

Honolulu, Hawaii

Feb 10, 2010

RE: H.B. No. 1927
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 1927 entitled:

"A BILL FOR AN ACT RELATING TO OWNER-BUILDERS,"

begs leave to report as follows:

The purpose of this bill is to improve the Owner-Builder Law, which exempts property owners and lessees from contractor licensing requirements for structures they build or improve for their own use. Specifically, this bill:

- (1) Allows owner-builders to sell or lease the property prior to the expiration of the one-year prohibition period following completion of the project in the event of an unforeseen hardship, as determined by the Contractors License Board (Board);
- (2) Exempts from the one-year prohibition period:
 - (A) Improvements with an aggregate value of under \$10,000; and
 - (B) Lenders and mortgagees taking title to property through a non-judicial foreclosure;
- (3) Provides a rebuttable presumption that an owner or lessee is in violation when obtaining an exemption from



certain licensing requirements more than once in five years; and

- (4) Defines when a project is completed for purposes of the Owner-Builder Law.

This bill also increases the "handyman exemption" to exclude from contractor licensing requirements, projects or operations with an aggregate contract price of up to \$2,000, rather than the \$1,000 ceiling under current law.

The Hawaii Island Board of Realtors testified in support of this bill. The Hawaii Association of REALTORS supported the intent of this measure. The Subcontractors Association of Hawaii, Painting and Decorating Contractors Association of Hawaii, Plumbing and Mechanical Contractors Association of Hawaii, and a concerned individual opposed this bill. The Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs, the Board, Building Industry Association of Hawaii, and a concerned individual provided comments.

The contractor licensing law under Chapter 444, Hawaii Revised Statutes, protects the public from the potential dangers of unlicensed contracting activity. This law includes a limited exemption for those who build or improve structures for their own use and who, at the time the exemption is obtained, do not intend to sell or lease the property. The law presumes that an owner-builder violates the terms of the exemption when the property is sold, leased, or offered for sale or lease up to one year after completion of the project.

Your Committee finds there may be instances when owner-builders may need to unexpectedly sell or lease their properties earlier than the one-year period following project completion, particularly in today's faltering economy. This bill attempts to assist owner-builders facing financial or other compelling, unforeseen hardships, while applying safeguards to prevent uses of the owner-builder exemption that circumvent contractor licensing requirements.

Your Committee has amended this bill by:

- (1) Specifying that the exemption from the one-year prohibition period on property sales and leases for improvements under \$10,000 applies to construction or improvements performed pursuant to an approved building



permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000;

- (2) Eliminating the exemption from the one-year prohibition period for lenders and mortgagees taking title to property through a non-judicial foreclosure;
- (3) With regard to sales or leases of the property prior to the expiration of the one-year prohibition period:
 - (A) Providing that an alleged unforeseen hardship is ineligible if the Board determines that the construction or improvement was undertaken for the purpose of sale or lease;
 - (B) Specifying the requirements for owners to apply to the Board for an unforeseen hardship exemption, including the requirement that the application be made prior to the owner's selling, leasing, or offering to sell or lease the property; and
 - (C) Requiring the Board to communicate its determination to the owner within 90 days of receiving the application;
- (4) Providing that the rebuttable presumption that an owner or lessee is in violation applies when the owner or lessee obtains an exemption from certain licensing requirements more than once in two, rather than five, years;
- (5) Redefining "completion" of a project under the Owner-Builder Law to mean the date of final inspection approval by the county;
- (6) Eliminating all amendments to the handyman exemption provisions;
- (7) Imposing fines for failure of an owner-builder to comply with the requirements set forth in the disclosure statement provided by the counties to explain the qualifications for the owner-builder exemption. In addition to the qualifications specific to the owner-builder statute under state law, these requirements include compliance with all applicable laws, ordinances,



building codes, zoning regulations, and workers' compensation and tax withholding requirements for employees working on the project;

- (8) Changing the effective date to January 1, 2011; and
- (9) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1927, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1927, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



