STAND. COM. REP. NO. 261 -10

Honolulu, Hawaii **Fe-910**, 2010 RE: H.B. No. 1927

H.D. 1

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

Sir:

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

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

begs leave to report as follows:

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

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



certain licensing requirements more than once in five years; and

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

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

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

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

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

Your Committee has amended this bill by:

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



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

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



STAND. COM. REP. NO. 261 -10 Page 4

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

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

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

HB1927 HD1 HSCR CPC HMS 2010-1543

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

ROBERT N. HERKES, Chair

State of Hawaii House of Representatives The Twenty-fifth Legislature

Record of Votes of the Committee on Consumer Protection & Commerce

□ The committee is reconsidering its previous decision on the measure. The recommendation is to: □ Pass, unamended (as is) □ Pass, with amendments (HD) □ Hold □ Pass short form bill with HD to recommit for future public hearing (recommit) □ ■ ■ 1. HERKES, Robert N. (C). □ □ ■ □ 2. WAKAI, Glenn (VC) □ □ □ □ 3. BELATTI, Delta Au □ □ □ □ 4. CABANILLA, Rida □ □ □ □ 5. CARROLL, Mele □ □ □ □ 6. ITO, Ken □ □ □ □ □ 7. KARAMATSU, Jon Riki □ □ □ □ □ □ 8. LUKE, Sylvia □	Bill/Resolution No.: HB 1927	Committe	e Referral: CPC	C, FIN Dat	e: 2/1	1290	
Pass short form bill with HD to recommit for future public hearing (recommendation Pass short form bill with HD to recommit for future public hearing (recommendation Pass short form bill with HD to recommit for future public hearing (recommendation Pass short for the recommendation is: Pass short form bill with HD to recommittee acronyme(s) Pass short for the recommendation is: Pass short form bill with HD to recommittee acronyme(s) Pass short for the recommendation is: Pass short form bill with HD to recommendation. Pass short for the recommendation is: Pass short for	The committee is reconsidering its previous decision on the measure.						
1. HERKES, Robert N. (C) 2. 2. WAKAI, Glenn (YC) 3. 3. BELATTI, Della Au 4. 4. CABANILLA, Rida 4. 5. CARROLL, Mele 4. 6. ITO, Ken 4. 7. KARAMATSU, Jon Riki 4. 8. LUKE, Sylvia 4. 9. MCKELVEY, Angus L.K. 4. 10. MIZUNO, John M. 4. 11. MORITA, Hermina M. 4. 12. SOUKI, Joseph M. 4. 13. TSUJI, Clift 4. 14. MARUMOTO, Barbara C. 4. 15. THIELEN, Cynthia 4. 7. TOTAL (15) 4. 7. TOTAL (15) 4. 7. TOTAL (15) 4. 7. Tota chairs or designee's signature: 4. 9. Vice Chair's or designee's signature: 4.							
2. WAKAI, Glenn (VC) 3. BELATTI, Della Au 4. CABANILLA, Rida 5. CARROLL, Rida 6. ITO, Ken 7. KARAMATSU, Jon Riki 8. LUKE, Sylvia 9. McKELVEY, Angus L.K. 10. MIZUNO, John M. 11. MORITA, Hermina M, 12. SOUKI, Joseph M. 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 15. THIELEN, Cynthia 16. TOTAL (15) 17. Total (15) 18. Committee acronym(s) 19. Wit Adopted 17. joint referral, committee acronym(s) 10. Support recommendation. 10. Committee acronym(s) 10. Committee acronym(s) 10. Support recommendation. 10. Support recommendation. 11. Morita acronym(s) 12. Source of the support recommendation. 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 15. THIELEN, Cynthia 16. Committee acronym(s) 17. Support recommendation. 17. Support recommendation. 18. Support recommendation. 19. Support recommendation. 19. Support recommendation. 19. Support recommendation. 19. Support recommendation. 10. Suppor	CPC Members		Ayes	Ayes (WR)	Nays	Excused	
3. BELATT, Della Au	1. HERKES, Robert N. (C)						
4. CABANILLA, Rida 5. CARROLL, Mele 6. ITO, Ken 7. KARAMATSU, Jon Riki 8. LUKE, Sylvia 9. McKELVEY, Angus L.K. 10. MIZUNO, John M. 11. MORITA, Hermina M. 12. SOUKI, Joseph M. 13. TSUIJ, Clift 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 15. THIELEN, Cynthia 16. Committee acronym(s) Vice Chair's or designee's signature:	2. WAKAI, Glenn (VC)		V	<u> </u>	<u> </u>		
5. CARROLL, Mele Image: Constraint of the support recommendation. 6. ITO, Ken Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. KARAMATSU, Jon Riki Image: Constraint of the support recommendation. 7. Constraint of the support recommendation. Image: Constraint of the support recommendation. 7. Constraint of the support recommendation. Image: Constraint of the support recommendation. 7. Constraint of the support recommendation. Image: Constraint of the support recommendation.	3. BELATTI, Della Au						
S. CARKOLL, where Image: Carkon of the system of the s	4. CABANILLA, Rida		\checkmark				
7. KARAMATSU, Jon Riki	5. CARROLL, Mele						
8. LUKE, Sylvia	6. ITO, Ken					Ve	
9. McKELVEY, Angus L.K. 10. MIZUNO, John M. 11. MORITA, Hermina M, 12. SOUKI, Joseph M. 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia TOTAL (15) The recommendation is: Adopted If joint referral,	7. KARAMATSU, Jon Riki						
10. MIZUNO, John M. 11. MORITA, Hermina M, 12. SOUKI, Joseph M. 12. SOUKI, Joseph M. 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 16. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 17. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 18. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. TOTAL (15) 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. TOTAL (15) 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. TOTAL (15) 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. TOTAL (15) 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. TOTAL (15) 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 19. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 10. MARUMOTO, Barbara C. <th>8. LUKE, Sylvia</th> <th></th> <th>\checkmark</th> <th></th> <th></th> <th></th>	8. LUKE, Sylvia		\checkmark				
11. MORITA, Hermina M. 12. SOUKI, Joseph M. 13. TSUJI, Clift 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 14. MARUMOTO, Contract of the second seco	9. McKELVEY, Angus L.K.						
12. SOUKI, Joseph M. 13. TSUJI, Clift 13. TSUJI, Clift 14. MARUMOTO, Barbara C. 14. MARUMOTO, Barbara C. 15. THIELEN, Cynthia 15. THIELEN, Cynthia 11. Interview 16. THIELEN, Cynthia 11. Interview 17. THIELEN, Cynthia 11. Interview 18. THIELEN, Cynthia 11. Interview 19. THIELEN, Cynthia 11. Interview 11. THIELEN, Cynthia 11. Interview 12. THIELEN, Cynthia 11. Interview 13. THIELEN, Cynthia 11. Interview 14. Interview 11. Interview 15. THIELEN, Cynthia 11. Interview 16. TOTAL (15) 11. Interview 17. The recommendation is: 12. Adopted 11. Joint referral,	10. MIZUNO, John M.		/	,			
13. TSUJI, Clift Image: Clift 14. MARUMOTO, Barbara C. Image: Clift 15. THIELEN, Cynthia Image: Clift 16. THIELEN, Cynthia Image: Clift 17. THIELEN, Cynthia Image: Clift 18. THIELEN, Cynthia Image: Clift 19. THIELEN, Cynthia Image: Clift 19. THIELEN, Cynthia Image: Clift 19. TOTAL (15) Image: Clift 19. Tottal (15) Image: Clift 19. The recommendation is: Image: Clift	11. MORITA, Hermina M.		· VA				
14. MARUMOTO, Barbara C. Image: Constraint of the second seco	12. SOUKI, Joseph M.		V,				
15. THIELEN, Cynthia			V				
TOTAL (15) The recommendation is:			/				
The recommendation is: Image: Adopted lif joint referral,	15. THIELEN, Cynthia						
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,			Ļ		 		
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,							
The recommendation is: Image: Adopted lif joint referral,				L			
The recommendation is: Image: Adopted lif joint referral,				/			
If joint referral, did not support recommendation.	TOTAL (15)		9	Ø	$ \phi$	6	
	If joint referral, did not support recommendation.						
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO	Vice Chair's or designee's signature:						
	Distribution: Original (White) – Committee	; (Du	plicate (Yellow) -	- Chief Clerk's Offic	e Duplicate (F	Pink) – HMSO	