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## A BILL FOR AN ACT

RELATING TO OWNER-BUILDER PERMITS.

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

1 SECTION 1. Section 444-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§444-2 Exemptions.** This chapter shall not apply to:

4 (1) Officers and employees of the United States, the  
5 State, or any county while in the performance of their  
6 governmental duties;

7 (2) Any person acting as a receiver, trustee in  
8 bankruptcy, personal representative, or any other  
9 person acting under any order or authorization of any  
10 court;

11 (3) A person who sells or installs any finished products,  
12 materials, or articles of merchandise that are not  
13 actually fabricated into and do not become a permanent  
14 fixed part of the structure, or to the construction,  
15 alteration, improvement, or repair of personal  
16 property;

17 (4) Any project or operation for which the aggregate  
18 contract price for labor, materials, taxes, and all



1 other items is not more than \$1,000. This exemption  
2 shall not apply in any case where a building permit is  
3 required regardless of the aggregate contract price,  
4 nor where the undertaking is only a part of a larger  
5 or major project or operation, whether undertaken by  
6 the same or a different contractor or in which a  
7 division of the project or operation is made in  
8 contracts of amounts not more than \$1,000 for the  
9 purpose of evading this chapter or otherwise;

10 (5) A [~~registered~~] licensed architect or professional  
11 engineer acting solely in the person's professional  
12 capacity;

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

16 (7) Owners or lessees of property who build or improve  
17 residential, farm, industrial, or commercial buildings  
18 or structures on property for their own use, or for  
19 use by their grandparents, parents, siblings, or  
20 children and who do not offer the buildings or  
21 structures for sale or lease; provided that this  
22 exemption shall not apply to electrical or plumbing



1 work that must be performed only by persons or  
2 entities licensed under this chapter, or to the owner  
3 or lessee of the property if the owner or lessee is  
4 licensed under chapter 448E. In all actions brought  
5 under this paragraph, proof of the sale or lease, or  
6 offering for sale or lease, of the structure not more  
7 than [~~one year~~] two years after [~~completion is~~]  
8 closing of the building permit, unless the sale was  
9 caused by any of the following unforeseen

10 circumstances:

11 (A) The death of the owner's spouse or home co-owner;

12 (B) The owner becoming eligible to receive  
13 unemployment compensation; or

14 (C) The divorce of the owner;

15 shall be prima facie evidence that the construction or  
16 improvement of the structure was undertaken for the  
17 purpose of sale or lease; provided that this provision  
18 shall not apply to residential properties sold or  
19 leased to employees of the owner or lessee; provided  
20 further that in order to qualify for this exemption  
21 the owner or lessee must register for the [~~exemptions~~]  
22 exemption as provided in section 444-9.1. Any owner



1 or lessee of property found to have violated this  
2 paragraph shall not be permitted to engage in any  
3 activities pursuant to this paragraph or to register  
4 under section 444-9.1 for a period of three years.

5 There is a presumption that an owner or lessee has  
6 violated this section, when the owner or lessee  
7 obtains an exemption from the licensing requirements  
8 of section 444-9 more than once in [~~two~~] three years;

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

11 (9) Any project or operation where it is determined by the  
12 board that less than ten persons are qualified to  
13 perform the work in question and that the work does  
14 not pose a potential danger to public health, safety,  
15 and welfare; or

16 (10) Any public works project that requires additional  
17 qualifications beyond those established by the  
18 licensing law and which is deemed necessary and in the  
19 public interest by the contracting agency."

20 SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is  
21 amended by amending subsection (c) to read as follows:



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

4                                        "Disclosure Statement

5        State law requires construction to be done by licensed  
6 contractors. You have applied for a permit under an  
7 exemption to that law. The exemption provided in section  
8 444-2(7), Hawaii Revised Statutes, allows you, as the owner  
9 or lessee of your property, to act as your own general  
10 contractor even though you do not have a license. You must  
11 supervise the construction yourself. You must also hire  
12 licensed subcontractors. The building must be for your own  
13 use and occupancy. It may not be built for sale or lease.  
14 If you sell or lease a building you have built yourself  
15 within [~~one year~~] two years after the [~~construction is~~  
16 ~~complete,~~] closing of the building permit, unless the sale  
17 was caused by any of the following unforeseen  
18 circumstances:

- 19        (A)     The death of the owner's spouse or home co-owner;
- 20        (B)     The owner becoming eligible to receive unemployment  
21                compensation; or
- 22        (C)     The divorce of the owner;

1 the law will presume that you built it for sale or lease,  
2 which is a violation of the exemption, and you may be  
3 prosecuted for this. It is your responsibility to make  
4 sure that subcontractors hired by you have licenses  
5 required by state law and by county licensing ordinances.  
6 Electrical or plumbing work must be performed by  
7 contractors licensed under chapters 448E and 444, Hawaii  
8 Revised Statutes. Any person working on your building who  
9 is not licensed must be your employee which means that you  
10 must deduct F.I.C.A. and withholding taxes and provide  
11 workers' compensation for that employee, all as prescribed  
12 by law. Your construction must comply with all applicable  
13 laws, ordinances, building codes, and zoning regulations.  
14 If you violate section 444-2(7) or fail to comply with the  
15 requirements set forth in this disclosure statement, you  
16 may be fined \$5,000 or forty per cent of the appraised  
17 value of the building as determined by the county tax  
18 appraiser, whichever is greater, for the first offense; and  
19 \$10,000 or fifty per cent of the appraised value of the  
20 building as determined by the county tax appraiser,  
21 whichever is greater for any subsequent offense."



1 The county shall not issue a building permit to the owner-  
 2 applicant until the applicant signs a statement that the  
 3 applicant has read and understands the disclosure [~~form.~~]  
 4 statement."

5 SECTION 3. Statutory material to be repealed is bracketed  
 6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval.  
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INTRODUCED BY:

Marilyn J. Thompson

J. Neil Kramets

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John M. [Handwritten]

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JAN 23 2008



**Report Title:**

Contractors; Owner-Builder Permits

**Description:**

Increases period prohibiting sale or lease by owner-builder from 1 to 2 years, and requires that an exemption from licensing requirements is given no more than once in 3 years.

