

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

February 16, 2022
2:00 p.m.

Chair Johanson and Members of the Committee:

MEASURE: H.B. No. 2110

TITLE: RELATING TO ADVANCE WARNING FOR EXCAVATION.

DESCRIPTION: Applies the existing advance warning requirements to excavators operating on residential properties and clarifies various excavation requirements and reporting procedures.

POSITION:

The Public Utilities Commission (“Commission”) supports this administration bill and offers the following comments for consideration.

COMMENTS:

The Commission supports this administration measure, which would improve and clarify the advance warning requirements that apply to excavators operating on residential properties. As a member of the One Call Center Advisory Committee established pursuant to Section 269E-4, Hawaii Revised Statutes (HRS), the Commission believes that these statutory amendments would help to reduce risks to homeowners, residential communities, and those involved in performing excavation work.

Most excavators are currently required to call the One Call Center, as set forth in chapter 269E, HRS, prior to commencing excavation. This provides the One Call Center with the opportunity to check for pipelines or similar infrastructure where an individual or organization plans to dig, in order to avoid situations where infrastructure is struck during excavation.

However, the current statute does not require excavators operating on residential properties (one or two family homes) to contact the One Call Center prior to excavation. As a result, underground utility infrastructure is frequently impacted in residential areas. In 2020, approximately 68 percent of subsurface utility infrastructure “hits” occurred on residential properties.

This exemption creates significant risk for homeowners who are digging on their property, contractors who are hired to do such work, and community members who use shared infrastructure. For example, breaching a water pipeline can result in water outages, especially in concentrated residential areas. In the case of a gas leak, there may be risks of physical harm to homeowners, their neighbors, and those performing the excavation work.

In applying the existing advance warning requirements to residential properties and clarifying these requirements, this measure would reduce avoidable infrastructure damage, as well as risks of water outages, gas leaks, and electrocution. As such, the Commission developed this measure in consultation with members of the One Call Center Advisory Committee to mitigate these concerns.

The Commission notes that it has conferred with the Hawaii Pest Control Association and recommends that the proposed language on page 2, lines 14-16, be removed from the measure. This amendment would exempt contractors from the advance warning requirements when their activities on residential properties do not involve excavation of more than 12 inches below the surface of the ground. The Commission believes that this will reduce disruptions to activities such as pest control measures on residential properties, without increasing safety risks.

The Commission respectfully requests your consideration and passage of this measure. Thank you for the opportunity to testify.



HAWAII PEST CONTROL ASSOCIATION

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February 16, 2022

Testimony To: House Committee on Consumer Protection & Commerce
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 2110 – RELATING TO ADVANCE WARNING FOR EXCAVATION.

Chair Johanson, Vice Chair Kitagawa and Members of the Committee:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association, an Association composed of those companies that perform structural pest control on residences and other buildings. We are in support of this bill with an amendment.

The Hawaii One Call Center is a great idea. It has helped utilities, consumers and contractors throughout the State. Unfortunately, when it first came into effect, someone made the determination that pest control operators who do liquid termiticide treatments around the perimeter of residential structures by trenching two (2) to four (4) inches around the house fell under the definition of an excavator. This was detrimental not only to the pest control

operators for coordination responsibilities but also to homeowners by way of increased costs and it was unnecessary.

So the Legislature in its wisdom passed Act 72 in 2009 that exempted pest control operators for three (3) years. Act 196 in 2012 exempted pest control operators for another three (3) years. In the interim, the Public Utilities Commission opened a docket in 2012 to determine if there should be relief to pest control operators which was filed on May 9, 2013. As noted in a report from PUC to the Legislature in 2014, "(The Commission found sufficient evidence in the established record on which to base its determination that the excavation activities of pest control operators, currently, do not pose the level of risk to underground facilities in the State that would require operators to fully comply with One Call Center requirements)". Based on that then, the PUC issued order number 31225 which provided for an exemption for pest control operators from general compliance with the One Call Center chapter.

As we understand it, this bill comes to you now in order to modernize the statute and clarify the exemption. Specifically the term "excavation" is revised in order to meet the activities of pest control operators.

The amendment we request appears on page two (2), lines fourteen (14) through sixteen (16) which we believe should be deleted entirely which adds wording, "if the excavation is performed by the person who owns or occupies the property on which the excavation is being performed."

Liquid termiticides are typically restricted use pesticides. That means that it requires certification from the Department of Agriculture based on EPA requirements. Homeowners do not have that certification so they could not perform these types of applications. We don't believe that the language was ever intended to be restricted solely to homeowners therefore we would request deletion of that language, otherwise we are all going back to "square one", pre-2009.

Based on the above, we respectfully request this Committee's deletion of that language and support the remainder of the bill.

Thank you.



**Testimony to
The Committee on Commerce Consumer Protection & Commerce**

**Wednesday February 16, 2022
2:00 PM
VIA Video Conference
Conference Room 329, Hawaii State Capitol**

HB 2110

Chair Johanson, Vice Chair Kitagawa, and members of the committee,

Hawaii Gas **supports HB 2110**, which applies the existing advance warning requirements to excavators operating on residential properties and clarifies various excavation requirements and reporting procedures.

Hawaii Gas is a national leader in the transmission and distribution use of hydrogen in our clean energy mix, and it is our vision to continue to lead the gas industry in its ability to safely, affordably, and reliably increase the amount of this zero-emissions fuel source in our utility pipeline.

The One Call policy has proven effective in preventing accidental occurrences that can pose a risk to life, health, property, or essential public services.

We urge the committee to pass HB 2110.

Thank you for the opportunity to testify.



**Hawaiian
Electric**

**WRITTEN TESTIMONY BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**H.B. 2110
Relating to Advance Warning for Excavation**

Wednesday, February 16, 2022
2:00 P.M., Agenda Item # 4
State Capitol, Conference Room 329

Rouen Liu
Permits Engineer, Transmission and Distribution Engineering
Hawaiian Electric Company

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

My name is Rouen Liu and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) **in support** of H.B. 2110, relating to advance warning for excavation.

Hawaiian Electric supports the intent of this bill which is to address additional safety concerns identified by recently provided excavation data.

Thank you for the opportunity to testify.

Written Statement of
Steven Golden
Vice President – External Affairs

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

February 16, 2022 2:00 PM
State Capitol, Room 329 & Videoconference

SUPPORT FOR:

H.B. NO. 2110 RELATING TO ADVANCE WARNING FOR EXCAVATION

To: Chair Johanson, Vice-Chair Kitagawa, and Members of the Committees

Re: Testimony in support of HB 2110, with requested amendment

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to submit testimony in support of House Bill 2110. This bill would improve the advance warning requirements to excavators operating on residential properties and clarify various excavation requirements and reporting procedures.

As a member of the Hawaii One Call Center (“HOCC”) Advisory Committee, Hawaiian Telcom stands committed to promoting organized planning and installation of underground facilities as well as protecting these substructures once placed. Current law¹ requires most excavators to call the One Call Center prior to a planned excavation. The HOCC provides uniform notification and alerts utilities to properly identify and mark underground facilities on the property so that contractors take caution to protect and avoid buried lines during an excavation. This bill extends that protocol to require excavators operating on residential property (single or duplex homes) to contact the HOCC prior to excavation to avoid the risk, cost, and inconvenience of damaging telecommunications infrastructure, water pipelines, and electric or gas lines.

In addition, Hawaiian Telcom stands in support of the amendment offered by Public Utilities Commission, which requests that the language on page 2, lines 14-16, be removed from the measure.

Thank you for the opportunity to submit testimony in support of House Bill 2110.

¹ Section 269E-4, Hawaii Revised Statutes

LATE

HB-2110

Submitted on: 2/15/2022 6:11:00 PM

Testimony for CPC on 2/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Greg Thielen	Individual	Oppose	No

Comments:

Dear Chair Johanson, Vice Chair Kitagawa and Members of the Committee,

My name is Greg Thielen and I am submitting testimony in **STRONG OPPOSITION** to HB2110. The intention of the bill is to extend the use of pre-excavation notification and utility location on to private residential property. As a builder with over 30 years experience I am a strong supporter of the One-Call Center and use the 811 hotline to protect **PUBLIC** utilities when excavating off property. Mandating this same procedure for on property excavations is a gross overreach of the original intent of this law and completely impractical. Anytime someone builds a fence, anytime someone plants a tree or anytime someone does a remodeling project, they will have contact 811. The volume of calls, if anyone follows this law, would be a hundredfold greater.

It is also deeply concerning that the author(s) of this bill cleverly concealed this language by changing the wording of the definition of what is "excluded" from the definition of "excavation". had this bill attempted this by stating in the positive what would be required, it would have met with much more pronounced opposition.