

JAN 24 2013

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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

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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 by amending subsection (a) to read as follows:

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

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

16 (2) The exemption under this section shall not apply to  
17 electrical or plumbing work that must be performed  
18 only by persons or entities licensed in accordance  
19 with this chapter, unless the owner or lessee of the  
20 property is licensed for such work under chapter  
21 448E[~~;~~];

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

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- 1           (A) Supervise the construction activity on the exempt
- 2                   buildings or structures;
- 3           (B) Hire subcontractors appropriately licensed under
- 4                   this chapter to perform all or part of the
- 5                   construction activity;
- 6           (C) Ensure that any electrical or plumbing work is
- 7                   performed by persons and entities appropriately
- 8                   licensed under this chapter or chapter 448E;
- 9           (D) Deduct Federal Insurance Contributions Act and
- 10                  withholding taxes, and provide workers'
- 11                  compensation insurance for persons working on the
- 12                  construction activity who are not licensed under
- 13                  this chapter or chapter 448E and who shall be
- 14                  considered employees of the owner or lessee; and
- 15           (E) Ensure that the construction activity complies
- 16                  with all applicable laws, ordinances, building
- 17                  codes, and zoning regulations.
- 18   (4) Until completion of the construction activity, an
- 19                  owner or lessee exempted under this section shall make
- 20                  available the following records for immediate
- 21                  inspection upon request by the department:
- 22           (A) A copy of the building permit application;

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- 1           (B) A copy of the issued building permit;
- 2           (C) Copies of all contracts with the names of all
- 3           persons who performed or are performing work on
- 4           the exempt buildings and structures; and
- 5           (D) Proof of payment to all persons contracted to
- 6           work on the exempt buildings and structures; and
- 7       (5) Upon completion of the construction activity, an owner
- 8       or lessee exempted under this section shall keep and
- 9       maintain the records identified in paragraph (4) for a
- 10       period of three years from completion of the
- 11       construction activity and shall make such records
- 12       available for inspection within seven business days
- 13       upon request by the department."

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

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

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

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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 4. 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 involving home construction or  
12           improvements [~~and prior to the application for a building~~  
13           ~~permit~~], licensed contractors shall:

14           (1) Explain verbally in detail to the homeowner all lien  
15           rights of all parties performing under the contract  
16           including the homeowner, the contractor, any  
17           subcontractor, or any materialman supplying  
18           commodities or labor on the project;

19           (2) Explain verbally in detail the homeowner's option to  
20           demand bonding on the project, how the bond would  
21           protect the homeowner, and the approximate expense of  
22           the bond; and

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

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

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

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

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

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

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

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



**Report Title:**

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

**Description:**

Sets forth specific responsibilities of and protections for owner-builders exempted under chapter 444, Hawaii Revised Statutes.

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



JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE OWNER-BUILDER EXEMPTION

PURPOSE: To clarify the responsibilities of and add protections for owner-builders exempt under chapter 444, Hawaii Revised Statutes (HRS).

MEANS: Amend sections 444-2.5(a), 444-23(e), and 444-25.5, HRS.

JUSTIFICATION: Under current law, owners or lessees of real property may qualify for an owner-builder exemption from the licensing requirements of Hawaii's Contractor law in chapter 444, HRS, if the owners or lessees build or improve residential, farm, industrial, or commercial buildings for their own use and do not offer the buildings for sale or lease. Owners or lessees who seek to qualify for an owner-builder exemption must register for the exemption and sign a disclosure statement that sets forth the responsibilities of the owner-builder.

The bill limits the application of the owner-builder exemption to residential or farm property. This bill deletes the exemption for industrial and commercial buildings and structures because construction activity on industrial and commercial properties impacts the public, and licensed contractors should be used on all phases of construction activity on these types of properties.

The bill also authorizes inspections by the Department of the owner-builder's records both during and after completion of the construction project for a period of three

years. This will increase the Department's ability to monitor owner-builder projects to ensure compliance with the owner-builder requirements. The fine amounts for noncompliance with the owner-builder requirements have been amended to account for the traditionally low value of construction or improvement indicated on the building permit application.

Lastly, the bill amends section 444-25.5, HRS, to afford owner-builders the same consumer protections currently given to homeowners who are not owner-builders. Currently, section 444-25.5, HRS, provides that licensed contractors must (1) disclose certain information to a homeowner prior to entering into a contract with the homeowner and prior to the application for a building permit; and (2) provide a written contract to the homeowner. The Intermediate Court of Appeals, in Toney v. Fauhiva, 109 Haw. 96, 123 P.3d 691 (Haw. Ct. App. 2005), previously concluded that the provisions of section 444-25.5, HRS, do not apply to owner-builders.

Under this bill, section 444-25.5, HRS, will apply to owner-builders such that licensed contractors must disclose certain information to and enter into written contracts with homeowners, including owner-builders. Owner-builders will benefit from the required disclosures and from written, enforceable contracts.

Impact on the public: The bill will benefit consumers by clarifying the responsibilities of and increasing the protections for owner-builders.

Impact on the department and other agencies: The bill will strengthen RICO's ability to monitor and prosecute violations involving owner-builder construction projects. No impact on other agencies is anticipated.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.