

S.B. NO. 3029

JAN 22 2008

A BILL FOR AN ACT

RELATING TO OWNER-BUILDER PERMITS.

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

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

4 "§508D-___ Construction, alteration, improvement,
5 demolition, or repair of building or structure by owner-builder.
6 Any construction, alteration, improvement, demolition, or repair
7 to a building or structure done by an owner-builder under
8 section 444-2(7) is a material fact that shall be conspicuously
9 included in the disclosure statement."

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

12 "**§444-9.1 Issuance of building permits; owner-builder**
13 **registration.** (a) Each county or other local subdivision of
14 the State which requires the issuance of a permit as a condition
15 precedent to the construction, alteration, improvement,
16 demolition, or repair of any building or structure shall also
17 require that each applicant for such a permit file as a
18 condition to the issuance of a permit a statement that the

1 applicant and all specialty contractors are licensed under this
2 chapter, giving the license numbers and stating that the
3 licenses are in full force and effect, or, if the applicant is
4 exempt from this chapter, the basis for the claimed exemption;
5 provided that if the applicant claims an exemption under section
6 444-2(7), the applicant shall also be required to certify that
7 the building or structure is for the applicant's personal use
8 and not for use or occupancy by the general public. Each county
9 or local subdivision of the State shall maintain an owner-
10 builder registration list which shall contain the following
11 information: (1) the name of any owner or lessee who claims an
12 exemption from this chapter as provided in section 444-2(7); (2)
13 the address of the property where exempt building or improvement
14 activity is to occur; (3) a description of the type of building
15 or improvement activity to occur; (4) the approximate dates of
16 construction activity; and (5) whether any electrical or
17 plumbing work is to be performed and if so, the name and license
18 number of the person or entity who will do the work. The
19 absence of such registration is prima facie evidence that the
20 exemption in section 444-2(7) does not apply.

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

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

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

8 "Disclosure Statement

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

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

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

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

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

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

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

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.

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

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.