



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Regular Session - 2019

IN THE _____

BILL NO. _____

BY _____

AN ACT

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

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

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

55-2211. VIOLATION -- CIVIL PENALTY -- DUTIES OF THE BOARD AND THE ADMINISTRATOR -- OTHER REMEDIES UNIMPAIRED. (1) The damage prevention board established in section 55-2203, Idaho Code, may hear, but may not initiate, 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 facility damage or a 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 conducted therewith, the administrator shall notify the person making the complaint and the alleged violator, in writing, of the administrator's ~~recommended course of action to the board~~ findings. The administrator shall ~~recommend~~ order that a training course adopted by the board, by rule, be successfully completed for a first violation of this chapter, except that if the complaint is for a first violation of this chapter wherein a residential homeowner or residential tenant excavating on the lot of his residency failed to provide notice as required in section 55-2205, Idaho Code, and caused damage to underground facilities, the board shall direct the administrator to deliver to the violator a written warning and educational materials to prevent a future violation. The administrator may ~~recommend the imposition of~~ impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for a ~~second~~ subsequent violation of this chapter within eighteen (18) months of an earlier violation and where facility damage has not occurred and in addition may ~~recommend~~ order successful completion of a training course adopted by the board, by rule, and issue a notice of ~~intent to impose~~ imposition of such penalty on behalf of the board and training. If the administrator ~~recommends the imposition of~~ imposes training or a civil penalty, the violator may complete the training or pay the fine to the board upon receipt of such notice. If, upon the expiration of twenty one (21) days, the viola-

1 ~~tor has not responded in writing to the division, the board may impose the~~
2 ~~penalty provided for in the notice.~~ A violator shall also have the right to
3 ~~contest~~ appeal the imposition of training or a civil penalty to the board and
4 the opportunity to produce evidence in his behalf. Notice of the time and
5 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.