

SB 2432

Measure Title: RELATING TO THE ONE CALL CENTER.
Report Title: One Call Center; Pest Control Operators; Exemption
Description: Repeals the June 30, 2012, sunset provision in section 5 of Act 72, Session Laws of Hawaii 2009, which makes permanent the exclusion of pest control operators' activities from the definition of "excavation".
Companion:
Package: None
Current Referral: CPN
Introducer(s): BAKER, CHUN OAKLAND, ENGLISH, GREEN, KAHELE, KIDANI, TOKUDA, TSUTSUI, Espero, Fukunaga, Galuteria, Ige, Ihara, Nishihara, Ryan, Solomon

<u>Sort by</u> <u>Date</u>		Status Text
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN.
1/25/2012	S	The committee(s) on CPN has scheduled a public hearing on 01-31-12 9:00AM in conference room 229.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION
JANUARY 31, 2012

MEASURE: S.B. No. 2432
TITLE: Relating to the One Call Center

Chair Baker and Members of the Committee:

DESCRIPTION:

This bill would exempt all pest control operators from having to comply with Chapter 269E, Hawaii Revised Statutes (HRS), the Hawaii One Call Utility Notification law.

POSITION:

The Commission opposes this bill and would like to offer the following comments for the Committee's consideration.

COMMENTS:

- HRS Chapter 269E establishes a one call center system to protect all subsurface installations during excavation activity to avoid accidental death or injury by directing excavators to follow procedures to keep themselves and the public safe.
- Due to changes caused by erosion, rain, and land shifting, underground facilities such as gas lines, electrical lines, and fiber optic cables can come to be located very near the surface. In some instances, gas lines and electrical lines may run in parallel underground, which poses a real danger to all excavators, including pest control operators.
- The Gas Company has reported to the Commission damage reports caused by pest control operators in response to this proposed legislation.

Below is a summary showing dates, specific companies involved, and estimated damage of four line breaks caused by pest control operators drilling through a gas line on the sidewalk or in a customer's yard:

1. 11/10/08 - Sandwich Isle Termite Company, estimated damage of \$200.
2. 12/12/08 - Osmose Pacific, estimated damage of \$430.

3. 1/13/09 - Orkin Pest control, estimated damage of \$400.
 4. 8/17/09 - Terminex, estimated damage of \$958.
- A line break of the types listed above could have been easily avoided by calling the Hawaii One Call Center, as facility operators would have been notified to mark their underground infrastructure by following the excavation procedures in the law. If facility operators do not respond within the prescribed time period, the excavation may proceed protecting the excavator from liability.
 - The Hawaii One Call Center Advisory Committee, which is comprised of multiple representatives from Hawaii's underground infrastructure and related construction industries supports removing the pest control operator exemption currently under HRS § 269-2.
 - The Hawaii One Call Utility Notification law is meant to keep **ALL** excavators and the public safe. The passage of this proposed legislation would allow pest control operators to be exempt from the law, which would be very dangerous for them, and could potentially result in serious injury or even death.

The Commission recommends that this measure be held, as it affects the health, safety and welfare of the community. Furthermore, the Legislature should seriously consider removing the homeowner exemption, since any exemption precludes the State from receiving Federal funding for pipeline safety.

Thank you for the opportunity to testify.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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W. Bruce Barrett
Castle & Cooke Homes Hawaii, Inc.

Testimony to the Senate Committee on Commerce & Consumer Protection
Tuesday, February 1, 2012
9:00 a.m.
State Capitol, Room 229

RE: S.B. 2432, Relating to One Call Center

Chair Baker, Vice Chair Taniguchi, and members of the committee:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is opposed to S.B. 2432, which makes permanent the exclusion of pest control operators' activities from the definition of "excavation".

The Hawaii One Call Center was established to receive requests for locating underground facilities from excavators and to relay these requests to facility operators. The Hawaii One Call Center Advisory Committee is dedicated to promoting organized planning and installation of underground facilities as well as protecting those substructures once placed.

The advisory committee is against any exemption to the One Call Center law because there is a huge potential of damaging a gas line, creating a leak then a gas explosion, resulting in huge loss of property and lives. One Call is a free service, created for the safety of the public. BIA-Hawaii urges this exemption sunset.

Finally, the Federal Government strongly discourages states from making any exemptions to the One Call Center law. Exemptions would jeopardize our ability to apply for federal grants, \$4 million of which have already been distributed in the form of State Damage Prevention Grants.

Thank you for the opportunity to testify.

Karen T. Nakamura

EVP/CEO
BIA-Hawaii

THE GAS COMPANY

P.O. Box 3000
Honolulu, Hawaii 96802-3000
www.hawaiigas.com

Chair Rosalyn H. Baker
Members of the Committee
Committee on Commerce and Consumer Protection

Stephanie Ackerman - Vice President Public Policy and Communications
The Gas Company
Contact: 808-535-5913

Tuesday, January 31, 2012

Strongly oppose S.B. 2432 Relating to the One Call Center

Chair Baker and Members of the Committee:

I am Stephanie Ackerman, Vice President of the Gas Company. The Gas Company strongly opposes this measure because it increases the risk of injury or even loss of life.

Since 2009 when pest control operators were exempted from the One-Call requirement, The Gas Company's records confirm two pipeline breaks by pest control operators digging at depths of eight and twelve inches. In addition, there were 163 pipeline leaks in the same period that could have been avoided had these excavators first contacted the Hawaii One-Call Center.

Safety is our number one priority. One gas leak that could be prevented by simply utilizing the state's One-Call Center must be a priority for everyone. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) invests considerable resources in ensuring every state across the country understands how to conduct best practices through established One-Call centers to effectively prevent pipeline damage to minimize the possibility of associated injuries.

Our state is fortunate to have the Hawaii One-Call Center and we should do all we can in the interest of promoting safety by requiring all excavators to utilize this resource to prevent unintended pipeline damage and injury to persons or property.

The Gas Company informs the public about pipeline safety by placing pipeline awareness notices in our local newspapers and mailing flyers to our customers, public officials and excavators. Every digging project requires private home owners or professional contractors to call the One-Call Center before digging – even small projects like planting trees or shrubs. This position is supported by PHMSA and the Association of Oil Pipelines.

Safety is shared responsibility and adherence to One-Call best practices is of the highest importance, because even one incident could lead to serious injury or even loss of life. For this reason, we ask that the exemption be allowed to expire.

Thank you for allowing me to testify on S.B. 2432.

Attachment

GAS PIPELINE HAZARD AWARENESS AND PREVENTION MEASURES

The Gas Company provides safe and reliable gas through underground pipelines to Hawaii homes and businesses. TGC routinely performs safety tasks including patrolling, inspecting, testing, repairing and replacing pipelines. We deliver Synthetic Natural Gas (SNG) on Oahu and propane statewide. Since you may live or work near a gas pipeline, please review this message as it provides information on the potential hazards and preventive measures.

Hazards: Gas leaks caused by third party excavators are the most common hazard. Precautions must be taken to avoid damaging gas facilities because gas is flammable. If you suspect a gas leak, leave the area immediately and warn others to stay away. Go to a safe location and call The Gas Company.

Prevention: The Gas Company adds an odorant to the gas to aid in detecting a leak. We also have monitoring and damage prevention programs to promote the safe transportation and use of gas.

Call 811 Before You Dig: Call the Hawaii One Call Center prior to doing any excavation, such as installing a sprinkler system or fence. They will contact all utilities to provide the location of underground facilities. If you suspect you have struck or damaged a pipeline, do not attempt to move the equipment. Shut off the equipment and leave the area immediately.

LEAK RECOGNITION AND RESPONSE



SMELL:

Odor of rotten eggs - the nose knows!



LISTEN FOR:

Unusual hissing or blowing noises from a gas appliance, the ground, or exposed gas piping.



LOOK FOR:

Flames near exposed piping or coming from the ground.



LOOK FOR:

Constant and localized blowing of dirt, dust, or debris.



LOOK FOR:

Rapid bubbling through water or mud.



LOOK FOR:

Unusual dying, brown or dead vegetation.

If you suspect a leak call 911, the Fire Department, or The Gas Company.

THE GAS COMPANY

EMERGENCY NUMBERS:

Oahu 526-0066, Hilo 935-0021, Kona 329-2984, Maui 877-6557
Kauai 245-3301, Molokai & Lanai 1-800-828-9359

Go to WWW.HAWAIIIGAS.COM for more gas safety tips.



HAWAII PEST CONTROL ASSOCIATION

Century Square – 1188 Bishop St., Ste. 1003*Honolulu, HI 96813-3304
Telephone (808) 533-6404 • Fax (808) 533-2739

January 31, 2012

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 2432 – RELATING TO THE ONE CALL CENTER

Chair Baker and Members of the Committee:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association an organization composed of 96% of all the structural licensed pest control operators.

It is our members who typically provide for applications to both residential and commercial sites to guard and protect against termites and other household pests. This is often accomplished by utilization of bait stations. This is a concept developed by industry in order to maximize the safety precautions involved with pesticides around homes in that, the pesticides are contained in bait stations that are very difficult to get into and typically placed in the ground.

After the establishment of the One Call Center it was discovered that pest control operators were included in this effort because they merely "move dirt". That is the definition of an

excavator in Section 269E is exactly that, where "earth...in the ground is moved". There is no definition as to the amount of dirt, how much dirt, how often they move that dirt. It is likely that most homeowners planting a shrub fall under this definition.

The purpose behind the One Call Center has much merit; that is, to avoid a possible breaking of utility lines. These utility lines typically are required by code to be twelve (12) to eighteen (18) inches below the surface. Our bait stations don't come anywhere near that depth.

Requiring our members to participate in the One Call Center activities will add costs to a termite job and what we feel are unnecessary delays. Typically with the One Call Center an additional trip will be needed after the customer agrees to the estimate in order to provide chalk lines as to the approximate area that will be dug. Additionally, this must be done at least five (5) days in advance so the customer who wants action now will have to wait that additional time period.

We also think that one of the more important reasons for our members to be exempt as they have been for the last three (3) years, is that the penalty does not match the activity. The penalties under 269E-14 are \$5000.00 per day up to \$10,000.00 and the possibility of being required to go to an educational program. An awful lot of termite jobs are barely in the three figures and rarely in the four figures. The fine per day appears to be entirely too severe.

Lastly, we are not aware of any major problems and if there are some, it would appear that these were either water sprinkler breaks or they were fixed immediately by the pest control operator and in very isolated cases. It should be remembered that the pest control industry

puts in an estimated sixty (60) to eighty (80) thousand holes in the ground every year. That translates to about four thousand (4000) jobs a year that the One Call Center does not have to mark now under which they would have to mark under this program and for very, very little benefit since we have received only one (1) report of a gas line break which was fixed immediately by the gas company.

Based on the above, we believe that our exemption from this activity is merited and we would be happy to work with the utilities in an effort to further educate pest control operators about potential breaks in lines if it is determined that it would be of assistance.

We support this bill.

Thank you.

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To: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

From: Jerry Edlao, Owner & Operator
Accupest & Termite Control Services
1797 Wili Pa Loop, ste #3
Wailuku, Maui, Hawaii, 96793

Re: SB2432-RELATING TO THE ONE CALL CENTER.
Repeals the June 30, 2012, sunset provision in section 5 of Act 72, Session Laws of Hawaii 2009, which makes permanent the exclusion of pest control operators' activities from the definition of "excavation".

I am in full support of this exclusion of Pest Control Operators in this matter. Our work involves trenching not more than 3 to 4 along the exterior perimeters of structures. In cases where drilling is involved, it only penetrates a concrete slab thickness and no more. Probing of soil areas are also limited to the exterior perimeters (approx. 12 to 18 inches). It is my understanding that all utility lines has to be below 24 inches and not within the areas that we do our work. I heard of situations where the homeowners sprinkler lines have been hit but that really is far and few and can be repaired easily without any effects to any utilities.

I am hopeful that your committee will support this and permanently exclude the Pest Control Operator for this One Call Center requirement.

Thank You for your consideration

To whom it may concern,

My name is Frank Planton, I work for One Call Concepts, Inc. We are the vendor that operates the One Call Center for the State of Hawaii. One Call Concepts is a national company that has successfully managed utility notification centers for thirty years. We are one of the industry's leading providers of excavation damage prevention services. Currently we operate centers in the States of Delaware, Hawaii, Iowa, Kansas, Louisiana, Maryland, Missouri, Montana, New Jersey, New York City and Long Island, North Dakota, Oregon, Texas, Washington and the District of Columbia. I have worked for the company since 1994 as the General Manager for our Portland, Oregon office and was most recently promoted to the position of Director-Customer Relations.

Please accept my testimony against the passage of SB 2432, which repeals the June 30, 2012, sunset provision in section 5 of Act 72, Session Laws of Hawaii 2009, making permanent the exclusion of pest control operators' activities from the definition of "excavation". Opposition to this very dangerous exemption from the damage prevention law is based on the following information.

Successful damage prevention programs and state laws across the country have little to no such exemptions to their definitions for excavation. In 1999, the Federal Department of Transportation sponsored the Common Ground Study. The purpose of the study was to identify and validate existing best practices performed in the connection with preventing damage to underground facilities. The DOT's intent was to collect industry best practices and share them among stakeholders involved with and dependent upon the safe and reliable operation, maintenance, construction, and protection of underground facilities. The resulting collection of best practices, published in 2000, are a reference guide that can be further examined and evaluated for possible consideration and incorporation into state and private stakeholder underground facility damage prevention programs.

In 2000, the Common Ground Alliance (CGA) was formed to further the work completed during the study. The CGA created its Best Practices Committee to:

- Continue identifying practices that are appropriate for each stakeholder group.
- Gauge current levels of implementation and use of existing Best Practices;
- And, encourage and promote increased implementation of the Best Practices.

One of the central tenets expressed by the Best Practices is that the best way to prevent facility damages, protect the general public and environment is for an excavator to call any time digging is taking place regardless of the size, type or depth of excavation. The Best Practices further define "excavation" to include, "Any operation using non-mechanical or mechanical equipment or explosives used in the movement of earth, rock or other material below existing grade." Taken together, there is little or no room for exempted activity and a call should be placed to the notification center prior to any instance of excavation.

Administration's (PHMSA) position is that effective damage prevention programs should be developed and implemented at the state levels. PHMSA seeks to characterize and document the states' damage prevention programs relative to the nine elements of effective damage prevention programs defined in the PIPES Act. PHMSA's goal in this effort is to gain a better understanding of the variability in state damage prevention programs across the United States at a level of detail that will assist PHMSA with making decisions regarding where and how to apply resources including grants and funding. The effort is designed to illustrate damage prevention programs strengths and areas that could use improvement relative to the nine elements contained in the PIPES Act. PHMSA's characterization tool uses the following standard to rank a State's damage prevention law: "All excavators must request the location of underground facilities at each site by notifying the facility owner/operator through the one call center. Few excavation activities are exempted from the one call requirement."

The following are quotes from a speech given by Cynthia L. Quarterman, Administrator for PHMSA, at the CGA's Annual meeting held in San Diego, CA on March 3, 2010.

"PHMSA's pipeline safety mission is to ensure the safe, reliable, and environmentally sound operation of the nation's pipeline system. Reducing excavation damage is of paramount importance to fulfilling that mission. ***Failure to call before digging remains the number one cause of excavation damage to underground facilities and a serious threat to energy pipelines.***"

"From 2007 through 2009, excavation damage caused approximately 27 percent of all serious hazardous liquid pipeline accidents and 16 percent of all serious natural gas transmission pipeline incidents. For natural gas distribution pipelines, excavation damage caused 28 percent of all incidents over the same two year period."

"A key challenge in achieving our goals is the need for state-level stakeholders to come together, engage with one another, and address the gaps that exist in state damage prevention laws and programs."

"In the past several years, many states have passed new or revised damage prevention laws that have significantly strengthened damage prevention programs in those states. We are also seeing tremendous momentum among the state to implement the nine elements of effective damage prevention programs described in the PIPES Act of 2006, which stress effective communication, stakeholder partnership, improved underground locating, employee training, public education, conflict resolution, law enforcement, technology, and data analysis."

"While these nine elements are not prescriptive, they are common sense principles that the states are readily adopting to make improvements in their damage prevention programs."

"Since 2008, PHMSA has provided over \$4 million dollars in State Damage Prevention grants to assist with the implementation of the nine elements. The results of these grants are extremely encouraging and we commend the states who have received these grants on a job well done."

The continuation of this exemption for pest control excavation is contrary to Best Practices and the PIPES Act of 2006. It is continuing a practice that puts at risk workers, public safety, the facility operators, (including essential services such as air traffic control and 911), along with the environment that is so important to the state of Hawaii. It is contrary to what is contained in every one of the laws of the other fourteen states in which we operate. Our position of opposition to this legislation is shared by the Hawaii PUC Advisory Committee, and by virtually every pipeline and gas industry operator in the State of Hawaii.

For safety's sake, I strongly encourage you to let this exemption fade away with the sunset date that is included in the present law.

Sincerely,

Frank S Planton
Director-Customer Relations
One Call Concepts, Inc.