

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 118

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO UNDERGROUND FACILITIES; AMENDING SECTION 54-1009, IDAHO CODE,
2 TO REVISE LANGUAGE RELATING TO VIOLATIONS AND TO MAKE A TECHNICAL COR-
3 RECTION; AMENDING SECTION 54-1914, IDAHO CODE, TO REVISE LANGUAGE
4 RELATING TO VIOLATIONS; AMENDING SECTION 54-2608, IDAHO CODE, TO RE-
5 VISE LANGUAGE RELATING TO VIOLATIONS; AMENDING SECTION 54-5013A, IDAHO
6 CODE, TO REVISE LANGUAGE RELATING TO VIOLATIONS; AMENDING SECTION
7 55-2201, IDAHO CODE, TO REVISE LANGUAGE RELATING TO LEGISLATIVE IN-
8 TENT; AMENDING SECTION 55-2202, IDAHO CODE, TO DEFINE TERMS, TO REVISE
9 EXISTING DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAP-
10 TER 22, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2203,
11 IDAHO CODE, TO ESTABLISH THE DAMAGE PREVENTION BOARD; AMENDING CHAP-
12 TER 22, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-2204,
13 IDAHO CODE, TO ESTABLISH THE DAMAGE PREVENTION BOARD FUND; AMENDING
14 SECTION 55-2203, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE
15 TERMS, TO PROVIDE THAT NOTICE SHALL BE REINITIATED IN CERTAIN CIRCUM-
16 STANCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2204,
17 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE TERMS; AMENDING
18 SECTION 55-2205, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SEC-
19 TION 55-2206, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE A TERM
20 AND TO ESTABLISH REPORTING REQUIREMENTS; AMENDING SECTION 55-2207,
21 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE TERMS RELATING TO
22 PERMITS; AMENDING SECTION 55-2208, IDAHO CODE, TO REDESIGNATE THE SEC-
23 TION AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 55-2209,
24 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH CERTAIN PRO-
25 CEDURES AND PENALTIES; AMENDING SECTION 55-2210, IDAHO CODE, TO RE-
26 DESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING
27 SECTION 67-2601A, IDAHO CODE, TO REVISE LANGUAGE RELATING TO UNDER-
28 GROUND FACILITIES DAMAGE PREVENTION AND TO MAKE A TECHNICAL CORRECTION.
29

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

31 SECTION 1. That Section 54-1009, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 54-1009. REVOCATION OR SUSPENSION OF LICENSES -- HEARINGS -- TAKING
34 TESTIMONY. (1) The administrator shall have power to revoke or suspend any
35 license if the same was obtained through error or fraud, or if the holder
36 thereof is shown to be grossly incompetent, or has willfully violated any of
37 the rules prescribed by the board, or as prescribed in this chapter; or has,
38 after due notice, failed or refused to correct, within the specified time,
39 any electrical installation not in compliance with the provisions of this
40 chapter, or has failed to pay within the time provided, civil penalties ~~which~~
41 that have become final by operation of law, or has violated the provisions

1 of chapter 22, title 55, Idaho Code, as specifically set forth in section
2 55-2211, Idaho Code.

3 (2) The administrator shall have the power to revoke or suspend any
4 electrical contractor or electrical specialty contractor license if, at any
5 time during the term of active contractor or specialty contractor licensure,
6 the licensee failed to maintain required liability insurance or applicable
7 worker's compensation insurance.

8 (3) Before any license shall be revoked or suspended, the holder
9 thereof shall have written notice enumerating the charges against him, and
10 shall be given a hearing by said administrator, and have an opportunity
11 to produce testimony in his behalf, at a time and place specified in said
12 notice, which time shall not be less than five (5) days after the service
13 thereof.

14 (a) The proceedings shall be governed by the provisions of chapter 52,
15 title 67, Idaho Code.

16 (b) Any party aggrieved by the action of the administrator shall be en-
17 titled to judicial review thereof in accordance with the provisions of
18 chapter 52, title 67, Idaho Code.

19 (4) The administrator shall have the power to appoint, by an order in
20 writing, a hearing officer to take testimony, who shall have power to admin-
21 ister oaths, issue subpoenas and compel the attendance of witnesses, and the
22 decision of the administrator shall be based on his examination of the tes-
23 timony taken and the records produced. Any person whose license has been re-
24 voked may, after the expiration of one (1) year from the date of such revoca-
25 tion, but not before, apply for a new license.

26 SECTION 2. That Section 54-1914, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 54-1914. ADMINISTRATIVE ENFORCEMENT PROCEEDINGS. (1) The administra-
29 tor may upon his own motion or at the direction of the board, and shall upon
30 the verified complaint in writing of any person, investigate the actions of
31 any public works contractor within the state and may undertake to reclas-
32 sify, retype, place on probation, defer or precondition licensure, impose an
33 administrative fine not to exceed twenty thousand dollars (\$20,000) per vi-
34 olation, impose the administrative costs of bringing the action including,
35 but not limited to, hearing officer fees, expert witness fees, attorney's
36 fees, costs of hearing transcripts and copies, temporarily suspend or perma-
37 nently revoke any license if the holder, while a licensee or applicant here-
38 under, is guilty of or commits any one (1) or more of the following acts or
39 omissions:

40 (a) Abandonment without legal excuse of any construction project or op-
41 eration engaged in or undertaken by the licensee as a contractor.

42 (b) Diversion of funds or property received under express agreement for
43 prosecution or completion of a specific construction project or opera-
44 tion, or for a specified purpose in the prosecution or completion of any
45 construction project or operation, and their application or use for any
46 other construction project or operation, obligation or purpose, with
47 intent to defraud or deceive creditors or the owner.

48 (c) Willful departure from or disregard of, plans or specifications in
49 any material respect, and prejudicial to another, without consent of

1 the owner or his duly authorized representative, and without the con-
2 sent of the person entitled to have the particular construction project
3 or operation completed in accordance with such plans and specifica-
4 tions.

5 (d) Willful or deliberate disregard and violation of valid building
6 laws of the state, or of any political subdivision thereof, or of the
7 safety laws or labor laws or compensation insurance laws of the state.

8 (e) Misrepresentation of a material fact by an applicant in obtaining a
9 license.

10 (f) Aiding or abetting an unlicensed person to evade the provisions of
11 this chapter or conspiring with an unlicensed person, or allowing one's
12 license to be used by an unlicensed person, or acting as agent or part-
13 ner or associate or otherwise, of an unlicensed person with the intent
14 to evade the provisions of this chapter.

15 (g) Failure in any material respect to comply with the provisions of
16 this chapter.

17 (h) Acting in the capacity of a contractor under any license issued
18 hereunder except: (1) in the name of the licensee as set forth upon the
19 license, or (2) in accordance with the personnel of the licensee as set
20 forth in the application for such license, or as later changed as pro-
21 vided in this chapter.

22 (i) Knowingly accepting a bid from, or entering into a contract with an-
23 other contractor for a portion of a public works project if at that time
24 such contractor does not possess the appropriate license to do that work
25 as provided in this chapter.

26 (j) Willful failure or refusal without legal excuse on the part of a
27 licensee as a contractor to finish a construction project or operation
28 with reasonable diligence, causing material injury to another.

29 (k) Willful or deliberate failure by any licensee, or agent or offi-
30 cer thereof, to pay any moneys when due, for any materials or services
31 rendered in connection with his operations as a contractor, when he has
32 the capacity to pay or when he has received sufficient funds therefor as
33 payment for the particular construction work, project or operation for
34 which the services or materials were rendered or purchased; or denial
35 of any such amount due or the validity of the claim thereof with intent
36 to secure for himself, his employer, or other person, any discount upon
37 such indebtedness or with intent to hinder, delay or defraud the person
38 to whom such indebtedness is due.

39 (l) Suffers a change in financial circumstances which may impair the
40 licensee's financial responsibility.

41 (m) Holding oneself or one's firm out as a public works contractor by
42 engaging in any act meeting the definition or character of a public
43 works contractor as defined herein without a legally required license.

44 (n) Failure to comply with subsection (1), (2) or (3) of section
45 67-2310, Idaho Code.

46 (o) Violation of the provisions of chapter 22, title 55, Idaho Code, as
47 specifically set forth in section 55-2211, Idaho Code.

48 (2) The administrator may upon his own motion or at the direction of the
49 board, and shall upon the verified complaint in writing of any licensed pub-
50 lic works contractor eligible to perform public works contracting duties,

1 investigate the actions of any public entity within the state and may impose
2 an administrative fine not to exceed five thousand dollars (\$5,000) per vi-
3 olation or impose the administrative costs of bringing the action includ-
4 ing, but not limited to, hearing officer fees, expert witness fees, attor-
5 ney's fees, costs of hearing transcripts and copies, if the public agency
6 contracts for public works construction with an unlicensed or improperly li-
7 censed contractor or knowingly awards a contract based upon a bid or proposal
8 not in compliance with subsection (1) or (2) of section 67-2310, Idaho Code.

9 SECTION 3. That Section 54-2608, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 54-2608. REVOCATION OF CERTIFICATES OF COMPETENCY -- SUSPENSION --
12 REFUSAL TO RENEW. The administrator of the division of building safety shall
13 have on the recommendation of the board the power to revoke, suspend or
14 refuse to issue a renewal of any certificate of competency if the same was ob-
15 tained through error or fraud, or if the holder thereof is shown to be grossly
16 incompetent or has a second time violated any of the rules prescribed by the
17 board, or as prescribed by this act, or has violated the provisions of chap-
18 ter 22, title 55, Idaho Code, as specifically set forth in section 55-2211,
19 Idaho Code. Before the administrator shall refuse to grant a renewal of
20 said certificate to any applicant or shall revoke or suspend any certificate
21 previously granted, he shall hold a hearing giving such applicant or holder
22 of said certificate fifteen (15) days written notice of his intended action
23 by registered mail directed to the applicant or holder at the address given
24 on said certificate or in the application for said certificate, stating
25 generally the basis for his intended action; and the applicant or holder of
26 said certificate shall have the opportunity to produce testimony in his own
27 behalf at a time and place specified in said notice. The proceedings shall
28 be governed by the provisions of chapter 52, title 67, Idaho Code. If the
29 administrator, after the hearing, shall refuse to grant a renewal of said
30 certificate or shall suspend or revoke any certificate previously granted,
31 said applicant or holder of a certificate may seek judicial review of the
32 administrator's final order in accordance with the provisions of chapter 52,
33 title 67, Idaho Code. Any person whose certificate has been revoked may,
34 after the expiration of one (1) year from the date of revocation, but not
35 before, apply for a new certificate of competency.

36 SECTION 4. That Section 54-5013A, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 54-5013A. REVOCATION OR SUSPENSION OF CERTIFICATE -- HEARINGS -- TAK-
39 ING TESTIMONY -- JUDICIAL REVIEW. The administrator shall have the power to
40 revoke or suspend any certificate if the same was obtained through error or
41 fraud, or if the holder thereof is shown to be grossly incompetent, or has
42 willfully violated any of the rules prescribed by the board, or as prescribed
43 in this chapter; or has, after due notice, failed or refused to correct,
44 within the specified time, any HVAC installation not in compliance with the
45 provisions of this chapter, or has failed to pay within the time provided,
46 civil penalties which have become final by operation of law, or has vio-
47 lated the provisions of chapter 22, title 55, Idaho Code, as specifically

1 set forth in section 55-2211, Idaho Code, provided, before any certificate
 2 shall be revoked or suspended, the holder thereof shall have written notice
 3 enumerating the charges against him, and shall be given a hearing by said ad-
 4 ministrator, and have an opportunity to produce testimony in his behalf, at
 5 a time and place specified in said notice, which time shall not be less than
 6 five (5) days after the service thereof. The proceedings shall be governed
 7 by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by
 8 the action of the administrator shall be entitled to judicial review thereof
 9 in accordance with the provisions of chapter 52, title 67, Idaho Code.

10 SECTION 5. That Section 55-2201, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 55-2201. LEGISLATIVE INTENT. It is the intent of the legislature in
 13 enacting this chapter to create a system of self-regulation and education
 14 addressing the prevention of damage to underground facilities, to assign
 15 responsibilities for locating and keeping accurate records of underground
 16 facility locations, for protecting and repairing damage to existing under-
 17 ground facilities, for collecting, storing and disseminating data related
 18 to underground facility damage and excavator downtime events, and for pro-
 19 tecting the public health and safety from great personal harm including
 20 death, property damage and interruption in vital services caused by damage
 21 to existing underground facilities.

22 SECTION 6. That Section 55-2202, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 55-2202. DEFINITIONS. As used in this chapter:

25 (1) "Administrator" means the administrator of the division of build-
 26 ing safety.

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

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

30 (24) "Damage" ~~includes~~ means any impact or exposure that results in the
 31 substantial weakening of structural or lateral support of an underground fa-
 32 ility, or the penetration, impairment, or destruction of any underground
 33 protective coating, housing, or other protective device, or the partial or
 34 complete destruction of the facility or the severance, partial or complete,
 35 of any underground facility to the extent that the project owner or the af-
 36 ected underground facility owner determines that repairs are required.

37 (35) "Emergency" means any condition constituting a clear and present
 38 danger to life or property, or a customer service outage.

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

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

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

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

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

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

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

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

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

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

23 (16) "Stakeholder" means all parties with an interest in protecting
24 underground facilities including, but not limited to, underground facil-
25 ity owners, excavators, contractors, cities, counties, highway districts,
26 railroads, public entities that deliver irrigation water and those engaged
27 in agriculture.

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

36 (148) "Underground facility owner" means any person who owns or oper-
37 ates an underground facility that serves the public.

38 SECTION 7. That Chapter 22, Title 55, Idaho Code, be, and the same is
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
40 ignated as Section 55-2203, Idaho Code, and to read as follows:

41 55-2203. DAMAGE PREVENTION BOARD. (1) There is hereby created in the
42 division of building safety the Idaho damage prevention board. The purpose
43 of the board is to reduce damages to underground facilities, promote safe ex-
44 cavation practices and review complaints of alleged violations of this chap-
45 ter. It shall be the responsibility and duty of the administrator to admin-
46 ister this chapter, and the administrator shall exercise such powers and du-
47 ties as are reasonably necessary to enforce the provisions of this chapter.
48 The administrator may promulgate such rules as may be necessary to carry out
49 the provisions of this chapter in order to effectuate the purposes herein and

1 for the orderly and efficient administration thereof, except as may be lim-
2 ited or prohibited by law and the provisions of this chapter.

3 (2) The board shall consist of fifteen (15) members, each of whom shall
4 be appointed by the governor with power of removal for cause. All members of
5 the board shall be qualified by experience, knowledge and integrity in for-
6 mulating rules, reviewing complaints referred to it, assessing penalties,
7 and properly performing the functions of the board. Of the fifteen (15) mem-
8 bers, one (1) each shall represent the following designated groups and be:

9 (a) A city official;

10 (b) A county official;

11 (c) An employee or officer of a gas corporation as defined by section
12 61-117, Idaho Code;

13 (d) An employee or officer of an electrical corporation, telephone cor-
14 poration or water corporation as defined in chapter 1, title 61, Idaho
15 Code;

16 (e) An employee or officer of a one-number notification service entity;

17 (f) An employee or officer of a pipeline corporation as defined by sec-
18 tion 61-115, Idaho Code;

19 (g) An employee or officer of a railroad and common carrier as defined
20 in chapter 1, title 61, Idaho Code;

21 (h) An employee or officer of either an electric cooperative or a munic-
22 ipal electric utility not subject to regulation pursuant to chapter 1,
23 title 61, Idaho Code;

24 (i) An employee or officer of a rural telephone cooperative, municipal
25 communications utility or cable or other telecommunications provider
26 not subject to regulation pursuant to chapter 1, title 61, Idaho Code;

27 (j) An employee or officer of a building contractor;

28 (k) An employee or officer of an excavator;

29 (l) An employee or owner of an agricultural enterprise, a representa-
30 tive of the agriculture industry or an employee or an official of a pub-
31 lic entity that delivers water for irrigation;

32 (m) An employee or an official of a highway district;

33 (n) An employee of the Idaho public utilities commission; and

34 (o) A member of the Idaho utility coordinating council or similar co-
35 operative statewide nonprofit organization created to coordinate the
36 protection of underground facilities in specific geographic portions
37 of the state.

38 (3) Each member of the board shall serve a term of four (4) years, and
39 such terms shall be staggered. The initial board shall have five (5) members
40 whose terms expire on July 1, 2017; five (5) members whose terms expire on
41 July 1, 2018; and five (5) members whose terms expire on July 1, 2019. There-
42 after, each board member shall be appointed for a term of four (4) years. No
43 member of the board may be appointed to more than two (2) consecutive terms.
44 A member may continue to serve until a successor is appointed. A successor
45 must represent the same designated group that his predecessor was appointed
46 to represent.

47 (4) The board shall meet within thirty (30) days after the appointment
48 of all its members and thereafter at such other times as may be expedient and
49 necessary for the proper performance of its duties, but the board shall hold
50 not less than two (2) regular meetings per year. At the board's first meet-

1 ing, the members shall elect one (1) of their number to be chairman and one
2 (1) to serve as vice chairman. The chairman may serve in such capacity for
3 a one (1) year term and may not serve in such capacity for more than two (2)
4 consecutive terms. A majority of the board shall constitute a quorum for the
5 transaction of business. The administrator shall serve as the secretary to
6 the board.

7 (5) Each member of the board shall be compensated as provided by section
8 59-509(n), Idaho Code.

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

12 (7) The activities of the board shall be funded by a fee established
13 by the board and promulgated in board rule. Such fee shall be imposed upon
14 all of the underground facilities owners required by the provisions of this
15 chapter to participate in and cooperate with the one-number notification
16 service. The fee shall be assessed upon an underground facility owner each
17 time such owner receives notice from a one-number notification service as
18 required by section 55-2205, Idaho Code. The fee is established to defray
19 the expenses of the board and the division in supervising, regulating and
20 administering the provisions of this chapter and the provision of services
21 hereunder. The fee assessed upon an underground facility owner shall be
22 collected by a one-number notification service and payable to the board in
23 accordance with a schedule and in a manner as established by the board in
24 rule. All fees collected by the board shall be deposited with the state trea-
25 surer to be credited by him to the damage prevention board fund established
26 pursuant to section 55-2204, Idaho Code.

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

31 (9) The board shall review complaints alleging violations of this chap-
32 ter involving practices related to underground facilities and impose appro-
33 priate discipline as authorized by this chapter. The proceedings shall be
34 governed by the provisions of section 55-2211, Idaho Code, and chapter 52,
35 title 67, Idaho Code. Any party aggrieved by the action of the board shall
36 be entitled to judicial review thereof in accordance with the provisions of
37 chapter 52, title 67, Idaho Code.

38 (10) The board shall analyze the data collected pursuant to section
39 55-2208, Idaho Code, including the number of reported damage and downtime
40 events and trends, the causes for such damage and any recommendations to
41 further reduce the number of such damage or downtime events annually and to
42 make their analysis publicly available.

43 (11) The board is authorized and directed to prescribe and amend rules
44 consistent with this chapter for the administration of this chapter and to
45 effectuate the purpose thereof.

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

49 (a) Hold meetings and attend or be represented at such meetings, pre-
50 pare and publish rules pertaining to this section, make investigation

1 or inquiry, conduct hearings, report findings and enter orders into
2 matters over which the board has authority.

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

10 (c) Administer oaths and take affirmations of witnesses appearing be-
11 fore the board, appoint competent persons to issue subpoenas, adminis-
12 ter oaths and take testimony, and appoint hearing officers.

13 (d) Impose civil penalties and conduct hearings related thereto for vi-
14 olations of this chapter and rules of the board.

15 (e) To enter into agreements with any vendor or contractor to provide
16 services or administer any obligation imposed on the board or the admin-
17 istrator by law, as well as the authority to make expenditures and make
18 purchases in accordance with chapter 57, title 67, Idaho Code, to effec-
19 tuate such agreements.

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

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

26 (14) The board may receive contributions, gifts and grants on behalf of
27 and in aid of the program. Such contributions, gifts and grants shall be de-
28 posited in the damage prevention board fund established pursuant to section
29 55-2204, Idaho Code.

30 SECTION 8. That Chapter 22, Title 55, Idaho Code, be, and the same is
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
32 igned as Section 55-2204, Idaho Code, and to read as follows:

33 55-2204. DAMAGE PREVENTION BOARD FUND ESTABLISHED -- USE OF FUNDS. (1)
34 There is hereby established in the state treasury a dedicated fund to be
35 known as the damage prevention board fund. All moneys received by the admin-
36 istrator under the terms and provisions of this chapter shall be paid into
37 the fund pursuant to section 59-1014, Idaho Code. Other than as prescribed
38 in subsection (2) of this section, all such moneys, hereafter placed in
39 said fund, are hereby set aside and appropriated to the division of building
40 safety to carry into effect the provisions of this chapter.

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

46 SECTION 9. That Section 55-2203, Idaho Code, be, and the same is hereby
47 amended to read as follows:

1 55-22035. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NO-
 2 TICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before com-
 3 mencing excavation, the excavator shall:

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

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

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

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

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

28 (2) Upon receipt of the notice provided for in this section, the under-
 29 ground facility owner or the owner's agent shall locate and mark its locat-
 30 able underground facilities by surface-marking the location of the facili-
 31 ties. If there are identified but unlocatable underground facilities, the
 32 owner of such facilities or the owner's agent shall locate and mark the un-
 33 derground facilities in accordance with the best information available to
 34 the owner of the underground facilities and with reasonable accuracy as de-
 35 fined in section 55-2202(125), Idaho Code. The owner of the underground fa-
 36 cility or the owner's agent providing the information shall respond no later
 37 than two (2) business days after the receipt of the notice or before the ex-
 38 cavation time set forth in the excavator's notice, at the option of the un-
 39 derground facility owner, unless otherwise agreed in writing by the parties.
 40 Excavators shall not excavate until all known facilities have been marked.
 41 Once marked by the owner of the underground facility, or the owner's agent,
 42 the excavator is responsible for maintaining the markings. Unless other-
 43 wise agreed in writing by the parties, maintained markings shall be valid for
 44 purposes of the notified excavation for a period of no longer than three (3)
 45 consecutive weeks following the date of notification so long as it is reason-
 46 ably apparent ~~to the excavator~~ that site conditions have not changed so sub-
 47 stantially as to invalidate the markings. If excavation has not commenced
 48 within three (3) weeks from the original notice to underground facility own-
 49 ers through the one-number notification service, the excavator shall reini-
 50 tiate notice in accordance with this section.

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

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

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

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

27 SECTION 10. That Section 55-2204, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 55-22046. ONE-NUMBER ~~LOCATOR~~ NOTIFICATION SERVICE -- ESTABLISHMENT
30 -- PARTICIPATION REQUIRED -- FUNDING. Two (2) or more persons who own or
31 operate underground facilities in a county may voluntarily establish or
32 contract with a third person to provide a one-number ~~locator~~ notification
33 service to maintain information concerning underground facilities within
34 a county. Upon the establishment of the first such one-number notification
35 service, all others operating and maintaining underground facilities
36 within said county shall participate and cooperate with the service, and
37 no duplicative service shall be established pursuant to this chapter. The
38 activities of the one-number ~~locator~~ notification service shall be funded by
39 all of the underground facility owner/operators required by the provisions
40 of this section to participate in and cooperate with the service.

41 SECTION 11. That Section 55-2205, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 55-22057. EXCAVATION CONTRACTS -- LIMITATIONS -- PRECAUTIONS TO AVOID
44 DAMAGE -- LIABILITY FOR DAMAGE. (1) Project owners shall indicate in bid
45 or contract documents the existence of underground facilities known by the
46 project owner to be located within the proposed area of excavation.

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

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

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

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

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

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

19 SECTION 12. That Section 55-2206, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 55-22068. DAMAGE TO UNDERGROUND FACILITIES -- DUTIES OF EXCAVATOR AND
22 OWNER -- REPORTING OF DATA. (1) An excavator who, in the course of excava-
23 tion, contacts or damages an underground facility shall notify the under-
24 ground facility owner and the one-number locator notification service. If
25 the damage causes an emergency condition, the excavator causing the damage
26 shall also alert the appropriate local public safety agencies and take all
27 appropriate steps to ensure the public safety. No damaged underground fa-
28 cility may be buried until it is repaired or relocated.

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

32 (3) Underground facility owners and excavators who observe, suffer or
33 cause damage to an underground facility or observe, suffer or cause excava-
34 tor downtime related to a failure of one (1) or more stakeholders to comply
35 with applicable damage prevention regulations shall report such information
36 to the board in accordance with the rules promulgated by the board.

37 SECTION 13. That Section 55-2207, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 55-22079. DUTIES OF PUBLIC AGENCY ISSUING EXCAVATION, BUILDING
40 OR SIMILAR PERMITS. (1) Any public agency issuing as defined in section
41 67-2327, Idaho Code, that has the authority to issue excavation, building
42 or similar permits authorizing excavation operations shall notify persons
43 seeking such permits of the existence of this chapter and the one-call loca-
44 tor number notification service telephone number.

45 (2) A permit shall not be valid for excavation until or unless the no-
46 tice provisions of this section have been complied with and may be suspended
47 by the issuing public agency if the permit holder violates any provisions of

1 this chapter. The issuing public agency shall reinstate the permit after the
2 permit holder provides evidence of compliance with the provisions of this
3 chapter.

4 SECTION 14. That Section 55-2208, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 55-220810. EXCAVATIONS EXEMPT FROM NOTICE REQUIREMENT. Unless facts
7 exist which would reasonably cause an excavator to believe that an under-
8 ground facility exists within the depth of the intended excavation, the fol-
9 lowing excavations shall not require notice of the excavation pursuant to
10 section 55-22035(1) (c), Idaho Code:

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

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

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

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

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

28 (6) Normal maintenance of railroad rights-of-way, except where such
29 rights-of-way intersect or cross public roads, streets, highways, or
30 rights-of-way adjacent thereto, or recorded underground facility ease-
31 ments.

32 SECTION 15. That Section 55-2209, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 55-220911. VIOLATION -- CIVIL PENALTY -- ~~TREBLE DAMAGES~~ DUTIES OF THE
35 BOARD AND ADMINISTRATOR -- OTHER REMEDIES UNIMPAIRED. (1) ~~Any person who vi-~~
36 ~~olates any provision of this chapter, other than the failure to provide no-~~
37 ~~tice pursuant to section 55-2203(1) (c), Idaho Code, and which violation re-~~
38 ~~sults in damage to underground facilities, is subject to a civil penalty of~~
39 ~~not more than one thousand dollars (\$1,000) for each violation. All penal-~~
40 ~~ties recovered in such actions shall be deposited in the state general ac-~~
41 ~~count. The damage prevention board established in section 55-2203, Idaho~~
42 Code, may hear contested cases of alleged violations of this chapter involv-
43 ing practices related to underground facilities as set forth in rules by the
44 board. Persons who violate the provisions of this chapter are subject to
45 civil penalties in accordance with this section. Complaints regarding an
46 alleged violation of this chapter may be made by any individual and shall be
47 made to the administrator. Complaints shall include the name and address

1 of the complainant and the alleged violator and the violation alleged. If
2 the alleged violation involves a facility damage or downtime event, the com-
3 plaint must be submitted on such forms and contain such information as re-
4 quired by the board in rule. Upon review of the complaint, and any inves-
5 tigation it may conduct therewith, the administrator shall notify the per-
6 son making the complaint and the alleged violator in writing of its recom-
7 mended course of action to the board. 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 first violation of this chapter and issue a notice of intent to
10 impose such penalty on behalf of the board, except that if the complaint is
11 for a first violation of this chapter wherein a residential homeowner or res-
12 idential tenant excavating on the lot of his residency has failed to provide
13 notice as required in section 55-2205, Idaho Code, and caused damage to un-
14 derground facilities, the board shall not impose a fine but shall direct the
15 administrator to deliver to the violator a written warning and educational
16 materials to prevent a future violation. If the administrator recommends
17 the imposition of a civil penalty, the violator may pay the fine to the board
18 upon receipt of such notice. If upon the expiration of twenty-one (21) days
19 the violator has not responded in writing to the division, the board may im-
20 pose the penalty provided for in the notice. A violator shall also have the
21 right to contest the imposition of a civil penalty to the board and the op-
22 portunity to produce evidence on the violator's behalf. Notice of the time
23 and place of such hearing shall be provided by the board, and such proceed-
24 ings shall be governed by the provisions of chapter 52, title 67, Idaho Code.
25 The board is authorized to impose the administrative costs of hearing the
26 action including, but not limited to, investigatory fees, hearing officer
27 fees, expert witness fees, attorney's fees and costs of hearing transcripts
28 and copies.

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

36 (a) If the court finds, by a preponderance of the evidence, that the
37 excavator has, on more than one (1) occasion during any consecutive pe-
38 riod of twelve (12) months, failed to provide the notice required pur-
39 suant to section 55-2203(1)(c), Idaho Code, and that such failure has
40 been a proximate cause of damage to an underground facility, the court
41 may increase the civil penalty in an amount up to five thousand dollars
42 (\$5,000).

43 (b) If the court finds, by a preponderance of the evidence, that the ex-
44 cavator has, on three (3) or more occasions during any consecutive pe-
45 riod of twelve (12) months, failed to provide the notice required pur-
46 suant to section 55-2203(1)(c), Idaho Code, and that such failure has
47 been a proximate cause of damage to an underground facility, the court
48 may increase the civil penalty in an amount up to ten thousand dollars
49 (\$10,000) for the third occurrence taking place during the twelve (12)-
50 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.~~

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 facility damage has occurred, the board may impose a civil penalty of not more than five thousand dollars (\$5,000) for each separate violation in accordance with the process described in subsection (1) of this section.

(3) In the event the board determines that a person who is licensed or registered pursuant to the provisions of chapters 10, 12, 19, 24, 26, 28, 50, 52 or 53, title 54, Idaho Code, and chapter 21, title 44, Idaho Code, has violated the provisions of this chapter in the conduct of such person's occupation, profession or business that requires the license or registration a third time within twenty-four (24) months from an earlier violation, and where a facility damage event has occurred, the board may direct the administrator to notify the public agency having the authority to issue such license or registration of such record of violations. The public agency so notified, at its discretion, may take disciplinary action in accordance with its own authority and procedures including, but not limited to, imposing restrictions, suspension, revocation of or refusal to renew a license or registration that it is authorized to issue. The board may also impose a civil penalty against a person who violates the provisions of this chapter a third time within twenty-four (24) months of an earlier violation in an amount not more than ten thousand dollars (\$10,000) for each separate violation in accordance with the process described in subsection (1) of this section. The board may also require a violator, at the violator's own expense, to complete an educational course regarding safe excavation practices.

(4) All civil penalties recovered shall be deposited in the underground facility damage prevention board fund and used pursuant to section 55-2204(2), Idaho Code.

(b)5) The penalties provided in this section are in addition to any other remedy at law or equity available to an 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.~~

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

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

14 SECTION 16. That Section 55-2210, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 55-2210~~2~~. WAIVER PERMITTED BY OWNER OF UNDERGROUND FACILITY. The no-
17 tification and marking provisions of this chapter may be waived for one (1)
18 or more designated persons by an underground facility owner with respect to
19 all or part of that underground facility owner's own underground facilities.

20 SECTION 17. That Section 67-2601A, Idaho Code, be, and the same is
21 hereby amended to read as follows:

22 67-2601A. DIVISION OF BUILDING SAFETY. (1) The division of building
23 safety will be headed by an administrator appointed by and serving at the
24 will of the governor. The division administrator, deputy administrators and
25 regional managers shall be nonclassified employees exempt from the provi-
26 sions of chapter 53, title 67, Idaho Code.

27 (2) The administrator shall administer the following provisions and
28 shall perform such additional duties as are imposed on him by law: chapter
29 41, title 39, Idaho Code, relating to the building code board; chapter 40,
30 title 39, Idaho Code, relating to manufactured homes; chapter 44~~3~~, title
31 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho
32 Code, relating to manufactured home dealer and installer licensing; chapter
33 25, title 44, Idaho Code, relating to mobile home rehabilitation; chapter
34 10, title 54, Idaho Code, relating to electrical contractors and journey-
35 men; chapter 19, title 54, Idaho Code, relating to licensing of public works
36 contractors; chapter 26, title 54, Idaho Code, relating to plumbing and
37 plumbers; chapter 45, title 54, Idaho Code, relating to public works con-
38 struction management licensing; chapter 50, title 54, Idaho Code, relating
39 to heating, ventilation and air conditioning systems; chapter 80, title 39,
40 Idaho Code, relating to school building safety; ~~and~~ chapter 86, title 39,
41 Idaho Code, relating to elevator safety; and chapter 22, title 55, Idaho
42 Code, relating to underground facilities damage prevention.

43 (3) The administrator shall cooperate with the industrial commission
44 and aid and assist the commission in its administration of sections 72-720,
45 72-721 and 72-723, Idaho Code, and at the request of the commission shall
46 make inspection of appliances, tools, equipment, machinery, practices or
47 conditions, and shall make a written report to the commission. The adminis-

1 trator shall make recommendations to the commission to aid the commission in
2 its administration of sections 72-720, 72-721 and 72-723, Idaho Code, pro-
3 vided however, that nothing herein shall be construed as transferring to the
4 administrator any of the authority or powers now vested in the industrial
5 commission.

6 (4) In administering the laws regulating professions, trades and occu-
7 pations that are devolved for administration upon the division, and in addi-
8 tion to the authority granted to the administrator by the laws and rules of
9 the agencies and entities within the division, the administrator may:

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

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

22 (c) Conduct hearings on proceedings to discipline, renew or reinstate
23 licenses, certificates or authorities of persons exercising the re-
24 spective professions, trades or occupations; appoint hearing officers,
25 administer oaths, issue subpoenas, and compel the attendance of wit-
26 nesses; revoke, suspend, refuse to renew, or take other disciplinary
27 action against such licenses, certifications or authorities; and pre-
28 scribe rules to recover costs and fees incurred in the investigation and
29 prosecution of any certificate holder, licensee or registrant of the
30 division, its boards, bureaus and programs, in accordance with the con-
31 tested case provisions of chapter 52, title 67, Idaho Code, and the laws
32 and rules of the boards, bureaus and programs the division administers;

33 (d) Assess civil penalties as authorized;

34 (e) Promulgate rules establishing: a coordinated system for the
35 issuance, renewal, cancellation and reinstatement of licenses, cer-
36 tificates, registrations and permits; assessment of all related fees;
37 the terms by which fees may be prorated, if any; and procedures for the
38 replacement of lost or destroyed licenses, certificates or registra-
39 tions; and

40 (f) Promulgate other rules as may be necessary for the orderly admin-
41 istration of the chapters specified in subsection (2) of this section
42 and such rules as may otherwise be required by those chapters as well as
43 rules for the standardization of operating procedures.

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

47 (6) The administrator shall have the authority to employ individuals,
48 make expenditures, enter into contracts, require reports, make investiga-
49 tions, travel, and take other actions deemed necessary.