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# A BILL FOR AN ACT

RELATING TO OWNER-BUILDERS.

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

- 1           SECTION 1. The legislature finds that the intent of  
2 contractor licensing laws under chapter 444, Hawaii Revised  
3 Statutes, is to:
- 4           (1) Protect the public from the dangers of unlicensed  
5           contracting activity;
- 6           (2) Afford owner-builders a limited exemption from  
7           contractor licensing requirements for structures built  
8           for their own use, and which, at the time the  
9           exemption is obtained, the owner-builder does not  
10          intend to sell or lease; and
- 11          (3) Prevent uses of the owner-builder exemption that  
12          circumvent contractor licensing requirements.

13          The legislature further finds that widespread economic  
14 hardship has forced many owner-builders into the unplanned sale  
15 of their property, despite their original intent to use the  
16 property for their own purposes. The legislature finds that it  
17 is necessary to provide relief for these owner-builders so that



1 they may sell or lease their properties under these difficult  
2 circumstances without violating chapter 444.

3 The purpose of this Act is to provide further relief for  
4 owner-builders who must sell or lease a property prior to the  
5 expiration of the one-year prohibition on sales or leases and to  
6 clarify the applicability of the owner-builder exemption.

7 SECTION 2. Chapter 444, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§444-A Owner-builder exemption. (a) This chapter shall  
11 not apply to owners or lessees of property who build or improve  
12 residential, farm, industrial, or commercial buildings or  
13 structures on property for their own use, or for use by their  
14 grandparents, parents, siblings, or children and who do not  
15 offer the buildings or structures for sale or lease; provided  
16 that:

17 (1) To qualify for an exemption under this section, the  
18 owner or lessee shall register for the exemption as  
19 provided in section 444-9.1; and

20 (2) The exemption under this section shall not apply to  
21 electrical or plumbing work that must be performed  
22 only by persons or entities licensed in accordance



1 with this chapter, unless the owner or lessee of the  
2 property is licensed for such work under chapter 448E.

3 (b) Proof of the sale or lease, or offering for sale or  
4 lease, of the structure not more than one year after completion,  
5 unless the sale or lease was caused by an eligible unforeseen  
6 hardship as determined by the board pursuant to subsection (c),  
7 shall be prima facie evidence that the construction or  
8 improvement of the structure was undertaken for the purpose of  
9 sale or lease; provided that this subsection shall not apply to:

10 (1) Residential properties sold or leased to employees of  
11 the owner or lessee; or

12 (2) Construction or improvements performed pursuant to an  
13 approved building permit where the estimated valuation  
14 of work to be performed, as reflected in the building  
15 permit, is less than \$10,000.

16 (c) The board shall determine the eligibility of an  
17 unforeseen hardship claimed by an owner under subsection (b);  
18 provided that an alleged unforeseen hardship shall not be deemed  
19 eligible if the board determines that the construction or  
20 improvement of the structure was undertaken for the purpose of  
21 sale or lease. An owner seeking a determination of eligibility  
22 of an unforeseen hardship shall:



1       (1) Be in compliance with the requirements set forth in  
2           the disclosure statement required to be provided under  
3           section 444-9.1; and

4       (2) Apply in writing to the board at any time prior to  
5           selling, leasing, or offering to sell or lease the  
6           property.

7       The board shall communicate its determination to the owner in  
8       writing within ninety days of receiving a completed application  
9       under this subsection.

10       (d) Any owner or lessee of property found to have violated  
11       this section shall not be permitted to engage in any activities  
12       pursuant to this section or to register under section 444-9.1  
13       for a period of three years. There is a rebuttable presumption  
14       that an owner or lessee has violated this section, when the  
15       owner or lessee obtains an exemption from the licensing  
16       requirements of section 444-9 more than once in two years.

17       (e) For the purposes of this section, "completion" means  
18       the date of final inspection approval by the county."

19       SECTION 3. Section 444-2, Hawaii Revised Statutes, is  
20       amended to read as follows:

21       "**§444-2 Exemptions.** This chapter shall not apply to:



- 1 (1) Officers and employees of the United States, the  
2 State, or any county while in the performance of their  
3 governmental duties;
- 4 (2) Any person acting as a receiver, trustee in  
5 bankruptcy, personal representative, or any other  
6 person acting under any order or authorization of any  
7 court;
- 8 (3) A person who sells or installs any finished products,  
9 materials, or articles of merchandise that are not  
10 actually fabricated into and do not become a permanent  
11 fixed part of the structure, or to the construction,  
12 alteration, improvement, or repair of personal  
13 property;
- 14 (4) Any project or operation for which the aggregate  
15 contract price for labor, materials, taxes, and all  
16 other items is not more than \$1,000. This exemption  
17 shall not apply in any case where a building permit is  
18 required regardless of the aggregate contract price,  
19 nor where the undertaking is only a part of a larger  
20 or major project or operation, whether undertaken by  
21 the same or a different contractor or in which a  
22 division of the project or operation is made in



1 contracts of amounts not more than \$1,000 for the  
2 purpose of evading this chapter or otherwise;

3 (5) A registered architect or professional engineer acting  
4 solely in the person's professional capacity;

5 (6) Any person who engages in the activities regulated in  
6 this chapter as an employee with wages as the person's  
7 sole compensation;

8 ~~(7) [Owners or lessees of property who build or improve  
9 residential, farm, industrial, or commercial buildings  
10 or structures on property for their own use, or for  
11 use by their grandparents, parents, siblings, or  
12 children and who do not offer the buildings or  
13 structures for sale or lease; provided that this  
14 exemption shall not apply to electrical or plumbing  
15 work that must be performed only by persons or  
16 entities licensed under this chapter, or to the owner  
17 or lessee of the property if the owner or lessee is  
18 licensed under chapter 448E. In all actions brought  
19 under this paragraph, proof of the sale or lease, or  
20 offering for sale or lease, of the structure not more  
21 than one year after completion is prima facie evidence  
22 that the construction or improvement of the structure~~



1 ~~was undertaken for the purpose of sale or lease;~~  
2 ~~provided that this provision shall not apply to~~  
3 ~~residential properties sold or leased to employees of~~  
4 ~~the owner or lessee; provided further that in order to~~  
5 ~~qualify for this exemption the owner or lessee must~~  
6 ~~register for the exemptions as provided in section~~  
7 ~~444 9.1. Any owner or lessee of property found to~~  
8 ~~have violated this paragraph shall not be permitted to~~  
9 ~~engage in any activities pursuant to this paragraph or~~  
10 ~~to register under section 444 9.1 for a period of~~  
11 ~~three years. There is a presumption that an owner or~~  
12 ~~lessee has violated this section, when the owner or~~  
13 ~~lessee obtains an exemption from the licensing~~  
14 ~~requirements of section 444 9 more than once in two~~  
15 ~~years;] Owner-builders exempted under section 444-A;~~

16 (8) Any joint venture if all members thereof hold licenses  
17 issued under this chapter;

18 (9) Any project or operation where it is determined by the  
19 board that less than ten persons are qualified to  
20 perform the work in question and that the work does  
21 not pose a potential danger to public health, safety,  
22 and welfare; or



1 (10) Any public works project that requires additional  
2 qualifications beyond those established by the  
3 licensing law and which is deemed necessary and in the  
4 public interest by the contracting agency."

5 SECTION 4. Section 444-9.1, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) Each county or other local subdivision of the [State]  
9 state which requires the issuance of a permit as a condition  
10 precedent to the construction, alteration, improvement,  
11 demolition, or repair of any building or structure shall also  
12 require that each applicant for such a permit file as a  
13 condition to the issuance of a permit a statement that the  
14 applicant and all specialty contractors are licensed [~~under~~] in  
15 accordance with this chapter, giving the license numbers and  
16 stating that the licenses are in full force and effect, or, if  
17 the applicant is exempt from this chapter, the basis for the  
18 claimed exemption; provided that if the applicant claims an  
19 exemption under section [~~444-2(7),~~] 444-A, the applicant shall  
20 [~~also be required to~~] certify that the building or structure is  
21 for the applicant's personal use and not for use or occupancy by  
22 the general public. Each county or local subdivision of the





1 [State] state shall maintain an owner-builder registration list  
2 which shall contain the following information:

3 (1) [~~the~~] The name of any owner or lessee who claims an  
4 exemption from this chapter as provided in section  
5 [~~444-2(7);~~] 444-A;

6 (2) [~~the~~] The address of the property where exempt  
7 building or improvement activity is to occur;

8 (3) [a] A description of the type of building or  
9 improvement activity to occur;

10 (4) [~~the~~] The approximate dates of construction activity;  
11 and

12 (5) [~~whether~~] Whether any electrical or plumbing work is  
13 to be performed and if so, the name and license number  
14 of the person or entity who will do the work.

15 The absence of such registration is prima facie evidence that  
16 the exemption in section [~~444-2(7)~~] 444-A does not apply."

17 2. By amending subsection (c) to read:

18 "(c) [~~To qualify for the exemption under section 444-2(7),~~  
19 ~~the~~] The county shall provide [~~the applicant~~] applicants for the  
20 exemption under section 444-A with a disclosure statement in  
21 substantially the following form:

22 "Disclosure Statement



1 State law requires construction to be done by licensed  
2 contractors. You have applied for a permit under an  
3 exemption to that law. The exemption provided in section  
4 [~~444-2(7)~~], 444-A, Hawaii Revised Statutes, allows you, as  
5 the owner or lessee of your property, to act as your own  
6 general contractor even though you do not have a license.  
7 You must supervise the construction yourself. You must  
8 also hire licensed subcontractors. The building must be  
9 for your own use and occupancy. It may not be built for  
10 sale or lease. If you sell or lease a building you have  
11 built yourself within one year after the construction is  
12 complete, the law will presume that you built it for sale  
13 or lease, which is a violation of the exemption, and you  
14 may be prosecuted for this. It is your responsibility to  
15 make sure that subcontractors hired by you have licenses  
16 required by state law and by county licensing ordinances.  
17 Electrical or plumbing work must be performed by  
18 contractors licensed under chapters 448E and 444, Hawaii  
19 Revised Statutes. Any person working on your building who  
20 is not licensed must be your employee which means that you  
21 must deduct F.I.C.A. and withholding taxes and provide  
22 workers' compensation for that employee, all as prescribed



1 by law. Your construction must comply with all applicable  
2 laws, ordinances, building codes, and zoning regulations.  
3 If you violate section [~~444-2(7)~~] 444-A or fail to comply  
4 with the requirements set forth in this disclosure  
5 statement, you may be fined \$5,000 or forty per cent of the  
6 appraised value of the building as determined by the county  
7 tax appraiser, whichever is greater, for the first offense;  
8 and \$10,000 or fifty per cent of the appraised value of the  
9 building as determined by the county tax appraiser,  
10 whichever is greater, for any subsequent offense."

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

14 SECTION 5. Section 444-23, Hawaii Revised Statutes, is  
15 amended by amending subsection (e) to read as follows:

16 "(e) Any person who violates section [~~444-2(7)~~] 444-A, or  
17 fails to comply with the requirements set forth in the  
18 disclosure statement required to be provided under section 444-  
19 9.1 shall be fined:

20 (1) \$5,000 or forty per cent of the appraised value of the  
21 building as determined by the county tax appraiser,  
22 whichever is greater, for the first offense; and



1           (2) \$10,000 or fifty per cent of the appraised value of  
2           the building as determined by the county tax  
3           appraiser, whichever is greater, for any subsequent  
4           offenses."

5           SECTION 6. This Act does not affect rights and duties that  
6           matured, penalties that were incurred, and proceedings that were  
7           begun before its effective date.

8           SECTION 7. In codifying the new section added by section 2  
9           of this Act, the revisor of statutes shall substitute the  
10          appropriate section number for the letter used in designating  
11          the new section in this Act.

12          SECTION 8. Statutory material to be repealed is bracketed  
13          and stricken. New statutory material is underscored.

14          SECTION 9. This Act shall take effect on July 1, 2010.

15



**Report Title:**

Contractors; Owner-Builders

**Description:**

Amends the owner-builder law by: (1) Allowing an exemption for the sale or lease of a property by an owner builder prior to the expiration of the one-year prohibition period in the event of hardship; (2) Defining when a construction or improvement is completed; (3) Exempting improvements pursuant to an approved building permit where the estimated valuation as reflected in the building permit is less than \$10,000; (4) Establishing fines for the failure of an owner-builder to comply with the requirements set forth in the disclosure statement provided to the owner-builder by the county. Effective July 1, 2010. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

