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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

WEDNESDAY, MARCH 27, 2013
4:00 P.M.

TESTIMONY ON SENATE BILL NO. 1077 S.D.2 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 Senate Bill No. 1077 S.D.2 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.

Senate Bill No. 1077 S.D.2 H.D.1 amends chapter 444, Hawaii Revised Statutes ("HRS") to: 1) clarify the responsibilities of and protections for owner-builders; 2) increase fine amounts for noncompliance with owner-builder requirements; and 3) grant the Contractors License Board ("Board") flexibility in determining fine amounts for first offenses. The bill also has a defective effective date. The bill contains consensus language agreed to among RICO and various industry stakeholders.

This Committee heard the companion bill, H.B. 846, and passed out an H.D.2 that is substantially similar to this bill. This current bill differs from H.B. 846 H.D.2 in that it allows the Board to determine the fine for a first offense based on the circumstances of each case. RICO supports the current bill, subject to a valid effective date of July 1, 2013.

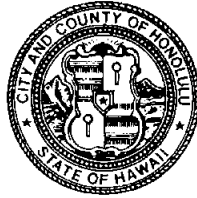
Owner-builders often obtain owner-builder permits without full knowledge of the responsibilities and risks they assume. This bill sets forth the requirements for owner-builders so that owner-builders will know exactly what is required of them. From an enforcement perspective, inspection of owner-builder records as authorized in this bill will strengthen RICO's ability to monitor and prosecute violations.

Thank you for this opportunity to testify on Senate Bill No. 1077 S.D.2 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA
FAICP, LEED AP, CEI
DIRECTOR DESIGNATE

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

March 27, 2013

The Honorable Angus L. K. McKelvey, Chair
and Members of the Committee on Consumer
Protection & Commerce
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

Subject: Senate Bill No. 1077, SD 2, HD 1
Relating to Owner-Builder Exemption

The Department of Planning and Permitting (DPP) **supports** passage of Senate Bill No. 1077, SD 2, HD 1. We understand that the purpose of the bill is to set forth the specific responsibilities and protections for owner-builder exempted from licensing and other requirements under chapter 444, Hawaii Revised Statutes.

A major objective of the DPP is to promote life safety through construction code compliance. The bill, as proposed, would promote this objective by requiring owner-builders to adhere to important performance and safety standards that licensed contractors must administer daily on the job site to ensure worker safety. Additionally, the bill would require the owner-builder to hire qualified subcontractors, thus ensuring that new construction will comply with current building, electrical, and plumbing codes.

The DPP recommends passage of Senate Bill No. 1077, SD 2, HD 1, which will significantly promote greater safety and improved quality of construction in Hawaii. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in cursive script that reads "George I. Atta".

George I. Atta, FAICP, LEED AP, CEI
Director Designate
Department of Planning and Permitting

GIA:jmf
sb1077sd2hd1-OwnrBldExemp-a

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, March 27, 2013
4:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1077, S.D. 2, 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 Senate
Bill No. 1077, S.D. 2, H.D. 1, Relating to the Owner-Builder Exemption.

The Board testified in support of the companion bill (H.B. No. 848) before your
committee on February 25, 2013. The Board also supports this measure, which is
similar to the House version, except for an amendment to grant the Board discretion to
determine fine amounts based on the circumstances of each case.

Thank you for the opportunity to provide comments on Senate Bill No. 1077,
S.D. 2, H.D. 1.

SAH - Subcontractors Association of Hawaii

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

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

March 27, 2013

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

Presented By: Tim Lyons
President

Subject: S.B. 1077, SD 2, 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 generally support this bill.

Although our input on this bill is strictly limited to Section 4 and is a rather minor change, it never the less bring the law in conformance with actual practice and to that extent we support it.

We would also note that owner-builders are still a primary source for unlicensed contracting activity and to the extent that this bill helps in that effort we also support it.

Thank you.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Consumer Protection & Commerce Wednesday, March 27, 2013

4:00 p.m.

Capitol, Room 325

RE: S.B. 1077, S. D. 2, H.D. 1, 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** S.B. 1077, S.D.2, H.D. 1, proposes to set forth specific responsibilities of, and protections for, owner-builders exempted under Chapter 444, Hawaii Revised Statutes (HRS) and other licensing requirements; amends the fine schedule to be based on the circumstances of each case. S.B. 1077, S.D. 1, H.D. 1 will: 1) help 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) ensures that appropriate taxes, including the GET, are paid to the State.

We support a proposal by the GCA to replace language in the current bill with language from the S.D. 1 as follows:

§444-2.5(3)(B) Hire subcontractors appropriately licensed under this chapter to perform all or part of the construction activity.

We agree the current language creates more confusion rather than clarification.

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. Thus, we support the removal of commercial and industrial properties from this exemption.

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.

For the preceding reasons, BIA-Hawaii **strongly supports** S.B. 1077, S.D.2, H.D. 1.

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

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Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 11, 2013

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

SUBJECT: **COMMENTS REGARDING S.B. 1077, SD2, WITH AMENDMENTS RELATING TO OWNER-BUILDER EXEMPTION.** Sets forth specific responsibilities of and protections for owner-builders exempted from contractor licensing and other requirements; amends the fine schedule to be based on the circumstances of each case. Effective July 1, 2050. (SB1077 HD1)

HEARING

DATE: Wednesday, March 27, 2013
TIME: 4:00 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 **requests amendments** to S.B. 1077, SD2, 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.

The GCA requests the following amendment:

(B) Hire subcontractors appropriately licensed under this chapter to perform ~~[any]~~ all or part of the construction activity ~~for which a license is required;~~

This amendment restores the original language of the bill to ensure that an owner who may choose to self-perform some work, other than plumbing and electrical work, is permitted to do so under the owner-builder exemption pursuant to Section 444-2.5, HRS.

Additionally, 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.