

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

TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

March 16, 2022
2:00 p.m.

Chair Johanson and Members of the Committee:

MEASURE: S.B. No. 3078 SD1

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. (SD1)

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.

SB-3078-SD-1

Submitted on: 3/14/2022 4:39:15 PM

Testimony for CPC on 3/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Baraquio	Able Pest Management LLC	Support	Written Testimony Only

Comments:

We support HPCA's testimony (attached)

16 March 2022

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

Presented By: Jonathan Montalbo, President
Aloha Termite & Pest Control

Subject: S.B. No. 3078 S.D. 1 – A Bill for An Act Relating to Advance
Warning for Excavation

Aloha Chair Johanson, Vice Chair Kitagawa, and Committee Members,

My name is Jonathan Montalbo. I am President of Aloha Termite & Pest Control, providing pest control services to all the Hawaiian Islands. I am also the Chairman for the Hawaii Pest Control Board. I am in support of subject bill.

Aloha Termite & Pest Control understands the importance of safety to consumers, the public, the environment, and to employees. The Hawaii One Call Center is an excellent tool for maintaining excavation type safety in our communities. Unfortunately, when subject bill was first enacted, pest control operators who conducted synthetic treatments around the perimeters of residential structures fell under the then definition of an "excavator." Over time and the passage of various Acts, pest control operators were provided temporary exemptions from the bill and general compliance with the One Call Center chapter.

Pest control operators who conduct liquid treatments around perimeters of residential structures, may trench two to four inches. Pest control operators' trenching of two to four inches originally fell under the definition of "excavation" as determined in the original statute. As I understand it, the bill has been presented to you now in an effort to modernize the statute and to permanently clarify the exemptions to said bill. Specifically, the term "excavation" is revised in order to exclude the activities of pest control operators.

I am writing to respectfully request the Committee's full support of this revision to the bill.

Mahalo for Your Time,



Jonathan Montalbo
President



HAWAII PEST CONTROL ASSOCIATION

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

Ph: (808) 533-6404**Fax: (808) 533-2739

March 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: S.B. 3078, SD 1– 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.

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.



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

Wednesday, March 16, 2022

2:00 PM

VIA Video Conference

Conference Room 329, Hawaii State Capitol

SB 3078 SD1

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

Hawaii Gas **supports SB 3078 SD1**, 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 SB 3078.

Thank you for the opportunity to testify.

Written Statement of
Steven Golden
Vice President – External Affairs

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

March 16, 2022 2:00 PM
State Capitol, Conference Room 329, Videoconference

SUPPORT FOR:

S.B. NO. 3078 SD1 RELATING TO ADVANCE WARNING FOR EXCAVATION

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

Re: Testimony in support of SB 3078 SD1

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

Thank you for this opportunity to submit testimony in support of Senate Bill 3078 SD1. 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 and 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.

Thank you for the opportunity to submit testimony in support of Senate Bill 3078 SD1.

¹ Section 269E-4, Hawaii Revised Statutes

March 16, 2022

**The Honorable:
Representative Aaron Ling Johanson
Chair, House Committee on Consumer Protection and Commerce**

Subject: SB3078, SD Relating to Advance Warning for Excavation

My name is Roy Maeda, I am the President of Xtermco Inc.. I have been in the Pest and Termite profession for 47 years.

I sincerely believe that the Pest / Termite Industry should be exempt from the mandatory advance warning for excavation.

Trenching for control of subterranean termites is an essential standard operating procedure to create a protective termite barrier around a structure. This is conducted by using hand tools carefully scraping away the top soil layer immediately adjacent to the slab or footing block foundation.

The Formosan Termite is relentless in attacking a home 24 hours / 7 days a week. Significant damage can be sustained within 2 to 5 days by a major colony.

Thank you for your time and hope for your kind consideration for the exemption.

**Sincerely,
Xtermco Inc.**

Roy I. Maeda - President

SB-3078-SD-1

Submitted on: 3/14/2022 8:04:43 PM

Testimony for CPC on 3/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Russo	Individual	Oppose	Written Testimony Only

Comments:

I am a professional expert in this field. I am a Board Certified Entomologist, a Licensed Pest Control Operator and have worked around the pest control industry for over 10 years.

The structural pest control industry should be added as an exempt industry to this bill. In our industry, the evacuation that we do:

Installing bait stations. These stations are approximately 8" in length and should not contact any submerged pipes or gas lines as these should be located 12" below grade.

Trenches for the application of termiticide: These trenchers are either 6" deep or 4" deep depending on the product.

More importantly, the delay of 5 or more days will cost homeowners significant amounts of money in terms of damage to their homes. In that amount of time the common species of ground termite in Hawaii, *C. formosanus*, could completely consume roughly 1/5 of a 2x4 piece of wood. Homeowners would always be left in a position of waiting for someone to mark their homes while knowing their homes were being actively damaged. In terms of resources, my company alone installs over 50 bait stations or trench operations per week. During the last year only two incidents where gas lines, both of which were less than the required 12" below grade, were contacted.

SB-3078-SD-1

Submitted on: 3/15/2022 11:44:34 AM

Testimony for CPC on 3/16/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bryan	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to this bill.