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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 20, 2019
Time: 4:00 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1154, H.D.1, Relating to the Owner-Builder Exemption

The Department of Taxation (Department) provides the following comments regarding H.B. 1154, H.D. 1, for your consideration. This measure requires owner-builders to provide proof of payment of withholding taxes and workers' compensation insurance, and amends fines for failure to comply with the statute. The House Committee on Intrastate Commerce defected the effective date to July 1, 3000.

The Department believes that this measure places a burden on an owner-builder that cannot be met in most cases. The owner-builder will only be able to prove that the relevant taxes and premiums are paid if the owner-builder is the employer. Where the owner-builder is not the employer, disclosure of the social security numbers and other confidential information of the employees would be unlawful.

In addition, withholding and worker's compensation returns are generally filed quarterly, for the previous period. A determination of compliance may not be made until several months beyond the period worked.

Thank you for the opportunity to provide comments



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Wednesday, February 20, 2019
4:00 p.m.
State Capitol, Conference Room 308**

**On the following measure:
H.B. 1154, H.D. 1, RELATING TO THE OWNER-BUILDER EXEMPTION**

Chair Luke and Members of the Committee:

My name is Esther L. Brown, and I am the Acting Complaints and Enforcement Officer of the Department of Commerce and Consumer Affairs' (Department) Regulated Industries Complaints Office (RICO). RICO supports this bill.

H.D 1, with a defective effective date of July 1, 3000, amends Hawaii Revised Statutes chapter 444 by requiring that proof of withholding of taxes and workers' compensation insurance be made available for inspection by owner-builders. The bill also increases the fines that can be imposed upon owner-builders who fail to comply with the owner-builder requirements.

RICO concurs with the amendment requested by the Contractors Licensing Board to subparagraph (E) on page 3, lines 10-18, as it will provide clarity from an enforcement standpoint as to a homeowner's obligations under the exemption.

Thank you for the opportunity to testify on this bill.

Testimony of the Contractors License Board

Before the
House Committee on Finance
Wednesday, February 20, 2019
4:00 p.m.
State Capitol, Conference Room 308

On the following measure:
H.B. 1154, H.D. 1, RELATING TO THE OWNER-BUILDER EXEMPTION

Chair Luke and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board appreciates the intent of this bill.

The purposes of this bill are to: (1) require owner-builders to provide proof of withholding taxes and workers' compensation insurance; and (2) amend fines for failure to comply with statute.

Hawaii Revised Statutes (HRS) section 444-2.5 requires exempted owner-builders to hire subcontractors appropriately licensed under HRS chapter 444 to perform any part of the construction activity for which a license is required. The Board respectfully requests that the following amendments be made to subparagraph (E) on page 3, lines 10-18 for clarity and consistency with HRS chapter 444:

“(E) Proof of withholding of applicable taxes including under the Federal Insurance Contributions Act, ~~[and]~~ proof of workers' compensation insurance for all persons ~~[contracted to work]~~ working on the exempt ~~[building and structures]~~ construction activity who are not licensed under this chapter and who shall be considered employees of the owner or lessee, and proof that any subcontractors~~[, including independent contractors,]~~ provided tax withholding and workers' compensation insurance to their employees; and”

Thank you for the opportunity to testify 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 20, 2019

Testimony To: House Committee on Finance
Representative Sylvia Luke,

Presented By: Tim Lyons, President

Subject: H.B. 1154, HD 1 – RELATNG TO THE OWNER-BUILDER EXEMPTION

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support the intent of this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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

We only would like to point out a technicality in that Section 1(a)(3)(D) correctly asserts that if you are on a project and not licensed or part of a licensed firm then you are considered an employee of the owner or lessee however, the new language in Subsection (4)(E) provides reference to subcontractors and "independent contractors", as well as employees. We believe that this is confusing and contradictory inasmuch as you can only have contractors and employees on a project, not independent contractors. In other words, Subsection (4)(E) contradicts Subsection (3)(D).

Secondly, we are unsure, although we don't have a disagreement with it, we are unsure how a owner-builder is to provide proof of workers' compensation insurance for all persons contracted to work on the project. Workers' compensation policies are issued for the type of construction activity and are not issued in the name of individual workers. If this could be satisfied merely by the existence of a workers' compensation policy then we suppose there is no problem however in order to provide proof of insurance for all persons, it would seem to indicate that names would have to be provided and that is not done in a workers' compensation policy.

Again, we are not opposed to the concept of this bill but we believe it may be difficult for the Department to implement.

Thank you.



TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE
Wednesday, February 20, 2019 at 4:00 P.M.
Conference Room 308, State Capitol

RE: HOUSE BILL 1154 HD1, RELATING TO THE OWNER-BUILDER EXEMPTION

Chair Luke, Vice Chair Cullen, and members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") is in **support** of HB 1154 HD1 which proposes to require owner-builders to provide proof of with-holding taxes and workers' compensation insurance. The bill also amends fines for failure to comply with statute.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We have always been a strong proponent of strengthening the "Owner-Builder" laws to discourage work being done by "Unlicensed Contractors." As the construction market tightens with contractors busy with many jobs in a high demand market, homeowners may be tempted by "Unlicensed Contractors" to go the Owner-Builder route in securing their building permit. Many homeowners are unaware of the responsibility that comes with being an Owner-Builder. This addresses some of these issues. Homeowners should also be made aware that they will be liable if any of the unlicensed contractor workers get injured on their property.

Thank you for the opportunity to testify.



February 16, 2019

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and members
House Committee on Finance
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Luke, Vice Chair Cullen, and Members:

HI Good Neighbor is a group of concerned citizens from around the island who are strongly opposed to the proliferation of large detached dwellings, also called “monster homes,” throughout Oahu’s residential neighborhoods.

We have been deeply concerned with the proliferation of monster homes and have been extremely troubled by how many of these homes have been built without regard to the building code, zoning code, construction safety, licensure, and tax laws. Our research has found that many monster home builders utilize the owner-builder exemption to avoid taxes and workers’ compensation requirements.

Therefore, we write to **strongly support HB1154 HD1**, relating to the owner-builder exemption. We feel that this bill will help to clarify recordkeeping requirements for those that utilize the owner-builder exemption, cut down on those who fraudulently utilize the exemption, and help investigative agencies to determine who is correctly following the law.

HB1154 HD1 has two parts:

Section 1 amends HRS 444-2.5(a)(4) to add a requirement about withholding of taxes and workers’ compensation coverage. HRS 444-2.5(a)(3) already requires owner-builders to provide such taxes and provide workers comp, but there’s no requirement to maintain records of such in 444-2.5(a)(4) or (5), hence the need for this clarification.

Section 2 amends HRS 444-9.1 so that the existing disclosure statement which owner-builders are required to sign conforms with the existing fine structure in HRS 444-23(e). When the fine structure was increased back in 2013 (Act 176, 2013), these associated housekeeping changes weren’t made, and as a result, the disclosure is out of sync with existing law. Section 2 would correct this omission as a housekeeping matter.

We thank you for the opportunity to express our opinion and ask for your favorable action on this bill.

Mahalo nui loa,

HI Good Neighbor
Tyler Dos Santos-Tam | Sarah Chinen | Melissa Mai'i
Aurora Muir | Christine Otto Zaa | Reyna Sueoka
Pat Watson | Trisha Kehaulani Watson | Steven Yamashiro

February 20, 2019

The Honorable Sylvia Luke, Chair

House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: H.B. 1154, HD1, Relating to the Owner-Builder Exemption

HEARING: Wednesday, February 20, 2019, at 4:00 p.m.

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

I am Ken Hiraki Government Affairs Director, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 9,500 members. HAR **opposes** H.B. 1154, HD1, which requires owner-builders to provide proof of withholding taxes and workers' compensation insurance. Amends fines for failure to comply with statute.

The purpose of the owner-builder exemption at Hawai'i Revised Statutes § 444-2 is to allow an individual homeowner to act as his/her own contractor for building or improving their residence.

Under the existing law, an owner-builder has a broad range of responsibilities of supervising the construction activity and must deduct Federal Insurance Contributions Act (FICA) and withholding taxes and provide worker's compensation for persons working on the construction activity who are not licensed. These unlicensed individuals are treated as employees.

This measure requires an owner-builder to keep on file for inspection purposes proof of withholding of applicable taxes under FICA and proof of workers' compensation insurance for all persons contracted to work on the exempt building and structure, and proof that any subcontractors, including independent contractors, provided tax withholdings and workers' compensation insurance to their employees. This responsibility should be on the contractor or subcontractor who hires the employees.

Additionally, it would be inappropriate for an owner-builder to request this highly confidential tax information from subcontractors on their employees.

Furthermore, even if best effort was made by an owner-builder to obtain this information, this would still impose steep penalties should an owner-builder be denied employee information by the subcontractors. This provision effectively places a chilling effect on anyone that would want to be an owner-builder, as they would be unable to meet this burdensome requirement.

Mahalo for the opportunity to testify.

HB-1154-HD-1

Submitted on: 2/15/2019 9:58:16 PM

Testimony for FIN on 2/20/2019 4:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

It's been a year and a half since an "owner builder's" construction project destroyed my property and nearly took the lives of my family. My property still hasn't been fixed, and I'm stuck in legal issues because of it. So, Councilmember's first, I'd like to invite you to come by and see the destruction that an "owner builder's" project can do and the "owner builder's" project that received a permit even though it was I'm told built by a contractor who's unlicensed and uninsured (verified with the DCCA; found has a record with RICO since 2008, with the last one being 2018. Not to mention the "owner builder" wasn't even on site, at least def. not during the "incidents" that occurred. Even that "owner builder" projects of this nature didn't need nor were the DPP going to investigate or inspect, till I griped about it – which it's exempted from regulations, making it more dangerous, yet not inspected...). I'm hoping this bill will curb unlicensed contractors from obtaining jobs as well as provide protection for those who might become affected by a decision to apply for an "Owner builder" exemption.

Second, I'd like to bring to light that while proof of workers' compensation insurance is one item, there's also liability insurance that should be brought to light. As "owner builder" projects, like any construction project, could/do pose a liability to those around them. (Found that what occurred to me is common; prosecution is low for these types of cases; fines are paid and back to work for majority; etc.) Which is why, most licensed contractors have *workers compensation and liability insurance in the 6-7 digits* – homeowners or "owner builder" liability insurance is usually mid to low 5 digits (basically the cost of a low end car or used truck, and we're talking property/structural damage – so 6 digits) With what I've found, insurance companies either approving too low, def not enough to cover damages or denying the claim altogether. (Again, "good faith" isn't exactly what a 3rd party receives. Most common reason I'm told is claims are denied because they don't think the 3rd party will go after the client; there's no time limit for completion like for the insured...) With I'm told, that while the "owner builder" couldn't find a contractor to fix my property for under what I found, that he's planning on having it torn down and rebuilt again in a different manner, as they might sell the property.

This isn't someone who doesn't have immediate or extended family in the construction business; nor is it someone who doesn't run a business themselves – so we're not talking about a person/family that would be ignorant of basic construction practices; unable to read the documentation for the "owner builder" exemption (which so far, doesn't seem to matter or hold much weight, to either the insurance company or courts

– will find out as this goes on); or even look up the information necessary to make a conscious decision to rehire the contractor. So, if this dangerous practice is common, committed even by those who have at least a basic knowledge of construction projects, and the current practice is not working, why not change the effective date from July 1, 3000, that's 981 yrs from now, to now.

Also while I'm at it, would like to bring to light that structures built without mortar, cement or binding agents seem to be legal, that as a retaining wall, with no footing, grid mats, rebars, etc. left uninspected or monitored is an accident waiting to happen, and should be revisited.

Thank you.