

JAN 19 2018

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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.   Section 444-2.5, Hawaii Revised Statutes, is  
2   amended by amending subsection (a) to read as follows:

3       "(a)   This chapter shall not apply to owners or lessees of  
4   property who build or improve residential or farm buildings or  
5   structures on property for their own use, or for use by their  
6   grandparents, parents, siblings, or children, and who do not  
7   offer the buildings or structures for sale or lease; provided  
8   that:

9       (1)   To qualify for an exemption under this section, the  
10       owner or lessee shall register for the exemption as  
11       provided in section 444-9.1;

12       (2)   The exemption under this section shall not apply to  
13       electrical or plumbing work that must be performed  
14       only by persons or entities licensed in accordance  
15       with this chapter, unless the owner or lessee of the  
16       property is licensed for such work under chapter 448E;

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



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 any part of the  
5 construction activity for which a license is  
6 required;

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

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

16 (E) Ensure that the construction activity complies  
17 with all applicable laws, ordinances, building  
18 codes, and zoning regulations;

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



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

(A) A copy of the building permit application;

(B) A copy of the issued building permit;

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

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

(E) Proof of withholding of applicable taxes including under the Federal Insurance Contribution Act and that workers' compensation insurance were provided to all persons contracted to work on the exempt building and structures; and that any subcontractors, including independent contractors, provided the same to their employees; and

(5) Upon completion of the construction activity, an owner or lessee exempted under this section shall keep and maintain the records identified in paragraph (4) for a period of three years from completion of the



1 construction activity and shall make the records  
2 available for inspection within seven business days  
3 upon request by the department."

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

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

9 "Disclosure Statement

10 State law requires construction to be done by licensed  
11 contractors. You have applied for a permit under an  
12 exemption to that law. The exemption provided in section  
13 444-2.5, Hawaii Revised Statutes, allows you, as the owner  
14 or lessee of your property, to act as your own general  
15 contractor even though you do not have a license. You must  
16 supervise the construction yourself. You must also hire  
17 licensed subcontractors. The building must be for your own  
18 use and occupancy. It may not be built for sale or lease.  
19 If you sell or lease a building you have built yourself  
20 within one year after the construction is complete, the law  
21 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 up to \$5,000 or  
15 [~~forty~~] fifty per cent of the [~~appraised~~] value of the  
16 [~~building~~] construction or improvement as [~~determined by~~  
17 ~~the county tax appraiser,~~] indicated on the building permit  
18 application, whichever is greater, and as determined based  
19 on review of the circumstances of each case, for the first  
20 offense; and \$10,000 or [~~fifty~~] sixty per cent of the  
21 [~~appraised~~] value of the [~~building~~] construction or



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1        improvement as ~~[determined by the county tax appraiser,]~~  
2        indicated on the building permit application, whichever is  
3        greater, for any 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        SECTION 3. Statutory material to be repealed is bracketed  
8        and stricken. New statutory material is underscored.

9        SECTION 4. This Act shall take effect on July 1, 2018.

10       INTRODUCED BY:





Michael Fedani



# S.B. NO. 2279

**Report Title:**

Owner-builder's Compliance; Labor Rules; Proof of Compliance

**Description:**

Requires that owner-builders provide proof of withholding of applicable taxes and that workers' compensation insurance were provided to those contracted to work on the exempt buildings and structures. Makes conforming amendments to section 444-9.1(c), HRS, relating to fines for violating the owner-builder exemption.

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

