

STAND. COM. REP. NO

184

Honolulu, Hawaii

FEB 19 2009

RE: S.B. No. 205
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Education and Housing, to which was referred S.B. No. 205 entitled:

"A BILL FOR AN ACT RELATING TO OWNER-BUILDERS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Increase the period prohibiting sale or lease by an owner-builder from one to two years unless the sale is due to unforeseen circumstances; and
- (2) Require that an exemption from contractor licensing requirements is given no more than once in three years.

Testimony in support of this measure was submitted by two state agencies and one private organization. Testimony in opposition was submitted by one private organization. Comments were submitted by one individual. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that this measure will enhance enforcement of laws against unlicensed contracting activity by increasing the restriction on post construction sale and requiring owner-builders to comply with certain contractor law requirements.

Your Committee has heard a number of concerns raised by this measure and thanks the interested parties for their efforts to strike a compromise on amendments.

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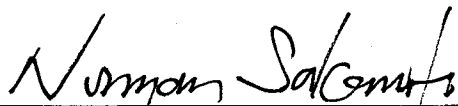


Your Committee has amended this measure by:

- (1) With regard to the prohibition on the sale or lease by an owner-builder, requiring the Contractors License Board to determine what may constitute circumstances beyond the control of the owner or lessee; and
- (2) Adding a new subsection (e) to section 444-9.1, Hawaii Revised Statutes, stating that any person who obtains a permit under section 444-2(7), Hawaii Revised Statutes, shall comply with all of the requirements specified in the disclosure statement, and that failure to comply is a violation of that section.

As affirmed by the record of votes of the members of your Committee on Education and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 205, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 205, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Education and
Housing,



NORMAN SAKAMOTO, Chair



Report Title:

Contractors; Owner-Builders

Description:

Increases period prohibiting sale or lease by owner-builder from 1 to 2 years unless due to circumstances beyond control of the owner or lessee as determined by the contractors licensing board; requires that an exemption from licensing requirements is given no more than once in 3 years; clarifies violation provisions. (SD1)

A BILL FOR AN ACT

RELATING TO OWNER-BUILDERS.

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;

- 1 (4) Any project or operation for which the aggregate
2 contract price for labor, materials, taxes, and all
3 other items is not more than \$1,000. This exemption
4 shall not apply in any case where a building permit is
5 required regardless of the aggregate contract price,
6 nor where the undertaking is only a part of a larger
7 or major project or operation, whether undertaken by
8 the same or a different contractor or in which a
9 division of the project or operation is made in
10 contracts of amounts not more than \$1,000 for the
11 purpose of evading this chapter or otherwise;
- 12 (5) A [~~registered~~] licensed architect or professional
13 engineer acting solely in the person's professional
14 capacity;
- 15 (6) Any person who engages in the activities regulated in
16 this chapter as an employee with wages as the person's
17 sole compensation;
- 18 (7) Owners or lessees of property who build or improve
19 residential, farm, industrial, or commercial buildings
20 or structures on property for their own use, or for
21 use by their grandparents, parents, siblings, or
22 children and who do not offer the buildings or

1 structures for sale or lease; provided that this
2 exemption shall not apply to electrical or plumbing
3 work that must be performed only by persons or
4 entities licensed under this chapter, or to the owner
5 or lessee of the property if the owner or lessee is
6 licensed under chapter 448E. In all actions brought
7 under this paragraph, proof of the sale or lease, or
8 offering for sale or lease, of the structure not more
9 than [~~one year~~] two years after [~~completion is~~]
10 closing of the building permit shall be prima facie
11 evidence that the construction or improvement of the
12 structure was undertaken for the purpose of sale or
13 lease[~~+~~], unless the sale or lease is due to
14 circumstances beyond the control of the owner or
15 lessee, as determined by the board; provided that this
16 provision shall not apply to residential properties
17 sold or leased to employees of the owner or lessee;
18 provided further that in order to qualify for this
19 exemption the owner or lessee must register for the
20 [~~exemptions~~] exemption as provided in section 444-9.1.
21 Any owner or lessee of property found to have violated
22 this paragraph shall not be permitted to engage in any

- 1 activities pursuant to this paragraph or to register
2 under section 444-9.1 for a period of three years.
3 There is a presumption that an owner or lessee has
4 violated this section, when the owner or lessee
5 obtains an exemption from the licensing requirements
6 of section 444-9 more than once in [~~two~~] three years;
- 7 (8) Any joint venture if all members thereof hold licenses
8 issued under this chapter;
- 9 (9) Any project or operation where it is determined by the
10 board that less than ten persons are qualified to
11 perform the work in question and that the work does
12 not pose a potential danger to public health, safety,
13 and welfare; or
- 14 (10) Any public works project that requires additional
15 qualifications beyond those established by the
16 licensing law and which is deemed necessary and in the
17 public interest by the contracting agency."

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

20 **"§444-9.1 Issuance of building permits; owner-builder**
21 **registration.** (a) Each county or other local subdivision of
22 the State which requires the issuance of a permit as a condition

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

1 absence of such registration is prima facie evidence that the
2 exemption in section 444-2(7) does not apply.

3 (b) The county shall verify the license against a list of
4 licensed contractors provided by the state contractors licensing
5 board, which list shall be updated at least quarterly. The
6 county shall also verify that the applicant is in fact the
7 contractor so licensed or the contractor's duly authorized
8 agent.

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

12 "Disclosure Statement

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

22 If you sell or lease a building you have built yourself

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

1 cent of the appraised value of the building as determined
2 by the county tax appraiser, whichever is greater for any
3 subsequent offense."

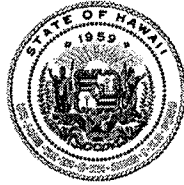
4 The county shall not issue a building permit to the owner-
5 applicant until the applicant signs a statement that the
6 applicant has read and understands the disclosure [~~form.~~]
7 statement.

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

14 (e) Any person who obtains a permit under section 444-2(7)
15 shall comply with all of the requirements specified in the
16 disclosure statement in subsection (c). Failure to comply is a
17 violation of section 444-2(7)."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.



LINDA LINGLE
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JAMES R. AIONA, JR.
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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

FRIDAY, FEBRUARY 27, 2009
9:30 A.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 205 S.D.1 – RELATING TO OWNER-BUILDERS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 205 S.D.1, Relating to Owner-Builders. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department strongly supports measures that will enhance its enforcement of laws against unlicensed contracting activity. The Department supports certain provisions of this bill and takes no position as to the remainder of the bill.

Section 444-2, Hawaii Revised Statutes ("HRS"), exempts persons who qualify as "owner-builders" from the contractor licensing law. This exemption was originally designed to allow an individual homeowner to act as his or her own contractor for purposes of building or improving their residence. Owner-builders are authorized to obtain special building permits that do not have to be signed by licensed contractors. However, owner-builders are expected to comply with all laws and, if they hire people to perform the construction, those people have to be licensed.

The exemption applies to owners or lessees of property who build or improve residential, farm, industrial, or commercial structures or buildings for their own or family's use, restricts the owner from fixing up the structure or building and then selling it within a year thereafter, and limits the frequency with which owner-builder permits can be obtained.

Senate Bill No. 205 S.D.1, among other things, increases the restriction on post-construction sale from one to two years after the closing of the building permit, and limits the availability of the owner-builder permit to once every three years instead of two years under the current law. The bill also requires owner-builders to comply with certain contractor law requirements.

The Department supports the language on page 3 line 10 and page 7 line 2 of the bill that changes the word "completion" to "closing of the building permit." The Department supports this change because it provides greater clarity as to which date applies.

The Department also supports the language on page 7 lines 18 and 19 of the bill that makes clear that an owner-builder's failure to comply with the requirements of the disclosure statement would subject the owner-builder to certain fines.

Finally, the Department supports the language on page 8 lines 14-17. The language requires that any person who obtains a permit under §444-2(7), HRS, shall comply with the disclosure statement requirements in subsection (c) and provides that a failure to comply constitutes a violation of §444-2(7), HRS. This language ensures that violators are subject to the fines set forth in §444-23(e), HRS.

Thank you for the opportunity to testify on Senate Bill No. 205 S.D.1. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Friday, February 27, 2009
9:30 a.m.

WRITTEN COMMENTS ON SENATE BILL NO. 205, S.D.1, RELATING TO OWNER-BUILDERS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Denny Sadowski, Legislative Committee Chair of the Contractors License Board ("Board"). The Board appreciates the opportunity to present written comments on Senate Bill No. 205, S.D. 1, Relating to Owner-Builders. The Board supports the intent of this bill, which is to place additional restrictions on owner-builders to prevent abuses of the permit process which foster unlicensed contractor activity.

The Board supports the proposed amendments to Chapter 444, HRS, which: (1) increases the time period that the owner-builder is prohibited from selling the property from one to two years after the closing of the building permit; (2) increases the time period that the owner-builder cannot pull another owner-builder permit from two to three years; and (3) requires the owner-builder to comply with the terms of the disclosure statement in section 444-9.1(c).

We believe these amendments will assist in the enforcement of our licensing requirements by preventing unlicensed contractors from abusing the owner-builder permit process.

Thank you for the opportunity to present comments on Senate Bill No. 205,
S.D. 1.

SAH - Subcontractors Association of Hawaii

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February 27, 2009

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: S.B. 205, SD 1 – RELATING TO OWNER-BUILDERS

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we are in support of this bill. SAH represents the following eight separate and distinct subcontracting associations:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

Unfortunately, unlicensed activity has been in existence forever for the construction industry. With the increasing poor economy, we would expect it to get even worse.

What we are talking about here is the "underground" economy; those that are operating illegally, generally are not paying taxes and violate a multitude of labor laws. We would agree that it should be legal for an individual to build their own house, that's not the problem. The problem is when they hire other people to fill in the areas where they don't feel comfortable doing it themselves. That too, is actually okay, as long as they use licensed contractors and subcontractors. From our experience however, we know that in these kinds of cases, owner-builders tend to hire casual labor thinking they are legal and calling them independent contractors. HIOSH actually cited an owner-builder recently because of the safety violations on the job.

In conclusion, we think that tightening up this law is definitely in order and we agree with increasing the period from one (1) to two (2) years and further providing that an exemption can be provided no more than once in every three (3) years.

Thank you for the opportunity to testify.