

NEIL ABERCROMBIE
GOVERNOR

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STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
DIRECTOR

JO ANN UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

MONDAY, FEBRUARY 25, 2013
2:30 P.M.

TESTIMONY ON HOUSE BILL NO. 846 H.D.1
RELATING TO THE OWNER-BUILDER EXEMPTION

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 846 H.D.1, Relating to the Owner-Builder Exemption. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department strongly supports this Administration bill, subject to certain amendments contained in the attached proposed H.D.2.

House Bill No. 846 H.D.1 amends chapter 444, Hawaii Revised Statutes ("HRS") to clarify the responsibilities of owner-builders and increase fine amounts

for non-compliance with owner-builder requirements. House Bill No. 846 H.D.1 also: (1) specifies that an owner-builder is not eligible to recover from the Contractors' Recovery Fund; (2) provides that the owner-builder exemption does not apply to agricultural buildings or structures that do not require a building permit or are exempt from the building code; (3) clarifies when a licensed contractor must provide certain disclosures to the homeowner; and (4) adds a fee structure to fund processing of applications and field investigations.

RICO has had the opportunity to work with various interested parties on a Senate Draft 1 for the companion bill, Senate Bill No. 1077. As a result, the attached proposed H.D.2 for House Bill No. 846 H.D.1 includes language, proposed by the Contractors' Board and supported by RICO, specifying that an owner-builder is not eligible to recover from the Contractors' Recovery Fund; language resulting from discussions with the Subcontractors Association of Hawaii clarifying when a licensed contractor must provide certain disclosures to the homeowner; and language that attempts to address concerns raised by the Hawaii Farm Bureau, by clarifying that the owner-builder exemption does not apply to agricultural structures that do not require a building permit or are exempt from the building code.

However, RICO has concerns with House Bill No. 846 H.D.1 to the extent that the bill now adds a blank fee amount to fund application processing and field investigations. It is unclear from the bill's language who or what entity will collect the fee and how the fee will be administered. Moreover, if the fee is intended to assist with RICO field investigations, the extent of the bill's impact on existing

RICO investigative resources is unknown and, therefore, any request to impose additional fees is premature at the present time.

Owner-builders often obtain owner-builder permits without full knowledge of the responsibilities and risks they assume. The attached proposed H.D.2 sets forth the requirements for owner-builders so that owner-builders will know exactly what is required of them and incorporates language previously agreed upon with various industry stakeholders.

Thank you for the opportunity to testify on House Bill No. 846 H.D.1. I will be happy to answer any questions the Committee members may have.

A BILL FOR AN ACT

RELATING TO THE OWNER-BUILDER EXEMPTION FROM CHAPTER 444, HAWAII
REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In the State of Hawaii, a contractor's license
2 is required to obtain a building permit from the various
3 counties, unless the applicant is an owner-builder. The owner-
4 builder exemption allows owners to perform their own home
5 improvements and construction. As an "owner-builder", an owner
6 can hire employees and contract directly with subcontractors to
7 construct improvements on their property. However, as an
8 "owner-builder", an owner also takes on all of the
9 responsibilities associated with acting as a general contractor,
10 including compliance with building codes, occupational safety
11 and health regulations, wage standards, taxes, and the like.

12 Oftentimes, owners are advised by unlicensed contractors to
13 obtain an owner-builder permit so that the owner can hire or
14 contract with an unlicensed person. Too often, owners are not
15 fully aware of the risks and responsibilities they have assumed
16 until it is too late.

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 The purpose of this Act is to limit the application of the
2 owner-builder exemption to residential or farm property only, to
3 improve the ability of the regulated industries complaints
4 office to investigate possible violations of the owner-builder
5 law, and to offer additional disclosures for owner-builders when
6 they enter into agreements with licensed subcontractors.

7 SECTION 2. Section 444-2.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "(a) This chapter shall not apply to owners or lessees of
10 property who build or improve residential~~[r]~~ or farm~~[r]~~
11 ~~industrial, or commercial]~~ buildings or structures on property
12 for their own use, or for use by their grandparents, parents,
13 siblings, or children and who do not offer the buildings or
14 structures for sale or lease; provided that:

15 (1) To qualify for an exemption under this section, the
16 owner or lessee shall register for the exemption as
17 provided in section 444-9.1; ~~[and]~~

18 (2) The exemption under this section shall not apply to
19 electrical or plumbing work that must be performed
20 only by persons or entities licensed in accordance
21 with this chapter, unless the owner or lessee of the

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 property is licensed for such work under chapter
2 448E~~[]~~;

3 (3) An owner or lessee exempted under this section shall:

4 (A) Supervise the construction activity on the exempt
5 buildings or structures;

6 (B) Hire subcontractors appropriately licensed under
7 this chapter to perform all or part of the
8 construction activity;

9 (C) Ensure that any electrical or plumbing work is
10 performed by persons and entities appropriately
11 licensed under this chapter or chapter 448E;

12 (D) Deduct Federal Insurance Contributions Act and
13 withholding taxes, and provide workers'
14 compensation insurance for persons working on the
15 construction activity who are not licensed under
16 this chapter or chapter 448E and who shall be
17 considered employees of the owner or lessee; and

18 (E) Ensure that the construction activity complies
19 with all applicable laws, ordinances, building
20 codes, and zoning regulations.

21 (4) Until completion of the construction activity, an
22 owner or lessee exempted under this section shall make

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 available the following records for immediate
2 inspection upon request by the department:
3 (A) A copy of the building permit application;
4 (B) A copy of the issued building permit;
5 (C) Copies of all contracts with the names of all
6 persons who performed or are performing work on
7 the exempt buildings and structures; and
8 (D) Proof of payment to all persons contracted to
9 work on the exempt buildings and structures; and
10 (5) Upon completion of the construction activity, an owner
11 or lessee exempted under this section shall keep and
12 maintain the records identified in paragraph (4) for a
13 period of three years from completion of the
14 construction activity and shall make such records
15 available for inspection within seven business days
16 upon request by the department."

17 (b) Proof of the sale or lease, or offering for sale or
18 lease, of the structure within one year after completion shall
19 be prima facie evidence that the construction or improvement of
20 the structure was undertaken for the purpose of sale or lease;
21 provided that this subsection shall not apply to:

H.B. NO. 846 H.D.1

PROPOSED H.D.2

- 1 (1) Residential properties sold or leased to employees of
2 the owner or lessee;
- 3 (2) Construction or improvements performed pursuant to an
4 approved building permit where the estimated valuation
5 of work to be performed, as reflected in the building
6 permit, is less than \$10,000; or
- 7 (3) Any sale or lease caused by an eligible unforeseen
8 hardship as determined by the board pursuant to
9 subsection (c).
- 10 (c) The board shall determine the eligibility of an
11 unforeseen hardship claimed by an owner under subsection (b);
12 provided that an alleged unforeseen hardship shall not be deemed
13 eligible if the board determines that the construction or
14 improvement of the structure was undertaken for the purpose of
15 sale or lease. An exemption for an unforeseen hardship shall
16 not be denied solely because of lack of completion, as the term
17 is defined in subsection (e). An owner seeking a determination
18 of eligibility of an unforeseen hardship shall:
- 19 (1) Be in compliance with the requirements set forth in
20 the disclosure statement required to be provided under
21 section 444-9.1; and

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 (2) Submit a written application to the board at any time
2 prior to selling, leasing, or offering to sell or
3 lease the property describing the nature of the
4 applicant's unforeseen hardship. The application
5 shall include supporting documentation detailing the
6 hardship, such as:

7 (A) Evidence of receipt of unemployment compensation;

8 (B) Tax returns;

9 (C) Medical records;

10 (D) Bank statements;

11 (E) Divorce decrees ordering sale of property;

12 (F) Mortgage default letters; or

13 (G) Bankruptcy filings.

14 The board shall communicate its determination to the owner in
15 writing within ninety days of receiving a completed application
16 under this subsection.

17 (d) Any owner or lessee of property found to have violated
18 this section shall not be permitted to engage in any activities
19 pursuant to this section or to register under section 444-9.1
20 for a period of three years. There is a rebuttable presumption
21 that an owner or lessee has violated this section, when the

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 owner or lessee obtains an exemption from the licensing
2 requirements of section 444-9 more than once in two years.

3 (e) For the purposes of this section, "completion" means
4 the date of final inspection approval by the county.

5 (f) An owner or lessee exempted under this section shall
6 not be eligible to recover from the contractors recovery fund.

7 (g) This section shall not apply to agricultural
8 buildings, structures, or appurtenances thereto that do not
9 require a building permit or are exempted from the building
10 code."

11 SECTION 3. Section 444-23, Hawaii Revised Statutes, is
12 amended by amending subsection (e) to read as follows:

13 "(e) Any person who violates section 444-2.5 [~~or fails to~~
14 ~~comply with the requirements set forth in the disclosure~~
15 ~~statement required to be provided under section 444-9.1]~~ shall
16 be fined:

17 (1) \$5,000 or [~~forty~~] fifty per cent of the [~~appraised~~
18 value of the [~~building~~] construction or improvement as
19 [~~determined by the county tax appraiser,~~] indicated on
20 the building permit application, whichever is greater,
21 for the first offense; and

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 (2) \$10,000 or [~~fifty~~] sixty per cent of the [~~appraised~~]
2 value of the [~~building~~] construction or improvement as
3 ~~[determined by the county tax appraiser,]~~ indicated on
4 the building permit application, whichever is greater,
5 for any subsequent offenses."

6 SECTION 4. Section 444-25.5, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (a) to read:

9 "(a) Prior to entering into a contract with a homeowner or
10 at the time a homeowner signs a contract involving home
11 construction or improvements [~~and prior to the application for a~~
12 ~~building permit~~], licensed contractors shall:

13 (1) Explain verbally in detail to the homeowner all lien
14 rights of all parties performing under the contract
15 including the homeowner, the contractor, any
16 subcontractor, or any materialman supplying
17 commodities or labor on the project;

18 (2) Explain verbally in detail the homeowner's option to
19 demand bonding on the project, how the bond would
20 protect the homeowner, and the approximate expense of
21 the bond; and

H.B. NO. 846 H.D.1

PROPOSED H.D.2

1 (3) Disclose all information pertaining to the contract
2 and its performance and any other relevant information
3 that the board may require by rule."

4 2. By amending subsection (c) to read:

5 "(c) For the purpose of this section, "homeowner" means
6 the owner or lessee of residential real property, including
7 owners or lessees of condominium or cooperative units~~(-)~~,
8 notwithstanding owner-builder status."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act, upon its approval, shall take effect
12 on July 1, 2013.

13

14

INTRODUCED BY: _____

15

BY REQUEST

H.B. NO. 846 H.D.1

PROPOSED H.D.2

Report Title:

Owner-Builder Exemption; Responsibilities of and Protections for Owner-Builders; Fines

Description:

Sets forth specific responsibilities of and protections for owner-builders exempted under chapter 444, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Monday, February 25, 2013
2:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 846, H.D. 1, RELATING TO THE OWNER-
BUILDER EXEMPTION.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Peter Lee, and I am the Legislation Committee Chair of the Contractors License Board ("Board"). Thank you for the opportunity to testify on House Bill No. 846, H.D. 1, Relating to the Owner-Builder Exemption.

The Board supports this bill, as it will enhance the Regulated Industries Complaints Office's ("RICO") ability to monitor and prosecute violations involving owner-builder construction projects. Often, owner-builder permits are used as a vehicle for unlicensed contracting activity. The Board feels that this bill will assist RICO in investigating such violations, as well as offer additional protection to the owner-builder by means of disclosure requirements.

Thank you for the opportunity to provide testimony on House Bill No. 846, H.D. 1.



Testimony of Cindy McMillan
The Pacific Resource Partnership

House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

HB 846, HD1 – RELATING TO THE OWNER-BUILDER EXEMPTION
Monday, February 25, 2013
2:30 p.m.
State Capitol – Conference Room 325

Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **supports** HB 846, HD1, which sets forth specific responsibilities of and protections for owner-builders exempted under contractor licensing laws. This measure establishes a filing fee to fund the processing of applications and field investigations regarding the owner-builder scheme.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii’s Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry’s high unemployment, many homeowners are choosing to be their own contractors.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

February 25, 2013

Testimony Supporting HB846, HD1 – Relating to Owner-Builder Exemption

Page 2

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site. However, many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

Hiring of unlicensed contractors result in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For these reasons, PRP respectfully asks for your support on HB 846, HD1. Thank you for the opportunity to share our views on this important initiative with you.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Complete Construction Services Corp.

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Ryan Engle

Bays Lung Rose & Holma

Scotty Anderson

Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Consumer Protection and Commerce

Monday, February 25, 2013

2:30 p.m.

Capitol, Room 325

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly supports** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry's high unemployment, many homeowners are choosing to be their own contractors under Chapter 444-2.5.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction: OSHA, EPA, taxes, insurance, etc. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site. However, Many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For the preceding reasons, BIA-Hawaii **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.



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February 25, 2013

Honorable Representative Angus McKelvey, Chair
Committee on Consumer Protection and Commerce
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

Subject: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

My name is Dean Uchida and I am a Director with BIA-Hawaii and the current Chair of the Government Relations Committee. I **strongly support** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction: OSHA, EPA, taxes, insurance, etc. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site. However, many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

February 25, 2013

BIA has been working on the proposed changes to the Owner-Builder section of the statutes since last year. We have been working with DCCA on preparing appropriated changes to the existing law to allow for better education and enforcement of the existing owner-builder law.

BIA made a presentation to the County Building Department representatives at the State Building Code Council meeting. We emphasized that the changes to the statute were to tighten up the existing owner-builder law so owner-builders are aware of their duties and responsibilities when they sign for an owner-builder permit. At that time, the State Building Code council suggested that we meet with the Farm Bureau because of legislation that was passed last year (Act 114) exempting certain farm structures from the building permit requirements.

BIA met with the Farm Bureau representative and was informed about the exemption bill that was passed last session. At the time, they didn't think there would be any problem with the language of the bill BIA and DCCA had worked on. The bill was submitted by DCCA as part of the administrations package of bills.

The Senate recently had a hearing on the bill where the Farm Bureau testified in opposition to what was being proposed. The Senate deferred action to allow BIA and the Farm Bureau to work out the differences in the language.

Since that time, BIA has met and exchanged e-mails with the Farm Bureau and DCCA in the hopes of developing language that is agreeable to all parties. DCCA inserted language into the original version of the bill that clarified that the owner-builder section would not apply to the exemptions granted in Act 114 for agricultural buildings, structures, or appurtenances thereto that do not require a building permit or are exempt from the building code.

Through the discussions with the Farm Bureau, we were made aware of the fact that Act 114 granted exemptions from the building permit and building code for only certain structures. Therefore, the Farm Bureau wanted to make sure that if a farmer wanted to build their own single family residence as an owner-builder, the owner-builder exemption was still available to them. As drafted, the owner-builder exemption is still available for those structures not exempted under Act 114.

Although the revised language now does not interfere with the exemptions granted in Act 114, it appears that the Farm Bureau still wants a change to the owner-builder statute to effectively clarify the exemptions from Act 114. Their proposal would exempt agricultural buildings, structures, or appurtenances thereto that do not require a building permit or are exempt from the building code as provided in Act 114 from all of Chapter 444 HRS. If the Farm Bureau wants to make that clarification for Act 114, we believe they need to have that discussion in a separate bill and not have it included in the BIA-DCCA bill to clarify the owner-builder section of the statute.

Furthermore, the changes proposed by the Farm Bureau were not part of our original bill and therefore not vetted with the Counties. We believe that discussion should occur between the Farm Bureau and the Counties and not be included in this bill.

February 25, 2013

For the preceding reasons, I **strongly support** H.B. 846, H.D.1. Thank you for the opportunity to testify on this matter.



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February 24, 2013

Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 25, 2013
2:30 p.m.
Capitol, Room 325

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

I am Greg Thielen, President and RME of Complete Construction Services. I am a Small Business Owner and have over 20 years experience in the Construction Industry. I am also the 2013 President of BIA Hawaii.

I am here to strongly support HB846. I have been working in the construction industry in Hawaii for my whole life. I have seen a destructive evolution occur in our industry over the last 30 years. There was a time when a side job was just that. A way for a tradesman to pick up a few extra dollars doing weekend work. Today we have individuals acting as full time cash contractors without a license. These individuals encourage home owners to pull permits as Owner Builders and to hire them to perform the work. Owners are often happy to do so as the unlicensed cash contractor can offer substantially lower prices. Since that is the case, who is the victim?

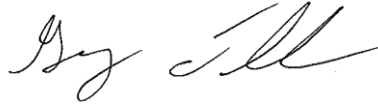
The owner is in many cases an accessory, but they can also be a victim. Since they are not an expert in monitoring construction they can unwittingly be the victim of shoddy workmanship. More importantly the State of Hawaii is a victim in lost revenue that cash contractors don't pay. This includes GET as well as income tax lost in cash wage transactions. Most importantly the workers are the victims. They are working without State mandated benefits including workers compensation insurance, health insurance, TDI and unemployment insurance. The simple fact is that the abuse of the Owner/Builder exemption profits a few, while hurting many.

So how big is the problem? For the last two years in the C&C of Honolulu there have been approximately 2,600 permits/ year with an estimated value of approximately 130 Million Dollars per year. Keep in mind these estimate values are commonly understated to reduce permit fees.

In addition to strongly supporting HB846 I also support an amendment to add a fee structure to fund the review and field investigation process. The fee should not be punitive to the small scale honest owner builder, but it is critical to provide this component. Without it the DCCA will be unable to keep up with the processing of the permits and investigating owner builder compliance.

Thank you for the opportunity to provide this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Thielen". The signature is fluid and cursive, with a large initial "G" and "T".

Greg Thielen
President/RME

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Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

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Uploaded via Capitol Website

February 25, 2013

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **SUPPORT OF H.B. 846, HD1, RELATING TO OWNER-BUILDER EXEMPTION.** Sets forth specific responsibilities of and protections for owner-builders exempted under contractor licensing laws. Establishes a filing fee to fund the processing of applications and field investigations regarding the owner-builder scheme. Effective July 1, 2013. (HB846 HD1)

HEARING

DATE: Monday, February 25, 2013
TIME: 2:30 p.m.
PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA supports the intent of H.B. 846, HD1, Relating to the Owner-Builder Exemption, as it intends to further clarify the requirements under Chapter 444, Hawaii Revised Statutes. The purpose of this bill is to limit the application of the owner-builder exemption to residential and agricultural property only, to improve the ability of the regulated industries complaints office to investigate possible violations of the owner-builder law, and to offer additional disclosures for owner-builders when they enter into agreements with licensed subcontractors.

While GCA supports the intent, **GCA has some concerns with the removal of the applicability of commercial and industrial owner builder exemption** because there seems to be little suggesting that there has been a problem with such use. It would be of interest to know whether the use of the owner builder exemption is occasionally used by commercial or industrial owners, and if no problems exist, why the need to eliminate the use of such? The GCA is concerned that an owner may want to build out their own office space, while using the owner builder exemption. The justification sheet indicates that because commercial or industrial buildings impacts the public, thus the exemption should not be permitted. However, there is

concern that there may be unintended consequences especially for the small number of owners that properly utilize this exemption without any problems.

Currently, owners or lessees of real property may qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law in chapter 444, HRS, if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease. Owners or lessees who seek to qualify for an owner builder exemption must register for the exemption and sign a disclosure statement that sets forth the responsibilities of the owner-builder. This bill proposes to increase fines for any violations and require additional record-keeping for any homeowner claiming the exemption. Additionally, this bill hopes to curb any abuse by contractors who may utilize the exemption beyond its intended use.

Thank you for the opportunity to present our views on this bill.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ♦ Fax: (808) 533-2739

February 25, 2013

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons
President

Subject: H.B. 846, HD 1 – RELATING TO OWNER-BUILDER EXEMPTION

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support this bill.

The Subcontractors Association of Hawaii is composed of the following nine separate and distinct subcontracting organizations which include:

HAWAII FLOORING ASSOCIATION
ROOFING CONTRACTORS ASSOCIATION OF HAWAII
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION
TILE CONTRACTORS PROMOTIONAL PROGRAM
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII
PAINTING AND DECORATING CONTRACTORS ASSOCIATION
PACIFIC INSULATION CONTRACTORS ASSOCIATION
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

Owner-builders are a huge source of unlicensed contracting activity. Sometimes knowingly, sometimes unknowingly. We feel that this bill will go a long way towards protecting owner-builders who are on the unknowing side; those that need protection from individuals potentially being classified as employees and the failure of the owner-builder to have the proper insurance meaning payment out of pocket.

We would however like to suggest an amendment to Section 4 appearing on page 4, which amends Section 444-25.5 regarding the disclosure. This has to do with information that the contractor must provide to the owner letting them know about the lien rights of all parties. The language is very explicit. The disclosure must be given prior to entering into a contract. The truth of the matter is that this disclosure is generally provided after a contract is signed. Therefore, we would recommend that Subsection (a) be amended to read, "Prior to entering into a contract or at the time of entering into a contract with a homeowner involving home construction or home improvements, licensed contractors shall...".

We realize this is rather "picky" but we do recall a case where a contractor was cited for getting the Disclosure of Lien Rights signed after they had the contract signed. We believe that our amendment will take care of that language and still preserve the intent of protecting the consumer by offering them this information about lien rights.

Based on the above, we concur with this bill as amended and recommend your adoption.

Thank you.



HAWAII ISLAND CONTRACTORS' ASSOCIATION

494-C Kalanikoa Street * Hilo, Hawaii 96720 * Phone: 808/935-1316 * Fax: 808/934-7779 * Email: hical@hawaiiantel.net

Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 25, 2013
2:30 p.m.
Capitol, Room 325

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

The Hawaii Island Contractors Association, **strongly supports** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry's high unemployment, many homeowners are choosing to be their own contractors under Chapter 444-2.5.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction: OSHA, EPA, taxes, insurance, etc. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site.

12/12/12

However, many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For the preceding reasons, The Hawaii Island Contractors Association **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.

Sincerely,



Craig S. Takamine
Hawaii Island Contractors Association President 2012-2013



**Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 25, 2013
2:30 p.m.
Capitol, Room 325**

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

BKA Builders Inc. **strongly supports** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry's high unemployment, many homeowners are choosing to be their own contractors under Chapter 444-2.5.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction: OSHA, EPA, taxes, insurance, etc. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site. However, many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For the preceding reasons, BKA Builders Inc. **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.

**William C. Loeffler Construction, Inc.
1451 Kinoole Street, Hilo, HI 96720
License # AC-18017**

**Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 25, 2013
2:30 p.m.
Capitol, Room 325**

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

Loeffler Construction, **strongly supports** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry's high unemployment, many homeowners are choosing to be their own contractors under Chapter 444-2.5.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction.

An owner-builder becomes the general contractor responsible for compliance with the regulations of federal, state, and county laws that govern construction: OSHA, EPA, taxes, insurance, etc. Violations of these regulations result in heavy fines levied by the respective agencies. The owner-builder is also liable for all persons who enter their project site. However, Many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with an unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For the preceding reasons, Loeffler Construction **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.



Alan Shintani Inc.
GENERAL CONTRACTOR BC 13068

February 25, 2013

Testimony to the House Committee on Consumer Protection and Commerce
Monday February 25, 2013, 2:30 pm
State Capitol, Room 325

RE: Support of H.B. 846 H.D.1, Relating to the Owner-Builder Exemption

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

Alan Shintani, Inc. **strongly supports** H.B. 846 H.D.1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

Currently, Chapter 444 – 2.5, HRS, allows owners or lessees of real property to qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease within one year. With the rising cost of construction and the industry's high unemployment, many homeowners are choosing to be their own contractors under Chapter 444-2.5.

The owner-builder exemption was established, and intended, for legitimate circumstances where homeowners had the requisite ability, time, and inclination to save money by performing their own home improvements and construction. The owner-builder then becomes the general contractor and is responsible for compliance with all regulations of federal, state, and county laws that govern construction: OSHA, HIOSH, EPA, taxes, insurance, etc. Any violations of these regulations can result in heavy fines levied by the respective agencies. The owner-builder is also liable for anyone who enters their project work site. However, many homeowners are ill-advised by unlicensed contractors to obtain an owner-builder permit so the owner can hire or contract with this unlicensed contractor.

The hiring of an unlicensed contractor results in millions of dollars in lost GET because payment is almost always made in cash. At Honolulu's Department of Planning and Permitting, between 2010 and 2012, over 5,200 owner-builder permits were issued, totaling over \$250 million. Workers who are hired for cash wages are not provided mandated employee benefits, such as workers compensation and insurance. This is both a disservice to the State and to homeowners, who become extremely vulnerable in the event anything adverse occurs to a worker on their property during the project. Legitimate businesses that comply with the legal cost of doing business are at a disadvantage because their costs are higher.

For the preceding reasons, Alan Shintani, Inc. **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.

Sincerely,

President
Alan Shintani, Inc.

Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 25, 2013
2:30 p.m.
Capitol, Room 325

RE: H.B. 846 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

Honua Landscaping, Inc. **strongly supports** H.B. 846 HD1, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). H.B. 846 HD1 will: 1) strengthen DCCA's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; 3) ensure that appropriate taxes, including the GET, are paid to the State; and 4) support DCCA's field investigative efforts by instituting a filing fee.

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For the preceding reasons, Honua Landscaping, Inc. **strongly supports** H.B. 846, H.D.1.

Thank you for the opportunity to share with you our views.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 2:58 PM
To: CPCtestimony
Cc: tadd@tjrworks.com
Subject: *Submitted testimony for HB846 on Feb 25, 2013 14:30PM*

HB846

Submitted on: 2/21/2013

Testimony for CPC on Feb 25, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tadd Rienstra	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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