

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

MARCH 12, 2012

MEASURE: S.B. No. 2432, S.D. 1
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, except for pest control activities performed under contract with state or county agencies. This exemption would now last through June 30, 2014. Exempt pest control operators would also now have to participate in compulsory training on how to minimize excavation-related risks to property. Finally, the Commission would have to investigate the risks of residential pest control activities and report its findings prior to the start of the 2014 legislative session.

POSITION:

The Commission would like to offer the following comments for the Committee's consideration.

COMMENTS:

To comply with federal law (Minimum standards for State one-call notification programs¹), and to address the concerns of the Hawaii Pest Control Association and The Gas Company, the Commission does have the authority to issue binding interpretations or declaratory rulings to assess, rank, and take into consideration the risks to public safety, the environment, excavators, and vital public services associated

¹ 49 U.S.C. § 6103 (1998).

with activities of different types of excavators. The issuance of a declaratory ruling can help to resolve the issue being raised in this legislation and can help the State comply with federal law regarding one call center operations, whereas a statutory exemption may not be in compliance with the federal law.

On March 9, 2012, the Commission issued the opening order to begin its investigation under HRS § 269E-3(4) to assess and evaluate the general risks caused by pest control operator activities with respect to damage caused by that industry to underground facilities ("Investigation"). Anyone wishing to intervene in this docket must file a motion to intervene within twenty days after the issuance of the opening order. The Commission believes it can conclude its investigation by the end of this legislative session if no motions to intervene are filed and interested parties participate through filed comments. Therefore, should this Committee decide to continue to move this measure forward, the Commission requests that a new defective date be considered to allow as much time as possible for the Commission to conclude its Investigation.

The Committee may review the order initiating the Investigation by visiting the Document Management System located on the Commission's website at <http://dms.puc.hawaii.gov/dms/index.jsp>.

Thank you for the opportunity to testify on this measure.



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March 12, 2012

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

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 2432, SD 1 – RELATING TO THE ONE CALL CENTER

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.

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.

As deliberations on this bill have progressed we think S.D. 1 represents a viable and fair solution to this matter.

Based on the above, we believe that our exemption from this activity is merited for another two (2) years while we work with the utilities in an effort to further educate pest control operators about potential breaks in lines and while they perform a risk-cost benefit evaluation and possible further action in 2014.

We support this bill.

Thank you.