

Testimony of the Contractors License Board

**Before the
Senate Committee on Housing
Tuesday, March 12, 2024
1:00 p.m.**

Conference Room 225 and Videoconference

**On the following measure:
H.B. 1633, H.D.1, RELATING TO CONTRACTORS**

Chair Chang and Members of the Committee:

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

The purpose of this bill is to remove the leasing restriction on owner-builders who obtain an owner-builder exemption to act as their own contractor and who build or improve residential or farm buildings or structures on their own property and do not offer the buildings or structures for sale.

The Board opposes this measure as the purpose of the one-year lease restriction and the requirement that the structures be built for the owner builder's own use, or for use by their grandparents, parents, siblings, or children, is to prevent the use of the owner-builder exemption to circumvent contractor licensing requirements. Lifting this limitation conflicts with the Board's objective to protect the health, safety and welfare of persons contracting with the construction industry and afford the public effective and practical protection against the incompetent, inexperienced, unlawful, and unfair practices of unlicensed contractors.

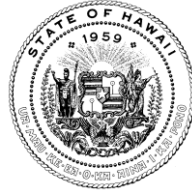
The owner builder exemption permits an owner to act as their own general contractor. They are responsible for supervising the construction, ensuring that subcontractors are properly licensed, and ensuring work safety standard are met. The owner-builder is also responsible for ensuring the project passes building codes and building inspections, and that the project complies with employment and tax laws for any persons working on the project who are not licensed. The average homeowner would not have adequate construction knowledge to carry out the responsibilities of a general contractor. A licensed general building contractor is required to have at least four years of supervisory experience constructing buildings from foundation to roof and

to possess knowledge of the laws that they are required to follow such as Occupational Health and Safety requirements, building codes, and tax and labor laws. Owners are often advised by unlicensed contractors to obtain an owner-builder permit so that the owner can hire or contract with an unlicensed person. In many instances, owner builders come to realize that they are not capable of performing the responsibilities of a general contractor, and resort to hiring unlicensed contractors to act as a general contractor.

The owner-builder exemption law has been amended several times since 1974 to narrow the exemption in order to control and abate the unlawful activities of unlicensed contractors. This bill removes a crucial requirement which currently curtails unlicensed contracting. It lessens the restrictions on the owner builder exemption and allows anyone who owns property to be exempt from the contractor licensing requirements. Removing the requirement that the structure be built for use by the owner-builder or their family permits anyone who owns land, including real estate investors, to build for other purposes such as short-term vacation rentals. This was never the intent of the owner-builder exemption.

This bill undermines the contractor licensing law and contradicts the intent of the owner builder exemption by removing controls and safeguards that were enacted to protect the public from the dangers of unlicensed contracting activity. The Board respectfully requests that this bill be held.

Thank you for the opportunity to testify on this bill.



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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Housing
Tuesday, March 12, 2024
1:00 p.m.
Conference Room 225

On the following measure:
H.B. 1633, H.D.1, RELATING TO CONTRACTORS

WRITTEN TESTIMONY ONLY

Chair Chang and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO). RICO is an agency within the Department of Commerce and Consumer Affairs and we partner with the Contractors License Board (Board) to protect the health, safety, and welfare of consumers by ensuring that contracting activity in the State is performed by legitimate licensees and, that if a person is constructing buildings and structures without a contractor's license, the conduct does not in any way deviate from the short list of narrowly-tailored exceptions to licensure that are found in section 444-2, Hawaii Revised Statutes (HRS).

RICO defers to and supports the Board's position on the H.D.1 draft (H.D.1), and must therefore **OPPOSE** the measure for the sound reasons set forth in the Board's testimony. In addition, the stated purpose of the measure, as introduced initially, was to remove the one-year prohibition on the leasing of structures built by an owner or lessee of property (owner-builder) who is currently eligible, by virtue of section 444-2(7), HRS, to act as a general contractor without a Board-issued license when the completed

dwelling described in section 444-2.5, HRS (444-2.5 structure), is occupied by the owner-builder or their 'Ohana only. Though the measure's intent was laudable and appreciated, the Board expressed concerns for a very good reason: construction activity by an unlicensed general contractor can be dangerous to the public. As the gate-keeper to the construction/contracting industry, therefore, the Board takes seriously the charge to ensure public safety when they license only the most qualified, experienced, fiscally-sound, and vetted general contractors so that projects to build dwellings that will be offered on the market to consumers, are overseen and managed safely and competently.

RICO wishes to point out that the H.D.1 has the following unintended consequences: (1) it does not ensure the safety of future consumers and occupants of a 444-2.5 structure; and (2) it has the effect of decreasing potential rental inventory.

1. Public safety jeopardy. With regard to public safety, the H.D.1 removed the only essential requirement that justifies the exemption from having a general contractor's license – that the completed 444-2.5 structure be occupied by the owner-builder and/or the owner-builder's 'Ohana. The absence of the requirement jeopardizes the welfare and safety of future non-family occupants because the dangers and risks resulting from an unlicensed general contractor will now be borne by them.

Importantly, if the H.D.1 allows 444-2.5 structures that are built by unlicensed general contractors, to be placed on the market for imminent consumption by renters, then the H.D.1 is sanctioning the very conduct that Chapter 444, HRS, forbids – unlicensed contracting. And it does so to the chagrin of the hundreds of law-abiding, licensed general contractors in the State who are ready, able, competent, and willing to undertake such projects to assure they are constructed safely for future consumers.

2. Reduction of rental inventory. Under the current law, lessees can qualify as "owner-builder" unlicensed contractors if they erect dwellings on their property for 'Ohana occupancy. The H.D.1 no longer permits lessees to qualify as "owner-builder" unlicensed contractors, and in doing so it removes their leased realty as possible foundations for 444-2.5 structures. See examples in the H.D.1 at page 2, lines 4, 11, 16, and 19; page 3, lines 15 and 21; etc.

RICO wishes to close with a reminder that unlicensed contracting is unlawful and criminal for an important reason. A well-intentioned but poorly constructed building can lead to a host of foreseeable and unforeseeable dangers that affect real property and

finances, and can even cause a tragic loss of life. Chapter 444, HRS, therefore, mandates – with very few and limited exemptions – the possession of a Board-issued contractor’s license by any person who undertakes a construction project. If conduct falls outside of one of the few exceptions to licensure listed in section 444-2, HRS, the conduct becomes unjustified and constitutes unlawful unlicensed activity.

RICO reiterates that in the case of the narrowly-tailored owner-builder exemption set out in section 444-2.5, HRS, the sole guardrail that is in place to protect the public is the current law’s requirement that the 444-2.5 structure be occupied by the owner-builder or their close family members only (occupancy requirement). The occupancy requirement ensures *that the unlicensed owner-builder general contractor has an obvious personal stake in the safety and quality of the 444-2.5 structure* that they built without applying for and receiving a contractor’s license from the Board. Meaning, only the owner-builder (or lessee-builder, under the current law) and their family must live with – quite literally – the risks of acting as an unlicensed general contractor without having any general contracting background, knowledge, or experience.¹ In doing so, the owner-builder will hopefully be incentivized to repair any defects that are discovered while occupying the structure. Therefore, repealing the occupancy requirement, which has been in the statute since 1974,² would be a significant departure from well-established law and policy. It would also foist upon vulnerable, unsuspecting, and unknowing consumers who may be desperate for housing, structures that were overseen and managed by an unlicensed general contractor.

For the foregoing reasons, passage of this measure would be in contradiction of Chapter 444, HRS’ main policy of protecting consumers. We therefore join the Board in opposing the bill and **respectfully request that the measure be held in Committee.**

Thank you for the opportunity to testify on this measure.

¹ It is important to note that general building contractors are not easy to emulate. They have enough experience, depth, and specialized knowledge in at least two or more unrelated trades and crafts to auto-qualify for specialties such as cabinetry, millwork, carpentry, scaffolding, drywall, building moving/wrecking, cement concrete, fencing, etc. Moreover, they are knowledgeable about the building process, building codes, permitting requirements, and so forth.

² See House Bill No. 2589-74, Regular Session of 1974, enacted as Act 112, Session Laws of Hawaii 1974.

March 12, 2024

The Honorable Stanley Chang, Chair

Senate Committee on Housing

State Capitol, Conference Room 225 & Videoconference

RE: House Bill 1633, HD1, Relating to Contractors

HEARING: Tuesday, March 12, 2024, at 1:00 p.m.

Aloha Chair Chang, Vice Chair Hashimoto, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **supports** House Bill 1633, HD1, which removes the leasing restriction on owner-builders who obtain an owner-builder exemption to act as their own contractor and who build or improve residential or farm buildings or structures on their own property and do not offer the buildings or structures for sale. Effective 7/1/3000.

An owner-builder is a property owner who has an owner-builder permit from the county to build or improve residential structures on a property for personal use or by their immediate family. As an owner-builder, one acts as their own general contractor, ensuring that all applicable laws, building codes, and zoning regulations are following amongst other requirements. Additionally, a property owner may not apply for another owner-builder permit for three years.

Under current law, an owner-builder cannot sell or lease, or even offer to sell or lease the structure for one year after completion. The current restriction on leasing means that properties that could offer units on Hawaii's rental market are unable to do so in that period. We support eliminating the one-year lease restriction for owner-builders to assist with increasing the supply of Hawaii's rental market.

Mahalo for the opportunity to testify in support of this measure.