

# DAMAGE PREVENTION BOARD

## Agenda Item

## Adoption of Pending Rules

**PRESENTER:** Patrick Grace, Deputy Administrator

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**OBJECTIVE:** Approve the reauthorized Pending Damage Prevention Board Rules – IDAPA 24.39.90.

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**ACTION:** Vote to approve and authorize the reauthorized omnibus rules.

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**BACKGROUND:** Administrative rule chapters that contain a fee in them were not reauthorized by the Idaho legislature in the 2020 legislative session. However, the Governor’s office had all executive agencies and boards promulgate temporary rules for such fee rule chapters several months ago so that they would still be in effect until the legislature can take up the matter again next session. The Damage Prevention Board rules were promulgated as temporary and proposed, and notices of such were published in special editions of the April 2020 and September 2020 administrative bulletins. The Board previously approved such action at meetings earlier this year. As part of the rulemaking process, the rules were published in the September bulletin as “proposed” rules and opportunity was provided to the public to provide comment and submit views or arguments about the rules – after which time the rules enter into a “pending” state. No comment has been received by the Division about the Damage Prevention Board rules to date. The final step in the Board’s rulemaking approval process is to authorize the rules as pending for final submission to the legislature for review in the next legislative session.

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**ATTACHMENTS:** Proposed Damage Prevention Board rules and Notice of Omnibus Rulemaking – Proposed Fee Rule

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**IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES  
DIVISION OF BUILDING SAFETY AND ITS CONSTITUENCY BOARDS**

**DOCKET NO. 24-3900-2000F (FEE RULE)**

**NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the following sections of Idaho Code:

I.C. § 39-4112	I.C. § 39-4113	I.C. § 39-4303	I.C. § 39-8605
I.C. § 44-2103	I.C. § 44-2107	I.C. § 54-1005	I.C. § 54-1006
I.C. § 54-1907	I.C. § 54-2605	I.C. § 54-2606	I.C. § 54-2607
I.C. § 54-4510	I.C. § 54-5017	I.C. § 54-5022	I.C. § 55-2203
I.C. § 55-2211	I.C. § 67-2601A		

**PUBLIC HEARING SCHEDULE:** Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 07, Title 01, Chapter 01; Title 02, Chapter 02; Title 03, Chapters 01, 03, 11-12; Title 04, Chapter 02; Title 05, Chapter 01; Title 07, Chapter 01; Title 10, Chapter 01, now indexed as IDAPA 24, Title 39, Chapter 10; Chapter 20; Chapters 30, 31, 33, 34; Chapter 40; Chapter 50; Chapter 70; and Chapter 90, rules of the Division of Building Safety:

**IDAPA 24.39**

- 24.39.10, *Rules of the Idaho Electrical Board;*
- 24.39.20, *Rules Governing Plumbing;*
- 24.39.30, *Rules of Building Safety (Building Code Rules);*
- 24.39.31, *Rules for Modular Buildings;*
- 24.39.33, *Rules Governing Manufactured/Mobile Home Industry Licensing;*
- 24.39.34, *Rules Governing Manufactured or Mobile Home Installations;*
- 24.39.40, *Safety Rules for Elevators, Escalators, and Moving Walks;*
- 24.39.50, *Rules of the Public Works Contractors License Board;*
- 24.39.70, *Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems;* and
- 24.39.90, *Rules Governing the Damage Prevention Board.*

**FEE SUMMARY:** This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. All fees contained in rule chapters covered by this notice relate to licensing and related administrative fees, fees to purchase permits or for the performance of inspections on various types of construction installations, or the assessment of civil penalties for non-compliance with applicable statutes.

The fees or charges are authorized in the following sections of Idaho Code:

I.C. § 39-4112	I.C. § 39-4113	I.C. § 39-4303	I.C. § 39-8605
I.C. § 39-8616	I.C. § 44-2103	I.C. § 54-1005	I.C. § 54-1014
I.C. § 54-2614	I.C. § 54-2616	I.C. § 54-1904	I.C. § 54-4510
I.C. § 54-5012	I.C. § 54-5017	I.C. § 55-2203	I.C. § 67-2601A

The following is a specific description of the fees or charges:

The preceding sections of Idaho Code and the attached rules provide a specific description of the fee or charge imposed by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. All fees contained in rules covered by this notice relate to licensing and related administrative fees, fees to perform inspections on various types of construction installations, or the assessment of civil penalties for non-compliance with applicable statutes. All Division programs that are covered by this notice operate from statutorily created dedicated funds that provide for the licensing of persons within the respective professions, as well as the inspection of such installations and/or administration of such programs by the Division. All of these operations require the collection of certain fees to ensure compliance with applicable standards and to protect the health and safety of the public.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact MiChell Bird at (208) 334-3285.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

Idaho Division of Occupational and Professional Licenses  
700 West State Street  
Boise, ID 83702  
PO Box 83720  
Boise, ID 83720-0063  
(208) 334-3233

## 24.39.90 – RULES GOVERNING THE DAMAGE PREVENTION BOARD

### 000. LEGAL AUTHORITY.

The Idaho Damage Prevention Board of the Division of Building Safety is authorized under Section 55-2203, Idaho Code, to promulgate rules for the administration of Title 55, Chapter 22, Idaho Code. ( )

### 001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 24.39.90, "Rules Governing the Damage Prevention Board." ( )

02. **Scope.** These rules are applicable to underground facilities, and facility owners as established in Title 55, Chapter 22, Idaho Code. ( )

### 002. ADMINISTRATIVE APPEALS.

01. **Governing Procedural Requirements.** IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Section 100, et seq., applies to contested cases, in addition to the provisions of Title 55, Chapter 22, Idaho Code. ( )

02. **Appeal Bond.** Upon notice of the imposition of training or a civil penalty, the notified party may contest the imposition of such before the Damage Prevention Board in accordance with Section 018 of these rules. An appeal bond in the amount of two hundred dollars (\$200) must accompany the request for hearing to contest the matter. In the case of training, the Division of Building Safety will refund the bond if the contesting party appears at the hearing. In the case of a civil penalty, the Division will refund any portion of the bond not used to satisfy the penalty imposed by the Board or the entire bond if the contesting party prevails at the hearing. ( )

### 004. -- 006. (RESERVED)

### 007. FUNDING OF BOARD ACTIVITIES.

Each owner of an underground facility must pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as prescribed by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner is collected by the one-number notification service, and is payable to the board in accordance with the following schedule: ( )

01. **Fee Assessed.** The fee will be assessed on an underground facility owner for each notification issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. ( )

02. **Payment Submission.** The one-number notification service must submit payment to the board for all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground facility owner is received after the seventy-day (70) period, the one-number service must include late payments in its next payment to the board. ( )

03. **Notices Issued.** The one-number notification service must also submit a detailed list of notices issued, including the facility owner's contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list must be updated on a monthly basis to reflect the status of all past-due payments due from underground facility owners that have not been received. ( )

### 008. AUDIT OF ONE-NUMBER SERVICE RECORDS.

The Board has the right to review and audit the payment records of any one-number notification service relating to the collection of the fee imposed on underground facility owners. In the event the board wishes to conduct a review and/or audit of a one-number notification service, the board will provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein this chapter to the Division of Building Safety. ( )

### 009. -- 014. (RESERVED)

### 015. EDUCATIONAL AND TRAINING MATERIALS.

**01. Approval of Training and Educational Programs.** The Board approves acceptable training courses or programs and educational materials on relevant underground facility damage prevention topics pertaining to safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre-marking of intended excavation areas, and appropriate procedures when encountering unmarked facilities. ( )

**02. Scope of Training and Educational Programs.** Such training programs and educational materials must relate to various aspects of underground facility damage prevention, and contain practices, information, and standards generally accepted and recognized among stakeholders in Idaho. ( )

**03. Accessibility of Training and Educational Programs.** The Division maintains and periodically updates a database of approved educational materials and training programs. ( )

**04. Purposes of Training and Educational Programs.** Such programs may be used for general educational use by stakeholders or for remedial training that may be ordered by the board or the administrator pursuant to Section 55-2211, Idaho Code. ( )

**016. ADEQUACY OF FACILITY OWNERS LOCATING UNDERGROUND FACILITIES.**  
The board reviews all stakeholder complaints of violations related to underground facility line locating, as well as generally accepted practices and procedures related to locating. Stakeholders must take remedial actions to improve line-locating performance and monitor and report performance improvements to the board. ( )

**017. IMPROVEMENT OF TECHNOLOGY AND COMMUNICATIONS BY STAKEHOLDERS.**

**01. Adoption of Technology and Communications Materials.** On an annual basis the board reviews and adopts any available technology and communications materials which promote effective underground facility locating. The board will make available any such appropriate technology and communications materials as it may determine to all stakeholders on the Division website. ( )

**02. Availability of Technology and Communications Materials.** The board may request that stakeholders provide it with information or data related to procedures, methods, or technologies utilized by such stakeholders to enhance communications among other stakeholders, or that enhances underground facility locating capabilities, or enhances the stakeholder's ability to gather and analyze data related to underground facility damage. The board will review such technologies, methods, or materials adopted by stakeholders to ensure that such use is adequate, as well as to provide stakeholders with best practices. The Division of Building Safety must maintain an approved database of such referenced stakeholder data for public viewing and analysis on its website. ( )

**018. DAMAGE PREVENTION COMPLAINTS.**

**01. Complaint Forms.** Persons may submit written complaints to the administrator regarding an alleged violation of Title 55, Chapter 22, Idaho Code, on such forms as required by the Division of Building Safety. Forms are available at the Division of Building Safety offices and electronically on the Division's website. Notice of the complaint may 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 must also be provided to the administrator. ( )

**02. Contents.** Complaints must include the name and address of the complainant and the alleged violator, the date and location of the alleged violation, as well as a complete description of the nature of the violation alleged, including whether it resulted in damage to an underground facility or an excavator downtime event. Complainants may also provide additional documentation in support of a complaint. Complaints must be accompanied by a sworn declaration from the complainant declaring that the information contained therein is true and accurate. The administrator may request additional information or documents in support of the complaint. ( )

**03. Complaint Procedures and Timelines.** The following timelines and procedure govern the process of filing and administering complaints related to violations of Title 55, Chapter 22, Idaho Code, and the rules of the Board. ( )

a. **Initial Filing.** Complaints must be filed with the administrator not later than thirty (30) days from the date of the alleged violation giving rise to the complaint or from the date the violation should have reasonably been discovered by the complainant, whichever is later. ( )

b. **Response.** The administrator must notify the alleged violator of the complaint and request a response and any additional information from the alleged violator as may be necessary. The alleged violator may provide a response to the administrator within thirty (30) days from the date they are notified of the complaint by the administrator. ( )

c. **Recommendation.** Within thirty (30) days of receipt of the response, or if no response is received, within fifteen (15) days from the deadline for filing a response, the administrator must notify the complainant and the alleged violator of his recommended course of action. The administrator may extend the period of time in which to determine a recommended course of action, and so notify the parties, if he determines it is necessary to further review or investigate the complaint. ( )

d. **Contest.** The alleged violator has the right to contest the imposition of a civil penalty before the damage prevention board. Notice of such contest must be provided by the alleged violator not more than thirty (30) days after receipt of the administrator's recommended course of action. Recommendations of the administrator regarding complaints may be reviewed by the board at its next regularly scheduled meeting. ( )

**019. CLAIMS AND REPORTS OF DAMAGE OR EXCAVATOR DOWNTIME.**

**01. Claims.** Claims for the cost of repairs for damaged underground facilities are enforced by the affected underground facility owner in accordance with procedures as may be established by the facility owner, and in accordance with applicable law. Underground facility owners must provide notice to excavator contractors of such procedures, along with sufficient information supporting the basis for the amount of a claim within six (6) months from the date of the event giving rise to the claim or from the date the event should have reasonably been discovered by the underground facility owner, whichever is later. ( )

**02. Reports.** 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 (1) or more stakeholders to comply with applicable damage prevention statutes or regulations must report such information to the board on forms or by such method adopted for such by the board. Forms are available at the Division offices and electronically on the Division's website. ( )

**020. CIVIL PENALTIES.**

The Idaho Damage Prevention Board is authorized under Section 55-2203(17), Idaho Code, to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen (18) months from an earlier violation, and where facility damage has occurred. ( )

**01. Violations of Title 55, Chapter 22, Idaho Code.** The following acts subject a person to civil penalties: ( )

a. **Pre-marking Excavation Site.** Any person who fails to adequately pre-mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with Section 55-2205(1)(b), Idaho Code, is subject to a civil penalty. ( )

b. **Notice of Excavation.** Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one-number notification service, or directly to a facility owner, as applicable within the prescribed time as required by Section 55-2205(1)(c), Idaho Code, is subject to a civil penalty. ( )

c. **One-Number Notification to Facility Owner.** A one-number notification service that fails to provide



notice of a scheduled excavation upon notification from an excavator is subject to a civil penalty. ( )

**d. Failure to Locate or Mark.** An underground facility owner, owner's agent, or locator who fails to locate or mark underground facilities when responsible to do so in accordance with Section 55-2205(2), Idaho Code, or within the prescribed time provided therein, is subject to a civil penalty. ( )

**e. Failure to Wait for Locate or Maintain Markings.** An excavator who commences excavation prior to waiting the time prescribed by Section 55-2205(2), Idaho Code, for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with Section 55-2205(2), Idaho Code, is subject to a civil penalty. ( )

**f. Failure to Cease Excavation or Report Unidentified Facilities.** An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with Section 55-2205(4), Idaho Code, is subject to a civil penalty. ( )

**g. Failure to Identify Facilities in Contract Documents.** Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with Section 55-2207, Idaho Code, is subject to a civil penalty. ( )

**h. Precautions to Avoid Damage.** An excavator who does not engage in any of the activities required by Section 55-2207(2), Idaho Code, or use reasonable care to avoid damage to underground facilities is subject to a civil penalty. ( )

**i. Reporting of Damage to Facility.** An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by Section 55-2208(1), Idaho Code, is subject to a civil penalty. ( )

**j. Reporting to the Board.** An excavator or underground facility owner who observes, suffers or causes damage to an underground facility or excavator downtime related to the failure of one (1) or more stakeholders to comply with the damage prevention regulations and fails to report such information to the board as required by Section 55-2208(5), Idaho Code, is subject to a civil penalty. ( )

**k. Failure to Participate.** Any person who fails to participate or cooperate with a one-number notification service as prescribed by Section 55-2206, Idaho Code, is subject to a civil penalty. ( )

**02. Second Offense.** For the purpose of this section, a second offense is deemed to be any violation of Title 55, Chapter 22, Idaho Code, for which a civil penalty may be imposed in accordance with this section which occurs within eighteen (18) months of a previous violation of any provision. ( )

**03. Multiple Violations.** Each day that a violation of Title 55, Chapter 22, Idaho Code, occurs for which a civil penalty may be imposed as provided herein constitutes a separate offense. ( )

**021. -- 999. (RESERVED)**