

# DRAFT DIG BILL LEGISLATION

AS OF JAN 19 15

## AN ACT

RELATING TO THE PREVENTION OF DAMAGE TO UNDERGROUND FACILITIES:  
AMENDING CHAPTER 22, TITLE 55, IDAHO CODE...(full title to be determined  
once bill has received input from coalition participants)

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-2201. LEGISLATIVE INTENT. It is the intent of the legislature in enacting this chapter to create a system of self-regulation and education addressing the prevention of damage to underground facilities, to assign responsibilities for locating and keeping accurate records of underground facility locations, for protecting and repairing damage to existing underground facilities, for collecting, storing and disseminating data related to underground facility damage and excavator downtime events, and for protecting the public health and safety from personal harm, property damage, and ~~from~~ interruption in vital services caused by damage to existing underground facilities.

SECTION 2. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

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

- (1) "Administrator" means the administrator of the division of building safety.
- (2) "Board" means the damage prevention board.
- (~~13~~) "Business day" means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.
- (~~24~~) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected underground facility owner determines that repairs are required.
- (~~35~~) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.
- (~~46~~) "Excavation" means any operation in which earth, rock, or other material in the ground is moved or otherwise displaced by any means including, but not limited to explosives.
- (~~57~~) "Excavator" means any person who engages directly in excavation.

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

(9) "Facility damage" is defined as any impact or exposure that results in the need to repair an underground facility due to a weakening or the partial or complete destruction of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection or the housing for the line device or facility.

~~(610)~~ "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

~~(711)~~ "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

~~(812)~~ "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

~~(913)~~ "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

~~(1014)~~ "One-number notification locator service" means a service through which a person can notify owners of underground facilities and request field-marking of their underground facilities.

~~(1115)~~ "Person" means an individual, partnership, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

~~(1216)~~ "Reasonable accuracy" or "reasonably accurate" means location within twenty-four (24) inches horizontally of the outside dimensions of each side of an underground facility.

~~(1317)~~ "Stakeholder" means all parties with an interest in protecting underground facilities, including but not limited to, underground facility owners, excavators, contractors, cities, counties, highway districts, water districts, irrigation districts, ground water districts, and those engaged in agriculture.

~~(1418)~~ "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water (unless being delivered primarily for irrigation), sewage, electronic, telephonic or telegraphic communications, cable television, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

~~(19)~~ "Underground facility owner" means any person who owns or operates an underground facility which serves the public and includes those located within the boundaries of an underground facility easement of public record on private property.

SECTION 3. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended by the addition of a NEW SECTION to be known and designated as Section 55-2203, Idaho Code, and to read as follows:

55-2203. – DAMAGE PREVENTION BOARD. (1) The Idaho damage prevention board is hereby created and made a part of the division of building safety. The purpose of the board is to reduce damages to underground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. It shall be the responsibility and duty of the

administrator to administer this chapter and the administrator shall exercise such powers and duties as are reasonably necessary to enforce the provisions of this chapter. The administrator may promulgate such rules as may be necessary to carry out the provisions of this chapter in order to effectuate the purposes herein and for the orderly and efficient administration thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(2) The board shall consist of fifteen (15) members, each of whom shall be appointed by the governor with power of removal for cause. All members of the board shall be qualified by experience, knowledge and integrity in formulating rules, reviewing complaints referred to it and assessing penalties, and properly performing the functions of the board. Of the fifteen (15) members, one each shall represent the interests of the following designated groups and be:

- (a) a city official;
- (b) a county official;
- (c) an employee or officer of a gas corporation as defined in section 129, Title 61, Idaho Code;
- (d) an employee or officer of an electrical corporation, telephone corporation, or water corporation as defined in section 129, Title 61, Idaho Code;
- (d) an employee or officer of a one-number notification service entity;
- (e) an employee or officer of a pipeline corporation as defined in chapter 129, Title 61, Idaho Code;
- (f) an employee or officer of a railroad and common carrier as defined in chapter 129, Title 61, Idaho Code;
- (g) an employee or officer of either an electric cooperative or a municipal electric utility not subject to regulation pursuant to chapter 1, Title 61, Idaho Code;
- (h) an employee or officer of either a rural telephone cooperative, municipal communications utility, or cable or other telecommunications provider not subject to regulation pursuant to chapter 1, Title 61, Idaho Code;
- (i) an employee or officer of a building contractor;
- (j) an employee or officer of an excavator;
- (k) an employee or owner of an agricultural enterprise or a representative of the agriculture industry;
- (l) an employee or an official of either a water district, irrigation district, or ground water district subject to Title 42, Idaho Code;
- (m) an employee of the Idaho public utilities commission;
- (n) a member of the Idaho Utility Coordinating Council or similar cooperative statewide non-profit organization created to coordinate the protection of underground facilities in specific geographic portions of the state.

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

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

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

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

(6) Each member of the board who is a contractor shall be registered in accordance with chapter 52, Title 54, Idaho Code, and shall be in good standing.

(7) The activities of the board shall be funded by a fee established by the board and promulgated in rule. Such fee shall be imposed upon all of the underground facility owners required by the provisions of this chapter to participate in and cooperate with the one number notification service. The fee shall be paid by an underground facility owner each time such owner provides notice to a one number notification service as required by section 55-2205, Idaho Code. The fee is established to defray the expenses of the board and the division in supervising, regulating, and administering the provisions of this chapter, and the provision of services hereunder. The fee shall be collected by a one number notification service, and payable to the board in accordance with a schedule and in a manner as established by the board in rule. All fees collected by the board shall be deposited with the state treasurer to be credited by him to the damage prevention board fund established pursuant to section 55-2204, Idaho Code.

(8) The board shall review complaints alleging violations of this chapter involving practices related to underground facilities and impose appropriate discipline authorized by this chapter. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

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

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

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

(a) Hold meetings and attend or be represented at such meetings prepare and publish rules pertaining to this section, make investigation or inquiry, conduct hearings, report findings and enter orders into matters over which the board has authority.

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

(c) Administer oaths and take affirmations of witnesses appearing before the board; and have the power to appoint competent persons to issue subpoenas, administer oaths and take testimony, and appoint hearing officers.

(d) Impose civil penalties and conduct hearings related thereto for violations of this chapter and rules of the board.

(e) To enter into agreements with any vendor or contractor to provide services or administer any obligation imposed on the board or the administrator by law, as well as the authority to make expenditures, and make purchases in accordance with Title 67, chapter 57 to effectuate such agreements.

(f) Delegate to the administrator the power to perform ministerial functions, conduct investigations, recommend and collect civil penalties on its behalf and appoint hearing officers.

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

(12) The board may receive contributions, gifts and grants on behalf of and in aid of the program. Such contributions, gifts and grants shall be deposited in the damage prevention board fund established pursuant to section 55-2204, Idaho Code.

SECTION 4. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended by the addition of a NEW SECTION to be known and designated as Section 55-2204, Idaho Code, and to read as follows:

55-2204. – DAMAGE PREVENTION BOARD FUND ESTABLISHED – USE OF FUNDS. (1) All money received by the administrator, under the terms and provisions of this chapter, shall be paid into the state treasury as directed by the provisions of section 59-1014, Idaho Code, and shall be, by the state treasurer, placed to the credit of a dedicated fund to be known as the damage prevention board fund and, other than as prescribed in subsection (2) of this section, all such moneys, hereafter placed in said fund, are hereby set aside and appropriated to the division of building safety to carry into effect the provisions of this chapter.

(2) All money received from civil penalties collected under the provisions of this chapter shall be deposited into the damage prevention board fund and shall be spent exclusively in support of board activities to develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities.

SECTION 5. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-2203~~5~~. Permit compliance -- Notice of excavation -- Response to notice -- Compensation for failure to comply -- Exemptions. (1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

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

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

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all underground facility owners through a one-number [notification locator](#) service. If no one-number [notification locator](#) service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the one-number [notification locator](#) service or, if no one-number [notification locator](#) service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the underground facility owner or the owner's agent shall locate and mark its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities or the owner's agent shall locate and mark the underground facilities in accordance with the best information available to the owner of the underground facilities and with reasonable accuracy as defined in section [55-2202\(12\)](#), Idaho Code. The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification so long as it is reasonably apparent ~~to the excavator~~ that site conditions have not changed so substantially as to invalidate the markings. If excavation has not commenced within three (3) weeks from the original notice to underground facility owners through the one-number notification service, the excavator shall re-initiate notice in accordance with this section.

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

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

(3) Emergency excavations are exempt from the time requirements for notification provided in this section.

(4) If the excavator, while performing the excavation, discovers underground facilities, whether active or abandoned which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number [notification locator](#) service. The excavator shall have the right to receive compensation from the underground facility owner for standby cost based on standby rates made publicly available incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify the unidentified facilities and provided that if the underground facility owner or the owner's agent supplies reasonably accurate locate information within eight (8) hours of the time that the excavator notifies the underground facility owner of



facilities not previously located, the excavator's compensation for delay of the excavation project shall be limited to actual costs or one thousand dollars (\$1,000), whichever is less.

SECTION 6. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220~~4~~6. One-number [notification locator](#) service -- Establishment -- Participation required -- Funding. Two (2) or more persons who own or operate underground facilities in a county may voluntarily establish or contract with a third person to provide a one-number [notification locator](#) service to maintain information concerning underground facilities within a county. Upon the establishment of the first such one-number [notification](#) service, all others operating and maintaining underground facilities within said county shall participate and cooperate with the service, and no duplicative service shall be established pursuant to this chapter. The activities of the one-number [notification locator](#) service shall be funded by all of the underground facility owner/operators required by the provisions of this section to participate in and cooperate with the service.

SECTION 7. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220~~5~~7. Excavation contracts -- Limitations -- Precautions to avoid damage -- Liability for damage. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

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

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

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

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

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

SECTION 8. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220~~6~~8. DAMAGE TO UNDERGROUND FACILITIES – DUTIES OF EXCAVATOR AND OWNER – [REPORTING OF DATA](#) (1) An excavator who, in the course of excavation,

contacts or damages an underground facility shall notify the underground facility owner and the one-number notification ~~locator~~ service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

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

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

SECTION 9. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220~~79~~. DUTIES OF PUBLIC AGENCY ISSUING EXCAVATION, BUILDING, OR OTHER SIMILAR PERMITS.

(1) Any public agency, as defined in section 67-2327, Idaho Code, that has the authority to issue ~~issuing excavation, building, or other similar~~ permits ~~authorizing excavation operations~~ shall notify persons seeking such permits of the existence of this chapter and the ~~one-call locator~~ one-number notification service telephone number.

(2) A permit shall not be valid for excavation until or unless the notice provisions of this section have been complied with and may be suspended by the issuing public agency if the permit holder violates any provisions of this chapter. The issuing public agency shall reinstate the permit after the permit holder provides evidence of compliance with the provisions of this chapter.

SECTION 10. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220~~8~~10. Excavations exempt from notice requirement. Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, the following excavations shall not require notice of the excavation pursuant to section 55-220~~35~~5(1)(c), Idaho Code:

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

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

(3) The extraction of minerals within recorded mining claims or excavation within material sites legally located and of record, unless such excavation occurs within the boundaries of an underground facility easement.

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



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

(6) Normal maintenance of railroad rights-of-way, except where such rights-of-way intersect or cross public roads, streets, highways, or rights-of-way adjacent thereto, or recorded underground facility easements.

SECTION 11. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-220911. Violation -- Civil penalty -- ~~Treble damages~~ – Duties of the board and the administrator – Other remedies unimpaired.

(1) The damage prevention board established in chapter 55-2203, Idaho Code, may hear contested cases of alleged violations of this chapter involving practices related to underground facilities as set forth in rules by the board. Persons who violate the provisions of this chapter are subject to civil penalties in accordance with this section. Complaints regarding an alleged violation of this chapter may be made by any individual and shall be made to the administrator. Complaints shall include the name and address of the complainant and the alleged violator, and the violation alleged. If the alleged violation involves a facility damage or downtime event, the complaint must be submitted on such forms and contain such information as required by the board in rule. Upon review of the complaint, and any investigation it may conduct therewith, the administrator shall notify the person making the complaint and the alleged violator in writing of its recommended course of action to the board. The administrator may recommend the imposition of a civil penalty in an amount not to exceed one thousand dollars (\$1000) for a first violation of this chapter, and issue a notice of intent to impose such penalty on behalf of the board. If the administrator recommends the imposition of a civil penalty, the violator may pay the fine to the board upon receipt of such notice. A violator shall also have the right to contest the imposition of a civil penalty to the board and the opportunity to produce evidence in his behalf. Notice of the time and place of such hearing shall be provided by the board, and such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. The board is authorized to impose the administrative costs of hearing the action including, but not limited to, investigatory fees, hearing officer fees, expert witness fees, attorney's fees, and costs of hearing transcripts and copies.

(2) 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 a facility damage has occurred, the board may impose a civil penalty of not more than five thousand dollar (\$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 has violated the provisions of this chapter in the conduct of such person's occupation, profession, or business which requires the license 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 dollar (\$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 his 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 chapter 55-2204(2).

~~(1) Any person who violates any provision of this chapter, other than the failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. All penalties recovered in such actions shall be deposited in the state general account.~~

~~(2) If an underground facility is damaged as a result of an excavator's failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, unless otherwise exempt, the excavator shall receive a written warning from the underground facility owner and shall be liable for actual costs of repairing the facility if it is the excavator's first failure to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, during any consecutive period of twelve (12) months:~~

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

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

~~(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.~~

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

~~(5)~~ (6) Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those at common law, of an underground facility owner whose facility is damaged; nor do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein. The court in its discretion may award attorneys fees and costs to the prevailing party.

SECTION 12. That chapter 22, Title 55, Idaho Code, be and the same is hereby amended to read as follows:

55-221~~0~~2. Waiver permitted by owner of underground facility. The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities.

SECTION 13. That chapter 26, Title 67, Idaho Code, be and the same is hereby amended to read as follows:

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

(2) The administrator shall administer the following provisions and shall perform such additional duties as are imposed on him by law: chapter 41, title 39, Idaho Code, relating to the building code board; chapter 40, title 39, Idaho Code, relating to manufactured homes; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and installer licensing; chapter 25, title 44, Idaho Code, relating to mobile home rehabilitation; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 19, title 54, Idaho Code, relating to licensing of public works contractors; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; chapter 45, title 54, Idaho Code, relating to public works construction management licensing; chapter 50, title 54, Idaho Code, relating to heating, ventilation and air conditioning systems; chapter 80, title 39, Idaho Code, relating to school building safety; ~~and~~ chapter 86, title 39, Idaho Code, relating to elevator safety; ~~and chapter 22, title 55, relating to underground facilities damage prevention.~~

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

[721](#) and [72-723](#), Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission.

(4) In administering the laws regulating professions, trades and occupations that are devolved for administration upon the division, and in addition to the authority granted to the administrator by the laws and rules of the agencies and entities within the division, the administrator may:

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

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

(c) Conduct hearings on proceedings to discipline, renew or reinstate licenses, certificates or authorities of persons exercising the respective professions, trades or occupations; appoint hearing officers, administer oaths, issue subpoenas, and compel the attendance of witnesses; revoke, suspend, refuse to renew, or take other disciplinary action against such licenses, certifications or authorities; and prescribe rules to recover costs and fees incurred in the investigation and prosecution of any certificate holder, licensee or registrant of the division, its boards, bureaus and programs, in accordance with the contested case provisions of [chapter 52, title 67](#), Idaho Code, and the laws and rules of the boards, bureaus and programs the division administers;

(d) Assess civil penalties as authorized;

(e) Promulgate rules establishing: a coordinated system for the issuance, renewal, cancellation and reinstatement of licenses, certificates, registrations and permits; assessment of all related fees; the terms by which fees may be prorated, if any; and procedures for the replacement of lost or destroyed licenses, certificates or registrations; and

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

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

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

SECTION 13. That chapter 10, Title 54, Idaho Code, be and the same is hereby amended to read as follows:

54-1009. Revocation or suspension of licenses -- Hearings -- Taking testimony. (1) The administrator shall have power to revoke or suspend any license if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any of the rules prescribed

by the board, or as prescribed in this chapter; or has, after due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this chapter, or has failed to pay within the time provided, civil penalties which have become final by operation of law, or has violated the provisions of chapter 22, title 55 Idaho Code as set forth in section 55-2211.

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

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

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

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

(4) The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the administrator shall be based on his examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one (1) year from the date of such revocation, but not before, apply for a new license.

SECTION 13. That chapter 26, Title 54, Idaho Code, be and the same is hereby amended to read as follows:

54-2608. Revocation of certificates of competency -- Suspension -- Refusal to renew. The administrator of the division of building safety shall have on the recommendation of the board the power to revoke, suspend or refuse to issue a renewal of any certificate of competency if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent or has a second time violated any of the rules prescribed by the board, or as prescribed by this act, or has violated the provisions of chapter 22, title 55 Idaho Code as set forth in section 55-2211. Before the administrator shall refuse to grant a renewal of said certificate to any applicant or shall revoke or suspend any certificate previously granted, he shall hold a hearing giving such applicant or holder of said certificate fifteen (15) days written notice of his intended action by registered mail directed to the applicant or holder at the address given on said certificate or in the application for said certificate, stating generally the basis for his intended action; and the applicant or holder of said certificate shall have the opportunity to produce testimony in his own behalf at a time and place specified in said notice. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. If the administrator, after the hearing, shall refuse to grant a renewal of said certificate or shall suspend or revoke any certificate previously granted, said applicant or holder of a certificate may seek judicial review of the administrator's final order in accordance with the provisions of chapter 52, title 67, Idaho Code. Any person whose certificate has been revoked may, after the expiration of one (1) year from the date of revocation, but not before, apply for a new certificate of competency.

SECTION 13. That chapter 50, Title 54, Idaho Code, be and the same is hereby amended to read as follows:

54-5013A. Revocation or suspension of certificate -- Hearings -- Taking testimony -- Judicial review. The administrator shall have the power to revoke or suspend any certificate if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any of the rules prescribed by the board, or as prescribed in this chapter; or has, after due notice, failed or refused to correct, within the specified time, any HVAC installation not in compliance with the provisions of this chapter, or has failed to pay within the time provided, civil penalties which have become final by operation of law, or has violated the provisions of chapter 22, title 55 Idaho Code as set forth in section 55-2211, provided, before any certificate shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said administrator, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall not be less than five (5) days after the service thereof. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the administrator shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 13. That chapter 19, Title 54, Idaho Code, be and the same is hereby amended to read as follows:

54-1914. Administrative enforcement proceedings. (1) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any person, investigate the actions of any public works contractor within the state and may undertake to reclassify, retype, place on probation, defer or precondition licensure, impose an administrative fine not to exceed twenty thousand dollars (\$20,000) per violation, impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one (1) or more of the following acts or omissions:

- (a) Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor.
- (b) Diversion of funds or property received under express agreement for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose, with intent to defraud or deceive creditors or the owner.
- (c) Willful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another, without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications.
- (d) Willful or deliberate disregard and violation of valid building laws of the state, or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws of the state.
- (e) Misrepresentation of a material fact by an applicant in obtaining a license.
- (f) Aiding or abetting an unlicensed person to evade the provisions of this chapter or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter.
- (g) Failure in any material respect to comply with the provisions of this chapter.



- (h) Acting in the capacity of a contractor under any license issued hereunder except: (1) in the name of the licensee as set forth upon the license, or (2) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter.
- (i) Knowingly accepting a bid from, or entering into a contract with another contractor for a portion of a public works project if at that time such contractor does not possess the appropriate license to do that work as provided in this chapter.
- (j) Willful failure or refusal without legal excuse on the part of a licensee as a contractor to finish a construction project or operation with reasonable diligence, causing material injury to another.
- (k) Willful or deliberate failure by any licensee, or agent or officer thereof, to pay any moneys when due, for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased; or denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay or defraud the person to whom such indebtedness is due.
- (l) Suffers a change in financial circumstances which may impair the licensee's financial responsibility.
- (m) Holding oneself or one's firm out as a public works contractor by engaging in any act meeting the definition or character of a public works contractor as defined herein without a legally required license.
- (n) Failure to comply with subsection (1), (2) or (3) of section [67-2310](#), Idaho Code.
- [\(o\) Violation of the provisions of chapter 22, title 55 Idaho Code as set forth in section 55-2211,](#)
- (2) The administrator may upon his own motion or at the direction of the board, and shall upon the verified complaint in writing of any licensed public works contractor eligible to perform public works contracting duties, investigate the actions of any public entity within the state and may impose an administrative fine not to exceed five thousand dollars (\$5,000) per violation or impose the administrative costs of bringing the action including, but not limited to, hearing officer fees, expert witness fees, attorney's fees, costs of hearing transcripts and copies, if the public agency contracts for public works construction with an unlicensed or improperly licensed contractor or knowingly awards a contract based upon a bid or proposal not in compliance with subsection (1) or (2) of section [67-2310](#), Idaho Code.