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# A BILL FOR AN ACT

RELATING TO THE OWNER-BUILDER EXEMPTION.

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

1           SECTION 1. In the State of Hawaii, a contractor's license  
2 is required to obtain a building permit from the various  
3 counties, unless the applicant is an owner-builder. The owner-  
4 builder exemption allows owners to perform their own home  
5 improvements and construction. As an "owner-builder", an owner  
6 can hire employees and contract directly with subcontractors to  
7 construct improvements on their property. However, as an  
8 "owner-builder", an owner also takes on all of the  
9 responsibilities associated with acting as a general contractor,  
10 including compliance with building codes, occupational safety  
11 and health regulations, wage standards, taxes, and the like.

12           Oftentimes, owners are advised by unlicensed contractors to  
13 obtain an owner-builder permit so that the owner can hire or  
14 contract with an unlicensed person. Too often, owners are not  
15 fully aware of the risks and responsibilities they have assumed  
16 until it is too late.

17           The purpose of this Act is to limit the application of the  
18 owner-builder exemption to residential or farm property only, to



1 improve the ability of the regulated industries complaints  
2 office to investigate possible violations of the owner-builder  
3 law, and to offer additional disclosures for owner-builders when  
4 they enter into agreements with licensed subcontractors.

5 SECTION 2. Section 444-2.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§444-2.5 Owner-builder exemption.** (a) This chapter  
8 shall not apply to owners or lessees of property who build or  
9 improve residential[, ] or farm[, ~~industrial, or commercial~~]  
10 buildings or structures on property for their own use, or for  
11 use by their grandparents, parents, siblings, or children and  
12 who do not offer the buildings or structures for sale or lease;  
13 provided that:

14 (1) To qualify for an exemption under this section, the  
15 owner or lessee shall register for the exemption as  
16 provided in section 444-9.1 and pay applicable fees;  
17 [~~and~~]

18 (2) The exemption under this section shall not apply to  
19 electrical or plumbing work that must be performed  
20 only by persons or entities licensed in accordance  
21 with this chapter, unless the owner or lessee of the



1 property is licensed for such work under chapter  
2 448E[-];

3 (3) An owner or lessee exempted under this section shall:

4 (A) Supervise the construction activity on the exempt  
5 buildings or structures;

6 (B) Hire subcontractors appropriately licensed under  
7 this chapter to perform all or part of the  
8 construction activity;

9 (C) Ensure that any electrical or plumbing work is  
10 performed by persons and entities appropriately  
11 licensed under this chapter or chapter 448E;

12 (D) Deduct Federal Insurance Contributions Act and  
13 withholding taxes, and provide workers'  
14 compensation insurance for persons working on the  
15 construction activity who are not licensed under  
16 this chapter or chapter 448E and who shall be  
17 considered employees of the owner or lessee; and

18 (E) Ensure that the construction activity complies  
19 with all applicable laws, ordinances, building  
20 codes, and zoning regulations.

21 (4) Until completion of the construction activity, an  
22 owner or lessee exempted under this section shall make



1           available the following records for immediate  
2           inspection upon request by the department:

3           (A) A copy of the building permit application;

4           (B) A copy of the issued building permit;

5           (C) Copies of all contracts with the names of all  
6           persons who performed or are performing work on  
7           the exempt buildings and structures; and

8           (D) Proof of payment to all persons contracted to  
9           work on the exempt buildings and structures; and

10          (5) Upon completion of the construction activity, an owner  
11          or lessee exempted under this section shall keep and  
12          maintain the records identified in paragraph (4) for a  
13          period of three years from completion of the  
14          construction activity and shall make such records  
15          available for inspection within seven business days  
16          upon request by the department.

17          (b) Proof of the sale or lease, or offering for sale or  
18          lease, of the structure within one year after completion shall  
19          be prima facie evidence that the construction or improvement of  
20          the structure was undertaken for the purpose of sale or lease;  
21          provided that this subsection shall not apply to:



- 1           (1) Residential properties sold or leased to employees of  
2           the owner or lessee;
- 3           (2) Construction or improvements performed pursuant to an  
4           approved building permit where the estimated valuation  
5           of work to be performed, as reflected in the building  
6           permit, is less than \$10,000; or
- 7           (3) Any sale or lease caused by an eligible unforeseen  
8           hardship as determined by the board pursuant to  
9           subsection (c).
- 10          (c) The board shall determine the eligibility of an  
11          unforeseen hardship claimed by an owner under subsection (b);  
12          provided that an alleged unforeseen hardship shall not be deemed  
13          eligible if the board determines that the construction or  
14          improvement of the structure was undertaken for the purpose of  
15          sale or lease. An exemption for an unforeseen hardship shall  
16          not be denied solely because of lack of completion, as the term  
17          is defined in subsection (e). An owner seeking a determination  
18          of eligibility of an unforeseen hardship shall:
- 19          (1) Be in compliance with the requirements set forth in  
20          the disclosure statement required to be provided under  
21          section 444-9.1; and



1           (2) Submit a written application to the board at any time  
2           prior to selling, leasing, or offering to sell or  
3           lease the property describing the nature of the  
4           applicant's unforeseen hardship. The application  
5           shall include supporting documentation detailing the  
6           hardship, such as:

- 7           (A) Evidence of receipt of unemployment compensation;  
8           (B) Tax returns;  
9           (C) Medical records;  
10          (D) Bank statements;  
11          (E) Divorce decrees ordering sale of property;  
12          (F) Mortgage default letters; or  
13          (G) Bankruptcy filings.

14 The board shall communicate its determination to the owner in  
15 writing within ninety days of receiving a completed application  
16 under this subsection.

17          (d) Any owner or lessee of property found to have violated  
18 this section shall not be permitted to engage in any activities  
19 pursuant to this section or to register under section 444-9.1  
20 for a period of three years. There is a rebuttable presumption  
21 that an owner or lessee has violated this section, when the



1 owner or lessee obtains an exemption from the licensing  
2 requirements of section 444-9 more than once in two years.

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

5 (f) An owner or lessee exempted under this section shall  
6 not be eligible to recover from the contractors recovery fund  
7 established under this chapter.

8 (g) This section shall not apply to agricultural  
9 buildings, structures, or appurtenances thereto that do not  
10 require a building permit or are exempt from the building code."

11 SECTION 3. Section 444-9.1, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§444-9.1 Issuance of building permits; owner-builder**  
14 **registration.** (a) Each county or other local subdivision of  
15 the State which requires the issuance of a permit as a condition  
16 precedent to the construction, alteration, improvement,  
17 demolition, or repair of any building or structure shall also  
18 require that each applicant for such a permit file as a  
19 condition to the issuance of a permit a statement that the  
20 applicant and all specialty contractors are licensed in  
21 accordance with this chapter, giving the license numbers and  
22 stating that the licenses are in full force and effect, or, if



1 the applicant is exempt from this chapter, the basis for the  
2 claimed exemption; provided that if the applicant claims an  
3 exemption under section 444-2.5, the applicant shall certify  
4 that the building or structure is for the applicant's personal  
5 use and not for use or occupancy by the general public. Each  
6 county or local subdivision of the State shall maintain an  
7 owner-builder registration list which shall contain the  
8 following information:

- 9 (1) The name of any owner or lessee who claims an  
10 exemption from this chapter as provided in section  
11 444-2.5;
- 12 (2) The address of the property where exempt building or  
13 improvement activity is to occur;
- 14 (3) A description of the type of building or improvement  
15 activity to occur;
- 16 (4) The approximate dates of construction activity; and
- 17 (5) Whether any electrical or plumbing work is to be  
18 performed and if so, the name and license number of  
19 the person or entity who will do the work.

20 The absence of such registration is prima facie evidence that  
21 the exemption in section 444-2.5 does not apply.





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

7 (c) The county shall provide applicants for the exemption  
8 under section 444-2.5 with a disclosure statement in  
9 substantially the following form:

10 "Disclosure Statement

11 State law requires construction to be done by licensed  
12 contractors. You have applied for a permit under an  
13 exemption to that law. The exemption provided in section  
14 444-2.5, Hawaii Revised Statutes, allows you, as the owner  
15 or lessee of your property, to act as your own general  
16 contractor even though you do not have a license. You must  
17 supervise the construction yourself. You must also hire  
18 licensed subcontractors. The building must be for your own  
19 use and occupancy. It may not be built for sale or lease.  
20 If you sell or lease a building you have built yourself  
21 within one year after the construction is complete, the law  
22 will presume that you built it for sale or lease, which is



1 a violation of the exemption, and you may be prosecuted for  
2 this. It is your responsibility to make sure that  
3 subcontractors hired by you have licenses required by state  
4 law and by county licensing ordinances. Electrical or  
5 plumbing work must be performed by contractors licensed  
6 under chapters 448E and 444, Hawaii Revised Statutes. Any  
7 person working on your building who is not licensed must be  
8 your employee which means that you must deduct F.I.C.A. and  
9 withholding taxes and provide workers' compensation for  
10 that employee, all as prescribed by law. Your construction  
11 must comply with all applicable laws, ordinances, building  
12 codes, and zoning regulations. If you violate section 444-  
13 2.5 or fail to comply with the requirements set forth in  
14 this disclosure statement, you may be fined \$5,000 or forty  
15 per cent of the appraised value of the building as  
16 determined by the county tax appraiser, whichever is  
17 greater, for the first offense; and \$10,000 or fifty per  
18 cent of the appraised value of the building as determined  
19 by the county tax appraiser, whichever is greater, for any  
20 subsequent offense."

21



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

10 (e) A filing fee of \_\_\_\_\_ shall be implemented to fund  
11 the processing of applications and the field investigation  
12 process."

13 SECTION 4. Section 444-23, Hawaii Revised Statutes, is  
14 amended by amending subsection (e) to read as follows:

15 "(e) Any person who violates section 444-2.5[~~, or fails to~~  
16 ~~comply with the requirements set forth in the disclosure~~  
17 ~~statement required to be provided under section 444-9.1]~~ shall  
18 be fined:

19 (1) \$5,000 or [~~forty~~] fifty per cent of the [~~appraised~~]  
20 value of the [~~building~~] construction or improvement as  
21 [~~determined by the county tax appraiser,~~] indicated on



1           the building permit application, whichever is greater,  
2           for the first offense; and  
3           (2) \$10,000 or [~~fifty~~] sixty per cent of the [~~appraised~~]  
4           value of the [~~building~~] construction or improvement as  
5           [~~determined by the county tax appraiser,~~] indicated on  
6           the building permit application, whichever is greater,  
7           for any subsequent offenses."

8           SECTION 5. Section 444-25.5, Hawaii Revised Statutes, is  
9           amended to read as follows:

10           "**§444-25.5 Disclosure; contracts.** (a) Prior to entering  
11           into a contract with a homeowner or prior to a homeowner's  
12           signing a contract, whichever is earlier, involving home  
13           construction or improvements [~~and prior to the application for a~~  
14           ~~building permit~~], licensed contractors shall:

- 15           (1) Explain verbally in detail to the homeowner all lien  
16           rights of all parties performing under the contract  
17           including the homeowner, the contractor, any  
18           subcontractor, or any materialman supplying  
19           commodities or labor on the project;  
20           (2) Explain verbally in detail the homeowner's option to  
21           demand bonding on the project, how the bond would



1 protect the homeowner, and the approximate expense of  
2 the bond; and

3 (3) Disclose all information pertaining to the contract  
4 and its performance and any other relevant information  
5 that the board may require by rule.

6 (b) All licensed contractors performing home construction  
7 or improvements shall provide a written contract to the  
8 homeowner. The written contract shall:

9 (1) Contain the information provided in subsection (a) and  
10 any other relevant information that the board may  
11 require by rule;

12 (2) Contain notice of the contractor's right to resolve  
13 alleged construction defects prior to commencing any  
14 litigation in accordance with section 672E-11;

15 (3) Be signed by the contractor and the homeowner; and

16 (4) Be executed prior to the performance of any home  
17 construction or improvement.

18 (c) For the purpose of this section, "homeowner" means the  
19 owner or lessee of residential real property, including owners  
20 or lessees of condominium or cooperative units[-],  
21 notwithstanding owner-builder status.



1 (d) Any violation of this section shall be deemed an  
2 unfair or deceptive practice and shall be subject to provisions  
3 of chapter 480, as well as the provisions of this chapter."

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

6 SECTION 7. This Act, upon its approval, shall take effect  
7 on July 1, 2013.



**Report Title:**

Owner-Builder Exemption; Responsibilities of and Protections for  
Owner-Builders; Fees

**Description:**

Sets forth specific responsibilities of and protections for  
owner-builders exempted under contractor licensing laws.  
Establishes a filing fee to fund the processing of applications  
and field investigations regarding the owner-builder scheme.  
Effective July 1, 2013. (HB846 HD1)

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not legislation or evidence of legislative intent.*

