

JAN 25 2017

A BILL FOR AN ACT

RELATING TO AGRICULTURAL BUILDING PERMITS.

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

1 SECTION 1. In 2012, the legislature found that the
2 building codes and permitting processes in existence at the time
3 were overly burdensome to the State's commercial agriculture and
4 aquaculture industries by adding substantial time and cost to
5 establishing or expanding farming and ranching enterprises in
6 the State. In response to these concerns, the legislature
7 enacted Act 114, Session Laws of Hawaii 2012, codified in
8 section 46-88, Hawaii Revised Statutes, requiring each county to
9 establish a list of agricultural buildings and structures that
10 were exempt from existing building permit requirements; each
11 county had discretion to add certain buildings and structures to
12 their exemption list and were mandated to include others.

13 In 2013, the legislature found that the State's agriculture
14 and aquaculture industries needed further relief from the
15 existing building codes and permitting processes, and enacted
16 Act 203, Session Laws of Hawaii 2013. Act 203 added an
17 exemption from county building code requirements for certain



1 buildings and structures, expanded the existing building permit
2 exemptions, and removed all discretion from the counties
3 regarding building permit exemptions.

4 The legislature finds that Act 203, Session Laws of Hawaii
5 2013, inadvertently resulted in failing to maintain state
6 floodplain management requirements consistent with the National
7 Flood Insurance Program (NFIP), impairing state and county
8 eligibility under NFIP; for flood insurance to be sold within
9 Hawaii, the State is required to ensure that its political
10 subdivisions with delegated land use authority are enabled to
11 regulate development within flood-prone areas, and to establish
12 minimum state flood plain managements regulatory standards
13 consist with NFIP's minimum requirements.

14 The legislature further finds that if the State is not in
15 compliance with the NFIP requirements by July 31, 2017, the
16 Federal Emergency Management Agency will initiate suspension
17 procedures throughout the State, which will result in the loss
18 of NFIP flood insurance coverage and will also impact
19 eligibility for certain federal disaster assistance.

20 The purpose of this Act is to amend the agricultural
21 building code and building permit requirements to bring the



1 State back into compliance with federal flood insurance
2 requirements.

3 SECTION 2. Section 46-88, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§46-88 Agricultural buildings and structures; building~~
6 ~~permit exemptions [from building permit and building code~~
7 ~~requirements]~~. (a) [~~Notwithstanding any law to the contrary,~~
8 ~~the following agricultural buildings, structures, and~~
9 ~~appurtenances thereto that are not used as dwellings or lodging~~
10 ~~units are exempt from building permit and building code~~
11 ~~requirements where they are no more than one thousand square~~
12 ~~feet in floor area:] Each county shall establish an agricultural
13 buildings and structures exemption list of buildings and
14 structures that are exempt from existing building permit
15 requirements. The list shall be established by each county no
16 later than January 1, 2018. Agricultural buildings, structures,
17 or appurtenances thereto, which are not used as dwelling or
18 lodging units, may be exempted from existing building permit
19 requirements where they are no more than one thousand square
20 feet in floor area; provided that the aggregate floor area of
21 the exempted agricultural building, structure, or appurtenance~~



1 thereto shall not exceed five thousand square feet per zoning
2 lot and the minimum horizontal separation between each
3 agricultural building, structure, or appurtenance thereto is
4 fifteen feet, and the agricultural buildings, structures, or
5 appurtenances thereto are located on a commercial farm or ranch
6 and are used for general agricultural or aquacultural
7 operations, or for purposes incidental to such operations;
8 provided further that:

9 (1) The agricultural building, structure, or appurtenance
10 thereto is constructed or installed on property that
11 is used primarily for agricultural or aquacultural
12 operations, and is two or more contiguous acres in
13 area or one or more contiguous acres in area if
14 located in a nonresidential agricultural or
15 aquacultural park;

16 (2) Upon completion of construction or installation, the
17 owner or occupier shall provide written notice to the
18 appropriate county fire department and county building
19 permitting agency of the size, type, and locations of
20 the building, structure, or appurtenance thereto.

21 Such written notification shall be provided to the



1 county agencies within thirty days of the completion
2 of the building, structure, or appurtenance thereto.
3 Failure to provide such written notice may void the
4 building permit exemption, which voidance for such
5 failure is subject to the sole discretion of the
6 appropriate county building permitting agency;

7 (3) No electrical power and no plumbing systems shall be
8 connected to the building or structure without first
9 obtaining the appropriate county electrical or
10 plumbing permit, and all such installations shall be
11 installed under the supervision of a licensed
12 electrician or plumber, as appropriate, and inspected
13 and approved by an appropriate county or licensed
14 inspector; and

15 (4) Disposal of wastewater from any building or structure
16 constructed or installed pursuant to this section
17 shall comply with chapter 342D.

18 (b) For purposes of subsection (a), the following
19 buildings and structures and appurtenances thereto shall be
20 included in each county's agricultural building and structures
21 exemption list:



- 1 (1) Nonresidential manufactured pre-engineered commercial
2 buildings and structures[+] consisting of no more than
3 one thousand square feet that have no electrical power
4 and have no potable water, sewage, or other plumbing
5 related services, or have such electrical or plumbing
6 related services installed and inspected in accordance
7 with subsection (a) (3) and (4);
- 8 (2) Single stand alone recycled ocean shipping or cargo
9 containers that are used as nonresidential commercial
10 buildings [~~and are properly anchored~~];
- 11 (3) Notwithstanding the one thousand square foot floor
12 area restriction[+] in subsection (a), agricultural
13 shade cloth structures, cold frames, or greenhouses
14 not exceeding twenty thousand square feet in area per
15 structure; provided that where multiple structures are
16 erected, the minimum horizontal separation between
17 each shade cloth structure, cold frame, or greenhouse
18 is fifteen feet;
- 19 (4) Aquacultural or aquaponics structures, including
20 above-ground water storage or production tanks,
21 troughs, and raceways with a maximum height of six



- 1 feet above grade, and in-ground ponds and raceways,
2 and piping systems for aeration, carbon dioxide, or
3 fertilizer or crop protection chemical supplies within
4 agricultural or aquacultural production facilities;
- 5 (5) Livestock watering tanks, water piping and plumbing
6 not connected to a source of potable water, or
7 separated by an air gap from such a source;
- 8 (6) Non-masonry fences not exceeding ten feet in height
9 and masonry fences not exceeding six feet in height;
- 10 (7) One-story masonry or wood-framed buildings or
11 structures with a structural span of less than twenty-
12 five feet and a total square footage of no more than
13 one thousand square feet, including farm buildings
14 used as:
- 15 (A) Barns;
16 (B) Greenhouses;
17 (C) Farm production buildings including aquaculture
18 hatcheries and plant nurseries;
19 (D) Storage buildings for farm equipment or plant or
20 animal supplies or feed; or



- 1 (E) Storage or processing buildings for crops;
- 2 provided that the height of any stored items
- 3 shall not collectively exceed twelve feet in
- 4 height[+] and the storage of any hazardous
- 5 materials shall comply with any and all
- 6 applicable statutes, regulations, and codes;
- 7 (8) Raised beds containing soil, gravel, cinders, or other
- 8 growing media or substrates with wood, metal, or
- 9 masonry walls or supports with a maximum height of
- 10 four feet;
- 11 (9) Horticultural tables or benches no more than four feet
- 12 in height supporting potted plants or other crops; and
- 13 (10) Nonresidential indigenous Hawaiian hale that do not
- 14 exceed five hundred square feet in size, have no
- 15 kitchen or bathroom, and are used for traditional
- 16 agricultural activities or education;
- 17 provided that the buildings, structures, and appurtenances
- 18 thereto comply with all applicable state and county [zoning
- 19 codes.
- 20 ~~(b) Notwithstanding the one thousand square foot floor~~
- 21 ~~area restriction in subsection (a), the following buildings,~~



1 ~~structures, and appurtenances thereto shall be exempt from~~
2 ~~building permit requirements when compliant with relevant~~
3 ~~building codes or county, national, or international~~
4 ~~prescriptive construction standards.~~

5 ~~(1) Nonresidential manufactured pre-engineered and county~~
6 ~~pre-approved commercial buildings and structures~~
7 ~~consisting of a total square footage greater than one~~
8 ~~thousand square feet but no more than eight thousand~~
9 ~~square feet; and~~

10 ~~(2) One-story wood-framed or masonry buildings or~~
11 ~~structures with a structural span of less than twenty-~~
12 ~~five feet and a total square footage greater than one~~
13 ~~thousand square feet but no more than eight thousand~~
14 ~~square feet constructed in accordance with county,~~
15 ~~national, or international prescriptive construction~~
16 ~~standards, including buildings used as:~~

17 ~~(A) Barns;~~

18 ~~(B) Greenhouses;~~

19 ~~(C) Farm production buildings, including aquaculture~~
20 ~~hatcheries and plant nurseries;~~



- 1 ~~(D) Storage buildings for farm equipment, plant or~~
- 2 ~~animal supplies, or feed; or~~
- 3 ~~(E) Storage or processing buildings for crops;~~
- 4 ~~provided that the height of any stored items~~
- 5 ~~shall not collectively exceed twelve feet in~~
- 6 ~~height.] codes, including but not limited to~~
- 7 ~~applicable building, fire, health, safety, and~~
- 8 ~~zoning codes and are properly anchored.~~

9 ~~[(c) The exemptions in subsections (a) and (b) shall~~
10 ~~apply; provided that:~~

11 ~~(1) The aggregate floor area of the exempted agricultural~~
12 ~~buildings shall not exceed:~~

13 ~~(A) Five thousand square feet per zoning lot for lots~~
14 ~~of two acres or less;~~

15 ~~(B) Eight thousand square feet per zoning lot for~~
16 ~~lots greater than two acres but not more than~~
17 ~~five acres; and~~

18 ~~(C) Eight thousand square feet plus two per cent of~~
19 ~~the acreage per zoning lot for lots greater than~~
20 ~~five acres; provided that each exempted~~
21 ~~agricultural building is compliant with the~~



- 1 ~~square foot area restrictions in subsection (a)~~
2 ~~or subsection (b);~~
- 3 ~~(2) The minimum horizontal separation between each~~
4 ~~agricultural building, structure, or appurtenance~~
5 ~~thereto is fifteen feet;~~
- 6 ~~(3) The agricultural buildings, structures, or~~
7 ~~appurtenances thereto are located on a commercial farm~~
8 ~~or ranch and are used for general agricultural or~~
9 ~~aquacultural operations, or for purposes incidental to~~
10 ~~such operations;~~
- 11 ~~(4) The agricultural buildings, structures, or~~
12 ~~appurtenances thereto are constructed or installed on~~
13 ~~property that is used primarily for agricultural or~~
14 ~~aquacultural operations, and is two or more contiguous~~
15 ~~acres in area or one or more contiguous acres in area~~
16 ~~if located in a nonresidential agricultural or~~
17 ~~aquacultural park;~~
- 18 ~~(5) Upon completion of construction or installation, the~~
19 ~~owner or occupier shall provide written notice to the~~
20 ~~appropriate county fire department and county building~~
21 ~~permitting agency of the size, type, and locations of~~



1 ~~the building, structure, or appurtenance thereto.~~

2 ~~Such written notification shall be provided to the~~
3 ~~county agencies within thirty days of the completion~~
4 ~~of the building, structure, or appurtenance thereto.~~

5 ~~Failure to provide such written notice may void the~~
6 ~~building permit or building code exemption, or both,~~
7 ~~which voidance for such failure is subject to the sole~~
8 ~~discretion of the appropriate county building~~
9 ~~permitting agency;~~

10 ~~(6) No electrical power and no plumbing systems shall be~~
11 ~~connected to the building or structure without first~~
12 ~~obtaining the appropriate county electrical or~~
13 ~~plumbing permit, and all such installations shall be~~
14 ~~installed under the supervision of a licensed~~
15 ~~electrician or plumber, as appropriate, and inspected~~
16 ~~and approved by an appropriate county or licensed~~
17 ~~inspector or, if a county building agency is unable to~~
18 ~~issue an electrical permit because the building or~~
19 ~~structure is permit exempt, an electrical permit shall~~
20 ~~be issued for an electrical connection to a meter on a~~
21 ~~pole beyond the permit exempt structure in accordance~~



1 ~~with the installation, inspection, and approval~~
2 ~~requirements in this paragraph;~~
3 ~~(7) Disposal of wastewater from any building or structure~~
4 ~~constructed or installed pursuant to this section~~
5 ~~shall comply with chapter 342D; and~~
6 ~~(8) Permit exempt structures shall be exempt from any~~
7 ~~certificate of occupancy requirements.]~~

8 (c) In the event that a county fails to establish the
9 agricultural buildings and structures exemption list within the
10 time period as required under subsection (a), the buildings and
11 structures specified in subsection (b) shall constitute that
12 county's agricultural building and structures exemption list.

13 (d) As used in this section:
14 "Agricultural building" means a nonresidential building or
15 structure, built for agricultural or aquacultural purposes,
16 located on a commercial farm or ranch constructed or installed
17 to house farm or ranch implements, agricultural or aquacultural
18 feeds or supplies, livestock, poultry, or other agricultural or
19 aquacultural products, used in or necessary for the operation of
20 the farm or ranch, or for the processing and selling of farm or
21 ranch products.

1 "Agricultural operation" means the planting, cultivating,
2 harvesting, processing, or storage of crops, including those
3 planted, cultivated, harvested, and processed for food,
4 ornamental, grazing, feed, or forestry purposes, as well as the
5 feeding, breeding, management, and sale of animals including
6 livestock, poultry, honeybees, and their products.

7 "Appurtenance" means an object or device in, on, or
8 accessory to a building or structure, and which enhances or is
9 essential to the usefulness of the building or structure,
10 including but not limited to work benches, horticultural and
11 floricultural growing benches, aquacultural, aquaponic, and
12 hydroponic tanks, raceways, troughs, growbeds, and filterbeds,
13 when situated within a structure.

14 "Aquacultural operation" means the propagation,
15 cultivation, farming, harvesting, processing, and storage of
16 aquatic plants and animals in controlled or selected
17 environments for research, commercial, or stocking purposes and
18 includes aquaponics or any growing of plants or animals in or
19 with aquaculture effluents.

20 "Manufactured pre-engineered commercial building or
21 structure" means a building or structure whose specifications



1 comply with appropriate county codes, and have been pre-approved
2 by a county or building official.

3 "Nonresidential building or structure" means a building or
4 structure, including an agricultural building, that is used only
5 for agricultural or aquacultural operations and is not intended
6 for use as, or used as, a dwelling.

7 (e) This section shall not apply to buildings or
8 structures otherwise exempted from building permitting or
9 building code requirements by applicable county ordinance.

10 (f) This section shall not be construed to supersede
11 public or private lease conditions.

12 (g) This section shall not apply to the construction or
13 installation of any building or structure on land in an urban
14 district ~~[-]~~ or within a high hazard safety area.

15 (h) The State or any county shall not be liable for claims
16 arising from the construction of agricultural buildings,
17 structures, or appurtenances thereto exempt from the building
18 ~~[code and]~~ permitting process as described in this section,
19 unless the claim arises out of gross negligence or intentional
20 misconduct by the State or county.



1 (i) This section shall not apply to buildings or
2 structures used to store pesticides or other hazardous material
3 unless stored in accordance with federal and state law.

4 (j) Failure to comply with the conditions of this section
5 shall result in penalties consistent with county building
6 department provisions."

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, 2017.

10

INTRODUCED BY:

~~SEN. D.C. Fink-Agare~~
Hal Rhoads



S.B. NO. 1118

Report Title:

Agricultural Buildings; Building Permits; Building Codes;
Exemptions; Counties

Description:

Removes exemptions from building codes and building permits for certain agricultural buildings and structures. Requires each county to establish a list of agricultural buildings and structures that are exempt from building permit regulations no later than January 1, 2018. Exempts specified buildings and structures, and their appurtenances, from certain building permit requirements.

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