRS, TO AUTHORIZE RULEMAKING
16 REGARDING THE PROCESSING OF CLAIMS AND TO REQUIRE THE REPORTING OF DATA;
17 AMENDING SECTION 55-2207, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO
18 CLARIFY DUTIES OF ENTITIES ISSUING BUILDING, EXCAVATION AND OTHER PER-
19 MITS; AMENDING SECTION 55-2208, IDAHO CODE, TO REDESIGNATE THE SECTION
20 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2209, IDAHO
21 CODE, TO REDESIGNATE THE SECTION AND TO AUTHORIZE THE DAMAGE PREVENTION
22 BOARD TO REVIEW ALLEGED VIOLATIONS, TO MAKE ADMINISTRATIVE DETERMINA-
23 TIONS AND TO IMPOSE ADMINISTRATIVE PENALTIES ON VIOLATORS; AMENDING
24 SECTION 55-2210, IDAHO CODE, TO REDESIGNATE THE SECTION; AND AMENDING
25 SECTION 67-2601A, IDAHO CODE, TO REVISE THE DUTIES OF THE ADMINISTRATOR
26 OF THE DIVISION OF BUILDING SAFETY.
27

28 Be It Enacted by the Legislature of the State of Idaho:

29 SECTION 1. That Section 55-2201, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 55-2201. LEGISLATIVE INTENT. It is the intent of the legislature in
32 enacting this chapter to create a system of stakeholder-driven education and
33 enforcement addressing the prevention of damage to underground facilities,
34 to assign responsibilities for locating and keeping accurate records of un-
35 derground facility locations, for ~~protecting~~ preventing and repairing dam-
36 age to existing underground facilities, for collecting, storing, analyzing
37 and disseminating data related to underground facility damage and excavator
38 downtime events, and for protecting the public health and safety from great
39 personal harm including death, property damage and interruption in vital
40 services caused by damage to existing underground facilities. It is fur-
41 ther the intent of the legislature that the state of Idaho, by adopting this
42 chapter, reaffirms its primacy over underground facility damage prevention

1 programs that protect the health, safety and property of its citizens and
 2 that, by adopting this chapter, Idaho precludes the pipeline and hazardous
 3 materials safety administration of the United States department of trans-
 4 portation from determining that Idaho's damage prevention enforcement is
 5 inadequate pursuant to 49 CFR part 198, as adopted on July 9, 2015, and effec-
 6 tive on January 1, 2016, and prevents any subsequent federal administrative
 7 enforcement actions that would result from such a formal determination.

8 SECTION 2. That Section 55-2202, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 55-2202. DEFINITIONS. As used in this chapter:

11 (1) "Administrator" means the administrator of the division of build-
 12 ing safety.

13 (2) "Board" means the damage prevention board.

14 (3) "Business day" means any day other than Saturday, Sunday, or a le-
 15 gal, local, state, or federal holiday.

16 (24) "Damage" includes means any impact or exposure that results in the
 17 substantial weakening of structural or lateral support of an underground fa-
 18 ility, or the penetration, impairment, or destruction of any underground
 19 protective coating, housing, or other protective device, or the partial or
 20 complete destruction of the facility, or the severance, partial or complete,
 21 of any underground facility to the extent that the project owner or the af-
 22 ected underground facility owner determines that repairs are required.

23 (35) "Emergency" means any sudden or unforeseen condition constituting
 24 a clear and present danger to life, health or property, or a customer service
 25 outage, or the blockage of roads or transportation facilities that requires
 26 immediate action.

27 (46) "Excavation" means any operation in which earth, rock, or other
 28 material in the ground is moved or otherwise displaced by any means includ-
 29 ing, but not limited to, explosives.

30 (57) "Excavator" means any person who engages directly in excavation.

31 (8) "Excavator downtime" means lost time for an excavation project due
 32 to failure of one (1) or more stakeholders to comply with applicable damage
 33 prevention regulations.

34 (69) "Identified but unlocatable underground facility" means an under-
 35 ground facility which has been identified but cannot be located with reason-
 36 able accuracy.

37 (710) "Identified facility" means any underground facility which is
 38 indicated in the project plans as being located within the area of proposed
 39 excavation.

40 (811) "Locatable underground facility" means an underground facility
 41 which can be field-marked with reasonable accuracy.

42 (912) "Marking" means the use of stakes, paint, or other clearly iden-
 43 tifiable materials to show the field location of underground facilities, in
 44 accordance with the current color code standard of the American public works
 45 association. Markings shall include identification letters indicating the
 46 specific type of the underground facility.

47 (103) "One-number locator notification service" means a service
 48 through which a person can notify owners of underground facilities and re-
 49 quest field-marking of their underground facilities.

1 (114) "Person" means an individual, partnership, association, corpo-
 2 ration, a state, a city, a county, or any subdivision or instrumentality of a
 3 state, and its employees, agents, or legal representatives.

4 (125) "Reasonable accuracy" or "reasonably accurate" means location
 5 within twenty-four (24) inches horizontally of the outside dimensions of
 6 each side of an underground facility.

7 (16) "Rural underground facility owner" means an underground facility
 8 owner that is a public utility or a member-owned cooperative that serves
 9 fewer than five thousand (5,000) total customers in a county or counties with
 10 populations that do not exceed fifty thousand (50,000) people.

11 (17) "Stakeholder" means any party with an interest in protecting un-
 12 derground facilities including, but not limited to, persons, property own-
 13 ers, underground facility owners, excavators, contractors, cities, coun-
 14 ties, highway districts, railroads, public entities that deliver irrigation
 15 water and those engaged in agriculture.

16 (138) "Underground facility" means any item buried or placed below
 17 ground for use in connection with the storage or conveyance of water (unless
 18 being delivered primarily for irrigation), sewage, electronic, telephonic
 19 or telegraphic communications, cable television, electric energy, petro-
 20 leum products, gas, gaseous vapors, hazardous liquids, or other substances
 21 and including, but not limited to, pipes, sewers, conduits, cables, valves,
 22 lines, wires, manholes, attachments, and those parts of poles or anchors
 23 below ground.

24 (149) "Underground facility owner" means any person who owns or oper-
 25 ates an underground facility.

26 SECTION 3. That Chapter 22, Title 55, Idaho Code, be, and the same is
 27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 28 ignated as Section 55-2203, Idaho Code, and to read as follows:

29 55-2203. DAMAGE PREVENTION BOARD. (1) The Idaho damage prevention
 30 board is hereby created and made a part of the division of building safety.
 31 The principal purpose of the board is to reduce damages to underground facil-
 32 ities and to promote safe excavation practices through education directed
 33 toward excavators, underground facility owners and the public at large. The
 34 board also shall review complaints of alleged violations of this chapter. It
 35 shall be the responsibility and duty of the administrator to administer this
 36 chapter, and the administrator shall exercise such powers and duties as are
 37 reasonably necessary to enforce the provisions of this chapter.

38 (2) The board shall consist of eleven (11) members, each of whom shall
 39 be appointed by and serve at the pleasure of the governor. All members of the
 40 board shall be qualified by experience, knowledge and integrity in formu-
 41 lating rules, reviewing complaints referred to it and assessing penalties,
 42 and properly performing the functions of the board. Of the eleven (11) mem-
 43 bers, one (1) each shall represent the interests of the following designated
 44 groups and be:

- 45 (a) A city official or a county official;
- 46 (b) An employee or elected official of a highway district;
- 47 (c) An employee of the Idaho public utilities commission;
- 48 (d) An employee or officer of a one-number notification service entity
- 49 or a member of the Idaho utility coordinating council or similar cooper-

1 ative statewide nonprofit organization created to coordinate the pro-
2 tection of underground facilities in specific geographic portions of
3 the state;

4 (e) An employee or officer of an underground facility owner;

5 (f) An employee or officer of an underground pipeline facility owner;

6 (g) An employee or officer of a rural underground facility owner;

7 (h) An employee or officer of a contractor;

8 (i) An employee or officer of a building contractor;

9 (j) An employee or officer of an excavator; and

10 (k) An employee or owner of an agricultural enterprise, a representa-
11 tive of the agriculture industry, or an employee or an official of a pub-
12 lic entity that delivers water for irrigation.

13 (3) Each member of the board shall serve a term of four (4) years, and
14 such terms shall be staggered. The initial board shall have three (3) mem-
15 bers whose terms expire July 1, 2018; four (4) members whose terms expire
16 July 1, 2019; and four (4) members whose terms expire July 1, 2020. There-
17 after, each board member shall be appointed for a term of four (4) years. No
18 member of the board may be appointed to more than two (2) consecutive terms.
19 A member may continue to serve until a successor is appointed. A successor
20 must represent the same designated group that his predecessor was appointed
21 to represent.

22 (4) The board shall meet within thirty (30) days after the appointment
23 of all its members and thereafter at such other times as may be expedient and
24 necessary for the proper performance of its duties, but the board shall hold
25 at least two (2) regular meetings per year. At the board's first meeting,
26 the members shall elect one (1) of their number to be chairman and one (1) to
27 serve as the vice chairman. The chairman may serve in such capacity for a one
28 (1) year term and may not serve in such capacity for more than two (2) consec-
29 utive terms. A majority of the board shall constitute a quorum for the trans-
30 action of business. The administrator shall serve as the secretary to the
31 damage prevention board.

32 (5) Each member of the board shall be compensated as provided by section
33 59-509(n), Idaho Code.

34 (6) Each member of the board who is a contractor shall be registered in
35 accordance with chapter 52, title 54, Idaho Code, and shall be in good stand-
36 ing.

37 (7) The activities of the board shall be funded by a fee established by
38 the board and promulgated in rule. Such fee shall be adopted by the board by
39 no less than eight (8) affirmative votes at a meeting duly called for such
40 purpose at which a quorum is present and shall be imposed uniformly upon
41 all of the underground facility owners required by the provisions of this
42 chapter to participate in and cooperate with the one-number notification
43 service. The fee shall be assessed upon an underground facility owner each
44 time such owner receives notice from a one-number notification service as
45 required by section 55-2205, Idaho Code. The fee is established to defray
46 the expenses of the board and the division in supervising, regulating and
47 administering the provisions of this chapter, and the provision of services
48 hereunder. The fee assessed upon an underground facility owner shall be
49 collected by a one-number notification service and payable to the board in
50 accordance with a schedule and in a manner established by the board in rule.

1 All fees collected by the board shall be deposited with the state treasurer
2 to be credited to the damage prevention board fund established pursuant to
3 section 55-2204, Idaho Code.

4 (8) The board shall cause educational materials regarding safe digging
5 practices and the dangers of failing to provide notice prior to excavating
6 to be prepared and distributed statewide on an ongoing basis. The board may
7 enter into agreements with other entities for this purpose.

8 (9) The board, by rule, may adopt or create training programs on all
9 pertinent underground damage prevention topics, which may include, but
10 are not limited to, safe excavation, locating and marking of facilities,
11 determining facility damage, emergency procedures, excavator downtime,
12 pre-marking of intended excavation areas, and procedures used when encoun-
13 tering unmarked facilities, for general use or for remedial training that
14 may be ordered by the board pursuant to section 55-2211, Idaho Code.

15 (10) The board shall periodically review the effectiveness of the meth-
16 ods used for maintaining effective communications among stakeholders from
17 receipt of an excavation notification until successful completion of the ex-
18 cavation and may adopt, by rule, methods to maintain or improve these commu-
19 nications among stakeholders.

20 (11) The board shall review complaints alleging violations of this
21 chapter by any party against any other party subject to the jurisdiction
22 of the board involving practices related to public safety and underground
23 facilities damage prevention including, but not limited to, notification
24 procedures, pre-marking of areas to be excavated, marking of facilities, ex-
25 cavation practices, excavator downtime, inaccurate location of facilities,
26 untimely location of facilities, untimely commencement of excavation, fail-
27 ure of a permitting entity to reinstate a permit in a timely manner, failure
28 of an underground facility owner to participate in a one-number notifica-
29 tion service as required, or failure by a party to report damage data when
30 required, and may impose appropriate training requirements or enforcement
31 discipline as authorized by this chapter. The proceedings shall be governed
32 by the provisions of section 55-2211 and chapter 52, title 67, Idaho Code.
33 Any party aggrieved by the action of the board shall be entitled to judicial
34 review thereof in accordance with the provisions of chapter 52, title 67,
35 Idaho Code.

36 (12) To continually evaluate and improve program effectiveness, the
37 board shall analyze the data collected pursuant to section 55-2208, Idaho
38 Code, including the number of reported damage and downtime events and
39 trends, the causes of such damage and any recommendations to further reduce
40 the number of damage or downtime events annually. The board shall make its
41 analysis publicly available.

42 (13) The board shall adopt, by rule, a process for reviewing the ade-
43 quacy of underground facility owners' use of internal performance measures
44 for those locating underground facilities and recommending changes to im-
45 prove such performance.

46 (14) The board shall adopt, by rule, a process for reviewing and pro-
47 moting the use, by all appropriate stakeholders, of improving technologies
48 that may enhance communications, underground facility locating capability
49 and the gathering and analysis of appropriate data.

1 (15) The board is authorized and directed to promulgate rules consis-
 2 tent with this act for the administration of this chapter and to effectuate
 3 the purpose thereof, except as may be limited or prohibited by law and the
 4 provisions of this chapter.

5 (16) The board may exercise such powers and duties as are reasonably
 6 necessary to carry out the provisions of this chapter. The board is autho-
 7 rized to, and may among other activities:

8 (a) Hold meetings and attend or be represented at such meetings, pre-
 9 pare and publish rules pertaining to this section, make investigation
 10 or inquiry, conduct hearings, report findings and enter orders in mat-
 11 ters over which the board has authority;

12 (b) Summon witnesses to appear and testify before it on any matter
 13 within the provisions of this chapter. No person shall be required to
 14 testify outside the county wherein he resides or where his principal
 15 place of business is located. A summons to testify shall be issued and
 16 served in like manner as a subpoena of a witness issued from the district
 17 court, or in any other manner consistent with the procedures of the di-
 18 vision of building safety;

19 (c) Administer oaths and take affirmations of witnesses appearing be-
 20 fore the board and appoint competent persons to issue subpoenas, admin-
 21 ister oaths and take testimony, and appoint hearing officers;

22 (d) Impose civil penalties and conduct hearings related thereto for vi-
 23 olations of this chapter or the rules of the board;

24 (e) Enter into agreements with any vendor or contractor to provide ser-
 25 vices or administer any obligation imposed on the board or the adminis-
 26 trator by law, as well as the authority to make expenditures, and to make
 27 purchases in accordance with chapter 57, title 67, Idaho Code, to effec-
 28 tuate such agreements; and

29 (f) Delegate to the administrator the power to perform ministerial
 30 functions, conduct investigations, recommend and collect civil penal-
 31 ties on its behalf and appoint hearing officers.

32 (17) The board may establish by administrative rule the fines to be paid
 33 for penalties issued for violations of this chapter. In no case shall the
 34 penalty exceed the limits prescribed in section 55-2211, Idaho Code.

35 (18) The board may receive contributions, gifts and grants on behalf of
 36 and in aid of the program. Such contributions, gifts and grants shall be de-
 37 posited in the damage prevention board fund established pursuant to section
 38 55-2204, Idaho Code.

39 SECTION 4. That Chapter 22, Title 55, Idaho Code, be, and the same is
 40 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 41 ignated as Section 55-2204, Idaho Code, and to read as follows:

42 55-2204. DAMAGE PREVENTION BOARD FUND ESTABLISHED -- USE OF
 43 FUNDS. (1) All moneys received by the administrator under the terms and pro-
 44 visions of this chapter shall be paid into the state treasury as directed by
 45 the provisions of section 59-1014, Idaho Code, and shall be held by the state
 46 treasurer in a dedicated fund to be known as the damage prevention board fund
 47 and, other than as prescribed in subsection (2) of this section, all such
 48 moneys placed in said fund shall be set aside and appropriated to the divi-
 49 sion of building safety to carry into effect the provisions of this chapter.

1 (2) All moneys received from civil penalties collected under the pro-
 2 visions of this chapter shall be deposited into the damage prevention board
 3 fund and shall be spent exclusively in support of board activities to develop
 4 and disseminate educational programming designed to improve worker and pub-
 5 lic safety relating to excavation and underground facilities.

6 SECTION 5. That Section 55-2203, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 55-2203~~5~~. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NO-
 9 TICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before com-
 10 mencing excavation, the excavator shall:

11 (a) Comply with other applicable law or permit requirements of any pub-
 12 lic agency issuing permits;

13 (b) Pre-mark on-site the path of excavation with white paint or, as the
 14 circumstances require, other reasonable means that will set out clearly
 15 the path of excavation. An excavator need not pre-mark as required in
 16 this subsection if:

17 (i) The underground facility owner or its agent can determine the
 18 location of the proposed excavation by street address or lot and
 19 block by referring to a locate ticket; or

20 (ii) The excavator and underground facility owner have had a meet-
 21 ing prior to the beginning of the proposed excavation at the ex-
 22 cavation site for the exchange of information required under this
 23 subsection.

24 (c) Provide notice of the scheduled commencement of excavation to all
 25 underground facility owners through a one-number ~~locator~~ notification
 26 service. If no one-number ~~locator~~ notification service is available,
 27 notice shall be provided individually to those owners of underground
 28 facilities known to have or suspected of having underground facilities
 29 within the area of proposed excavation. The notice shall be communi-
 30 cated by the excavator to the one-number ~~locator~~ notification service
 31 or, if no one-number ~~locator~~ notification service is available, to the
 32 owners of underground facilities not less than two (2) business days nor
 33 more than ten (10) business days before the scheduled date for commence-
 34 ment of excavation, unless otherwise agreed in writing by the parties.

35 (2) Upon receipt of the notice provided for in this section, the under-
 36 ground facility owner or the owner's agent shall locate and mark its locat-
 37 able underground facilities by surface-marking the location of the facili-
 38 ties. If there are identified but unlocatable underground facilities, the
 39 owner of such facilities or the owner's agent shall locate and mark the un-
 40 derground facilities in accordance with the best information available to
 41 the owner of the underground facilities and with reasonable accuracy as de-
 42 fined in section 55-2202(1~~2~~5), Idaho Code. The owner of the underground fa-
 43 cility or the owner's agent providing the information shall respond no later
 44 than two (2) business days after the receipt of the notice or before the ex-
 45 cavation time set forth in the excavator's notice, at the option of the un-
 46 derground facility owner, unless otherwise agreed in writing by the parties.
 47 Excavators shall not excavate until all known facilities have been marked.
 48 Once marked by the owner of the underground facility, or the owner's agent,
 49 the excavator is responsible for maintaining the markings. Unless other-

1 wise agreed in writing by the parties, maintained markings shall be valid for
 2 purposes of the notified excavation for a period of no longer than three (3)
 3 consecutive weeks following the date of notification so long as it is reason-
 4 ably apparent ~~to the excavator~~ that site conditions have not changed so sub-
 5 stantially as to invalidate the markings. If excavation has not commenced
 6 within three (3) weeks from the original notice to underground facility own-
 7 ers through the one-number notification service, the excavator shall reini-
 8 tiate notice in accordance with this section.

9 (a) Excavators shall have the right to receive compensation from the
 10 owner of the underground facility for costs incurred if the owner of the
 11 underground facility does not locate its facilities in accordance with
 12 this chapter.

13 (b) The owner of the underground facility shall have the right to
 14 receive compensation for costs incurred in responding to excavation
 15 notices given less than two (2) business days prior to the excavation
 16 except for notices given for discovered facilities after the owner has
 17 identified facilities.

18 (3) Emergency excavations are exempt from the time requirements for no-
 19 tification provided in this section.

20 (4) If the excavator, while performing the excavation, discovers un-
 21 derground facilities (whether active or abandoned) which are not identified
 22 or were not located with reasonable accuracy, the excavator shall cease
 23 excavating in the vicinity of the facility and immediately notify the owner
 24 or operator of such facilities, or the one-number ~~locator~~ notification ser-
 25 vice. The excavator shall have the right to receive compensation from the
 26 underground facility owner for standby cost (based on standby rates made
 27 publicly available) incurred as a result of waiting for the underground
 28 facility owner or the owner's agent to arrive at the work site to identify
 29 the unidentified facilities and provided that if the underground facility
 30 owner or the owner's agent supplies reasonably accurate locate information
 31 within eight (8) hours of the time that the excavator notifies the under-
 32 ground facility owner of facilities not previously located, the excavator's
 33 compensation for delay of the excavation project shall be limited to actual
 34 costs or ~~one~~ two thousand dollars (\$2,000), whichever is less.

35 SECTION 6. That Section 55-2204, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 55-22046. ONE-NUMBER ~~LOCATOR~~ NOTIFICATION SERVICE -- ESTABLISHMENT
 38 -- PARTICIPATION REQUIRED -- FUNDING. Two (2) or more persons who own or
 39 operate underground facilities in a county may voluntarily establish or
 40 contract with a third person to provide a one-number ~~locator~~ notification
 41 service to maintain information concerning underground facilities within
 42 a county. Upon the establishment of the first such one-number notification
 43 service, all others operating and maintaining underground facilities
 44 within said county shall participate and cooperate with the service, and
 45 no duplicative service shall be established pursuant to this chapter. The
 46 activities of the one-number locator service shall be funded by all of the
 47 underground facility owner/operators required by the provisions of this
 48 section to participate in and cooperate with the service. All underground
 49 facility owner/operators who are required to participate in a one-number no-

1 tification service are subject to the jurisdiction of the damage prevention
 2 board established in section 55-2203, Idaho Code.

3 SECTION 7. That Section 55-2205, Idaho Code, be, and the same is hereby
 4 amended to read as follows:

5 55-22057. EXCAVATION CONTRACTS -- LIMITATIONS -- PRECAUTIONS TO AVOID
 6 DAMAGE -- LIABILITY FOR DAMAGE. (1) Project owners shall indicate in bid
 7 or contract documents the existence of underground facilities known by the
 8 project owner to be located within the proposed area of excavation.

9 (2) An excavator shall use reasonable care to avoid damaging under-
 10 ground facilities. An excavator shall:

11 (a) Determine by hand digging, in the area twenty-four (24) inches or
 12 less from the facilities, the precise actual location of underground
 13 facilities which have been marked;

14 (b) Plan the excavation to avoid damage to or minimize interference
 15 with underground facilities in and near the excavation area; and

16 (c) Provide such support for underground facilities in and near the
 17 construction area, including during backfill operations, as may be rea-
 18 sonably necessary for the protection of such facilities.

19 (3) If an underground facility is damaged and such damage is the conse-
 20 quence of the failure to fulfill an obligation under this chapter, the party
 21 failing to perform that obligation shall be liable for any damages to the un-
 22 derground facility owner. Nothing in this chapter prevents the parties to an
 23 excavation contract from contracting with respect to the allocation of risk
 24 for changed or differing site conditions.

25 (4) In any action brought under this section, the prevailing party is
 26 entitled to reasonable attorney's fees.

27 SECTION 8. That Section 55-2206, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 55-22068. DAMAGE TO UNDERGROUND FACILITIES -- DUTIES OF EXCAVATOR AND
 30 OWNER -- REPORTING OF DATA. (1) An excavator who, in the course of excava-
 31 tion, contacts or damages an underground facility shall notify the under-
 32 ground facility owner and the one-number ~~locator~~ notification service. If
 33 the damage causes an emergency condition or an actual breach of an under-
 34 ground facility that releases gas or hazardous liquids into the surrounding
 35 environment, the excavator causing the damage shall also alert the appropri-
 36 ate local public safety agencies by, at a minimum, calling 911, and take all
 37 appropriate steps to ensure the public safety. No damaged underground fa-
 38 cility may be buried until it is repaired or relocated.

39 (2) The owner of the underground facilities damaged shall arrange for
 40 repairs or relocation as soon as is practical or may permit the excavator to
 41 do necessary repairs or relocation at a mutually acceptable price.

42 (3) Any party responsible for damages to an underground facility shall
 43 be liable for the cost of repairs.

44 (4) The board shall adopt by rule a procedure for the processing of
 45 claims related to damages to underground facilities.

46 (5) Underground facility owners and excavators who observe, suffer or
 47 cause damage to an underground facility or observe, suffer or cause exca-

1 vator downtime related to a failure of one (1) or more stakeholders to com-
2 ply with applicable damage prevention regulations shall report such infor-
3 mation to the board in accordance with the rules promulgated by the board.
4 Reporting of such data does not constitute a complaint provided for in sec-
5 tion 55-2211, Idaho Code.

6 SECTION 9. That Section 55-2207, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 55-22079. DUTIES OF PUBLIC AGENCY ISSUING EXCAVATION, BUILDING OR
9 OTHER SIMILAR PERMITS. (1) Any public agency issuing, as defined in section
10 67-2327, Idaho Code, that has the authority to issue excavation, building or
11 other similar permits authorizing excavation operations shall notify per-
12 sons seeking such permits of the existence of this chapter and the one-call
13 locator one-number notification service telephone number.

14 (2) A permit shall not be valid for excavation until or unless the no-
15 tice provisions of this section have been complied with, and the portion of
16 the permit directly relating to excavation may be suspended by the issuing
17 public agency if the permit holder violates any provisions of this chapter.
18 The issuing public agency shall reinstate the permit at no charge within
19 forty-eight (48) hours of receiving evidence of compliance with the provi-
20 sions of this chapter.

21 SECTION 10. That Section 55-2208, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 55-220810. EXCAVATIONS EXEMPT FROM NOTICE REQUIREMENT. Unless facts
24 exist which would reasonably cause an excavator to believe that an under-
25 ground facility exists within the depth of the intended excavation, the fol-
26 lowing excavations shall not require notice of the excavation pursuant to
27 section 55-22035(1) (c), Idaho Code:

28 (1) An excavation of less than fifteen (15) inches in vertical depth
29 outside the boundaries of an underground facility easement of public record
30 on private property.

31 (2) The tilling of soil to a depth of less than fifteen (15) inches for
32 agricultural practices.

33 (3) The extraction of minerals within recorded mining claims or excava-
34 tion within material sites legally located and of record, unless such exca-
35 vation occurs within the boundaries of an underground facility easement.

36 (4) Normal maintenance of roads, streets and highways, including
37 cleaning of roadside drainage ditches and clear zones, to a depth of fif-
38 teen (15) inches below the grade established during the design of the last
39 construction of which underground facility owners were notified and which
40 excavation will not reduce the authorized depth of cover of an underground
41 facility.

42 (5) Replacement of highway guardrail posts, sign posts, delineator
43 posts, culverts, and traffic control device supports in the same approximate
44 location and depth of the replaced item within public highway rights-of-way.

45 (6) Normal maintenance of railroad rights-of-way, except where such
46 rights-of-way intersect or cross public roads, streets, highways, or

1 rights-of-way adjacent thereto, or recorded underground facility ease-
2 ments.

3 SECTION 11. That Section 55-2209, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 ~~55-2209~~11. VIOLATION -- CIVIL PENALTY -- ~~TREBLE DAMAGES~~ DUTIES OF THE
6 BOARD AND THE ADMINISTRATOR -- OTHER REMEDIES UNIMPAIRED. (1) ~~Any person who~~
7 ~~violates any provision of this chapter, other than the failure to provide no-~~
8 ~~tice pursuant to section 55-2203(1)(c), Idaho Code, and which violation re-~~
9 ~~sults in damage to underground facilities, is subject to a civil penalty of~~
10 ~~not more than one thousand dollars (\$1,000) for each violation. All penal-~~
11 ~~ties recovered in such actions shall be deposited in the state general ac-~~
12 ~~count.~~

13 ~~(2) If an underground facility is damaged as a result of an excavator's~~
14 ~~failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, un-~~
15 ~~less otherwise exempt, the excavator shall receive a written warning from~~
16 ~~the underground facility owner and shall be liable for actual costs of re-~~
17 ~~pairing the facility if it is the excavator's first failure to provide the~~
18 ~~notice required pursuant to section 55-2203(1)(c), Idaho Code, during any~~
19 ~~consecutive period of twelve (12) months.~~

20 ~~(a) If the court finds, by a preponderance of the evidence, that the~~
21 ~~excavator has, on more than one (1) occasion during any consecutive pe-~~
22 ~~riod of twelve (12) months, failed to provide the notice required pur-~~
23 ~~suant to section 55-2203(1)(c), Idaho Code, and that such failure has~~
24 ~~been a proximate cause of damage to an underground facility, the court~~
25 ~~may increase the civil penalty in an amount up to five thousand dollars~~
26 ~~(\$5,000).~~

27 ~~(b) If the court finds, by a preponderance of the evidence, that the ex-~~
28 ~~cavator has, on three (3) or more occasions during any consecutive pe-~~
29 ~~riod of twelve (12) months, failed to provide the notice required pur-~~
30 ~~suant to section 55-2203(1)(c), Idaho Code, and that such failure has~~
31 ~~been a proximate cause of damage to an underground facility, the court~~
32 ~~may increase the civil penalty in an amount up to ten thousand dollars~~
33 ~~(\$10,000) for the third occurrence taking place during the twelve (12)-~~
34 ~~month period~~

35 The damage prevention board established in section 55-2203, Idaho Code, may
36 hear, but may not initiate, contested cases of alleged violations of this
37 chapter involving practices related to underground facilities as set forth
38 in rules by the board. Persons who violate the provisions of this chapter
39 are subject to civil penalties in accordance with this section. Complaints
40 regarding an alleged violation of this chapter may be made by any individ-
41 ual and shall be made to the administrator. Complaints shall include the
42 name and address of the complainant and the alleged violator, and the vio-
43 lation alleged. If the alleged violation involves facility damage or a down-
44 time event, the complaint must be submitted on such forms and contain such
45 information as required by the board in rule. Upon review of the complaint,
46 and any investigation conducted therewith, the administrator shall notify
47 the person making the complaint and the alleged violator, in writing, of the
48 administrator's recommended course of action to the board. The administra-
49 tor shall recommend that a training course adopted by the board, by rule, be

1 successfully completed for a first violation of this chapter, except that
2 if the complaint is for a first violation of this chapter wherein a resi-
3 dential homeowner or residential tenant excavating on the lot of his resi-
4 dency failed to provide notice as required in section 55-2205, Idaho Code,
5 and caused damage to underground facilities, the board shall direct the ad-
6 ministrator to deliver to the violator a written warning and educational ma-
7 terials to prevent a future violation. The administrator may recommend the
8 imposition of a civil penalty in an amount not to exceed one thousand dollars
9 (\$1,000) for a second violation of this chapter and in addition may recommend
10 successful completion of a training course adopted by the board, by rule, and
11 issue a notice of intent to impose such penalty on behalf of the board. If
12 the administrator recommends the imposition of a civil penalty, the viola-
13 tor may pay the fine to the board upon receipt of such notice. If, upon the
14 expiration of twenty-one (21) days, the violator has not responded in writ-
15 ing to the division, the board may impose the penalty provided for in the no-
16 tice. A violator shall also have the right to contest the imposition of a
17 civil penalty to the board and the opportunity to produce evidence in his be-
18 half. Notice of the time and place of such hearing shall be provided by the
19 board, and such proceeding shall be governed by the provisions of chapter 52,
20 title 67, Idaho Code.

21 (2) In the event the board determines that a person has violated the
22 provisions of this chapter a subsequent time within eighteen (18) months
23 from an earlier violation, and where facility damage has occurred, the board
24 may impose a civil penalty of not more than five thousand dollars (\$5,000)
25 for each separate violation in accordance with the process described in sub-
26 section (1) of this section.

27 (3) ~~(a)~~ An action to recover a civil penalty under this section may be
28 brought by a prosecuting attorney. If the prosecuting attorney does not file
29 an action for such civil penalty within sixty (60) days from the date of a
30 request for such action by the owner of an underground facility, the under-
31 ground facility owner may file such action. Venue for such an action shall
32 be proper in the judicial district for the county in which the damaged under-
33 ground facility is located or the county in which the excavator resides or
34 maintains a principal place of business in this state. The prevailing party
35 in such action shall be entitled to recover its costs and reasonable attor-
36 ney's fees incurred in such action. All civil penalties recovered shall be de-
37 posited in the underground facility damage prevention board fund and used
38 pursuant to section 55-2204(2), Idaho Code.

39 ~~(b)~~ (4) The penalties provided in this section are in addition to any
40 other remedy at law or equity available to an excavator or to the owner or
41 operator of a damaged underground facility any party subject to the juris-
42 isdiction of the damage prevention board established in section 55-2203, Idaho
43 Code.

44 ~~(c)~~ The court shall consider, as a mitigating factor in determining the
45 amount of civil penalty to be imposed, evidence showing by a preponder-
46 ance of the evidence that the violation occurred solely as a proximate
47 result of the excavator or underground facility owner's reasonable re-
48 sponse to an emergency beyond the control of the offending party.

1 ~~(d) Any civil penalty imposed pursuant to this section shall be de-~~
2 ~~posited in the state general fund. Attorney's fees shall be paid solely~~
3 ~~to the party successfully bringing the action.~~

4 ~~(4) Any excavator who damages an underground facility on a third or sub-~~
5 ~~sequent violation pursuant to subsection (2) of this section may be liable~~
6 ~~for treble the costs incurred in repairing or relocating the facility.~~

7 (5) Unless expressly provided herein, nothing in this chapter elimi-
8 nates, alters or otherwise impairs common law, statutory or other preexist-
9 ing rights and duties of persons affected by the provisions of this chap-
10 ter; nor does anything in this chapter, unless expressly so provided, elimi-
11 nate, alter or otherwise impair other remedies, state or federal, includ-
12 ing those at common law, of an underground facility owner whose facility is
13 damaged; nor do the provisions of this chapter affect any civil remedies for
14 personal injury or property damage except as expressly provided for herein.
15 The court in its discretion may award attorney's fees and costs to the pre-
16 vailing party.

17 SECTION 12. That Section 55-2210, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 55-2210~~2~~. WAIVER PERMITTED BY OWNER OF UNDERGROUND FACILITY. The no-
20 tification and marking provisions of this chapter may be waived for one or
21 more designated persons by an underground facility owner with respect to all
22 or part of that underground facility owner's own underground facilities.

23 SECTION 13. That Section 67-2601A, Idaho Code, be, and the same is
24 hereby amended to read as follows:

25 67-2601A. DIVISION OF BUILDING SAFETY. (1) The division of building
26 safety will be headed by an administrator appointed by and serving at the
27 will of the governor. The division administrator, deputy administrators and
28 regional managers shall be nonclassified employees exempt from the provi-
29 sions of chapter 53, title 67, Idaho Code.

30 (2) The administrator shall administer the following provisions and
31 shall perform such additional duties as are imposed on him by law: chapter
32 43, title 39, Idaho Code, relating to the building code board; chapter 40,
33 title 39, Idaho Code, relating to manufactured homes; chapter 43, title 39,
34 Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code,
35 relating to manufactured home dealer and installer licensing; chapter 25,
36 title 44, Idaho Code, relating to mobile home rehabilitation; chapter 10,
37 title 54, Idaho Code, relating to electrical contractors and journeymen;
38 chapter 19, title 54, Idaho Code, relating to licensing of public works
39 contractors; chapter 26, title 54, Idaho Code, relating to plumbing and
40 plumbers; chapter 45, title 54, Idaho Code, relating to public works con-
41 struction management licensing; chapter 50, title 54, Idaho Code, relating
42 to heating, ventilation and air conditioning systems; chapter 80, title 39,
43 Idaho Code, relating to school building safety; ~~and~~ chapter 86, title 39,
44 Idaho Code, relating to elevator safety; and chapter 22, title 55, Idaho
45 Code, relating to underground facilities damage prevention.

46 (3) The administrator shall also have the authority to perform safety
47 inspections and safety training programs for logging operations in Idaho.

1 (a) When an inspection reveals evidence of a condition that poses an im-
2 mediate threat of serious bodily harm or loss of life to any person, the
3 administrator may issue an order to immediately stop the work or close
4 the facility or site where the threat exists. The safety order shall not
5 be rescinded until after the threat has been corrected or removed.

6 (b) The safety order may be enforced by the attorney general in a civil
7 action brought in the district court for the county wherein the haz-
8 ardous work site or facility is located.

9 (c) Any person who knowingly fails or refuses to comply with such an or-
10 der is guilty of a misdemeanor.

11 (d) The administrator shall promulgate rules adopting minimum logging
12 safety standards and procedures for conducting inspections and safety
13 training.

14 (4) In addition to safety inspections of state-owned public buildings
15 conducted under chapter 23, title 67, Idaho Code, the administrator may con-
16 duct safety inspections of buildings owned or maintained by political sub-
17 divisions of the state upon receipt of a written request from the governing
18 body of that political subdivision, subject to the availability of division
19 resources and the requesting entity's agreement to pay the division's cur-
20 rent fees for such an inspection.

21 (a) The findings of the inspection shall be reported to the governing
22 body of the political subdivision.

23 (b) The administrator may promulgate rules adopting minimum safety
24 standards and procedures for conducting such inspections, as well as
25 fees for performing the same.

26 (c) For purposes of this section, "political subdivision" means any
27 governmental unit or special district of the state of Idaho other than
28 public school districts.

29 (5) In administering the laws regulating professions, trades and occu-
30 pations that are devolved for administration upon the division, and in addi-
31 tion to the authority granted to the administrator by the laws and rules of
32 the agencies and entities within the division, the administrator may:

33 (a) Revise the operating structure of the division as needed to provide
34 efficient and appropriate services to the various professions, trades,
35 occupations and programs administered within the division;

36 (b) Conduct examinations to ascertain the qualifications and fitness
37 of applicants to exercise the profession, trade or occupation for which
38 an examination is held; pass upon the qualifications of applicants for
39 reciprocal licenses, certificates and authorities; prescribe rules for
40 a fair and impartial method of examination of candidates to exercise the
41 respective professions, trades or occupations; issue registrations,
42 licenses and certificates; and until fees are established in rule, the
43 administrator shall charge a fee of seventy-five dollars (\$75.00) for
44 each examination administered;

45 (c) Conduct hearings on proceedings to discipline, renew or reinstate
46 licenses, certificates or authorities of persons exercising the re-
47 spective professions, trades or occupations; appoint hearing officers,
48 administer oaths, issue subpoenas, and compel the attendance of wit-
49 nesses; revoke, suspend, refuse to renew, or take other disciplinary
50 action against such licenses, certifications or authorities; and pre-

1 scribe rules to recover costs and fees incurred in the investigation and
2 prosecution of any certificate holder, licensee or registrant of the
3 division, its boards, bureaus and programs, in accordance with the con-
4 tested case provisions of chapter 52, title 67, Idaho Code, and the laws
5 and rules of the boards, bureaus and programs the division administers;

6 (d) Assess civil penalties as authorized;

7 (e) Promulgate rules establishing: a coordinated system for the
8 issuance, renewal, cancellation and reinstatement of licenses, cer-
9 tificates, registrations and permits; assessment of all related fees;
10 the terms by which fees may be prorated, if any; and procedures for the
11 replacement of lost or destroyed licenses, certificates or registra-
12 tions; and

13 (f) Promulgate other rules as may be necessary for the orderly adminis-
14 tration of the chapters specified in subsection (2) of this section, ex-
15 cept for those related to underground facilities damage prevention con-
16 tained in chapter 22, title 55, Idaho Code, and such rules as may other-
17 wise be required by those chapters as well as rules for the standardiza-
18 tion of operating procedures.

19 (6) Notwithstanding any law governing any specific board, bureau or
20 program comprising the division of building safety, each board member shall
21 hold office until a successor has been duly appointed and qualified.

22 (7) The administrator shall have the authority to employ individuals,
23 make expenditures, enter into contracts, require reports, make investiga-
24 tions, travel, and take other actions deemed necessary.