



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

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  
WATER AND LAND

AND

TO THE HOUSE COMMITTEE ON AGRICULTURE

TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2013

WEDNESDAY, FEBRUARY 13, 2013  
8:15 A.M.

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

TO THE HONORABLE CINDY EVANS, CHAIR,  
TO THE HONORABLE JESSICA WOOLEY, CHAIR,  
AND TO THE HONORABLE NICOLE E. LOWEN, VICE CHAIR,  
AND TO THE HONORABLE RICHARD H.K. ONISHI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 846, 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.

House Bill No. 846 amends §444-2.5, Hawaii Revised Statutes ("HRS") to: (1) limit the owner-builder exemption to residential or farm property; (2) clarify the disclosure requirements for owner-builders; and (3) authorize inspections by the Department of owner-builder records both during and after completion of a construction project for a period of three years. The bill also amends §444-25.5, HRS, to afford owner-builders the same consumer protections currently given to homeowners who are not owner-builders. House Bill No. 846 also increases fine amounts for noncompliance with owner-builder requirements.

Owner-builders often obtain owner-builder permits without full knowledge of the responsibilities and risks they assume. This bill sets forth the requirements for owner-builders so that owner-builders will know exactly what is required of them. The bill limits the owner-builder exemption to exclude construction activity on industrial and commercial properties because construction activities on these properties impact the general public such that licensed contractors should be used on all phases of construction activity on these types of properties. The bill also requires contractors to disclose certain information and provide a written contract to an owner-builder, protections that only homeowners who are not owner-builders now enjoy.

In addition, the bill authorizes inspections of owner-builder records during and after completion of the construction project and increases fine amounts for noncompliance with owner-builder requirements. From an enforcement

Testimony on House Bill No. 846  
February 13, 2013  
Page 3

perspective, inspections will strengthen RICO's ability to monitor and prosecute violations and enhanced fine amounts will help to deter noncompliance.

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

February 13, 2013

**The Honorable Cindy Evans, Chair**  
House Committee on Water & Land

**The Honorable Jessica Wooley, Chair**  
House Committee on Agriculture  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: H.B. 846, Relating to the Owner-Builder Exemption**

**HEARING: Wednesday, February 13, 2013 at 8:15 a.m.**

Aloha Chair Evans, Chair Wooley, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, and am appearing on behalf of the Hawai'i Association of REALTORS® ("HAR"), which is the largest trade association in the State of Hawaii and with approximately 8,000 members. HAR **submits comments** on H.B. 846, which sets forth specific responsibilities of and protections for owner-builders exempted under HRS Chapter 444.

In 2010, recognizing the hardships owner-builders encountered in selling property, the Legislature passed Act 44, Session Laws of Hawai'i 2010, which amends the owner-builder law by: (1) Allowing an exemption for the sale or lease of a property by an owner builder prior to the expiration of the one-year prohibition period in the event of hardship; (2) Defining when a construction or improvement is completed; (3) Exempting improvements pursuant to an approved building permit where the estimated valuation as reflected in the building permit is less than \$10,000; and (4) Establishing fines for the failure of an owner-builder to comply with the requirements set forth in the disclosure statement provided to the owner-builder by the county.

Other amendments include clearly defining when a construction or improvement is completed and establishing fines for the failure of an owner-builder to comply with the requirements set forth in the disclosure statement by the Counties. HAR's believes that Act 44 recognized that homeowners who face financial or unforeseen hardships after receiving an owner-builder permit may need to sell their home or face even greater hardship.

In 2011, the Legislature passed Act 115, Session laws of Hawaii 2011, which clarified that an owner with an open permit may be exempt, upon a showing proof of hardship such as evidence of unemployment compensation, tax returns, medical records, bank statement, divorce decrees ordering sale of property, mortgage default letters, or bankruptcy filings.

---

HAR believes Act 115 helped to further clarify that owner-builders may qualify for the hardship exemption, notwithstanding any open permits on the property.

From HAR's point of view, the law should not impose additional liability upon real estate licensees for aiding and abetting under HRS 436B-19(6) and (16), or any other applicable statute simply because an owner-builder is found to have violated the provisions of the law. Real estate licensees are not in a position to know what an Owner-Builder did at the time of construction.

Accordingly, the bill should provide a safe haven for real estate practitioners who do not know whether an owner-builder complied with all of their obligations, including but not limited to withholding taxes, providing worker's compensation insurance or maintaining records for three years.

Therefore, should the Committee be inclined to pass this measure, we respectfully ask that aforementioned concerns be addressed.

Mahalo for the opportunity to testify.

# ***SAH - Subcontractors Association of Hawaii***

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

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 13, 2013

Testimony To: House Committee on Water & Land  
Representative Cindy Evans, Chair  
  
House Committee on Agriculture  
Representative Jessica Wooley, Chair

Presented By: Tim Lyons  
President

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

Chair Evans, Chair Wooley and Members of the Joint Committees:

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

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.

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON WATER & LAND  
AND  
TO THE HOUSE COMMITTEE ON AGRICULTURE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Wednesday, February 13, 2013  
8:15 a.m.

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

TO THE HONORABLE CINDY EVANS, CHAIR, AND  
TO THE HONORABLE JESSICA WOOLEY, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Peter Lee, and I am the Chair of the Contractors License Board's ("Board") Legislation Committee. Thank you for the opportunity to testify on House Bill No. 846, 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.

The Board also supports an amendment to the bill that will clarify that owner-builders are not eligible for payment for claims from the Contractors Recovery Fund. The Fund was established by the Board to allow homeowners to be compensated for damages incurred due to the actions of a licensed contractor. Because an owner-builder is acting as their own contractor, the Board has consistently taken the position that owner-builders are not eligible to file a claim for compensation from the Fund, and the amendment will clarify and memorialize the Board's position.



Testimony on H.B. No. 846  
February 13, 2013  
Page 2

It is our understanding that RICO has included such an amendment in their proposed House Draft 1.

Thank you for the opportunity to testify on House Bill No. 846.



Testimony of Cindy McMillan  
The Pacific Resource Partnership

House Committee on Water & Land  
Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair

House Committee on Agriculture  
Representative Jessica Wooley, Chair  
Representative Richard H.K. Onishi, Vice Chair

HB 846 – Relating to the Owner-Builder Exemption  
Wednesday, February 13, 2013  
8:15 am  
Conference Room 325

Aloha Chairs Evans and Wooley, Vice Chairs Lowen and Onishi, 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 – Relating to the Owner-Builder Exemption, which sets forth specific responsibilities of and protections for owner-builders exempted under chapter 444, Hawaii Revised Statutes. This measure limits the application of the owner-builder exemption to residential or farm property only, to improve the ability of the Regulated Industries Complaints Office (RICO) 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.

HB 846 will afford owner-builders the same consumer protections currently given to homeowners who are not owner-builders. Currently, section 444-25.5, HRS, provides that licensed contractors must (1) disclose certain information to a homeowner prior to entering into a contract with the homeowner and prior to the application for a building permit; and (2) provide a written contract to the homeowner. Under this bill, owner-builders will benefit from the required disclosures and from written, enforceable contracts.

In addition, the bill will strengthen RICO's ability to monitor and prosecute violations involving owner-builder construction projects, eliminating the unfair advantage dishonest companies have over those who play by the rules. Cheating contractors who apply for the owner-builder exemption underbid and steal work away from honest, tax-paying contractors.

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