

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 235

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO UNDERGROUND FACILITIES DAMAGE PREVENTION; AMENDING SECTION  
2 55-2202, IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE TERMS, AND TO  
3 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-2205, IDAHO CODE, TO  
4 PROVIDE FOR CERTAIN RIGHTS OF UNDERGROUND FACILITY OWNERS, TO PROVIDE  
5 FOR EMERGENCY EXCAVATIONS, AND TO MAKE A TECHNICAL CORRECTION; AMEND-  
6 ING SECTION 55-2206, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE  
7 ONE-NUMBER NOTIFICATION SERVICE; AMENDING SECTION 55-2207, IDAHO CODE,  
8 TO PROVIDE FOR LIABILITY FOR DAMAGE TO AN UNDERGROUND FACILITY AND TO  
9 MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING  
10 AN EFFECTIVE DATE.  
11

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

13 SECTION 1. That Section 55-2202, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 55-2202. DEFINITIONS. As used in this chapter:

16 (1) "Administrator" means the administrator of the division of build-  
17 ing safety.

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

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

21 (4) "Damage" means any impact or exposure that results in the substan-  
22 tial weakening of structural or lateral support of an underground facility,  
23 or the penetration, impairment, or destruction of any underground protec-  
24 tive coating, housing, or other protective device, or the partial or com-  
25 plete destruction of the facility, or the severance, partial or complete, of  
26 any underground facility to the extent that the project owner or the affected  
27 underground facility owner determines that repairs are required.

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

32 (5) "Emergency" means any sudden or unforeseen condition that compels  
33 immediate action to prevent or resolve:

34 (a) A clear and present danger to life, health, or property;

35 (b) An unplanned customer service outage; or

36 (c) The blockage of roads or transportation facilities.

37 (6) "Emergency excavation" means an excavation performed in response  
38 to an emergency.

39 ~~(6) (7) "End user" means any customer or consumer of any utility service~~  
40 ~~or commodity provided by an underground facility owner.~~

1       ~~(7)~~ (8) "Excavation" means any operation in which earth, rock, or other  
2 material in the ground is moved or otherwise displaced by any means includ-  
3 ing, but not limited to, explosives.

4       ~~(8)~~ (9) "Excavator" means any person who engages directly in excava-  
5 tion.

6       ~~(9)~~ (10) "Excavator downtime" means lost time for an excavation project  
7 due to failure of one (1) or more stakeholders to comply with applicable dam-  
8 age prevention regulations.

9       ~~(10)~~ (11) "Hand digging" means any excavation involving nonmechanized  
10 tools or equipment that when used properly will not damage underground fa-  
11 cilities. Hand digging includes, but is not limited to, hand shovel digging,  
12 manual posthole digging, vacuum excavation, and soft digging.

13       ~~(11)~~ (12) "Identified but unlocatable underground facility" means an  
14 underground facility that has been identified but cannot be located with  
15 reasonable accuracy.

16       ~~(12)~~ (13) "Identified facility" means any underground facility that is  
17 indicated in the project plans as being located within the area of proposed  
18 excavation.

19       ~~(13)~~ (14) "Locatable underground facility" means an underground facil-  
20 ity that can be field-marked with reasonable accuracy.

21       ~~(14)~~ (15) "Locator" means a person who identifies and marks the loca-  
22 tion of an underground facility owned or operated by an underground facility  
23 owner.

24       ~~(15)~~ (16) "Marking" means the use of stakes, paint, or other clearly  
25 identifiable materials to show the field location of underground faciliti-  
26 ties, in accordance with the current color code standard of the American  
27 public works association. Markings shall include identification letters  
28 indicating the specific type of the underground facility.

29       (17) "Notice of emergency excavation" means an excavator call to a one-  
30 number notification service not less than two (2) hours prior to commencing  
31 the emergency excavation to provide a description of the emergency, the lo-  
32 cation of the emergency excavation area, contact information for an individ-  
33 ual with the excavator who may be reached throughout the emergency, and ex-  
34 pected time and date of the emergency excavation.

35       ~~(16)~~ (18) "One-number notification service" means a service through  
36 which a person can notify owners of underground facilities and request  
37 field-marking of their underground facilities.

38       ~~(17)~~ (19) "Person" means an individual, partnership, association, cor-  
39 poration, a state, a city, a county, or any subdivision or instrumentality of  
40 a state, and its employees, agents, or legal representatives.

41       ~~(18)~~ (20) "Public right-of-way" means the area on, below, or above a  
42 public roadway, highway, street, lane, path, sidewalk, alley, or other  
43 right-of-way dedicated for compatible uses.

44       ~~(19)~~ (21) "Reasonable accuracy" or "reasonably accurate" means loca-  
45 tion within twenty-four (24) inches horizontally of the outside dimensions  
46 of each side of an underground facility.

47       ~~(20)~~ (22) "Rural underground facility owner" means an underground fa-  
48 cility owner that is a public utility or a member-owned cooperative that  
49 serves fewer than five thousand (5,000) total customers in a county or coun-  
50 ties with populations that do not exceed fifty thousand (50,000) people.

1       ~~(21)~~ (23) "Service lateral" means any underground facility located in  
 2 a public right-of-way or underground facility easement that is used to con-  
 3 vey water (unless being delivered primarily for irrigation), stormwater, or  
 4 sewage and connects an end user's building or property to an underground fa-  
 5 cility owner's main utility line.

6       ~~(22)~~ (24) "Soft digging" means any excavation using tools or equipment  
 7 that utilize air or water pressure as the direct means to break up soil or  
 8 earth for removal by vacuum excavation.

9       ~~(23)~~ (25) "Stakeholder" means any party with an interest in protecting  
 10 underground facilities including, but not limited to, persons, property  
 11 owners, underground facility owners, excavators, contractors, cities,  
 12 counties, highway districts, railroads, public entities that deliver irri-  
 13 gation water and those engaged in agriculture.

14       ~~(24)~~ (26) "Underground facility" means any item buried or placed below  
 15 ground belowground for use in connection with the storage or conveyance  
 16 of water (unless being delivered primarily for irrigation), stormwater,  
 17 sewage, electronic, telephonic or telegraphic communications, cable tele-  
 18 vision, electric energy, petroleum products, gas, gaseous vapors, hazardous  
 19 liquids, or other substances and ~~including, but not limited to,~~ includes but  
 20 is not limited to pipes, sewers, conduits, cables, valves, lines, wires,  
 21 manholes, attachments, and those parts of poles or anchors belowground.

22       ~~(25)~~ (27) "Underground facility easement" means a nonpossessory right  
 23 to operate, control, bury, install, maintain, or access an underground fa-  
 24 cility.

25       ~~(26)~~ (28) "Underground facility owner" means any person who owns or op-  
 26 erates an underground facility or who provides any utility service or com-  
 27 modity to an end user via an underground facility.

28       SECTION 2. That Section 55-2205, Idaho Code, be, and the same is hereby  
 29 amended to read as follows:

30       55-2205. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NO-  
 31 TICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before com-  
 32 mencing excavation, the excavator shall:

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

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

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

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

46       (c) Provide notice of the scheduled commencement of excavation to all  
 47 underground facility owners through a one-number notification service.  
 48 If no one-number notification service is available, notice shall be  
 49 provided individually to those owners of underground facilities known

1 to have or suspected of having underground facilities within the area of  
2 proposed excavation. The notice shall be communicated by the excavator  
3 to the one-number notification service or, if no one-number notifica-  
4 tion service is available, to the owners of underground facilities not  
5 less than two (2) business days nor more than ten (10) business days  
6 before the scheduled date for commencement of excavation, unless other-  
7 wise agreed in writing by the parties.

8 (2) Upon receipt of the notice provided for in this section, the under-  
9 ground facility owner or the owner's agent shall locate and mark its locat-  
10 able underground facilities with reasonable accuracy, as defined in section  
11 55-2202, Idaho Code, by surface-marking the location of the facilities. If  
12 there are identified but unlocatable underground facilities, the owner of  
13 such facilities or the owner's agent shall locate and mark the underground  
14 facilities in accordance with the best information available to the owner  
15 of the underground facilities. The owner of the underground facility or the  
16 owner's agent providing the information shall respond no later than two (2)  
17 business days after the receipt of the notice or before the excavation time  
18 set forth in the excavator's notice, at the option of the underground facil-  
19 ity owner, unless otherwise agreed in writing by the parties. Excavators  
20 shall not excavate until all known facilities have been marked. Once marked  
21 by the owner of the underground facility, or the owner's agent, the excava-  
22 tor is responsible for maintaining the markings. Unless otherwise agreed in  
23 writing by the parties, maintained markings shall be valid for purposes of  
24 the notified excavation for a period of no longer than ~~three (3)~~ four (4) con-  
25 secutive weeks following the date of notification as long as it is reasonably  
26 apparent that site conditions have not changed so substantially as to inval-  
27 idate the markings. If excavation has not commenced within three (3) weeks  
28 from the original notice to underground facility owners through the one-num-  
29 ber notification service, the excavator shall reinitiate notice in accor-  
30 dance with this section.

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

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

40 (b) An owner of an underground facility shall have the right to receive  
41 compensation for costs incurred in responding to an excavation notice  
42 given less than two (2) business days prior to the excavation except for  
43 notices given for emergency excavations under subsection (4) of this  
44 section and unidentified facilities discovered under subsection (5) of  
45 this section.

46 (3) An end user shall not be required to locate or mark any service lat-  
47 eral. An underground facility owner who provides any utility service or com-  
48 modity via a service lateral shall locate and mark the service lateral in ac-  
49 cordance with the provisions of subsection (2) of this section. Nothing in  
50 this subsection shall be construed to impose an indemnification obligation

1 prohibited by law on any public agency as defined in section 67-2327, Idaho  
2 Code, or to alter the liability of any public agency as provided by law, in-  
3 cluding article VIII of the constitution of the state of Idaho.

4 (4) (a) Emergency excavations are exempt from the time requirements  
5 for notification provided in this section notice as provided in this  
6 section when an excavator determines a delay caused by providing notice  
7 would cause an imminent risk to life, health, or property; however, an  
8 excavator is required to provide notice of emergency excavation in all  
9 other emergency situations.

10 (b) Upon receiving notice of an emergency excavation, an underground  
11 facility owner or its designated agent shall:

12 (i) Within one (1) hour of receiving the notice of emergency ex-  
13 cavation, attempt to contact the excavator at the telephone number  
14 provided in the notice of emergency excavation to provide any in-  
15 formation concerning underground facilities within the emergency  
16 excavation area and the anticipated response time of the under-  
17 ground facility owner or its designated agent; and

18 (ii) Unless the underground facilities owner informs the excava-  
19 tor that it is impossible or impracticable under the circumstances  
20 and provides the excavator with an expected arrival time that is as  
21 soon as reasonably feasible, or if the parties agree to a differ-  
22 ent arrival time, arrive at the emergency excavation site within  
23 two (2) hours of receiving the notice of emergency excavation to  
24 locate and mark underground facilities within the emergency exca-  
25 vation area.

26 (c) If an underground facility owner or its designated agent is unable  
27 to locate and mark underground facilities identified in the notice of  
28 emergency excavation, the underground facility owner shall immediately  
29 attempt to notify the excavator at the telephone number provided in the  
30 notice of emergency excavation.

31 (5) If the excavator, while performing the excavation, discovers un-  
32 derground facilities (whether active or abandoned) ~~which~~ that are not iden-  
33 tified or were not located in accordance with subsection (2) of this sec-  
34 tion, the excavator shall cease excavating in the vicinity of the facility  
35 and immediately notify the owner or operator of such facilities, or the one-  
36 number notification service. The excavator shall have the right to receive  
37 compensation from the underground facility owner for standby cost (based on  
38 standby rates made publicly available) incurred as a result of waiting for  
39 the underground facility owner or the owner's agent to arrive at the work  
40 site to identify the unidentified facilities and provided that if the under-  
41 ground facility owner or the owner's agent supplies the locate information  
42 required under subsection (2) of this section within eight (8) hours of the  
43 time that the excavator notifies the underground facility owner of facili-  
44 ties not previously located, the excavator's compensation for delay of the  
45 excavation project shall be limited to actual costs or two thousand dollars  
46 (\$2,000), whichever is less.

47 SECTION 3. That Section 55-2206, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1           55-2206. ONE-NUMBER NOTIFICATION SERVICE -- ESTABLISHMENT -- PARTIC-  
 2 IPATION REQUIRED -- FUNDING. Two (2) or more persons who own or operate un-  
 3 derground facilities in a county may voluntarily establish or contract with  
 4 a third person to provide a one-number notification service to maintain in-  
 5 formation concerning underground facilities within a county. Upon the es-  
 6 tablishment of the first such one-number notification service, ~~all others~~  
 7 ~~operating and maintaining underground facility owners with~~ underground fa-  
 8 cilities within said county shall participate and cooperate with the ser-  
 9 vice, and no duplicative service shall be established pursuant to this chap-  
 10 ter. The activities of the one-number ~~locator~~ notification service shall be  
 11 funded by all of the underground facility owners ~~or operators~~ required by the  
 12 provisions of this section to participate in and cooperate with the service.  
 13 ~~All~~ Each underground facility owners ~~or operators who are~~ required to par-  
 14 ticipate in a one-number notification service ~~are~~ is subject to the juris-  
 15 diction of the damage prevention board established in section 55-2203, Idaho  
 16 Code, ~~and shall maintain accurate contact information, updated at least an-~~  
 17 ~~nually, with the one-number notification service for individuals responsi-~~  
 18 ~~ble for the operation of the underground facilities of the underground fa-~~  
 19 ~~ility owner, including contact information for individuals responsible for~~  
 20 ~~responding to an emergency.~~

21           SECTION 4. That Section 55-2207, Idaho Code, be, and the same is hereby  
 22 amended to read as follows:

23           55-2207. EXCAVATION CONTRACTS -- LIMITATIONS -- PRECAUTIONS TO AVOID  
 24 DAMAGE -- LIABILITY FOR DAMAGE. (1) Project owners shall indicate in bid  
 25 or contract documents the existence of underground facilities known by the  
 26 project owner to be located within the proposed area of excavation.

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

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

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

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

37           (3) If an underground facility is damaged and such damage is the conse-  
 38 quence of the failure to fulfill an obligation under this chapter, the party  
 39 failing to perform that obligation shall be liable for ~~any damages~~ the dam-  
 40 age to the underground facility ~~owner~~. Nothing in this chapter prevents the  
 41 parties to an excavation contract from contracting with respect to the allo-  
 42 cation of risk for changed or differing site conditions.

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

45           SECTION 5. An emergency existing therefor, which emergency is hereby  
 46 declared to exist, this act shall be in full force and effect on and after  
 47 July 1, 2023.