

TITLE 50
MUNICIPAL CORPORATIONS

CHAPTER 25
UNDERGROUND CONVERSION OF UTILITIES

50-2501. SHORT TITLE. This act shall be known and cited as the "Idaho Underground Conversion of Utilities Law."

[50-2501, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2502. DEFINITIONS. As used in this chapter, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" mean any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances. "Communication facilities" shall not include facilities used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(4) "Extension" or "extending" means any continuation, either overhead or underground, of existing distribution or transmission facilities or the construction of new electric or communication facilities which are reasonably required by prudent electrical or communication practices.

(5) "Governing body" means the board of county commissioners or mayor and council or board of directors as may be appropriate depending on whether the improvement district is located in a county or within a city.

(6) "Ordinance" shall be construed to mean resolution where the governing body properly acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" mean electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any one or more, public or private persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" mean electric or communication facilities located, in whole or in part, beneath the surface of the ground.

(10) A "lot" or "parcel" of land means a single tract or parcel of land containing five (5) acres or less. No single tract or parcel of property containing more than five (5) acres may be included in any district organized

under this chapter, unless located within an incorporated city, without the consent of the owner or owners thereof.

Definitions in section [50-1702](#), Idaho Code, shall be applicable to any sections of [chapter 17, title 50](#), Idaho Code, incorporated in this chapter by reference.

[50-2502, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 1, p. 789.]

50-2503. POWERS CONFERRED. The governing body of every county is hereby authorized and empowered to create local improvement districts under this chapter within the unincorporated portion of such county, and the governing body of every city is hereby authorized and empowered to create local improvement districts under this chapter within its territorial limits: to provide for the extension of distribution or transmission facilities or the conversion of existing overhead electric and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter.

[50-2503, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 2, p. 791.]

50-2504. BASIS OF ASSESSMENTS. Whenever any improvement authorized to be made by any governing body by the terms of this chapter is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous and adjacent lots and land and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet, number of front feet, or other equitable basis, of such lands and lots abutting, adjoining, contiguous and adjacent thereto or included in the improvement district, and in proportion to the benefits accruing to such property by said improvements. The entire cost of the improvement may be assessed against the benefited property as herein provided or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as herein provided for shall include the cost of the improvement, the public utility cost and feasibility report, engineering and clerical service, advertising, inspection, collecting assessments, easements, interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Idaho or any county, city or town, shall not be considered as lands or property benefited by any improvements district, unless such public entity within the boundaries of any improvement district consents in writing, filed before the governing body adopts the ordinance provided for in section [50-2510](#), Idaho Code. The lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement, unless said consent is filed.

[50-2504, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 3, p. 791.]

50-2505. RESOLUTION FOR COST AND FEASIBILITY STUDY. Any governing body may on its own initiative, or upon a petition signed by at least sixty per cent (60%) of the resident owners of property subject to assessment within such proposed improvement district requesting the creation of an improvement district as provided for in this chapter, pass a resolution by the affirmative vote of three-fourths (3/4) of all members of the governing body at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for a purpose set out in this chapter will promote the public convenience, necessity, and welfare. The resolution must state that costs and expenses will be levied and assessed upon the property benefited and further request that the appropriate public utility serving such area by overhead electric or communication facilities shall, within one hundred twenty (120) days after the receipt of the resolution, make a study of the cost of extension or conversion of its facilities. The resolution shall provide for payment of the public utility's costs and expenses associated with preparing the costs and feasibility report in the event the improvement district is not created. The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution of the governing body shall require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study. The study shall further list each lot or parcel within the proposed improvement impact area. The appropriate public utility serving such improvement district area shall, within one hundred twenty (120) days after receipt of the resolution, make a study of the costs of extension or of conversion, and shall provide the governing body and make available at its office a joint report of the results of the study.

[50-2505, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 4, p. 792.]

50-2506. COSTS AND FEASIBILITY REPORT. The public utility or utilities report shall set forth an estimate of the total costs of extension or conversion. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utilities concerned on the basis of the amended district. The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six (6) months of the submission of the estimate for reasons not within the control of the utility. Should such a delay result in a significant increase in the conversion cost, new hearings shall be held on the

creation of the district. In the event that a ten per cent (10%) or less increase results, only the hearing on the assessments need be held again.

[50-2506, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 5, p. 792.]

50-2507. RESOLUTION DECLARING INTENTION TO CREATE DISTRICT. On the filing with the clerk or any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, specifying the contribution of the governing body or others, if any, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity and welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and that the governing body will hold a hearing on the proposed improvements at which time they will consider protests filed with the governing body against the proposed improvements for the creation of the district.

[50-2507, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2508. NOTICE OF RESOLUTION AND HEARING ON PROTESTS -- CONTENTS. Following the passage of the resolution in section [50-2507](#), the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement and any requests for inclusion in the district to be given in the manner provided in subsection (8). Such notice shall:

- (1) Declare that the governing body has passed a resolution of intention to create an improvement district;
- (2) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;
- (3) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;
- (4) State the estimated cost to the property owners, governing body and public utility;
- (5) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the proportionate square footage, front footage, or other equitable basis, as specified;
- (6) State the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvement, or the creation of such district or the benefit to be derived by the real property in the district, or requests to be included in such district;
- (7) State that all persons desiring to be included in such district and all property owners liable to be assessed for such work and desiring to make protests shall submit, in writing, such protests or requests for inclusion

to the governing body by a specified date not less than fifteen (15) days from the first day of publication of such notice.

(8) Notice shall be given as contemplated by this section in the manner specified in section [50-1714](#), Idaho Code.

[50-2508, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2509. FILING AND HEARING OF PROTESTS AND REQUESTS FOR INCLUSION. At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvement, or the creation of such district, or the benefits to be derived by the real property in the district, and any property owner desiring to be included in such district may make a written request for inclusion. Such protests or requests must be in writing and be delivered to the clerk of the governing body not later than 5 P.M. of the last day within said period.

At time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests and requests so made, and its decisions shall be final and conclusive. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearing, it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utilities concerned, appear to affect either the cost or the feasibility of the improvement, the hearing shall be adjourned to a fixed time and place and a new cost and feasibility report shall be prepared on the basis of the contemplated changes. Notice and an opportunity to protest shall again be given on the basis of such contemplated changes.

If protests against the making of the improvement are received from the owners of more than two-thirds (2/3) of the assessable property within the proposed improvement district, the district and project shall be abandoned.

[50-2509, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2510. CHANGES IN PROPOSED IMPROVEMENTS OR IN AREA OF DISTRICT -- ORDINANCE CREATING IMPROVEMENT DISTRICT. After the hearing has been concluded, and after all the protests and requests have been considered, the governing body may make such changes in the proposed improvements or in the area to be included in the district as it may consider desirable or necessary, providing said changes are not substantial. However, no such changes shall be made without a new costs and feasibility report being prepared, and public hearing held, if the public utilities concerned deem it necessary or such changes are determined to be substantial by the governing body.

The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project. Such ordinance shall be published in the manner provided in subsection (8) of section [50-2509](#), Idaho Code, but need not be mailed. If an ordinance be adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of such ordinance. Such action shall be subject to the provisions of section [50-2511](#). Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceedings.

[50-2510, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2511. WAIVER OF OBJECTIONS. Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with section [50-2509](#)[, Idaho Code,] shall be deemed to have waived any objections to the creation of the district, the making of the improvements and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in [chapter 17, title 50](#), Idaho Code.

[50-2511, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2512. NOTICE OF HEARING ON OBJECTIONS TO PROPOSED ASSESSMENTS. After the preparation of the aforesaid ordinance, notice of a hearing on objections to the proposed assessments shall be given. Such notice shall be given in the same manner as provided under section [50-1713](#), Idaho Code.

Each notice shall state the time at which the governing body will hear and consider all objections to the assessment roll by the parties aggrieved by such assessments. Such notice shall further state that the owner or owners of any property which is assessed in such assessment roll may file with the clerk of the governing body his written objections to said assessments and to the amount levied on any particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvement. Failure to file a written objection pursuant to section [50-2517](#), Idaho Code, shall constitute the grant of an easement for extension or conversion purposes to the district as provided in said section. The district after obtaining all easements required for the extension or conversion project shall, prior to commencement of construction, convey these easements to the utility. The time within which such objections shall be filed shall be specified in the notice but in no case shall it be less than fifteen (15) days from the date of the first publication of such notice.

The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this chapter.

[50-2512, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 6, p. 793.]

50-2513. INCORPORATION OF ASSESSMENT AND BONDING PROVISIONS FROM [CHAPTER 17, TITLE 50](#), IDAHO CODE. The following sections of [chapter 17, title 50](#), Idaho Code, are specifically incorporated herein by this reference as though set out here at length, and any amendments to said sections which are

compatible with the original intent of this chapter shall be given effect. Said sections incorporated herein are as follows: Sections [50-1718](#) through [50-1724](#), inclusive, Idaho Code, and sections [50-1729](#) through [50-1732](#), inclusive, Idaho Code.

[50-2513, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2514. CIVIL ACTIONS -- INCORPORATION OF SECTIONS [50-1725](#) THROUGH [50-1727](#), INCLUSIVE -- STATUTE OF LIMITATIONS. Sections [50-1725](#) through [50-1727](#), inclusive, Idaho Code, are incorporated herein by this reference as though set out at length herein. Without changing the intent or effect of the incorporated sections, the following paragraph of this section shall be an additional limitation of any or all actions to test the validity of this chapter.

If an ordinance be adopted establishing the assessment or assessments pursuant to this chapter, such ordinances shall be final and conclusive against all persons, unless an action attacking the validity of any part or all of this law or any or all of the acts or matters contemplated by this law shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of the assessment ordinance. Thereafter, any such action shall be perpetually barred and the organization of said district, the assessment levied pursuant thereto, or any other act or matter contemplated by this statute shall not be directly or collaterally questioned in any suit, action, or proceeding. Any such action shall be given preference over all civil cases pending in the courts of the state except proceedings relating to acts of eminent domain by cities and actions of forcible entry and detainer. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof invalid, inequitable or unjust shall rest upon the party who brings such suit.

[50-2514, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2515. COSTS. In determining costs for an extension or conversion included in the cost and feasibility report required by section [50-2506](#), Idaho Code, the public utility shall be entitled to amounts included in applicable tariffs, rules or regulations filed with or promulgated by the Idaho public utilities commission or federal communications commission or federal energy regulatory commission. In the event tariffs, rules and regulations do not apply, the public utility shall be entitled to amounts sufficient to repay them for the following, computed according to the uniform system of accounts approved by the Idaho public utilities commission or other appropriate regulating agency, and in the event the public utility is not subject to regulation by governmental agencies, by the utility corporation's system of accounts then in use and in accordance with the accounting procedures of said public utility:

(1) Any and all costs including, without limitation, reasonable acquisition costs associated with obtaining new or expanded easements reasonably necessary to construct the extension or conversion. This shall include new or expanded easements to replace existing easements in those instances where technical considerations or the new facilities require new or expanded easements;

(2) If the estimated cost of constructing a conversion exceeds the recorded original cost of constructing the facilities being replaced, then the cost difference between the two (2);

(3) For extensions, the full cost of the facilities required less depreciation taken as of the date of installation;

(4) For removals, the estimated cost of removing the facilities being replaced less the salvage value of the facilities removed.

[50-2515, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 7, p. 794.]

50-2516. CONSTRUCTION OF AND TITLE TO EXTENDED OR CONVERTED FACILITIES. The public utility concerned shall be responsible for all construction work and may contract out such of the construction work as it deems desirable. Title to the extended or converted facilities shall be at all times solely and exclusively in the public utility involved.

[50-2516, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 8, p. 795.]

50-2517. UNDERGROUND DISTRIBUTION EXTENSION OR CONVERSION COSTS AND SERVICE CONNECTIONS. The public utility performing the underground distribution extension or conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. Creation of a district for the purpose of underground distribution extension or conversion shall be taken as a consent and grant of easement to the utility and shall be construed as express authority to the public utility and their respective officers, agents and employees to enter upon such lot or parcel for such purpose.

The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

[50-2517, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 9, p. 795.]

50-2518. PAYMENT TO PUBLIC UTILITY -- REFUNDS. Upon completion of the extension or conversion contemplated by this chapter, the public utility shall present the governing body with its verified bill for extension or conversion costs as computed pursuant to section [50-2515](#), Idaho Code, but based upon the actual cost of construction rather than the estimated cost of the facility. In no event shall the bill for extension or conversion costs presented by the public utility exceed the amount of estimated extension or conversion costs by the public utility. In the event the extension or conversion costs are less than the estimated extension or conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such times as the governing body may determine. The bill of the public utility corporation shall be paid within thirty (30) days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the facility the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the state or federal regulatory commission and as is in use at the time of the extension or conversion by the public utility involved. All

rules and regulations of the utility pertaining to refund provisions for line extensions will also be applicable to an improvement district.

[50-2518, as added by 1971, ch. 212, sec. 1, p. 923; am. 1991, ch. 301, sec. 10, p. 796.]

50-2519. REINSTALLATION OF OVERHEAD FACILITIES NOT PERMITTED. Once removed pursuant to this chapter, no overhead electric or communication facilities as defined herein, shall be installed within the boundaries of the local improvement district for conversion of overhead electric and communication facilities, except as authorized herein.

[50-2519, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2520. NO LIMITATION OF PUBLIC UTILITIES COMMISSION'S JURISDICTION. Nothing contained in this chapter shall vest any jurisdiction over public utilities in the governing bodies. The public utilities commission of Idaho shall retain all jurisdiction now or hereafter conferred upon it by law.

[50-2520, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2521. REASSESSMENT OF BENEFITS. In all cases of assessments for improvements under this chapter against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the chapter provisions, or laws governing such assessments, the governing body shall be, and they are hereby, authorized to reassess such special taxes or assessments and to enforce their collection, in accordance with the provisions of law existing at the time the reassessment is made. But no mistake, in description of the property, or the name of the owner, shall be held to affect any assessment or any lien created thereby under the provisions of this chapter, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the cost and expenses of the improvement made and enjoyed by owners of property in any local improvement district where the same is made, it shall be lawful, and the governing body is hereby directed and authorized to make reassessments on all property in said local improvement district sufficient to pay for such improvements, such reassessment to be made and collected in accordance with the provisions of the law existing at the time of its levy.

[50-2521, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2522. INVALIDITY OF ONE PROVISION NOT TO AFFECT OTHERS -- EXCEPTION. If any section or provision of this chapter be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of this chapter as a whole, or of any section or provision hereof, which is not specifically so adjudicated unconstitutional or invalid; provided, however, if any section or provision of this chapter concerning the payment to the public utilities shall be adjudged unconstitutional or invalid for any reason in such a way that the payment to the public utilities or the creation of the funds for that purpose is adjudged to be invalid

or unconstitutional then such invalidity or unconstitutionality shall invalidate this chapter in its entirety and to this end and in this event the provisions of this chapter are declared to be nonseverable.

[50-2522, as added by 1971, ch. 212, sec. 1, p. 923.]

50-2523. ABATEMENT OF CONSTRUCTION. If an improvement district is established pursuant to this chapter, the public utility corporations involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

[50-2523, as added by 1971, ch. 212, sec. 1, p. 923.]