

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

TO THE
HOUSE COMMITTEE ON
JUDICIARY AND HAWAIIAN AFFAIRS

April 5, 2022
2:00 p.m.

Chair Nakashima and Members of the Committee:

MEASURE: S.B. No. 3078 SD1 HD1

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. Effective 1/1/2050. (HD1)

POSITION:

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

COMMENTS:

The Public Utilities Commission (“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.

In addition, the Commission previously conferred with the Hawaii Pest Control Association and supported amendments to this bill to 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. These amendments were incorporated into the current SD 1 version of this measure.

The Commission respectfully requests your consideration and passage of this measure.

Thank you for the opportunity to testify.



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April 5, 2022

Testimony To: House Committee on Judiciary
Representative Mark Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 3078, SD 1– RELATING TO ADVANCE WARNING FOR EXCAVATION.

Chair Nakashima, Vice Chair Matayoshi 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 as amended.

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.

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 have recently been advised that there were two (2) pipe breaks (out of 7000 jobs for the year) for 2021. It should be noted that PUC stated, in their Order #31225 that the incident rate was 0.00001388 for pipe breaks. In all cases there were no injuries and the pest control operator paid for the damages and repairs.

Based on the above, we respectfully request this Committee's support of this bill.

Thank you.