



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 55-2202, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-2205, IDAHO CODE, TO REVISE PROVISIONS REGARDING LOCATING AND MARKING UNDERGROUND FACILITIES AND TO REVISE PROVISIONS REGARDING COMPENSATION FOR FAILURE TO COMPLY; AND AMENDING SECTION 55-2208, IDAHO CODE, TO REVISE A PROVISION REGARDING THE DUTIES OF UNDERGROUND FACILITY OWNERS AND EXCAVATORS.

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

SECTION 1. That Section 55-2202, 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.

(3) "Business day" means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.

(4) "Damage" means any impact or exposure that results in the substantial weakening of structural or lateral support of an underground facility, or the penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the partial or complete destruction of the facility, 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.

(5) "Emergency" means any sudden or unforeseen condition constituting a clear and present danger to life, health or property, or a customer service outage, or the blockage of roads or transportation facilities that requires immediate action.

(6) "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.

(7) "Excavator" means any person who engages directly in excavation.

(8) "Excavator downtime" means lost time for an excavation project due to failure of one (1) or more stakeholders to comply with applicable damage prevention regulations.

(9) "Hand digging" means any excavation involving nonmechanized tools or equipment that when used properly will not damage underground facilities. Hand digging includes, but is not limited to, hand shovel digging, manual posthole digging, vacuum excavation, and soft digging.

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

1 (101) "Identified facility" means any underground facility ~~which that~~  
2 is indicated in the project plans as being located within the area of pro-  
3 posed excavation.

4 (112) "Locatable underground facility" means an underground facility  
5 ~~which that~~ can be field-marked with reasonable accuracy.

6 (13) "Locator" means a person who identifies and marks the location of  
7 an underground facility owned or operated by an underground facility owner.

8 (124) "Marking" means the use of stakes, paint, or other clearly iden-  
9 tifiable materials to show the field location of underground facilities, in  
10 accordance with the current color code standard of the American public works  
11 association. Markings shall include identification letters indicating the  
12 specific type of the underground facility.

13 (135) "One-number notification service" means a service through which a  
14 person can notify owners of underground facilities and request field-mark-  
15 ing of their underground facilities.

16 (146) "Person" means an individual, partnership, association, corpora-  
17 tion, a state, a city, a county, or any subdivision or instrumentality of a  
18 state, and its employees, agents, or legal representatives.

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

22 (168) "Rural underground facility owner" means an underground facil-  
23 ity owner that is a public utility or a member-owned cooperative that serves  
24 fewer than five thousand (5,000) total customers in a county or counties with  
25 populations that do not exceed fifty thousand (50,000) people.

26 (19) "Soft digging" means any excavation using tools or equipment that  
27 utilize air or water pressure as the direct means to break up soil or earth  
28 for removal by vacuum excavation.

29 (1720) "Stakeholder" means any party with an interest in protecting un-  
30 derground facilities including, but not limited to, persons, property own-  
31 ers, underground facility owners, excavators, contractors, cities, coun-  
32 ties, highway districts, railroads, public entities that deliver irrigation  
33 water and those engaged in agriculture.

34 (1821) "Underground facility" means any item buried or placed below  
35 ground for use in connection with the storage or conveyance of water (unless  
36 being delivered primarily for irrigation), sewage, electronic, telephonic  
37 or telegraphic communications, cable television, electric energy, petro-  
38 leum products, gas, gaseous vapors, hazardous liquids, or other substances  
39 and including, but not limited to, pipes, sewers, conduits, cables, valves,  
40 lines, wires, manholes, attachments, and those parts of poles or anchors  
41 below ground.

42 (1922) "Underground facility owner" means any person who owns or oper-  
43 ates an underground facility.

44 SECTION 2. That Section 55-2205, Idaho Code, be, and the same is hereby  
45 amended to read as follows:

46 55-2205. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NO-  
47 TICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before com-  
48 mencing excavation, the excavator shall:

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

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

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

10 (ii) The excavator and underground facility owner have had a meet-  
11 ing prior to the beginning of the proposed excavation at the ex-  
12 cavation site for the exchange of information required under this  
13 subsection.

14 (c) Provide notice of the scheduled commencement of excavation to all  
15 underground facility owners through a one-number notification service.  
16 If no one-number notification service is available, notice shall be  
17 provided individually to those owners of underground facilities known  
18 to have or suspected of having underground facilities within the area of  
19 proposed excavation. The notice shall be communicated by the excavator  
20 to the one-number notification service or, if no one-number notifica-  
21 tion service is available, to the owners of underground facilities not  
22 less than two (2) business days nor more than ten (10) business days  
23 before the scheduled date for commencement of excavation, unless other-  
24 wise agreed in writing by the parties.

25 (2) Upon receipt of the notice provided for in this section, the under-  
26 ground facility owner or the owner's agent shall locate and mark its locat-  
27 able underground facilities with reasonable accuracy, as defined in section  
28 55-2202, Idaho Code, by surface-marking the location of the facilities. If  
29 there are identified but unlocatable underground facilities, the owner of  
30 such facilities or the owner's agent shall locate and mark the underground  
31 facilities in accordance with the best information available to the owner of  
32 the underground facilities ~~and with reasonable accuracy as defined in sec-~~  
33 ~~tion 55-2202(15), Idaho Code~~. The owner of the underground facility or the  
34 owner's agent providing the information shall respond no later than two (2)  
35 business days after the receipt of the notice or before the excavation time  
36 set forth in the excavator's notice, at the option of the underground facil-  
37 ity owner, unless otherwise agreed in writing by the parties. Excavators  
38 shall not excavate until all known facilities have been marked. Once marked  
39 by the owner of the underground facility, or the owner's agent, the excava-  
40 tor is responsible for maintaining the markings. Unless otherwise agreed in  
41 writing by the parties, maintained markings shall be valid for purposes of  
42 the notified excavation for a period of no longer than three (3) consecutive  
43 weeks following the date of notification ~~so~~ as long as it is reasonably ap-  
44 parent that site conditions have not changed so substantially as to inval-  
45 idate the markings. If excavation has not commenced within three (3) weeks  
46 from the original notice to underground facility owners through the one-num-  
47 ber notification service, the excavator shall reinitiate notice in accor-  
48 dance with this section.

49 (a) Excavators shall have the right to receive compensation from the  
50 owner of the underground facility for costs incurred if the owner of the

1 underground facility does not locate its facilities in accordance with  
2 this chapter.

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

8 (3) Emergency excavations are exempt from the time requirements for no-  
9 tification provided in this section.

10 (4) If the excavator, while performing the excavation, discovers un-  
11 derground facilities (whether active or abandoned) which are not identified  
12 or were not located in accordance with reasonable accuracy subsection (2)  
13 of this section, the excavator shall cease excavating in the vicinity of the  
14 facility and immediately notify the owner or operator of such facilities, or  
15 the one-number notification service. The excavator shall have the right to  
16 receive compensation from the underground facility owner for standby cost  
17 (based on standby rates made publicly available) incurred as a result of  
18 waiting for the underground facility owner or the owner's agent to arrive at  
19 the work site to identify the unidentified facilities and provided that if  
20 the underground facility owner or the owner's agent supplies ~~reasonable ac-~~  
21 ~~curate~~ the locate information required under subsection (2) of this section  
22 within eight (8) hours of the time that the excavator notifies the under-  
23 ground facility owner of facilities not previously located, the excavator's  
24 compensation for delay of the excavation project shall be limited to actual  
25 costs or two thousand dollars (\$2,000), whichever is less.

26 SECTION 3. That Section 55-2208, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 55-2208. DAMAGE TO UNDERGROUND FACILITIES -- DUTIES OF EXCAVATOR AND  
29 OWNER -- REPORTING OF DATA. (1) An excavator who, in the course of excava-  
30 tion, contacts or damages an underground facility shall notify the under-  
31 ground facility owner and the one-number notification service. If the dam-  
32 age causes an emergency condition or an actual breach of an underground fa-  
33 cility that releases gas or hazardous liquids into the surrounding environ-  
34 ment, the excavator causing the damage shall also alert the appropriate lo-  
35 cal public safety agencies by, at a minimum, calling 911, and take all appro-  
36 priate steps to ensure the public safety. No damaged underground facility  
37 may be buried until it is repaired or relocated.

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

41 (3) Any party responsible for damages to an underground facility shall  
42 be liable for the cost of repairs.

43 (4) The board shall adopt by rule a procedure for the processing of  
44 claims related to damages to underground facilities.

45 (5) Underground facility owners ~~and excavators~~ who observe, or suffer  
46 ~~ex-cause~~ damage to an underground facility ~~ex~~ and excavators who observe, or  
47 suffer ~~ex-cause~~ excavator downtime related to a failure of one (1) or more  
48 stakeholders to comply with applicable damage prevention regulations shall  
49 report such information to the board in accordance with the rules promul-

1 gated by the board. Reporting of such data does not constitute a complaint  
2 provided for in section 55-2211, Idaho Code.