

SB205



LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON  
EDUCATION AND HOUSING

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

WEDNESDAY, FEBRUARY 4, 2009  
1:15 P.M.

TESTIMONY ON SENATE BILL NO. 205 – RELATING TO OWNER-BUILDERS

TO THE HONORABLE NORMAN SAKAMOTO, CHAIR,  
AND TO THE HONORABLE MICHELLE KIDANI, 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, 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, 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.

With regard to the language on page 3 line 10 and page 5 line 18 of the bill that changes the word "completion" to "closing of the building permit," the Department supports this change as it provides greater clarity as to which date applies.

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February 4, 2009  
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The Department also supports the language on page 6 lines 17 and 18 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. However the Department suggests that additional language be added to the bill to further clarify owner-builders' responsibility to comply with the licensing law by adding a sentence to the end of this section that states:

Failure by an owner-builder to comply with all of the requirements specified in this section is a violation of section 444-2(7).

This will ensure that owner-builders who violate the requirements of the disclosure statement are subject to the fines set forth in §444-23(e), HRS.

Thank you for the opportunity to testify on Senate Bill No. 205. 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 EDUCATION AND HOUSING

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Wednesday, February 4, 2009  
1:15 p.m.

**TESTIMONY ON SENATE BILL NO. 205, RELATING TO OWNER-BUILDERS.**

TO THE HONORABLE NORMAN SAKAMOTO, 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 testimony on Senate Bill No. 205, 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; however, we must respectfully oppose the addition of specific exemptions to the restriction on selling the property within a certain period of time.

The Board supports: (1) increasing the time period that the owner-builder is prohibited from selling the property from one to two years; (2) increasing the time period that the owner-builder cannot pull another owner-builder permit from two to three years; and (3) requiring the owner-builder to comply with the terms of the disclosure statement. However, the Board is opposed to specifying certain exemptions to the restrictions on selling the property within two years, as stated on page 3, lines 13-16.

While the Board understands that there may be unforeseen circumstances under which an owner may be forced to sell the property, the Board feels that specifying

certain exemptions, such as becoming eligible for unemployment insurance, merely creates loopholes for owners intent on circumventing the license requirements. Also, an owner-builder may have a legitimate need to sell the property within the two-year period, but for reasons other than an exemption specified in the statute. Therefore, we prefer that these matters are left to the Board's discretion, so as not to create an undue burden on rightful owner-builders.

Lastly, while the Board supports the clarification that the owner-builder comply with the requirements of the disclosure statement in section 444-9.1(c), we feel that merely placing the clarifying language within the disclosure statement itself is not sufficient. Therefore, we support the addition of a new subsection (e) within section 444-9.1 as follows:

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

Thank you for the opportunity to testify on Senate Bill No. 205.

# ***SAH - Subcontractors Association of Hawaii***

***820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938***

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 4, 2009

Testimony To: Senate Committee on Education and Housing  
Senator Norman Sakamoto, Chair

Presented By: Tim Lyons  
President

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

Chair Sakamoto 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 two (2) years.

Thank you for the opportunity to testify.

February 3, 2009

**The Honorable Norman Sakamoto, Chair**  
Senate Committee on Education and Housing  
State Capitol, Room 225  
Honolulu, Hawaii 96813

**RE: S.B. 205 Relating to Owner-Builders**

**HEARING DATE:** Wednesday, February 4, 2009 at 1:15 p.m.

Aloha Chair Sakamoto and Members of the Committee on Education and Housing:

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) **opposes** S.B. 205 which increases the restriction on post-construction sale from 1 to 2 years and limits availability of owner-builder permits to once every 3 years instead of 2 years.

The purpose of the owner-builder exemption at Hawai'i Revised Statutes § 444-2 is to allow an individual homeowner to act as his/her own contractor for building or improving their residence. This provision operates to exempt persons who qualify as an owner-builder from the contractors' licensing law. Exempted owner-builders are still required to comply with all laws including hiring and supervision of licensed workers such as plumbers and electricians.

HAR opposes the increase of time limits as proposed in S.B. 205, and believes that this provision unduly restricts private property rights. While the proposed measure exempts owners-builders who experience certain unforeseen circumstances, (i.e. death, divorce or unemployment), there may be other financial hardships, such as unforeseen construction costs, that may cause an owner-builder to wish to sell the property. During these challenging economic times, imposing a more stringent limitation on an owner-builder's ability to sell his/her property seems unjustified.

HAR asks that the impacts of S.B. 205 be carefully considered, and respectfully asks that this bill be held.

Mahalo for the opportunity to testify.