

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
and
AGRICULTURE AND ENVIRONMENT

Wednesday, February 8, 2017
1:15 P.M.
State Capitol, Conference Room 224

In consideration of
SENATE BILL 873
RELATING TO AGRICULTURAL BUILDINGS

Senate Bill (SB) 873 proposes to require notice be given to certain county agencies at least 30 days prior to construction or installation of certain agricultural buildings and structures that are exempt from building permit and code requirements. The measure also proposes to impose a fine of \$100 per day of violation if construction or installation begins within 30 days of notice. **The Department of Land and Natural Resources (Department) appreciates the opportunity to provide comments on SB 873. If the intent of this measure is to meet eligibility requirements for continued participation in the National Flood Insurance Program (NFIP), the Department recommends this measure be replaced with the language proposed in the Administrative measure SB 988.**

The Department serves as the State Coordinating Agency for the NFIP and acts as a liaison between Federal Emergency Management Agency (FEMA) and the four counties to ensure proper administration and enforcement of floodplain management regulations. An April 15, 2016 letter from FEMA (attached) identified specific deficiencies with Hawaii Revised Statutes (HRS) §46-88, which prohibits the counties from enforcing their floodplain management regulations as required for participation in the NFIP.

SB 873 does not satisfy the eligibility requirements as identified in the April 15th FEMA letter. Specifically, this bill lacks the following FEMA requirements:

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFERY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

- 1) Consistency with 44CFR §60.3(a)(1) and §60.3(b)(1), where the NFIP participating community (county) must require permits for all proposed construction or other development in flood prone and special flood hazard areas (SFHA) which includes “development” as defined in 44CFR §59.1.
- 2) Incorporate county adopted higher regulatory standards whereby new construction or other development in non-SFHA may also be subject to compliance with floodplain management regulations. In accordance with 44CFR§60.1, when a county adopts a more restrictive floodplain development standards, that standard shall take precedence and must be legally-enforceable and applied uniformly throughout the county.
- 3) State that any agricultural structure or development, which were exempt from building permits pursuant to HRS 46-88 and in violation of the county flood plain management regulations must be brought into compliance to the maximum extent possible.

The State of Hawaii has been participating in the NFIP for over 35 years which has enabled homeowners, business owners, and renters the ability to purchase federally backed and subsidized flood insurance optionally or as required by their mortgage lending institution pursuant to the National Flood Insurance Act of 1968. The Flood Disaster Protection Act of 1973, requires mortgage lending institutions to mandate the purchase of flood insurance for properties located in the SFHA for federally backed mortgages underwritten by their institution. If the NFIP flood policies were not available to Hawaii, all properties located in areas designated by FEMA as high risk for flooding would be required to find another mechanism to satisfy the mandatory flood insurance purchase requirement. Private flood insurance would not be eligible for the current government subsidies provided by the NFIP and are anticipated to be substantially higher than the current NFIP rates.

Since HRS §46-88 was originally enacted in 2012, the amount of paid losses from flood insurance claims in Hawaii has increased by \$11,607,940 according to statistics from FEMA’s Community Information System database.

Another advantage of participation in the NFIP is the availability of Federal disaster assistance in the event of a Presidential declaration. If the State of Hawaii is no longer participating in the NFIP, certain forms of Federal disaster assistance may not be available to government, businesses, and individuals to aid in recovery. It is estimated that the amount of disaster aid made available to the State of Hawaii since (1980) joining the NFIP, has totaled over \$400 million dollars.

While flood insurance and disaster aid are beneficial for recovering from floods, mitigation to reduce losses is the goal of the NFIP. Mitigation is achieved through sound floodplain management. Unregulated development within floodplains increases the risk to life and property from flooding.

Thank you for the opportunity to testify on this measure.



FEMA

April 15, 2016

The Honorable David Y. Ige
Governor of the State of Hawaii
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Dear Governor Ige:

The purpose of this letter is to bring to your attention a serious matter concerning the State and four (4) Hawaii counties participating in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). FEMA has learned that the State of Hawaii amended Hawaii Revised Statute § 46-88 through Hawaii State Bill 586 enacted as Act No. 2013-203 (“HRS § 46-88” or the “Act”) exempting certain agricultural structures from building code and permit requirements, and as a result failing to maintain state floodplain management requirements consistent with the NFIP, impairing the State and its political subdivisions’ eligibility under the NFIP and preventing participating NFIP communities’ ability to enforce their floodplain management requirements. In order for federal flood insurance to be sold within a State, as prerequisites, the State is required to ensure that their political subdivisions with delegated land use authority are enabled to regulate development within flood-prone areas, and to establish minimum State flood plain management regulatory standards consistent with the NFIP’s minimum requirements. See 44 CFR § 59.21, § 59.22 and § 60.25 (b) (1) and (9).

As discussed below, the State of Hawaii’s action places the State and its political subdivisions: the City and County of Honolulu, and the Counties of Hawaii, Maui and Kauai at risk of suspension from the NFIP. If remedial action is not taken to amend the statute and to restore the State and its political subdivisions’ eligibility and enable the State’s political subdivisions with land use authority to meet the minimum floodplain management requirements of the NFIP by July 31, 2017, FEMA will begin the process of suspending the sale of Federal flood insurance in the State and all of Hawaii’s communities currently participating in the NFIP. When communities are suspended from the NFIP, they lose their eligibility for federally-backed flood insurance and eligibility for certain federal disaster assistance.

In amending HRS § 46-88, the Act states, “Notwithstanding any law to the contrary, the following agricultural buildings, structures, and appurtenances thereto that are not used as dwellings or lodging units are exempt from building permit and building code requirements where they are no more than one thousand square feet in floor area.” The Act also states, “Notwithstanding the one thousand square foot floor area restriction in subsection (a), the

following buildings, structures, and appurtenances thereto shall be exempt from building permit requirements when compliant with relevant building codes or county, national, or international prescriptive construction standards...Upon completion of construction or installation, the owner or occupier shall provide written notice to the appropriate county fire department and county building permitting agency of the size, type, and location of the building, structure, or appurtenance thereto. Such written notification shall be provided to the county agencies within thirty days of the completion of the building, structure, or appurtenance thereto.”

According to 44 CFR § 60.3(a)(1), an NFIP participating community must, “Require permits for all proposed construction or other *development* in the community, including the placement of manufactured homes, so that it may determine whether such construction or development is proposed within flood prone areas.” Additionally, development is defined at 44 CFR § 59.1, as “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment and materials.” The Act provides exemptions to the requirements in 44 CFR § 60.3(a)(1) for activities defined in 44 CFR § 59.1 which are not compliant with the minimum criteria of the NFIP.

FEMA is the Federal Agency responsible for administering the NFIP, as authorized by the National Flood Insurance Act, 42 U.S.C. § 4001 *et seq.* The NFIP is a voluntary program whereby the Federal Government makes affordable flood insurance available in exchange for community adoption of a local floodplain management ordinance consistent with the Federal standards that are designed to minimize the risk of flood and ensures that new and substantially improved buildings are constructed to minimize flood risk. The land use and control measures must be legally enforceable and uniformly applied in a NFIP participating community. See 42 U.S.C. §§ 4012(c), 4022; 44 CFR §§ 60.1(a), 60.2, 59.21 and 59.22. According to Federal statute, FEMA is prohibited from making flood insurance available in a community unless that community adopts floodplain management measures that meet or exceed the minimum program requirement at 44 CFR § 60.3 with effective enforcement provisions that meet FEMA’s minimum floodplain management regulations. See 42 U.S.C. §§ 4012(c), 4022.

Consequently, if a community lacks the ability to legally enforce its floodplain management ordinance uniformly throughout the community within the Special Flood Hazard Area (SFHA), then it is not in compliance with the NFIP. The Act revised the statute creating a legal impediment to community compliance with the NFIP requirements which places the State of Hawaii and its communities’ continued participation in jeopardy. The State is responsible for enacting legislation that enables communities and municipalities to adopt and uniformly enforce floodplain management regulations consistent with FEMA’s minimum floodplain management regulations (44 CFR § 60.25(b)(1)).

FEMA trusts that the State will take the necessary action to repeal these provisions and preserve the availability of federally flood insurance and other federal disaster assistance for the State of Hawaii and its communities. Failure to address this compliance problem by July 31, 2017, will force FEMA to initiate suspension procedures for the State and all Hawaii communities that participate in the NFIP, as allowed under 44 CFR § 59.24(d). Under this provision, FEMA will provide Hawaii communities with 30 days prior written notice and

notice by publication in the *Federal Register*. If the Act is repealed after the Hawaii communities are suspended, communities will be reinstated in the program once they are compliant with NFIP regulations, and flood insurance and other forms of federal disaster assistance will be available.

Suspension from the NFIP will result in the loss of NFIP flood insurance coverage for Hawaii communities. Hawaii currently has four (4) communities participating in the NFIP with nearly 60,000 flood insurance policies in force and over \$13.2 billion in flood risk covered by NFIP insurance policies. Since 1978, Hawaii has benefited from nearly 4,600 claims paid, totaling over \$87 million. Furthermore, all Federal agencies are prohibited by statute from making grants, loans, or guarantees for the acquisition or construction of structures located in the SFHA in suspended communities (42 U.S.C. § 4106). This restriction applies to assistance from the Federal Housing Administration, Veterans Administration, and the Small Business Administration, among others. Lending institutions insured or regulated by a federal agency may, however, continue to make conventional loans in these areas at their discretion. (42 U.S.C. § 4012a(b)). If a flood disaster occurs in a suspended community, most types of federal disaster assistance are not available for acquisition, construction, or repair of insurable structures within the SFHA, including federal assistance to individuals and households for housing and personal property (42 U.S.C. § 4106).

In the meantime, FEMA expects Hawaii communities to continue to enforce their adopted floodplain management ordinances. Local communities that have exempted agricultural structures or any other development as outlined above from their floodplain management regulations will be required to bring the structures into compliance to the maximum extent possible.

If you or your staff have any questions or need additional information or assistance please contact Jeffery D. Lusk, Mitigation Division Director, FEMA Region IX, at (510) 627-7116.

Sincerely,



Roy E. Wright
Deputy Associate Administrator
for Insurance and Mitigation

- Cc: Robert Fenton, Regional Administrator, FEMA Region IX
Colby Stanton, Director, FEMA Pacific Area Office
Shan S. Tsutsui, Lt. Governor, State of Hawaii
Douglas Chin, Attorney General, State of Hawaii
Carty Chang, State Engineer, State of Hawaii Dept. of Land & Natural Resources
Carol Tyau-Beam, State NFIP Coordinator, Dept. of Land & Natural Resources

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 873
A BILL RELATING TO AGRICULTURAL STRUCTURES

PRESENTATION TO
THE SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY
AFFAIRS AND AGRICULTURE AND ENVIRONMENT

BY

VERN T. MIYAGI
Administrator, Hawaii Emergency Management Agency

Aloha Chairs Nishihara and Gabbard, Vice-Chairs Wakai and Riviere and Members of the Senate Committees.

I am Vern T. Miyagi, Administrator, Hawaii Emergency Management Agency (HI-EMA) and I appreciate the opportunity to provide comments regarding Senate Bill 873.

Our primary interest in this and related bills center on the April 15, 2016 letter from the Federal Emergency Management Agency (FEMA) to Governor Ige, which identified specific deficiencies with HRS 46-88, that prohibit the counties from enforcing their flood plain management regulations. These deficiencies, if not corrected, would suspend the state's participation in the National Flood Insurance Program (NFIP). In addition, certain forms of Federal Disaster Assistance under a Federal Presidential Disaster Declaration would not be available to the state and counties in the event of a declared disaster.

If the intent of SB 873 is to correct these deficiencies, we recommend that this measure be replaced with language proposed in Senate Bill 988. A technical review of the proposed amendments in SB 988 and its companion measure, HB 1122 was conducted by FEMA and found to meet the eligibility requirements for continued participation in the NFIP.

Thank you for the opportunity to provide these comments and recommendations regarding SB 873.



Harry Kim
Mayor

Wil Okabe
Managing Director

Frank J. De Marco, P.E.
Director

Allan G. Simeon, P.E.
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
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public_works@hawaiicounty.gov

February 02, 2017

COMMITTEE ON AGRICULTURE & ENVIRONMENT
Senator Mike Gabbard, Chair
Senator Gil Riviere, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
Senator, Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 8, 2017
TIME: 1:15 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

Re: Testimony in Opposition of Senate Bill 873, RELATING TO AGRICULTURAL BUILDINGS

Testimony in Opposition of Senate Bill 1118, RELATING TO AGRICULTURAL BUILDING PERMITS

Dear Chairs Gabbard and Nishihara, Vice Chairs Riviere and Wakai and committee members:

HRS 46-88 includes an exemption for agricultural buildings from complying with the National Flood Insurance Program's (NFIP) federal statutes. The NFIP related statutes require all buildings (including agricultural buildings) located within Federal Emergency Management Agency's mapped floodplains to be built to prescriptive standards. These NFIP prescriptive standards are intended to prevent buildings from being damaged during the 100 year (1-percent annual chance) peak discharge.

If the State Legislature passes the wrong amendment to HRS 46-88, the State of Hawai'i and its Counties may no longer be able to participate in the NFIP. The NFIP provides flood maps used to identify flood risk areas; flood insurance; disaster relief assistance/funds; and much more. Participation in the NFIP is essential for the State and Counties of Hawai'i in terms of federal assistance to communities recovering from damage sustained during natural disasters.

The Legislature's passage of HRS 46-88 was a well-intended effort to assist the agricultural community. Unfortunately, passage of HRS 46-88 has jeopardized the State and Counties' continued participation in the NFIP which is a program that significantly benefits all the people of Hawai'i, including the agricultural community.

Therefore, the County of Hawai'i Department of Public Works is in opposition of both Bill 873 and Bill 1118.

Thank you for allowing us to provide testimony.

Aloha,

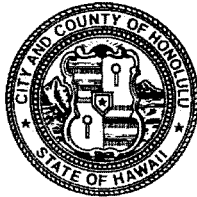


Frank J. De Marco, P.E.
DIRECTOR

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
ACTING DEPUTY DIRECTOR

February 6, 2017

The Honorable Mike Gabbard, Chair
and Members of the Committee on Agriculture
and Environment
The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Gabbard and Nishihara, and Committee Members:

Subject: Senate Bill No. 873
Relating to Agricultural Buildings

The Department of Planning and Permitting (DPP) **opposes, as drafted,** Senate Bill No. 873, which would require notice be given to certain county agencies at least 30 days prior to construction or installation of certain agricultural buildings and structures that are exempt from building permit and code requirements.

This Bill is unenforceable as the county would not know when construction started. Therefore, we would not know how to track the 30-day window. Moreover, in its present form, this Bill does not address the inadequacies in the statute identified by the Federal Emergency Management Agency as noncompliant with the National Flood Insurance Program (NFIP). There is no language in this Bill that brings Section 46-88, Hawaii Revised Statutes, into compliance with minimum standards of the NFIP.

The City and County of Honolulu has been notified of the risk of suspension from the NFIP. Remedial action must be taken before the July 31, 2017 deadline to amend the statute and restore to the State and counties the authority to regulate agricultural buildings in special flood hazard areas, including the requirement to obtain a building permit, regardless of whether the buildings are used as dwellings.

Suspension from the NFIP will jeopardize more than 38,000 flood insurance policies and \$8.7 billion of flood insurance coverage in-force within the City and County of Honolulu. If these policies are not in effect or renewed, federally insured mortgage loans for properties within flood zones will be prohibited, with potentially disastrous economic consequences for homeowners and businesses. Additionally, if a major flooding event occurs while the

The Honorable Mike Gabbard, Chair
and Members of the Committee on Agriculture
and Environment

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs

Senate Bill No. 873

February 6, 2017

Page 2

community is suspended, property owners would not have access to a variety of federal disaster assistance programs.

To bring the statute into compliance with the NFIP, we recommend the Bill be amended to adopt the language proposed by Senate Bill No. 988, which has been reviewed and found acceptable by the Federal Emergency Management Agency.

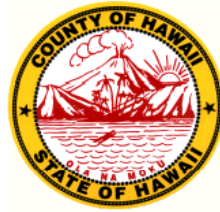
Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Sokugawa", written in a cursive style.

Kathy Sokugawa
Acting Director

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i

Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokalole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

Dear Chairs Nishihara and Gabbard, and members:

Thank you for this opportunity to testify against SB 873 and SB 1118.

We are informed by the State National Flood Insurance Program Coordinator that her agency has been working closely with FEMA to prevent the State from being suspended from the National Flood Insurance Program (NFIP). That program provides flood maps used to identify flood risk areas; flood insurance; disaster relief assistance/funds; and much more. Participation in the NFIP is essential for the State and counties of Hawai'i in terms of federal assistance for damage sustained during natural disasters.

It is my understanding that administration bills HB 1122 and SB 988 would bring the State into compliance with FEMA's regulations, while SB 873 and SB1118 could jeopardize our continued participation.

Therefore, we respectfully request that SB873 and SB 1118 be filed.

Respectfully submitted,

Harry Kim
Mayor
County of Hawaii



February 7, 2017

Senator Mike Gabbard, Chair and Senator Gil Riviere, Vice Chair
Senate Committee on Agriculture and Environment
Senator Clarence K. Nishihara, Chair and Senator Glenn Wakai, Vice Chair
Committee on Public Safety, Intergovernmental and Military Affairs
Hawaii State Capitol, 415 S. Beretania St.
Honolulu, Hawaii 96813

Dear Chairs Gabbard and Nishihara, Vice Chairs Riviere and Wakai, and Members of the Committees:

The Hawaii Aquaculture and Aquaponics Association (HAAA) is sending this testimony to express a **concern with SB 873**, "Relating to Agricultural Buildings." HAAA strongly supported the passage of Act 203 (2013), which provided exemptions under HRS Section 46-88 from building codes and permits for certain essential agricultural structures. Section 46-88 currently requires notification to the appropriate County building department and fire department within 30 days of completion of an exempt structure. SB 873 would instead require such notification to take place at least 30 days prior to commencement of construction.

HAAA has no strong objection to the requirement for prior notice, provided that the requirement does not make it more difficult or expensive for farmers to construct agricultural structures that comply with Section 46-88. However, if SB 873 passes into law, there may be farmers who have already initiated construction on exempt structures, but who have not completed construction at the time the new law takes effect. These farmers may be in violation of the new law even though they are not in a floodplain and were in compliance with the old law at the time they started construction. We encourage you to amend SB 873 to allow a grace period of one year during which farmers who have already started building can complete construction.

Thank you for the opportunity to testify on this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Frederick M. Mencher". The signature is written in dark ink and is positioned above the typed name and title.

Frederick M. Mencher
for Ronald Weidenbach, President
Hawaii Aquaculture and Aquaponics Association

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 3, 2017 10:41 AM
To: PSMTestimony
Cc: dale@hicattle.org
Subject: *Submitted testimony for SB873 on Feb 8, 2017 13:15PM*

SB873

Submitted on: 2/3/2017

Testimony for PSM/AEN on Feb 8, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	Support	No

Comments:

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Sent: Monday, February 6, 2017 10:49 AM
To: PSMTestimony
Cc: alan@prloffice.com
Subject: *Submitted testimony for SB873 on Feb 8, 2017 13:15PM*

SB873

Submitted on: 2/6/2017

Testimony for PSM/AEN on Feb 8, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Support	No

Comments:

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To: PSMTestimony
Cc: prentissc001@hawaii.rr.com
Subject: *Submitted testimony for SB873 on Feb 8, 2017 13:15PM*

SB873

Submitted on: 1/27/2017

Testimony for PSM/AEN on Feb 8, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Individual	Support	No

Comments:

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