

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
JANUARY 25, 2012

MEASURE: H.B. No. 1879

TITLE: RELATING TO THE ONE CALL CENTER

Chair Herkes 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.

THE GAS COMPANY

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

January 24, 2012

Testimony To: House Committee on Consumer Protection and Commerce
Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice Chair
Members of the Committee

Presented By: Stephanie Ackerman
Vice President Public Policy and Communications

Measure: H.B. 1879
Title: Relating to the One Call Center

Chair Herkes and Members of the Committee:

I am Stephanie Ackerman, Vice President of the Gas Company. The Gas Company strongly opposes this measure because it jeopardizes the safety of the public.

The Gas Company has been in business since 1904 providing safe, efficient and reliable gas service to Hawaii's homes and businesses. We distribute gas to over 35,000 utility customers statewide through more than 1,000 miles of underground gas pipelines.

Gas pipeline safety is tremendously important throughout Hawaii and throughout the nation. There are well established best practices to ensure our communities remain safe and it is important that these best practices are continually reinforced and not weakened over time.

Hawaii has an established One-Call prevention program requiring third party excavators to notify the center at no cost at least 24 hours prior to excavation. The One-Call center then contacts the utility companies so they can locate their infrastructure and prevent unintended damage. If third parties do not contact One-Call they can be liable for damages.

All stakeholders must recognize that safety is shared responsibility and by allowing some to circumvent the One-Call system, we would be needlessly introducing risk to the people of Hawaii.

Since 2009, our records confirm two pipeline breaks by pest control operators. In addition, third parties who failed to contact the Hawaii One-Call Center before digging underground accounted for 163 pipeline leaks in 2009-2010 that could have been avoided.

Safety is our number one priority, and we must follow best practices established by Pipeline and Hazardous Materials Safety Administration (PHMSA) to ensure the safety of Hawaii's citizens.

We ask that the exemption be allowed to expire so that every business that performs excavations in its operations regardless of frequency, develop safe practices and be required to contact the One Call Center to first verify that it is safe to do so.

Thank you for allowing me to testify on H.B. 1879.

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 HB 1879, 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 every instance of excavation.

The PIPES Act of 2006 placed strong emphasis on addressing and improving state damage prevention programs. The Federal Department of Transportation, Pipeline and Hazardous Materials Safety

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."

"There is one thing that we need to nix across the board and that is exceptions to the one call laws..."

Ms. Quarterman's comments reflect the position of PHMSA.

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.



HAWAII PEST CONTROL ASSOCIATION

Century Square – 1188 Bishop St., Ste. 1003*Honolulu, HI 96813-3304

Telephone (808) 533-6404 • Fax (808) 533-2739

January 25, 2012

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 1879 – RELATING TO THE ONE CALL CENTER

Support

Chair Herkes 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.