

MINUTES

## HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

**DATE:** Tuesday, February 16, 2016

**TIME:** 1:30 P.M.

**PLACE:** Room EW41

**MEMBERS:** Chairman Thompson, Vice Chairman Anderst, Representatives Raybould, Hartgen (Hartgen), Vander Woude, Nielsen, Anderson, Mendive, Trujillo, Beyeler, Chaney, Nate, Scott, Smith, Rusche, Jordan, Rubel

**ABSENT/  
EXCUSED:** None

**GUESTS:** Russell Westerberg, R.M.P.; Diana Westerberg, Westerberg & Assoc.; Ron Law, I.D.P.C.; Hart Gilchrist, Intermountain Gas; Neil Colwell, Avista Corp.; Brenda Tominaga, Idaho Water Policy Gr.; Kelli Brassfield, IAC; Celynda Rouch, CableOne; Ron Williams, Tesoro Pipeline, Idaho Cable Telecom Assn.; David Nelson, Intermountain Gas; Kate Hart, Alta Mesa; Bill Roden, CenturyLink

**Chairman Thompson** called the meeting to order at 1:32 p.m.

**MOTION:** **Rep. Smith** made a motion to approve the minutes of the February 4, 2016, meeting and the February 8, 2016, meeting. **Motion carried by voice vote.**

**H 454:** **Neil Colwell**, Avista Corporation, introduced **H 454** to the committee. He represented the Underground Facilities Damage Prevention Coalition. There are 45 entities that participated in the bill, including stakeholders such as Idaho utilities, underground facility owners, builders and contractors, excavators, the Association of Cities, Realtors, highway districts, sewer and water districts, agricultural communities, and Idaho water users. There has been no organized opposition to the bill. The bill makes changes to the terms of the existing dig laws and creates a board to advance public safety, education, and enforcement of dig laws. It would have the authority to establish requirements for those engaged in locating underground facilities.

The board would be supported by two funds. The board would be paid for by the underground facility owners. When a company calls 811 to locate underground facilities, the facility owners are charged a fee for the notification. A surcharge on the fee per locate call would generate funds to operate the board. The second fund would contain any civil penalties created under this act; that fund would be used only for public education efforts. The board is not motivated to collect fees for violations. If a civil penalty is imposed, those funds would be designated for education regarding safe building practices.

The goals of the coalition are to improve the information in the underground facilities database for improved efficiency; create a board to police itself, with no lawsuits; and to increase the knowledge base for the safety of the public, workers, and underground facilities. Representatives from the Division of Building Safety will administer the functions and make the decisions. The director of the board will not have the authority to write rules on his own, but is subject to the board. The goal is to gain compliance in a mutual setting.

**Mr. Colwell** answered questions from the committee, saying if there were a complaint levied against a company, the board would review the situation and come to a conclusion. The party engaged in the violation would be enrolled in a training class to improve work quality. If the party continued to perform slipshod work, the board would impose a penalty. The goal of having the board is to seek consensus on issues and to educate for the purpose of safety. In other states where similar bills have been enacted, the complaints have gone away when the parties talked to each other.

In regards to compensation, the party who is responsible for the damages is the one who must pay. If the contractor did not dig by hand around a line and ruptured it, he would have to pay. If the damage occurs due to a mis-mark, then the underground facility owner would be responsible for the fee. There is an opportunity to appeal written into the law. If the board proposes a fine, the violator could appeal in court. The goal is to gain compliance in a mutual setting. **Ken McClure**, Idaho Telecom Alliance, clarified that the proceedings shall be governed by the provisions of the Administrative Procedures Act. That act itself contains the appellate rights of parties as determined by Idaho Code.

**Mr. Colwell** continued to answer questions from the committee, explaining the revisions to the bill were based on suggestions from participating entities. The revisions enlarged the section on federal involvement, clarified definitions, and expanded the procedure for taking litigation from the courts to the board. The revisions spell out the protection for those accused of violations. The civil penalties imposed would be used exclusively to fund education on public safety, such as billboards and bill stuffers explaining the Call Before You Dig program, so there is no motivation to impose fees.

**Celynda Roach**, General Manager, CableOne Boise, spoke **in support of H 454**, saying in 2015 there were 89 incidents involving dig-ins into cable systems in Idaho. If the line cut were a power or gas line, it could have caused a tragic accident. Idaho has been lucky. The definition of luck is success or failure apparently brought on by chance rather than by one's own actions. Idaho should not be trusting to luck in this matter. Idaho's dig law has no provision for education, which is the best prevention, and the penalties are essentially unenforceable unless we sue in court.

**Ron Williams**, Tesoro Pipeline Company and Idaho Cable Telecommunications Association, spoke **in support of H 454**, saying the prevention of interruptions in underground service is shared by the Tesoro Pipeline Company, the only petroleum products pipeline in southern Idaho. Hitting those pipelines is a huge safety risk, with the potential for catastrophic damage and danger to human life. Pipelines are regulated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA). The fines it administers are significant. PHMSA is designed to help the states meet the requirements for jurisdiction over hazardous waste control so states can take primacy.

**David Nelson**, District Manager of Intermountain Gas Company in Hailey, spoke **in support of H 454**. He presented a personal incident caused by a damaged gas line that caused an explosion. One home was completely blown up, another burned to the ground, and a third sustained significant damage. Mr. Nelson was the first responder to the blowing gas line, arriving just before the blowing gas line exploded. He was blown into the hole with an ignited gas line and debris on top of him. Somehow he was able to escape, but he was severely burned, causing loss of time on the job, great stress on his family, more work for his fellow employees, and a high cost to the Intermountain Gas Company. If more time had been taken during the line-locating phase, the accident could have been avoided.

The new damage prevention legislation would help prevent serious accidents like that from happening in the future. The board would raise awareness, increase damage prevention training, and provide a mechanism for enforcement. The new law would also require excavators who damage a line to call 911. If the fire department had been on the scene when the gas line was blowing, more steps could have been taken to possibly prevent the explosion.

**MOTION:**

**Rep. Chaney** made a motion to send **H 454** to the floor with a **DO PASS** recommendation.

**Mr. Colwell** answered further questions from the committee, stating the fee associated with all locates, including residential, is paid by the underground facility owners. There is no charge at any time to someone requesting a locate. This is to encourage people to submit requests for locates. The underground facility owners provide 811, the Dig Line, with maps for locates. If a request requires contacting four companies, each company would pay the designated fee, for example 10 cents per phone call for locate notification.

The advantage of having a board is that it would encourage voluntary compliance. The data on dig-ins shows that currently not all dig-ins get recorded, and there are no consequences for not reporting, so the data is flawed. In addition, prosecutors are reluctant to pursue civil penalty cases, and the idea of suing customers and excavators is unappealing to underground facility companies as well.

Another issue is primacy. The federal government enacted PHMSA in 2006. PHMSA can review the adequacy of the state's hazardous material safety measures. Further rulemaking was concluded July 23, 2015, listing seven criteria states must meet. Idaho does not comply with six of the seven. If this bill passes, Idaho would comply. The driver in this legislation was to provide a means for Idaho to gain primacy.

**Rep. Scott** invoked Rule 38 stating a possible conflict of interest and she would not be voting on the legislation.

**VOTE ON MOTION:**

**Chairman Thompson** called for a vote on the motion to send **H 454** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nate** requested to be recorded as voting **NAY.** **Chairman Thompson** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 2:37 p.m.

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Representative Thompson  
Chair

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Diana Seba  
Secretary