
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 (HRS), 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, HRS.

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 exemptions 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 under this



1 chapter, unless the owner or lessee of the property is
2 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."



1 SECTION 3. 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
19 other items is not more than \$1,000. This exemption
20 shall not apply in any case where a building permit is
21 required regardless of the aggregate contract price,
22 nor where the undertaking is only a part of a larger



1 or major project or operation, whether undertaken by
2 the same or a different contractor or in which a
3 division of the project or operation is made in
4 contracts of amounts not more than \$1,000 for the
5 purpose of evading this chapter or otherwise;

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

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

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



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

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

21 (9) Any project or operation where it is determined by the
22 board that less than ten persons are qualified to



1 perform the work in question and that the work does
2 not pose a potential danger to public health, safety,
3 and welfare; or

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

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

10 1. By amending subsection (a) to read as follows:

11 "(a) Each county or other local subdivision of the [State]
12 state which requires the issuance of a permit as a condition
13 precedent to the construction, alteration, improvement,
14 demolition, or repair of any building or structure shall also
15 require that each applicant for such a permit file as a
16 condition to the issuance of a permit a statement that the
17 applicant and all specialty contractors are licensed under this
18 chapter, giving the license numbers and stating that the
19 licenses are in full force and effect, or, if the applicant is
20 exempt from this chapter, the basis for the claimed exemption;
21 provided that if the applicant claims an exemption under section
22 [~~444-2(7)-7~~] 444-A, the applicant shall also be required to



1 certify that the building or structure is for the applicant's
2 personal use and not for use or occupancy by the general public.
3 Each county or local subdivision of the [State] state shall
4 maintain an owner-builder registration list which shall contain
5 the following information:

6 (1) [~~the~~] The name of any owner or lessee who claims an
7 exemption from this chapter as provided in section
8 [~~444-2(7)-;~~] 444-A;

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

11 (3) [~~a~~] A description of the type of building or
12 improvement activity to occur;

13 (4) [~~the~~] The approximate dates of construction activity;
14 and

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

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



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

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

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



1 "(e) Any person who violates section [~~444-2(7)~~], 444-A, or
 2 fails to comply with the requirements set forth in the
 3 disclosure statement required to be provided under section 444-
 4 9.1 shall be fined:

- 5 (1) \$5,000 or forty per cent of the appraised value of the
- 6 building as determined by the county tax appraiser,
- 7 whichever is greater, for the first offense; and
- 8 (2) \$10,000 or fifty per cent of the appraised value of
- 9 the building as determined by the county tax
- 10 appraiser, whichever is greater, for any subsequent
- 11 offenses."

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

15 SECTION 7. In codifying the new sections added by section
 16 2 of this Act, the revisor of statutes shall substitute
 17 appropriate section numbers for the letters used in designating
 18 the new sections in this Act.

19 SECTION 8. Statutory material to be repealed is bracketed
 20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect on January 1, 2011.



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 January 1, 2011.
(HB1927 HD1)

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

