

IN THE SENATE

SENATE BILL NO. 1036

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO UNDERGROUND FACILITIES DAMAGE PREVENTION; AMENDING SECTION  
2 55-2211, IDAHO CODE, TO REVISE PROVISIONS REGARDING VIOLATIONS, TO  
3 AUTHORIZE THE BOARD TO AFFIRM, REJECT, DECREASE, OR INCREASE TRAINING  
4 OR PENALTIES IMPOSED, AND TO PROVIDE THAT THE ADMINISTRATOR MAY IMPOSE  
5 CERTAIN PENALTIES.  
6

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

8 SECTION 1. That Section 55-2211, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 55-2211. VIOLATION -- CIVIL PENALTY -- DUTIES OF THE BOARD AND THE  
11 ADMINISTRATOR -- OTHER REMEDIES UNIMPAIRED. (1) The damage prevention board  
12 established in section 55-2203, Idaho Code, may hear, but may not initiate,  
13 contested cases of alleged violations of this chapter involving prac-  
14 tices related to underground facilities as set forth in rules by the board.  
15 Persons who violate the provisions of this chapter are subject to civil  
16 penalties in accordance with this section. Complaints regarding an alleged  
17 violation of this chapter may be made by any individual and shall be made to  
18 the administrator. Complaints shall include the name and address of the com-  
19 plainant and the alleged violator, and the violation alleged. If the alleged  
20 violation involves facility damage or a downtime event, the complaint must  
21 be submitted on such forms and contain such information as required by the  
22 board in rule. Upon review of the complaint, and any investigation conducted  
23 therewith, the administrator shall notify the person making the complaint  
24 and the alleged violator, in writing, of the administrator's ~~recommended~~  
25 ~~course of action to the board~~ findings. The administrator shall ~~recommend~~  
26 order that a training course adopted by the board, by rule, be successfully  
27 completed for a first violation of this chapter, except that if the complaint  
28 is for a first violation of this chapter wherein a residential homeowner or  
29 residential tenant excavating on the lot of his residency failed to provide  
30 notice as required in section 55-2205, Idaho Code, and caused damage to un-  
31 derground facilities, the board shall direct the administrator to deliver to  
32 the violator a written warning and educational materials to prevent a future  
33 violation. The administrator may ~~recommend the imposition of~~ impose a civil  
34 penalty in an amount not to exceed one thousand dollars (\$1,000) for a ~~second~~  
35 subsequent violation of this chapter within eighteen (18) months of an ear-  
36 lier violation and where facility damage has not occurred and in addition  
37 may ~~recommend order~~ successful completion of a training course adopted by  
38 the board, by rule, and issue a notice of ~~intent to impose~~ imposition of such  
39 penalty ~~on behalf of the board and training~~. If the administrator ~~recommends~~  
40 ~~the imposition of~~ imposes training, a civil penalty, or both, the violator  
41 may shall complete the training, pay the fine to the board upon receipt of  
42 such notice, or both. ~~If, upon the expiration of twenty-one (21) days, the~~

1 ~~violator has not responded in writing to the division, the board may impose~~  
2 ~~the penalty provided for in the notice.~~ A violator shall also have the right  
3 to ~~contest~~ appeal the imposition of training or a civil penalty to the board  
4 and the opportunity to produce evidence in his behalf. Notice of the time  
5 and place of such hearing shall be provided by the board, and such proceeding  
6 shall be governed by the provisions of chapter 52, title 67, Idaho Code. The  
7 board is authorized to affirm, reject, decrease, or increase the training or  
8 penalty imposed, as applicable. The board shall not increase any penalty to  
9 an amount that exceeds what is authorized pursuant to the provisions of this  
10 section.

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

17 (3) All civil penalties recovered shall be deposited in the under-  
18 ground facility damage prevention board fund and used pursuant to section  
19 55-2204(2), Idaho Code.

20 (4) The penalties provided in this section are in addition to any other  
21 remedy at law or equity available to any party subject to the jurisdiction of  
22 the damage prevention board established in section 55-2203, Idaho Code.

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