

IN THE SENATE

SENATE BILL NO. 1073

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO UNDERGROUND FACILITIES DAMAGE PREVENTION; AMENDING SECTION
2 55-2202, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS; AMEND-
3 ING SECTION 55-2205, IDAHO CODE, TO PROVIDE FOR WHO SHALL AND SHALL NOT
4 LOCATE AND MARK SERVICE LATERALS, TO PROVIDE THAT PUBLIC AGENCIES SHALL
5 NOT INCUR CERTAIN OBLIGATIONS OR LIABILITY, TO PROVIDE A CORRECT CODE
6 REFERENCE, AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION
7 55-2206, IDAHO CODE, TO REVISE TERMINOLOGY.
8

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

10 SECTION 1. That Section 55-2202, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 55-2202. DEFINITIONS. As used in this chapter:

13 (1) "Administrator" means the administrator of the division of build-
14 ing safety.

15 (2) "Board" means the damage prevention board.

16 (3) "Business day" means any day other than Saturday, Sunday, or a le-
17 gal, local, state, or federal holiday.

18 (4) "Damage" means any impact or exposure that results in the substan-
19 tial weakening of structural or lateral support of an underground facility,
20 or the penetration, impairment, or destruction of any underground protec-
21 tive coating, housing, or other protective device, or the partial or com-
22 plete destruction of the facility, or the severance, partial or complete, of
23 any underground facility to the extent that the project owner or the affected
24 underground facility owner determines that repairs are required.

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

29 (6) "End user" means any customer or consumer of any utility service or
30 commodity provided by an underground facility owner.

31 (7) "Excavation" means any operation in which earth, rock, or other ma-
32 terial in the ground is moved or otherwise displaced by any means including,
33 but not limited to, explosives.

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

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

38 (910) "Identified but unlocatable underground facility" means an un-
39 derground facility ~~which~~ that has been identified but cannot be located with
40 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 (123) "Marking" means the use of stakes, paint, or other clearly iden-
7 tifiable materials to show the field location of underground facilities, in
8 accordance with the current color code standard of the American public works
9 association. Markings shall include identification letters indicating the
10 specific type of the underground facility.

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

14 (145) "Person" means an individual, partnership, association, corpo-
15 ration, a state, a city, a county, or any subdivision or instrumentality of a
16 state, and its employees, agents, or legal representatives.

17 (16) "Public right-of-way" means the area on, below, or above a public
18 roadway, highway, street, lane, path, sidewalk, alley, or other right-of-
19 way dedicated for compatible uses.

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

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

27 (19) "Service lateral" means any underground facility located in a pub-
28 lic right-of-way or underground facility easement that is used to convey
29 water (unless being delivered primarily for irrigation), stormwater, or
30 sewage and connects an end user's building or property to an underground
31 facility owner's main utility line.

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

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

45 (22) "Underground facility easement" means a nonpossessory right to op-
46 erate, control, bury, install, maintain, or access an underground facility.

47 (1923) "Underground facility owner" means any person who owns or oper-
48 ates an underground facility or who provides any utility service or commod-
49 ity to an end user via an underground facility.

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

3 55-2205. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NO-
4 TICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before com-
5 mencing excavation, the excavator shall:

6 (a) Comply with other applicable law or permit requirements of any pub-
7 lic agency issuing permits;

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

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

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

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

30 (2) Upon receipt of the notice provided for in this section, the under-
31 ground facility owner or the owner's agent shall locate and mark its locat-
32 able underground facilities by surface-marking the location of the facili-
33 ties. If there are identified but unlocatable underground facilities, the
34 owner of such facilities or the owner's agent shall locate and mark the un-
35 derground facilities in accordance with the best information available to
36 the owner of the underground facilities and with reasonable accuracy as de-
37 fined in section 55-2202(157), Idaho Code. The owner of the underground fa-
38 cility or the owner's agent providing the information shall respond no later
39 than two (2) business days after the receipt of the notice or before the ex-
40 cavation time set forth in the excavator's notice, at the option of the un-
41 derground facility owner, unless otherwise agreed in writing by the parties.
42 Excavators shall not excavate until all known facilities have been marked.
43 Once marked by the owner of the underground facility, or the owner's agent,
44 the excavator is responsible for maintaining the markings. Unless other-
45 wise agreed in writing by the parties, maintained markings shall be valid for
46 purposes of the notified excavation for a period of no longer than three (3)
47 consecutive weeks following the date of notification ~~so~~ as long as it is rea-
48 sonably apparent that site conditions have not changed so substantially as
49 to invalidate the markings. If excavation has not commenced within three (3)

1 weeks from the original notice to underground facility owners through the
 2 one-number notification service, the excavator shall reinitiate notice in
 3 accordance with this section.

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

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

13 (3) An end user shall not be required to locate or mark any service lat-
 14 eral. An underground facility owner who provides any utility service or com-
 15 modity via a service lateral shall locate and mark the service lateral in ac-
 16 cordance with the provisions of subsection (2) of this section. Nothing in
 17 this subsection shall be construed to impose an indemnification obligation
 18 prohibited by law on any public agency as defined in section 67-2327, Idaho
 19 Code, or to alter the liability of any public agency as provided by law, in-
 20 cluding article VIII of the constitution of the state of Idaho.

21 (4) Emergency excavations are exempt from the time requirements for no-
 22 tification provided in this section.

23 (45) If the excavator, while performing the excavation, discovers un-
 24 derground facilities (whether active or abandoned) which are not identified
 25 or were not located with reasonable accuracy, the excavator shall cease ex-
 26 cavating in the vicinity of the facility and immediately notify the owner or
 27 operator of such facilities, or the one-number notification service. The
 28 excavator shall have the right to receive compensation from the underground
 29 facility owner for standby cost (based on standby rates made publicly avail-
 30 able) incurred as a result of waiting for the underground facility owner
 31 or the owner's agent to arrive at the work site to identify the unidenti-
 32 fied facilities and provided that if the underground facility owner or the
 33 owner's agent supplies reasonably accurate locate information within eight
 34 (8) hours of the time that the excavator notifies the underground facility
 35 owner of facilities not previously located, the excavator's compensation
 36 for delay of the excavation project shall be limited to actual costs or two
 37 thousand dollars (\$2,000), whichever is less.

38 SECTION 3. That Section 55-2206, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 55-2206. ONE-NUMBER NOTIFICATION SERVICE -- ESTABLISHMENT -- PARTIC-
 41 IPATION REQUIRED -- FUNDING. Two (2) or more persons who own or operate un-
 42 derground facilities in a county may voluntarily establish or contract with
 43 a third person to provide a one-number notification service to maintain in-
 44 formation concerning underground facilities within a county. Upon the es-
 45 tablishment of the first such one-number notification service, all others
 46 operating and maintaining underground facilities within said county shall
 47 participate and cooperate with the service, and no duplicative service shall
 48 be established pursuant to this chapter. The activities of the one-number
 49 locator service shall be funded by all of the underground facility owner/s

1 or operators required by the provisions of this section to participate in
2 and cooperate with the service. All underground facility owner/s or oper-
3 ators who are required to participate in a one-number notification service
4 are subject to the jurisdiction of the damage prevention board established
5 in section 55-2203, Idaho Code.