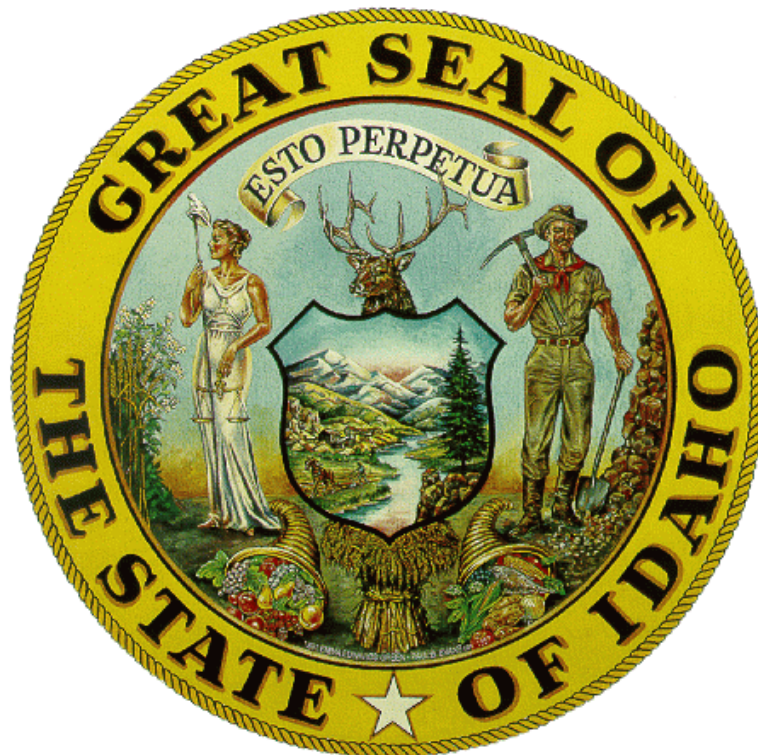


DIVISION OF BUILDING SAFETY

DAMAGE PREVENTION BOARD  
VIDEOCONFERENCE MEETING

NOVEMBER 30, 2017



# DAMAGE PREVENTION BOARD

## Agenda Item No. 01

## Agenda

**PRESENTER:** Mark Van Slyke, Chairman

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**OBJECTIVE:** Approve the agenda for the November 30, 2017 Damage Prevention Board meeting.

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**ACTION:** Consent

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**BACKGROUND:**

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**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** Tentative agenda

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# **TENTATIVE AGENDA**

## **NOTICE OF PUBLIC MEETING**

### **DAMAGE PREVENTION BOARD VIDEOCONFERENCE MEETING**

**Division of Building Safety  
1090 East Watertower Street, Suite 150, Meridian  
1250 Ironwood Drive, Suite 220, Coeur d'Alene  
2055 Garrett Way, Building 1, Suite 4, Pocatello  
dbs.idaho.gov – (208) 332-7137**

**Thursday, November 30, 2017  
9:30 a.m. – 3:00 p.m. (MST)**

*(Note: North Idaho - Meeting Commences @ 8:30 a.m. PST)*

- 
- 9:30 a.m. CALL TO ORDER** – Mark Van Slyke, Chairman
- Roll Call & Introductions
  - Open Forum

#### **CONSENT AGENDA**

1. Approval of the November 30, 2017 Agenda – Mark Van Slyke
2. Approval of the September 28, 2017 Board Meeting Minutes – Mark Van Slyke

#### **ACTION AGENDA**

3. Delegate Authority to DBS -- Idaho Code § 55-2203(16)(f) – Patrick Grace, Regional Manager
4. DPB/DBS Informational Seminars – Joe Leckie, Board Member

#### **INFORMATIONAL AGENDA**

*(These items are for informational purposes only. Any action will be at the Damage Prevention Board's discretion.)*

5. PHMSA Audit – Patrick Grace
6. Idaho Code § 55-2210 *Excavations Exempt from Notice Requirements* – Vaughn Rasmussen, Vice-Chairman
7. Ethics Law -- Presentations and Reimbursements – Spencer Holm, Deputy Attorney General
8. Sewer/Water Lines in Right of Way – Spencer Holm

9. Damage Complaints Review -- Violation Checklist – Patrick Grace
10. Damage Prevention Board Ad Campaign – Fred Sisneros, Financial Manager
11. Definition of Business Day – Nichole Rush, Board Member
12. Publication of Rules – Ron Whitney, Deputy Administrator
13. Compliance Report – Amy Kohler, Compliance Program Specialist
14. Administrator Report – Chris L. Jensen, Administrator
  - a. Financial Report

**3:00 p.m. ADJOURN**

*For additional agenda information, refer to the packet, available one week prior to this meeting, at the DBS's central and regional offices and <https://dbs.idaho.gov/boards/dpboard/dpmeetings.html>.*

*All times, other than beginning, are approximate and scheduled according to Mountain Standard Time (MST), unless otherwise noted. Agenda items may shift depending on Board preference. 11/16/2017rb*

# DAMAGE PREVENTION BOARD

**Agenda Item No. 02**

**Minutes**

**PRESENTER:** Mark Van Slyke, Chairman

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**OBJECTIVE:** Approve the minutes from the September 28, 2017 Damage Prevention Board meeting.

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**ACTION:** Consent

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**BACKGROUND:**

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**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** Draft minutes

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**DAMAGE PREVENTION BOARD  
VIDEOCONFERENCE MEETING**

**Thursday – September 28, 2017 – 9:30 a.m. (MDT)**

**Division of Building Safety  
1090 East Watertower Street, Suite 150, Meridian  
1250 Ironwood Drive, Suite 220, Coeur d'Alene  
2055 Garrett Way, Building 1, Suite 4, Pocatello**

**\*DRAFT MINUTES OF THE SEPTEMBER 28, 2017 MEETING**

**NOTE:** The following report is not a verbatim transcript of the discussions at the meeting; however, it is intended to record the significant features of those discussions.

Chairman Mark Van Slyke called the meeting to order at 9:32 a.m. (MDT)

**Board Members Present:**

Mark Van Slyke, Chairman  
Vaughn Rasmussen, Vice-Chairman  
Jeanna Anderson  
Scott Spears  
Bob Chandler  
Jeffrey Diehl  
Nichole Rush  
Jerry Piper  
Linda Phillips – Teleconference

**DBS Staff Members Present:**

Ron Whitney, Deputy Administrator  
Spencer Holm, Deputy Attorney General  
Larry Jeffres, Regional Manager, Region 1  
Patrick Grace, Regional Manager, Region 2  
Jeff Egan, Regional Manager, Region 3  
Fred Sisneros, Financial Manager  
Amy Kohler, Compliance Program Specialist  
Renee Bryant, Administrative Assistant 2

◆ **Approval of the September 28, 2017 Agenda**

**MOTION:** Jerry Piper made a motion to approve the agenda as presented. Bob Chandler seconded. All in favor, motion carried.

◆ **Approval of the July 13, 2017 Board Meeting Minutes**

**MOTION:** Jeffrey Dahl made a motion to approve the minutes as written. Jerry Piper seconded. All in favor, motion carried.

◆ **Change to the Agenda**

Due to scheduling changes, there was a request to move agenda item ten *Administrator Report* to the first item under the informational agenda.

**AMENDED MOTION:** Jerry Piper amended his motion to approve the agenda with the change. Bob Chandler seconded. All in favor, motion carried.

◆ **Election of Officers**

In statute, the chairman and vice-chairman may not hold a position for more than two consecutive terms. Chairman Mark Van Slyke and Vice-Chairman Vaughn Rasmussen have served one year; therefore, are eligible to hold office for one more term.

**MOTION:** Jerry Piper made a motion to re-elect the current officers. Jeffrey Diehl seconded. All in favor, motion carried.

◆ **Schedule 2018 Board Meetings**

The 2018 Damage Prevention Board meeting dates are January 25, March 22, May 24, July 26, September 27, and November 29. Meetings will continue to be every other month to accommodate rulemaking procedures and possible complaints.

**MOTION:** Vaughn Rasmussen made a motion to accept the above-mentioned 2018 board meeting dates. Nichole Rush seconded. All in favor, motion carried.

**ACTION:** The 2018 Damage Prevention Board meeting dates will be added to the Board Meeting calendar on the Division's website.

◆ **Education and Training**

Intermountain Gas Training Program – A PowerPoint presentation by Terry Harpt, Intermountain Gas Public Awareness Coordinator, did not properly download to the Division's computer. The Administrative Assistant offered to distribute Mr. Harpt's PowerPoint to the Board after the meeting.

A letter by Intermountain Gas explaining the new complaint process when damages occur to one of its underground facilities was distributed. Mr. Harpt asked the Board to approve the letter as a form of safety awareness. The majority of the Board interpreted Intermountain Gas's letter as addressing two components; educational and notice of complaint. It was suggested two letters be generated with the notice of complaint sent certified mail.

Idaho Power has a similar letter; however, it addresses locates not called in and is sent certified mail.

The Division will not design training; however, is looking for resources through groups associated with the industry.

Upon further discussion, Mr. Harpt offered, and the Chairman agreed, to present his PowerPoint presentation to the Board later in the meeting. The Chairman suggested the topic *Intermountain Gas Training Program* be placed after agenda item nine *DPB Members – All*.

**MOTION:** Jeffrey Diehl made a motion to move the topic *Intermountain Gas Training Program* immediately behind agenda item nine *DPB Members - All*. Bob Chandler seconded. All in favor, motion carried.

◆ **Administrator Report**

Financial Report – Deputy Administrator Ron Whitney reviewed two handouts, Damage Prevention Board Call Revenue Spreadsheet and Underground Facilities Damage Prevention Board's Fiscal Year (FY) 2017 Financial Statement as of June 30, 2017. Also reviewed was the

Underground Facilities Damage Prevention Board's FY 2017 Financial Statement as of August 31, 2017, included in the packet.

Grants – Recently notified, the Division will receive \$90,000 from a second grant submitted to the Pipeline & Hazardous Materials Safety Administration (PHMSA) in February 2017. Of the monies, allocated is \$30,000 and \$60,000 is marked as “other”, which is not well defined. In the grant is an element that can apply towards enforcement. In addition, the grant specifically has a section that is adherence to original project objectives and budget estimates allowing the Division to make an addendum to the original request.

811 – April is National Safe Digging Month. Prior to April 2018, Board Member Linda Phillips suggested grant monies be used to order and distribute updated 811 brochures to all permitting agencies.

The Deputy Administrator offered to resend a letter, originally sent to all permitting agencies on permit compliance and 811 flyer to cities and counties.

Virtual Private DIRT – DBS has registered with Virtual Private Damage Information Reporting Tool (DIRT). There is a \$500 set-up fee and \$500 annual membership fee. Deputy Administrator Whitney and Board Member Phillips will verify the transfer of all clients and historical information from Pass Word and DIGLINE to the Division's state specific reporting system. It is the goal of the Division to provide a report of activities at every board meeting, whether from Virtual Private DIRT or complaints filed with DBS.

Complaint Process – Regional Manager Larry Jeffres recently attended a public hearing with the Washington Utilities and Transportation Commission. A five-person committee make recommendations to the Board for action. Individuals from the Washington commission have offered to discuss Washington's procedures with the Board.

For future reference and the Board's benefit, Board Member Jeffrey Diehl requested, and the Deputy Administrator agreed, for Mr. Jeffres to summarize the time allocations that occurred and procedural path that transpired.

Regional Manager Patrick Grace has been in contact with Oregon and its complaint process is similar to Washington. Pipeline Safety Chief Kevin Hennessey, Oregon Public Utility Commission, offered to attend a Damage Prevention Board meeting to discuss Oregon's procedures.

**ACTION:** The Division will invite at least one of the two states to attend the November meeting to discuss complaint processes and procedures.

PHMSA Audit – At the July meeting, David Appelbaum, State Evaluator for PHMSA, offered the Board a case against a landowner in southeastern Idaho. During the process, Regional Manager Grace reached out to Mr. Appelbaum, who shared useful information about the upcoming 2016 audit; specifically, creating the appropriate expectations. He suggested engaging in the temporary rules and issuing civil penalties to generate records and processes for the 2017 audit.



Budget – On September 1, 2017, the Division submitted its budget request for FY 2019. In the request is four full-time employees, three investigators and one technical records specialist. If approved, the monies would have to come from general funds.

Grants (Cont'd) – The Division has identified another \$60,000 grant, available through the Public Utilities Commission, with a deadline for submission of October 12, 2017. The grant is on a three-year term with monies issued one year at a time.

Additional Data Report – Board Member Nichole Rush met with Deputy Administrator Whitney and Financial Manager Fred Sisneros to discuss expenditures. In the future, Board Member Rush would like additional information on the larger amounts of revenue and expenditures.

Loan – It is projected the \$25,000 loan from the Public Works Contractors License Board, to assist the Damage Prevention Board with start-up costs, will be repaid by the end of June 2018.

Complaint Process Subcommittee – The Deputy Administrator suggested the Board create a subcommittee as a reference or “go-to” for the Division as it begins to address processing of complaints, as well as to set-up matrix for the type of information DBS is trying to control from the complaints and reports it gives to the Board. It was decided to further discuss the topic of a new subcommittee under agenda item seven *Damage Complaints Review*.

◆ **Rules Update**

The Governor’s office approved the Board’s temporary and proposed rules. The temporary rules became effective September 1, 2017, and the 2018 legislature will review the proposed rules for permanent status.

Upon speaking with stakeholders, Board Member Bob Chandler asked the Division to publish the rules as an addendum to the statutes, flyer, etc. The rules are on the DBS and Board’s websites; however, the Deputy Administrator will get a publication quote for the November Board meeting.

**ACTION:** The Division will provide a quote on the publication of rules at the November 2017 Board meeting.

◆ **Damage Complaint Review**

Status of Current Complaints – The Division has received seven complaints. One did not qualify as the violation was prior to September 1, 2017. The other six are incomplete and require additional information.

Board Member Rush stated it is a stretch to meet the 30-day timeframe for the submittal of complaints to DBS. So far, it seems the common denominator is the failure to hand dig. Board Member Jeanna Anderson will create a list of soft dig options.

As addressed under the topic *Complaint Process Subcommittee*, the Chairman asked if this was a good time to create a subcommittee.

**MOTION:** Vaughn Rasmussen made a motion to amend the agenda, adding an action item to create a complaint process subcommittee. Jeffrey Diehl seconded. All in favor, motion carried.

**MOTION:** Jeffrey Diehl made a motion to form a subcommittee as a resource for DBS on the complaint process. Jerry Piper seconded. All in favor, motion carried.

The following board members offered to be on the subcommittee: Nichole Rush, Jeanna Anderson, Jerry Piper, Jeffrey Diehl and Roy Ellis. Although not at the meeting, Board Member Ellis spoke to the Administrative Assistant to the meeting and stated interest to be on a future committee.

**MOTION:** Vaughn Rasmussen made a motion to accept the five volunteers as the subcommittee. Bob Chandler seconded. All in favor, motion carried.

Stakeholder Contact Information – For clarification, it is up to the individual filing the complaint to find out whom the contact of the facility owner is and how to get their information.

Non-Compliance of DBS Mandated Training or Penalties – This topic has been addressed at previous meetings. There have been discussions on the type of recourse to an individual/company that does not accept training or stop damaging facilities; however, there has been no decision. Therefore, it was determined to table this topic until further notice.

Vice-Chairman Rasmussen chaired the remainder of the meeting upon Chairman Van Slyke's departure at 11:45 a.m.

◆ **Damage Prevention Board Ad Campaign**

Idaho Code 54-2203(18) states, "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."

The Division must go through the Division of Financial Management (DFM) to receive spending authority to utilize monetary gifts. Financial Manager Sisneros offered to meet with DFM to confirm the procedure. Vice-Chairman Rasmussen asked, and the Financial Manager agreed, to report his findings to the November 2017 Board meeting.

**ACTION:** For the November 2017 meeting, the Financial Manager will provide a report on the process the Division must use to receive spending authority on donated monies.

**ACTION:** The topic *Damage Prevention Board Ad Campaign* will be placed on the November 2017 agenda as an informational item.

◆ **Education and Training (Continued)**

Terry Harpt, Intermountain Gas, provided a video on how 811 works, as well as a PowerPoint presentation on Idaho dig line law, Damage Prevention Board, potential violations, gas line incidences, etc. If approved, the program would be another source of training/education available to all interested parties at no charge.

The Board encourages multiple facility owners to submit their training programs for consideration and adoption into the training toolbox.

**MOTION:** Jeffrey Diehl made a motion to accept the training course by Intermountain Gas. Jerry Piper seconded. All in favor, motion carried.

◆ **DPB Members – All**

Presentations and Reimbursements – The question arose if a board member attends a meeting/presentation as a representative of the Board, would the Board reimburse them for expenses.

Several board members voiced concern that depending on the event, it could be perceived as a conflict of interest. There are ethic laws that prevent conflict of interest. Deputy Attorney General Spencer Holm offered to research the laws.

**ACTION:** The Deputy Attorney General will look into the ethic laws on whether it is a conflict of interest for a board member to represent the Board at a function and receive reimbursement for travel expenses.

The Board agreed that if a board member represents the Board at a function outside of a board meeting, pre-approval by the Board would be required.

**ACTION:** The topic *Presentations and Reimbursements* will be placed on the November 2017 agenda as an informational item.

Sewer and Water Lines in the Right of Way (ROW) – Utilities, contractors and others are hitting/damaging lateral lines in the ROW and expected to pay to fix the damages. Board Member Rush has heard sewer and water companies are not locating in the ROW; stating it is not at the main and the onus is on the homeowner. Based on statute, it is the underground facility owner or the owner's agent to locate and mark its locatable underground facilities by surface marking the location of the facilities.

Suggestions were to invite the Association of Idaho Cities (AIC) and Association of Counties to a Board meeting, as well as the Deputy Attorney General to research for any legal opinions.

**ACTION:** Deputy Attorney General Holm will look into whether there are any legal opinions on this topic.

Board Member Scott Spears asked, and Regional Manager Grace offered, to contact Nancy Stricklin, attorney and AIC representative, for her opinion. Board members can reach out to cities and associations as well.

Regional Manager Grace also offered for Regional Manager Jeffres and himself to contact Washington and Oregon on how they handle this issue.

**ACTION:** Regional Managers Jeffres and Grace will contact the states of Washington and Oregon, as well as Regional Manager Grace will reach out to Nancy Stricklin for opinions or processes on this topic.

**ACTION:** The topic *Sewer and Water Lines in the Right of Way (ROW)* will be placed on the November 2017 agenda as an informational item.

Positive Response – Positive Response is a system that closes the communication loop between the excavator and utility operator by informing the excavator when and if the lines are marked.

Idaho is one of a few states that does not have a Positive Response system when it comes to locates.

To drive down damages, there are two constraints in statute, 1) The owner or owner’s agent of the underground facility will respond (locate) no later than two (2) business days, and 2) Excavators shall not excavate until all known facilities have been marked.

Abandoned Lines – Board Member Bob Chandler stated industry is concerned about abandoned lines not being located and the down time to find out. Board Member Chandler foresees contractors filing complaints due to down time and locates not done within the 48-hour timeline.

There is a contractual obligation between the locator and facility owner on what is the responsibility to mark. The statute does not say you do not have to mark abandoned lines, it says you have to mark owned lines and facility owners still own those abandoned lines.

◆ **Adjournment**

**MOTION:** Jeffrey Diehl made a motion to adjourn the meeting. Jerry Piper seconded. All in favor, motion carried.

The meeting adjourned at 1:55 p.m. (MDT)

\_\_\_\_\_  
VAUGHN RASMUSSEN  
VICE-CHAIRMAN  
DAMAGE PREVENTION BOARD

\_\_\_\_\_  
RON WHITNEY  
DEPUTY ADMINISTRATOR  
DIVISION OF BUILDING SAFETY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\*These DRAFT minutes are subject to possible correction and final approval by the Damage Prevention Board. 11/16/17rb

# DAMAGE PREVENTION BOARD

## Agenda Item No. 03 Delegate Authority to DBS -- Idaho Code § 55-2203(16)(f)

**PRESENTER:** Patrick Grace, Regional Manager

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**OBJECTIVE:** To determine whether the Board desires to delegate certain functions, including the ability to impose training and civil penalties, to the Division of Building Safety.

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**ACTION:** Vote to authorize or disapprove the ability of the Division to make final determinations regarding training and civil penalties in the complaint process.

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**BACKGROUND:** Statutorily, the Administrator of the Division of Building Safety receives complaints related to violations of the damage prevention requirements (*See* § 55-2211). Pursuant to that statute, the Administrator may make a recommendation regarding the complaints it receives. With this agenda item, the Board is now considering whether it wants to take action to further approve all such recommendations, or rather through delegated authority by the Board, declare such recommendations by the Division as final determinations on its behalf. Section 55-2203(16)(f), Idaho Code, allows the Board to delegate certain actions on its behalf.

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**PROCEDURAL HISTORY:**

This matter has not previously been addressed by the Board.

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**ATTACHMENTS:** Idaho Code § 55-2203; § 55-2211

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**§ 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 principal purpose of the board is to reduce damages to underground facilities and to promote safe excavation practices through education directed toward excavators, underground facility owners and the public at large. The board also shall 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.

(2) The board shall consist of eleven (11) members, each of whom shall be appointed by and serve at the pleasure of the governor. 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 eleven (11) members, one (1) each shall represent the interests of the following designated groups and be:

- (a) A city official or a county official;
- (b) An employee or elected official of a highway district;
- (c) An employee of the Idaho public utilities commission;
- (d) An employee or officer of a one-number notification service entity or a member of the Idaho utility coordinating council or similar cooperative statewide nonprofit organization created to coordinate the protection of underground facilities in specific geographic portions of the state;
- (e) An employee or officer of an underground facility owner;
- (f) An employee or officer of an underground pipeline facility owner;
- (g) An employee or officer of a rural underground facility owner;
- (h) An employee or officer of a contractor;
- (i) An employee or officer of a building contractor;
- (j) An employee or officer of an excavator; and
- (k) An employee or owner of an agricultural enterprise, a representative of the agriculture industry, or an employee or an official of a public entity that delivers water for irrigation.

(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 three (3) members whose terms expire July 1, 2018; four (4) members whose terms expire July 1, 2019; and four (4) members whose terms expire July 1, 2020. 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 at least two (2) regular 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 adopted by the board by no less than eight (8) affirmative votes at a meeting duly called for such purpose at which a quorum is present and shall be imposed uniformly 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 assessed upon an underground facility owner each time such owner receives notice from 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 assessed upon an underground facility owner shall be collected by a one-number notification service and payable to the board in accordance with a schedule and in a manner established by the board in rule. All fees collected by the board shall be deposited with the state treasurer to be credited to the damage prevention board fund established pursuant to section [55-2204](#), Idaho Code.

(8) The board shall cause educational materials regarding safe digging practices and the dangers of failing to provide notice prior to excavating to be prepared and distributed statewide on an ongoing basis. The board may enter into agreements with other entities for this purpose.

(9) The board, by rule, may adopt or create training programs on all pertinent underground damage prevention topics, which may include, but are not limited to, safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre-marking of intended excavation areas, and procedures used when encountering unmarked facilities, for general use or for remedial training that may be ordered by the board pursuant to section [55-2211](#), Idaho Code.

(10) The board shall periodically review the effectiveness of the methods used for maintaining effective communications among stakeholders from receipt of an excavation notification until successful completion of the excavation and may adopt, by rule, methods to maintain or improve these communications among stakeholders.

(11) The board shall review complaints alleging violations of this chapter by any party against any other party subject to the jurisdiction of the board involving practices related to public safety and underground facilities damage prevention including, but not limited to, notification procedures, pre-marking of areas to be excavated, marking of facilities, excavation practices, excavator downtime, inaccurate location of facilities, untimely location of facilities, untimely commencement of excavation, failure of a permitting entity to reinstate a permit in a timely manner, failure of an underground facility owner to participate in a one-number notification service as required, or failure by a party to report damage data when required, and may impose appropriate training requirements or enforcement discipline as authorized by this chapter. The proceedings shall be governed by the provisions of section [55-2211](#) and [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.

(12) To continually evaluate and improve program effectiveness, 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 of such damage and any recommendations to further reduce the number of damage or downtime events annually. The board shall make its analysis publicly available.

(13) The board shall adopt, by rule, a process for reviewing the adequacy of underground facility owners' use of internal performance measures for those locating underground facilities and recommending changes to improve such performance.

(14) The board shall adopt, by rule, a process for reviewing and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground facility locating capability and the gathering and analysis of appropriate data.

(15) The board is authorized and directed to promulgate rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, except as may be limited or prohibited by law and the provisions of this chapter.

(16) The board may exercise such powers and duties as are reasonably necessary to carry out the provisions of this chapter. The board is authorized to, and may among other activities:

(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 in 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. A summons to testify shall be issued and served in like manner as a subpoena of a witness issued from the district court, or in any other manner consistent with the procedures of the division of building safety;

(c) Administer oaths and take affirmations of witnesses appearing before the board and 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 or the rules of the board;

(e) 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 to make purchases in accordance with [chapter 57, title 67](#), Idaho Code, to effectuate such agreements; and

(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.

(17) 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.

(18) 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.

**§ 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. The administrator shall recommend 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 a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for a second violation of this chapter and in addition may recommend successful completion of a training course adopted by the board, by rule, 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. If, upon the expiration of twenty-one (21) days, the violator has not responded in writing to the division, the board may impose the penalty provided for in the 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 proceeding shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(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 facility damage has occurred, the board may impose a civil penalty of not more than five thousand dollars (\$5,000) for each separate violation in accordance with the process described in subsection (1) of this section.

(3) All civil penalties recovered shall be deposited in the underground facility damage prevention board fund and used pursuant to section 55-2204(2), Idaho Code.

(4) The penalties provided in this section are in addition to any other remedy at law or equity available to any party subject to the jurisdiction of the damage prevention board established in section 55-2203, Idaho Code.

(5) 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 attorney's fees and costs to the prevailing party.

# DAMAGE PREVENTION BOARD

## Agenda Item No. 04

## DPB/DBS Informational Seminars

**PRESENTER:** Joe Leckie, Board Member

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**OBJECTIVE:** Create a committee, comprised of the Board, Public Utilities Commission, Idaho Utility Coordinating Council, and other interested stakeholders, to develop and present a seminar to parties affected by the operation of the Board throughout the state of Idaho.

The seminar would address the new DP law, operation of the Board, information reporting requirements and enforcement procedures.

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**ACTION:** Approve or disapprove a committee to create a seminar as addressed under “Objective”.

---

**BACKGROUND:**

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**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** No documentation

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# DAMAGE PREVENTION BOARD

**Agenda Item No. 05**

**PHMSA Audit**

**PRESENTER:** Patrick Grace, Regional Manager

---

**OBJECTIVE:** Report to the Board the status of the 2016 PHMSA evaluation of the State of Idaho.

---

**ACTION:** Informational

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**BACKGROUND:** September 2017 – Regional Manager Grace reached out to Mr. Appelbaum, who shared useful information about the upcoming 2016 audit; specifically, creating the appropriate expectations. He suggested engaging in the temporary rules and issuing civil penalties to generate records and processes for the 2017 audit.

The Division met with Mr. Appelbaum (PHMSA) in November and was briefed about the status of the 2016 evaluation, as well as necessary steps to achieve “adequacy” in preparation of the 2017 evaluation.

---

## **PROCEDURAL**

**HISTORY:** The Board discussed the PHMA audit at the July and September 2017 Board meetings.

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**ATTACHMENTS:** No documentation

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# DAMAGE PREVENTION BOARD

**Agenda Item No. 06 Idaho Code § 55-2210 Excavation Exempt from Notice Requirements**

**PRESENTER:** Vaughn Rasmussen, Vice-Chairman

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**OBJECTIVE:** To get the Board's interpretation of the code.

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**ACTION:** Informational

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**BACKGROUND:** A farmer plowed his field and hit an underground utility. He knew the line was there; however, claims the agricultural exemption, 55-2210(2).

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**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** Idaho Code § 55-2210 *Excavation Exempt From Notice Requirements*

---



**§ 55-2210. 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 [55-2205\(1\)\(c\)](#), 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.

# DAMAGE PREVENTION BOARD

## Agenda Item No. 07                      Ethics Law--Presentations and Reimbursements

**PRESENTER:**            Spencer Holm, Deputy Attorney General

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**OBJECTIVE:**            Clarify whether it is appropriate for a member of the Board to attend meetings/presentations as a representative of the Board.

---

**ACTION:**                Informational

---

**BACKGROUND:**        September 2017 – The question arose if a board member attends a meeting/presentation as a representative of the Board, would the Board reimburse them for expenses.

Several board members voiced concern that depending on the event, it could be perceived as a conflict of interest. There are ethic laws that prevent conflict of interest. Deputy Attorney General Spencer Holm offered to research the laws.

---

### **PROCEDURAL HISTORY:**

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**ATTACHMENTS:**    No documentation

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# DAMAGE PREVENTION BOARD

## Agenda Item No. 08 Sewer/Water Lines in Right of Way

**PRESENTER:** Spencer Holm, Deputy Attorney General

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**OBJECTIVE:** To see if there are any legal opinions on who is responsible to locate sewer/water lines in the ROW.

---

**ACTION:** Informational

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**BACKGROUND:** September 2017 – Utilities, contractors and others are hitting/damaging lateral lines in the ROW and expected to pay to fix the damages. Board Member Rush has heard sewer and water companies are not locating in the ROW; stating it is not at the main and the onus is on the homeowner. Based on statute, it is the underground facility owner or the owner's agent to locate and mark its locatable underground facilities by surface marking the location of the facilities.

Deputy Attorney General Holm will look into whether there are any legal opinions on this topic.

---

**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** No documentation

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# DAMAGE PREVENTION BOARD

## Agenda Item No. 09                      Damage Complaints Review--Violation Checklist

**PRESENTER:**            Patrick Grace, Regional Manager

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**OBJECTIVE:**            To review a checklist of possible violations that may be included in the materials required to be submitted in support of damage prevention complaints.

---

**ACTION:**                Informational

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**BACKGROUND:**        The Division has determined that in many cases it is not entirely clear what the nature of the violation is about which a complaint may be alleging. Accordingly, in addition to the information supplied on the complaint form, the Division would like to include a checklist requiring a complainant to specifically identify which violation(s) of the damage prevention laws they are alleging were violated.

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**PROCEDURAL HISTORY:**        This matter has not previously been addressed by the Board.

---

**ATTACHMENTS:**        Proposed Checklist

---







**IDAHO DAMAGE PREVENTION BOARD  
STATE OF IDAHO DIVISION OF BUILDING SAFETY**

1090 East Watertower Street, Suite 150  
Meridian, Idaho 83642  
Ph: 800-955-3044  
Fax: 877-810-2840

Email: [dbs.dpbcomplaints@dbs.idaho.gov](mailto:dbs.dpbcomplaints@dbs.idaho.gov)

Website: [dbs.idaho.gov](http://dbs.idaho.gov)

Complaint No. \_\_\_\_\_  
(For DBS use only)

**DAMAGE PREVENTION COMPLAINT FORM**

This complaint form is authorized pursuant to section 55-2011, Idaho Code, and the rules of the Damage Prevention Board. It is a public record subject to the provisions of chapter 2, title 74, Idaho Code. This document is a formal complaint form from which discipline may be imposed on the alleged violator pursuant to section 55-2211, Idaho Code. General reports of underground facility damage or excavator downtime, which are not complaints but required by section 55-2208(5), Idaho Code should be made separately in accordance with procedures established by the Board.

**\*\*ALL FIELDS MUST BE COMPLETED\*\***

**Company or Person(s) making the complaint:** \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

**Company or Person(s) committing alleged violation:** \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Location of alleged violation: \_\_\_\_\_

Address

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Date(s) of alleged violation: \_\_\_\_\_

Date(s) Complainant became aware of alleged violation (if different): \_\_\_\_\_

Description of alleged violation (*describe below and check the appropriate box on page 3*): \_\_\_\_\_



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Website: [dbb.idaho.gov](http://dbb.idaho.gov)

Complaint No. \_\_\_\_\_  
(For DBS use only)

Did the violation cause damage to an underground facility?  Yes  No

If yes, explain: \_\_\_\_\_

Did the violation cause excavator downtime?  Yes  No

If yes, explain: \_\_\_\_\_

In accordance with IDAPA rule 07.10.01.018.01, notice of a complaint shall also be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator shall also be provided to the administrator.

Has written notification of this complaint been provided to the alleged violator?  Yes  No

If yes, provide date and attach a copy of such notification: \_\_\_\_\_

If no, explain: \_\_\_\_\_

Please include any additional documents, photographs, invoices, contracts and/or other relevant information in support of the complaint and attach it to this complaint form.

I swear (or affirm) under penalty of perjury that the foregoing information is true, complete, and correct. Additionally, I agree to assist the Division and Board in the resolution of this complaint, and if necessary appear before the board to verify and support the information contained in this complaint.

\_\_\_\_\_  
Name (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Executed



**IDAHO DAMAGE PREVENTION BOARD  
STATE OF IDAHO DIVISION OF BUILDING SAFETY**

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Website: [dbs.idaho.gov](http://dbs.idaho.gov)

Complaint No. \_\_\_\_\_  
(For DBS use only)

Please check the nature of the violation being alleged below (*check all that may apply*):

- Failure to adequately pre-mark onsite the path of proposed excavation.
- Failure to provide notice of the scheduled commencement of excavation to an underground facility owner.
- Failure of one-number notification service to provide notice of scheduled excavation to facility owner
- Failure of underground facility owner to locate or mark facilities within prescribed time
- Failure to wait for all known facilities to be located
- Failure to maintain the markings of an underground facility previously marked subsequent to excavation
- Failure to cease excavation upon discovery of underground facilities.
- Failure to identify in contract documents all facilities known by the owner to exist within the proposed area of excavation
- Failure to take precautions to avoid damage including hand digging within 24 inches, planning the excavation, and providing support to underground facilities.
- Failure to report contact or damage to an underground facility.
- Failure to participate or cooperate with a one-number notification service.

# DAMAGE PREVENTION BOARD

## Agenda Item No. 10

## Damage Prevention Board Ad Campaign

**PRESENTER:** Fred Sisneros, Financial Manager

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**OBJECTIVE:** Report on the process the Division must use to receive spending authority on donated monies.

---

**ACTION:** Informational

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**BACKGROUND:** September 2017 – Idaho Code 54-2203(18) states, “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.”

The Division must go through the Division of Financial Management (DFM) to receive spending authority to utilize monetary gifts. Financial Manager Sisneros offered to meet with DFM to confirm the procedure. Vice-Chairman Rasmussen asked, and the Financial Manager agreed, to report his findings to the November 2017 Board meeting.

---

## **PROCEDURAL HISTORY:**

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**ATTACHMENTS:** No documentation

---



# DAMAGE PREVENTION BOARD

## Agenda Item No. 11

## Definition of Business Day

**PRESENTER:** Nichole Rush, Board Member

---

**OBJECTIVE:** Clarify the definition of “business day”.

---

**ACTION:** Informational

---

**BACKGROUND:** The Law Dictionary defines “Business Day” as, “A business day is considered every official working day of the week. Another common term is working day. Typically, these are the days between and including Monday to Friday and do not include public holidays and weekends.”

---

**PROCEDURAL  
HISTORY:**

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**ATTACHMENTS:** No documentation

---



# DAMAGE PREVENTION BOARD

**Agenda Item No. 12**

**Publication of Rules**

**PRESENTER:** Ron Whitney, Deputy Administrator

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**OBJECTIVE:** Provide a quote on the cost to publish the rules.

---

**ACTION:** Informational

---

**BACKGROUND:** September 2017 – Upon speaking with stakeholders, Board Member Bob Chandler asked the Division to publish the rules as an addendum to the statutes, flyer, etc. The rules are on the DBS and Board’s websites; however, the Deputy Administrator will get a publication quote for the November Board meeting.

---

**PROCEDURAL HISTORY:**

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**ATTACHMENTS:** No documentation

---



# DAMAGE PREVENTION BOARD

**Agenda Item No. 13**

**Compliance Report**

**PRESENTER:** Amy Kohler, Compliance Program Specialist

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**OBJECTIVE:** Update the Board on the Damage Prevention Program's current activities.

---

**ACTION:** Informational

---

**BACKGROUND:** This topic is addressed at all regularly scheduled Damage Prevention Board meetings.

---

**PROCEDURAL HISTORY:**

---

**ATTACHMENTS:** No documentation

---



# DAMAGE PREVENTION BOARD

**Agenda Item No. 14**

**Administrator Report**

**PRESENTER:** Chris L. Jensen, Administrator

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**OBJECTIVE:** Provide an overview of the Division's current activities.

---

**ACTION:** Informational

---

**BACKGROUND:**

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**PROCEDURAL  
HISTORY:**

---

**ATTACHMENTS:** No documentation

---





# DAMAGE PREVENTION BOARD

**Agenda Item No. 14a**

**Financial Report**

**PRESENTER:** Chris L. Jensen, Administrator

---

**OBJECTIVE:** Review the Damage Prevention Board's Financial Report.

---

**ACTION:** Informational

---

**BACKGROUND:** This topic is addressed at all regularly scheduled Idaho Electrical Board meetings.

---

**PROCEDURAL  
HISTORY:**

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**ATTACHMENTS:** Financial Report

---





**Division of Building Safety**  
**UNDERGROUND FACILITIES DAMAGE PREVENTION**  
 Fiscal Year 2018 Financial Statements  
 As of 10/31/2017

Statement of Revenues and Expenditures - 0229-27 Dedicated Fund

Class	Budget	Fiscal Year To Date	YTD as a % of Budget	Remaining Budget	Projected for Remainder of Year	Projected Year End Totals	Projected Total as a % of Budget
Revenues:	50,000	31,844	64%	18,156	18,156	50,000	100%
Expenditures							
Personnel:	-	2,125	0%	(2,125)	5,047	7,172	0%
Operating:	50,000	2,930	6%	47,070	66,863	69,793	140%
Capital:	-	-	0%	0	0	0	0%
Total Expenditures	50,000	5,055	10%	44,945	71,910	76,965	154%
Net for FY 2018	-	26,789			(53,754)	(26,965)	

Statement of Cash Balance - 0229-27 Dedicated Fund

July 1, 2017 Beginning Cash Available	Fiscal Year to Date Revenues	Fiscal Year to Date Expenditures and Encumbrances	Other Changes in Cash	Available Cash as of October 31, 2017	Projected Change in Cash for Remainder of Year	Projected Year End Available Cash
18,775	31,844	5,055		45,564	(53,754)	(8,190)

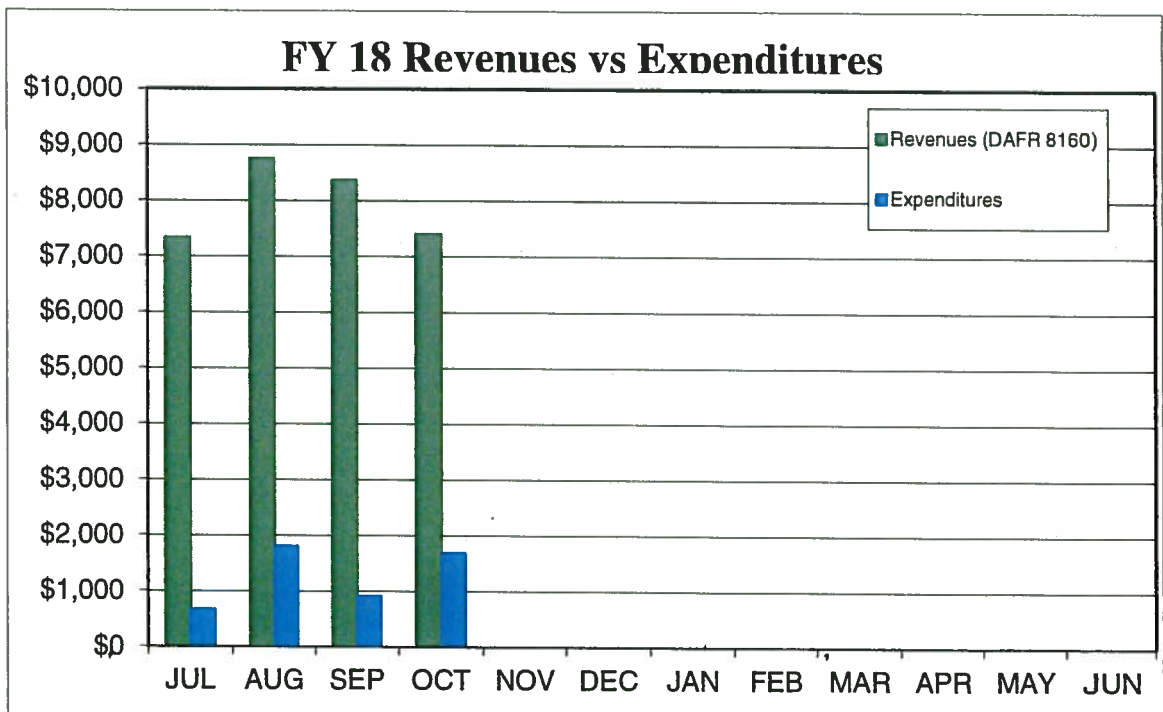
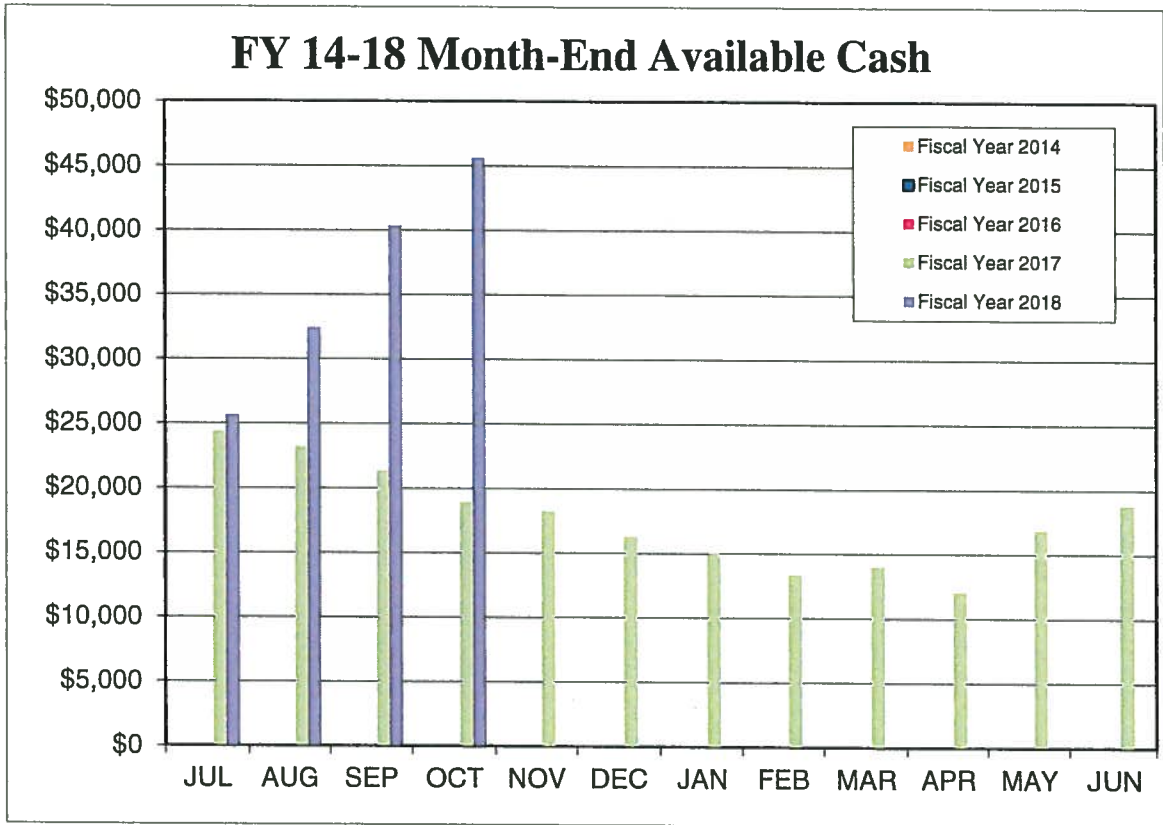
Statement of Revenues and Expenditures - 0348-00 Federal Grant (State Damage Prevention Program Grant - 2016)

Class	Budget	Fiscal Year To Date	YTD as a % of Budget	Remaining Budget	Projected for Remainder of Year	Projected Year End Totals	Projected Total as a % of Budget
Revenues:	-	-	0%	0	0	0	0%
Expenditures							
Personnel:	15,580	15,551	100%	29	36,934	52,485	337%
Operating:	54,802	31,398	57%	23,403	0	31,398	57%
Capital:	-	-	0%	0	0	0	0%
Total Expenditures	70,382	46,950	67%	23,432	36,934	83,884	119%
Net for FY 2018	(70,382)	(46,950)			(36,934)	(83,884)	

Statement of Cash Balance - 0348-00 Federal Grant (State Damage Prevention Program Grant - 2016)

July 1, 2017 Beginning Cash Available	Fiscal Year to Date Revenues	Fiscal Year to Date Expenditures and Encumbrances	Other Changes in Cash	Available Cash as of October 31, 2017	Projected Change in Cash for Remainder of Year	Projected Year End Available Cash
70,381	-	46,950	0	23,432	(36,934)	(13,502)

# UNDERGROUND FACILITIES DAMAGE



# UNDERGROUND FACILITIES DAMAGE

