

AN ACT

RELATING TO THE PREVENTION OF DAMAGE TO UNDERGROUND FACILITIES:
AMENDING CHAPTER 22, TITLE 55, IDAHO CODE, TO CHANGE LEGISLATIVE INTENT AND TO ADD DEFINITIONS; AMENDING CHAPTER 22, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION, TO BE KNOWN AND DESIGNATED AS SECTION 55-2203, IDAHO CODE, TO ESTABLISH A DAMAGE PREVENTION BOARD AND PROVIDE FOR ITS DUTIES AND THAT OF ITS ADMINISTRATOR AT THE DIVISION OF BUILDING SAFETY; AMENDING CHAPTER 22, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION, TO BE KNOWN AND DESIGNATED AS SECTION 55-2204, IDAHO CODE, TO ESTABLISH A DAMAGE PREVENTION BOARD FUND; AMENDING CHAPTER 22, TITLE 55, IDAHO CODE, TO CLARIFY NOTIFICATION REQUIREMENTS PRIOR TO EXCAVATION; TO REQUIRE REPORTING OF CERTAIN DAMAGE OR LOST TIME DATA; TO CLARIFY DUTIES OF ENTITIES ISSUING BUILDING, EXCAVATION AND OTHER PERMITS; TO ELIMINATE JUDICIAL PENALTIES AND DEFINE AND LIMIT THE AUTHORITY OF THE DAMAGE PREVENTION BOARD AND ITS ADMINISTRATOR AT THE DIVISION OF BUILDING SAFETY TO IMPOSE ADMINISTRATIVE PENALTIES; AMENDING CHAPTER 26, TITLE 67, IDAHO CODE, TO INCLUDE ADMINISTRATION OF CHAPTER 22, TITLE 55, IDAHO CODE, INTO THE DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-2201. LEGISLATIVE INTENT. It is the intent of the legislature in enacting this chapter to create a system of stakeholder-driven education and enforcement addressing the prevention of damage to underground facilities, to assign responsibilities for locating and keeping accurate records of underground facility locations, for ~~protecting~~ preventing and repairing damage to existing underground facilities, for collecting, storing, analyzing and disseminating data related to underground facility damage and excavator downtime events, and for protecting the public health and safety from great personal harm including death, property damage, and from interruption in vital services caused by damage to existing underground facilities. It is further the intent of the legislature that the state of Idaho by adopting this chapter reaffirms its primacy over underground facility damage prevention programs that protect the health, safety and property of its citizens, and that by adopting this chapter Idaho precludes the Pipeline and Hazardous Materials Safety Administration of the US Department of Transportation from determining that Idaho's damage prevention enforcement is inadequate pursuant to 49 CFR Part 198, as adopted on July 9, 2015 and effective on January 1, 2016, and prevents any subsequent Federal administrative enforcement actions that would result from such formal determination.

SECTION 2. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

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

(1) “Administrator” means the administrator of the division of building safety.

(2) “Board” means the damage prevention board.

(~~3~~) "Business day" means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.

(~~24~~) "Damage" ~~includes~~ means any impact or exposure that results in the substantial weakening of structural or lateral support of an underground facility, or the penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the partial or complete destruction of the facility or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected underground facility owner determines that repairs are required.

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

(~~46~~) "Excavation" means any operation in which earth, rock, or other material in the ground is moved or otherwise displaced by any means including, but not limited to explosives.

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

(8) “Excavator downtime” means lost time for an excavation project due to failure of one or more stakeholders to comply with applicable damage prevention regulations.

(~~69~~) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

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

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

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

(~~1013~~) "One-number notification locator service" means a service through which a person can notify owners of underground facilities and request field-marking of their underground facilities.

(~~1114~~) "Person" means an individual, partnership, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(~~1215~~) "Reasonable accuracy" or "reasonably accurate" means location within twenty-four (24) inches horizontally of the outside dimensions of each side of an underground facility.

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

(17) "Stakeholder" means any party with an interest in protecting underground facilities, including but not limited to, persons, property owners, underground facility owners, excavators, contractors, cities, counties, highway districts, railroads, public entities that deliver irrigation water, and those engaged in agriculture.

~~(1318)~~ "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water (unless being delivered primarily for irrigation), sewage, electronic, telephonic or telegraphic communications, cable television, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

~~(1419)~~ "Underground facility owner" means any person who owns or operates an underground facility.

SECTION 3. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended by the addition of a NEW SECTION to be known and designated as Section 55-2203, Idaho Code, and to read as follows:

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

(2) The board shall consist of eleven (11) members, each of whom shall be appointed by and serve at the pleasure of the governor. All members of the board shall be qualified by experience, knowledge and integrity in formulating rules, reviewing complaints referred to it and assessing penalties, and properly performing the functions of the board. Of the eleven (11) members, one each shall represent the interests of the following designated groups and be:

- (a) a city official or a county official;
- (b) an employee or elected official of a highway district;
- (c) an employee of the Idaho public utilities commission;
- (d) an employee or officer of a one-number notification service entity; or, a member of the Idaho Utility Coordinating Council or similar cooperative statewide non-profit organization created to coordinate the protection of underground facilities in specific geographic portions of the state.
- (e) an employee or officer of an underground facility owner;
- (f) an employee or officer of an underground pipeline facility owner;
- (g) an employee or officer of a rural underground facility owner;
- (h) an employee or officer of a contractor;
- (i) an employee or officer of a building contractor;
- (j) an employee or officer of an excavator;
- (k) an employee or owner of an agricultural enterprise, or a representative of the agriculture industry, or an employee or an official of a public entity that delivers water for irrigation.

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

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

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

(6) Each member of the board who is a contractor shall be registered in accordance with chapter 52, Title 54, Idaho Code, and shall be in good standing.

(7) The activities of the board shall be funded by a fee established by the board and promulgated in rule. Such fee shall be adopted by the board by no less than eight (8) affirmative votes at a meeting duly called for such purpose at which a quorum is present and shall be imposed uniformly upon all of the underground facility owners required by the provisions of this chapter to participate in and cooperate with the one-number notification service. The fee shall be assessed upon an underground facility owner each time such owner receives notice from a one number notification service as required by section 55-2205, Idaho Code. The fee is established to defray the expenses of the board and the division in supervising, regulating, and administering the provisions of this chapter, and the provision of services hereunder. The fee assessed upon an underground facility owner shall be collected by a one-number notification service, and payable to the board in accordance with a schedule and in a manner as established by the board in rule. All fees collected by the board shall be deposited with the state treasurer to be credited by him to the damage prevention board fund established pursuant to section 55-2204, Idaho Code.

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

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

(10) The board shall periodically review the effectiveness of the methods used for maintaining effective communications among stakeholders from receipt of an excavation notification until successful completion of the excavation and may adopt, by rule, methods to maintain or improve these communications among stakeholders.

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

(12) To continually evaluate and improve program effectiveness, the board shall analyze the data collected pursuant to section 55-2208, Idaho Code, including the number of reported damage and downtime events and trends, the causes for such damage, and any recommendations to further reduce the number of such damage or downtime events annually and make their analysis publically available.

(13) The board shall adopt, by rule, a process for reviewing the adequacy of underground facility owners' use of internal performance measures for those performing locating of underground facilities and recommend changes to improve such performance.

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

(15) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(16) The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter, and it is authorized to and may among other things:

(a) Hold meetings and attend or be represented at such meetings prepare and publish rules pertaining to this section, make investigation or inquiry, conduct hearings, report findings and enter orders into matters over which the board has authority.

(b) Summon witnesses to appear and testify before it on any matter within the provisions of this chapter. No person shall be required to testify outside the county wherein he resides or where his principal place of business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witness issued from the district court, or in other manner consistent with the procedure of the division of building safety.

(c) Administer oaths and take affirmations of witnesses appearing before the board; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony, and appoint hearing officers.

(d) Impose civil penalties and conduct hearings related thereto for violations of this chapter and rules of the board.

(e) To enter into agreements with any vendor or contractor to provide services or administer any obligation imposed on the board or the administrator by law, as well as the authority to make expenditures, and make purchases in accordance with Title 67, chapter 57 to effectuate such agreements.

(f) Delegate to the administrator the power to perform ministerial functions, conduct investigations, recommend and collect civil penalties on its behalf and appoint hearing officers.

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

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

SECTION 4. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended by the addition of a NEW SECTION to be known and designated as Section 55-2204, Idaho Code, and to read as follows:

55-2204. – DAMAGE PREVENTION BOARD FUND ESTABLISHED – USE OF FUNDS. (1) All money received by the administrator, under the terms and provisions of this chapter, shall be paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code, and shall be, by the state treasurer, placed to the credit of a dedicated fund to be known as the damage prevention board fund and, other than as prescribed in subsection (2) of this section, all such moneys, hereafter placed in said fund, are hereby set aside and appropriated to the division of building safety to carry into effect the provisions of this chapter.

(2) All money received from civil penalties collected under the provisions of this chapter shall be deposited into the damage prevention board fund and shall be spent exclusively in support of board activities to develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities.

SECTION 5. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-2203~~5~~. Permit compliance -- Notice of excavation -- Response to notice -- Compensation for failure to comply -- Exemptions. (1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

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

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

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all underground facility owners through a one-number notification ~~locator~~ service. If no one-number notification ~~locator~~ service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the one-number

notification locator service or, if no one-number notification locator service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the underground facility owner or the owner's agent shall locate and mark its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities or the owner's agent shall locate and mark the underground facilities in accordance with the best information available to the owner of the underground facilities and with reasonable accuracy as defined in section 55-2202(12), Idaho Code. The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification so long as it is reasonably apparent ~~to the excavator~~ that site conditions have not changed so substantially as to invalidate the markings. If excavation has not commenced within three (3) weeks from the original notice to underground facility owners through the one-number notification service, the excavator shall re-initiate notice in accordance with this section.

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

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

(3) Emergency excavations are exempt from the time requirements for notification provided in this section.

(4) If the excavator, while performing the excavation, discovers underground facilities, whether active or abandoned which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number notification locator service. The excavator shall have the right to receive compensation from the underground facility owner for standby cost based on standby rates made publicly available incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify the unidentified facilities and provided that if the underground facility owner or the owner's agent supplies reasonably accurate locate information within eight (8) hours of the time that the excavator notifies the underground facility owner of facilities not previously located, the excavator's compensation for delay of the excavation project shall be limited to actual costs or one thousand dollars (\$1,000), whichever is less.

SECTION 6. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-22046. One-number notification locator service -- Establishment -- Participation required -- Funding. Two (2) or more persons who own or operate underground facilities in a county may voluntarily establish or contract with a third person to provide a one-number notification locator service to maintain information concerning underground facilities within a county. Upon the establishment of the first such one-number notification service, all others operating and maintaining underground facilities within said county shall participate and cooperate with the service, and no duplicative service shall be established pursuant to this chapter. The activities of the one-number notification locator service shall be funded by all of the underground facility owner/operators required by the provisions of this section to participate in and cooperate with the service. All underground facility owner/operators who are required to participate in a one-number notification service are subject to the jurisdiction of the damage prevention board established in 55-2203, Idaho Code.

SECTION 7. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-22057. Excavation contracts -- Limitations -- Precautions to avoid damage -- Liability for damage. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

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

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

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

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

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

SECTION 8. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-22068. DAMAGE TO UNDERGROUND FACILITIES – DUTIES OF EXCAVATOR AND OWNER – REPORTING OF DATA (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the underground facility owner and the one-number notification locator service. If the damage causes an emergency condition or an actual breach of an underground facility that releases gas or hazardous liquids into the surrounding environment, the excavator causing the damage shall also alert the appropriate local public safety

agencies by, at a minimum, calling 911, and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

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

(3) Underground facility owners and excavators who observe, suffer, or cause damage to an underground facility or, observe, suffer, or cause excavator downtime related to a failure of one or more stakeholders to comply with applicable damage prevention regulations shall report such information to the board in accordance with the rules promulgated by the board. Reporting of such data does not constitute a complaint provided for in section 55-2211, Idaho Code.

SECTION 9. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-22079. DUTIES OF PUBLIC AGENCY ISSUING EXCAVATION, BUILDING, OR OTHER SIMILAR PERMITS.

(1) Any public agency, as defined in section 67-2327, Idaho Code, that has the authority to issue issuing excavation, building, or other similar permits authorizing excavation operations shall notify persons seeking such permits of the existence of this chapter and the one-call locator one-number notification service telephone number.

(2) A permit shall not be valid for excavation until or unless the notice provisions of this section have been complied with and may be suspended by the issuing public agency if the permit holder violates any provisions of this chapter. The issuing public agency shall reinstate the permit at no charge after the permit holder provides evidence of compliance with the provisions of this chapter.

SECTION 10. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220810. Excavations exempt from notice requirement. Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, the following excavations shall not require notice of the excavation pursuant to section 55-22035(1)(c), Idaho Code:

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

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

(3) The extraction of minerals within recorded mining claims or excavation within material sites legally located and of record, unless such excavation occurs within the boundaries of an underground facility easement.

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

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

(6) Normal maintenance of railroad rights-of-way, except where such rights-of-way intersect or cross public roads, streets, highways, or rights-of-way adjacent thereto, or recorded underground facility easements.

SECTION 11. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-2209~~11~~. Violation -- Civil penalty -- ~~Treble damages~~ – Duties of the board and the administrator – Other remedies unimpaired.

(1) The damage prevention board established in chapter 55-2203, Idaho Code, may hear, but may not initiate, contested cases of alleged violations of this chapter involving practices related to underground facilities as set forth in rules by the board. Persons who violate the provisions of this chapter are subject to civil penalties in accordance with this section. Complaints regarding an alleged violation of this chapter may be made by any individual and shall be made to the administrator. Complaints shall include the name and address of the complainant and the alleged violator, and the violation alleged. If the alleged violation involves a facility damage or downtime event, the complaint must be submitted on such forms and contain such information as required by the board in rule. Upon review of the complaint, and any investigation it may conduct therewith, the administrator shall notify the person making the complaint and the alleged violator in writing of its recommended course of action to the board. The administrator shall recommend that a training course adopted by the board in rule be successfully completed for a first violation of this chapter, except that if the complaint is for a first violation of this chapter wherein a residential homeowner or residential tenant excavating on the lot of his residency has failed to provide notice as required in 55-2205, Idaho Code, and caused damage to underground facilities, the board shall direct the administrator to deliver to the violator a written warning and educational materials to prevent a future violation. The administrator may recommend the imposition of a civil penalty in an amount not to exceed one thousand dollars (\$1000) for a second violation of this chapter and in addition may recommend successful completion of a training course adopted by the board in rule, and issue a notice of intent to impose such penalty on behalf of the board. If the administrator recommends the imposition of a civil penalty, the violator may pay the fine to the board upon receipt of such notice. If upon the expiration of twenty one (21) days the violator has not responded in writing to the division, the board may impose the penalty provided for in the notice. A violator shall also have the right to contest the imposition of a civil penalty to the board and the opportunity to produce evidence in his behalf. Notice of the time and place of such hearing shall be provided by the board, and such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. The board is authorized to impose the administrative costs of hearing the action including, but not limited to, investigatory fees, hearing officer fees, expert witness fees, attorney's fees, and costs of hearing transcripts and copies.

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

~~(4)~~ (3) All civil penalties recovered shall be deposited in the underground facility damage prevention board fund and used pursuant to chapter 55-2204(2).

~~(1) Any person who violates any provision of this chapter, other than the failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. All penalties recovered in such actions shall be deposited in the state general account.~~

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

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

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

~~(3) (a) An action to recover a civil penalty under this section may be brought by a prosecuting attorney. If the prosecuting attorney does not file an action for such civil penalty within sixty (60) days from the date of a request for such action by the owner of an underground facility, the underground facility owner may file such action. Venue for such an action shall be proper in the judicial district for the county in which the damaged underground facility is located or the county in which the excavator resides or maintains a principal place of business in this state. The prevailing party in such action shall be entitled to recover its costs and reasonable attorney's fees incurred in such action.~~

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

~~(c) The court shall consider, as a mitigating factor in determining the amount of civil penalty to be imposed, evidence showing by a preponderance of the evidence that the violation occurred solely as a proximate result of the excavator or underground facility owner's reasonable response to an emergency beyond the control of the offending party.~~

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

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

~~(5) Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the~~

provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those at common law, of an underground facility owner whose facility is damaged; nor do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein. The court in its discretion may award attorneys fees and costs to the prevailing party.

SECTION 12. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-22102. Waiver permitted by owner of underground facility. The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities.

SECTION 13. That chapter 26, Title 67, Idaho Code, be and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

(4) In addition to safety inspections of state-owned public buildings conducted under chapter 23, title 67, Idaho Code, the administrator may conduct safety inspections of buildings owned or maintained by political subdivisions of the state upon receipt of a written request from the governing body of that political subdivision, subject to the availability of division resources and the requesting entity's agreement to pay the division's current fees for such an inspection.

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

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

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

(5) In administering the laws regulating professions, trades and occupations that are devolved for administration upon the division, and in addition to the authority granted to the administrator by the laws and rules of the agencies and entities within the division, the administrator may:

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

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

(c) Conduct hearings on proceedings to discipline, renew or reinstate licenses, certificates or authorities of persons exercising the respective professions, trades or occupations; appoint hearing officers, administer oaths, issue subpoenas, and compel the attendance of witnesses; revoke, suspend, refuse to renew, or take other disciplinary action against such licenses, certifications or authorities; and prescribe rules to recover costs and fees incurred in the investigation and prosecution of any certificate holder, licensee or registrant of the division, its boards, bureaus and programs, in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, and the laws and rules of the boards, bureaus and programs the division administers;

(d) Assess civil penalties as authorized;

(e) Promulgate rules establishing: a coordinated system for the issuance, renewal, cancellation and reinstatement of licenses, certificates, registrations and permits; assessment of all related fees; the terms by which fees may be prorated, if any; and procedures for the replacement of lost or destroyed licenses, certificates or registrations; and

(f) Promulgate other rules as may be necessary for the orderly administration of the chapters specified in subsection (2) of this section, except for those related to underground facilities damage prevention contained in chapter 22, title 55, Idaho Code,

and such rules as may otherwise be required by those chapters as well as rules for the standardization of operating procedures.

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

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