H.B. NO. 3107

A BILL FOR AN ACT

RELATING TO OWNER-BUILDER PERMITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 508D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§508D-__ Construction, alteration, improvement, demolition, or repair of building or structure by owner-builder.** Any construction, alteration, improvement, demolition, or repair to a building or structure done by an owner-builder under section 444-2(7) is a material fact that shall be conspicuously included in the disclosure statement."

SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

"**§444-9.1 Issuance of building permits; owner-builder registration.** (a) Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the

applicant and all specialty contractors are licensed under this chapter, giving the license numbers and stating that the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; (4) the approximate dates of construction activity; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

(b) The county shall verify the license against a list of licensed contractors provided by the state contractors licensing

board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor's duly authorized agent.

(c) To qualify for the exemption under section 444-2(7), the county shall provide the applicant with a disclosure statement in substantially the following form:

"Disclosure Statement

State law requires the construction, alteration, improvement, demolition, or repair of any building or structure to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section 444-2(7), Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction, alteration, improvement, demolition, or repair yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction, alteration, improvement,

demolition, or repair is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure that subcontractors hired by you have licenses required by state law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building or structure who is not licensed must be your employee, which means that you must deduct F.I.C.A. and withholding taxes and provide workers' compensation for that employee, all as prescribed by law. Your construction, alteration, improvement, demolition, or repair must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section 444-2(7), or fail to comply with the requirements set forth in this disclosure statement, you may be fined $5,000 or forty per cent of the [~~appraised~~] value specified by the county or other local subdivision on the permit application of the construction, alteration, improvement, demolition, or repair of the building [~~as determined by the county tax appraiser,~~] or structure, whichever is greater,

for the first offense; and $10,000 or fifty per cent of the [~~appraised~~] value specified by the county or other local subdivision on the permit application of the construction, alteration, improvement, demolition, or repair of the building [~~as determined by the county tax appraiser,~~] or structure, whichever is greater, for any subsequent offense."

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form.

(d) A county building inspector or other building official shall report to the regulated industries complaints office the name and address of any person, who, in the opinion of the building inspector or official, has violated this chapter by accepting or contracting to accomplish work which would classify the person as a contractor under this chapter.

(e) Any person who obtains a permit under section 444-2(7) shall comply with all of the requirements specified in the disclosure statement in subsection (c)."

SECTION 3. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person who violates section 444-2(7)[~~,~~] or 444-9.1(e) shall be fined:

(1) $5,000 or forty per cent of the [~~appraised~~] value specified by the county or other local subdivision on the permit application of the [~~building as determined by the county tax appraiser,~~] construction, alteration, improvement, demolition, or repair of the building or structure, whichever is greater, for the first offense; and

(2) $10,000 or fifty per cent of the [~~appraised~~] value specified by the county or other local subdivision on the permit application of the [~~building as determined by the county tax appraiser,~~] construction, alteration, improvement, demolition, or repair of the building or structure, whichever is greater, for any subsequent offenses."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3107

Report Title:
Owner-builder permits

Description:
Requires sellers to disclose whether a building or structure was built or improved under an owner-builder permit, clarifies that owner-builders must use licensed subcontractors, and establishes penalties for owner-builders who fail to comply with the owner-builder permit requirements.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO OWNER-BUILDER PERMITS.

PURPOSE: The purpose of this bill is to require persons selling residential real property to disclose whether any construction or improvements were performed under an owner-builder exemption pursuant to section 444-2(7), Hawaii Revised Statutes (HRS), and clarify that a person who obtains an owner-builder building permit must comply with the requirements of both sections 444-2(7) and 444-9.1(c), HRS.

MEANS: Add a new section to chapter 508D and amend sections 444-9.1 and 444-23(e), HRS.

JUSTIFICATION: Section 444-2(7), HRS, exempts owners or lessees who build or improve property for their own use from the licensing requirements of chapter 444, HRS. Amending chapter 508D, HRS, to require sellers of residential real property to disclose any construction or improvements undertaken pursuant to an owner-builder permit will insure that buyers are making an informed decision regarding their purchase, and alert buyers to the possibility that all work may not have been performed by licensed subcontractors.

Section 444-9.1, HRS, requires that an owner-builder register for the exemption and sign a statement that the owner-builder has read and understands a disclosure statement. The disclosure statement requires, among other things, that owner-builders hire licensed subcontractors. In addition, any unlicensed person working on the building must be the employee of the owner-builder. Although the section is clearly designed to require owner-builders to comply with all owner-builder requirements including the

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specifications of the disclosure statement, the current statute does not explicitly require compliance with the terms of the disclosure statement.

The proposed amendments would clarify that owner-builders are required to comply with the provisions of the disclosure statement and would provide for monetary sanctions for noncompliance.

The bill also proposes "housekeeping" amendments to provide consistency in the description of the permitted work, and to clarify that the amount of the fine is based on the value of the permitted work rather than the value of the entire structure.

Impact on the public: Clarifying the owner-builder exemption requirements will give owner-builders clearer guidance on their duties and obligations as owner-builders.

Impact on the department and other agencies: The proposed amendments will bolster the department's enforcement efforts against unlicensed contractors in the owner-builder context.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-105

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.