

SB 1077

Measure Title: RELATING TO THE OWNER-BUILDER EXEMPTION.

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.

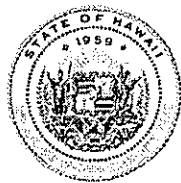
Companion: [HB846](#)

Package: Gov

Current Referral: CPN, WAM

Introducer(s): KIM (Introduced by request of another party)

Sort by Date		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN, WAM.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-06-13 9:00AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

WEDNESDAY, FEBRUARY 6, 2013
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 1077
RELATING TO THE OWNER-BUILDER EXEMPTION

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1077, 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.

Senate Bill No. 1077 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. Senate Bill No. 1077 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 perspective, inspections will strengthen RICO's ability to monitor and prosecute violations and enhanced fine amounts will help to deter noncompliance.

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Thank you for the opportunity to testify on Senate Bill No. 1077. I will be happy to answer any questions the Committee members may have.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION**

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013**

**Wednesday, February 6, 2013
9:00 a.m.**

**TESTIMONY ON SENATE BILL NO. 1077, RELATING TO THE OWNER-BUILDER
EXEMPTION.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Peter Lee, and I am the Legislative Committee Chair of the Contractors License Board ("Board"). Thank you for the opportunity to testify on Senate Bill No. 1077, 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.

The Board has been in contact with RICO and it is our understanding that RICO is amenable to such an amendment. Therefore, we respectfully request that SECTION

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2 of the bill (beginning on page 2, line 5) be amended to add a new subsection (f) in §444-2.5, Hawaii Revised Statutes, to read as follows:

“(f) An owner or lessee exempted under this section shall not be eligible to recover from the contractors recovery fund described in this chapter.”

Thank you for the opportunity to testify on Senate Bill No. 1077.

February 6, 2013

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1077, Relating to Owner-Builder Exemption

HEARING: Wednesday, February 6, 2013 at 9:00 a.m.

Aloha Chair Baker, Vice Chair Galuteria, and Members of the Committee:


I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **submits comments** on S.B. 1077, 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 Hawaii 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.



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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 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 his obligations, including but not limited to withholding taxes, providing worker's compensation insurance or maintained 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.





Hawaii Farm Bureau
F E D E R A T I O N

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FEBRUARY 6, 2013

HEARING BEFORE THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

TESTIMONY ON SB 1077
RELATING TO THE OWNER-BUILDER EXEMPTION

Conference Room 229
9:00 AM

Chair Baker, Vice Chair Galuteria, and Members of the Committee:

I am Dean Okimoto, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,950 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

I am sending this testimony to express the **strong opposition of the Hawaii Farm Bureau Federation to SB 1077**, "Relating to the Owner-Builder Exemption." The additional restrictions imposed upon owner-builders by SB 1077 would make it more difficult and expensive to build necessary agricultural structures such as sheds, greenhouses, and shade houses. It could negate the beneficial effects of legislation passed just last year to relieve the regulatory burden on farmers and ranchers.

In 2012 the Legislature passed, and the Governor signed Act 114, which provided relief from county building permit requirements for certain low-risk, nonresidential agricultural buildings and structures. In doing so, the legislature recognized the substantial burden of time and cost that these requirements imposed upon farmers and ranchers. SB 1077, in contrast, requires owner-builders to apply for and receive a building permit. This requirement would set up a direct conflict with the exemptions Act 114 provided. Low-risk structures like sheds, fish tanks, greenhouses, and shade houses on agricultural

lands should not be subject to the same time-consuming and expensive permit process as residential structures in congested urban areas.

In addition, subsection (B) of SB 1077's proposed language appears to require that an owner-builder hire licensed subcontractors to perform at least part of any construction activity. This requirement would greatly increase the cost of any structure that the agricultural owner-builder could otherwise build by himself or herself, or with the assistance of farm workers.

HFBF is currently supporting bills that would further reduce the cost and construction time of low-risk farm structures by exempting these structures from county building code requirements. We feel that this exemption is necessary to encourage the development of much-needed agricultural infrastructure. SB 1077, with its requirement that every structure "comply with all applicable laws, ordinances, building codes, and zoning regulations" would prohibit the relief that such an exemption would provide for Hawaii's farmers and ranchers, and would interfere with the State's efforts towards greater food self-sufficiency. HFBF therefore opposes SB 1077, and respectfully asks that it not be passed.

Thank you for the opportunity to testify.

The Pacific Resource
PARTNERSHIP



Testimony of Cindy McMillan
The Pacific Resource Partnership

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair

SB 1077 – Relating to the Owner-Builder Exemption
Wednesday, February 6, 2013
9:00 am
Conference Room 229

Aloha Chair Baker, Vice Chair Galuteria 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** SB 1077, 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.

SB 1077 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 SB 1077. Thank you for the opportunity to share our views on this important initiative with you.

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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

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February 6, 2013

TO: HONORABLE ROSALYN BAKER, CHAIR; HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **SUPPORT S.B.1077, RELATING TO THE OWNER BUILDER EXEMPTION.** Sets forth specific responsibilities of and protections for owner-builders exempted under chapter 444, Hawaii Revised Statutes.

HEARING

DATE: Wednesday, February 6, 2013
TIME: 1:15 P.M.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Galuteria and Members:

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 is **in support** of S.B. 1077, Relating to the Owner Builder Exemption, because it will 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 or farm 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.

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.

This bill hopes to curb any abuse by contractors who may utilize the exemption beyond its intended use. In regards to the use of this exemption for commercial and industrial buildings, 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?

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

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Testimony to the Senate Committee on Commerce and Consumer Protection

Wednesday, February 6, 2013

9:00am

Capitol, Room 229

RE: S.B. 1077, RELATING TO THE OWNER-BUILDER EXEMPTION

Dear Chair Baker, Vice-Chair Galuteria, 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** S.B. 1077, which proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS). S.B. 1077 will: 1) strengthen RICO's ability to monitor and prosecute violations involving owner-builder construction projects; 2) increase protections for owner-builders as well as workers; and 3) ensure that appropriate taxes, including the GET, are paid to the State.

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. 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. BIA-Hawaii members have witnessed, first hand, how unlicensed individuals have abused this exemption by performing work without complying with the law.

BIA-Hawaii would like to recommend that a filing fee, based on the value of the proposed improvement, be instituted to directly support the Department's inspection efforts.

For the preceding reasons, BIA-Hawaii **strongly supports** S.B. 1077.

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