

JAN 26 2022

A BILL FOR AN ACT

RELATING TO AGRICULTURAL BUILDINGS.

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

1 SECTION 1. Section 46-88, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§46-88 Agricultural buildings; exemptions from building**
4 **permit and building code requirements.** (a) Notwithstanding any
5 law to the contrary, the following agricultural buildings,
6 structures, and appurtenances thereto that are not used as
7 dwellings or lodging units are exempt from building permit and
8 building code requirements where they are no more than one
9 thousand square feet in floor area:

10 (1) Nonresidential manufactured pre-engineered commercial
11 buildings and structures;

12 (2) Single [~~stand-alone~~] stand-alone recycled ocean
13 shipping or cargo containers that are used as
14 nonresidential commercial buildings and are properly
15 anchored;

16 (3) Notwithstanding the one thousand square foot floor
17 area restriction, agricultural shade cloth structures,



1 cold frames, or greenhouses not exceeding sixty
2 thousand square feet in area per structure; provided
3 that where multiple structures are erected, the
4 minimum horizontal separation between each shade cloth
5 structure, cold frame, or greenhouse is fifteen feet;

6 (4) Aquacultural or aquaponics structures, including
7 above-ground water storage or production tanks,
8 troughs, and raceways with a maximum height of six
9 feet above grade, and in-ground ponds and raceways,
10 and piping systems for aeration, carbon dioxide, or
11 fertilizer or crop protection chemical supplies within
12 agricultural or aquacultural production facilities;

13 (5) Livestock watering tanks, water piping, and plumbing
14 not connected to a source of potable water, or
15 separated by an air gap from such a source;

16 (6) Non-masonry fences not exceeding ten feet in height
17 and masonry fences not exceeding six feet in height;

18 (7) One-story masonry or wood-framed buildings or
19 structures with a structural span of less than twenty-
20 five feet and a total square footage of no more than



one thousand square feet, including farm buildings
used as:

(A) Barns;

(B) Greenhouses;

(C) Farm production buildings including aquaculture
hatcheries and plant nurseries;

(D) Storage buildings for farm equipment or plant or
animal supplies or feed; or

(E) Storage or processing buildings for crops;

provided that the height of any stored items

shall not collectively exceed twelve feet [~~in~~

~~height~~];

(8) Raised beds containing soil, gravel, cinders, or other
growing media or substrates with wood, metal, or
masonry walls or supports with a maximum height of
four feet;

(9) Horticultural tables or benches no more than four feet
in height supporting potted plants or other crops; and

(10) Nonresidential indigenous Hawaiian hale that do not
exceed five hundred square feet in size, have no



1 kitchen or bathroom, and are used for traditional
2 agricultural activities or education;
3 provided that the buildings, structures, and appurtenances
4 thereto comply with all applicable state and county zoning
5 codes.

6 (b) Notwithstanding the one thousand square foot floor
7 area restriction in subsection (a), the following buildings,
8 structures, and appurtenances thereto shall be exempt from
9 building permit requirements when compliant with relevant
10 building codes or county, national, or international
11 prescriptive construction standards:

12 (1) Nonresidential manufactured pre-engineered and county
13 pre-approved commercial buildings and structures
14 consisting of a total square footage greater than one
15 thousand square feet but no more than eight thousand
16 square feet; and

17 (2) One-story wood-framed or masonry buildings or
18 structures with a structural span of less than twenty-
19 five feet and a total square footage greater than one
20 thousand square feet but no more than eight thousand
21 square feet constructed in accordance with county,



national, or international prescriptive construction standards, including buildings used as:

(A) Barns;

(B) Greenhouses;

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

(D) Storage buildings for farm equipment, plant or animal supplies, or feed; or

(E) Storage or processing buildings for crops;

provided that the height of any stored items shall not collectively exceed twelve feet [~~in~~ height].

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

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

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

(B) Eight thousand square feet per zoning lot for lots greater than two acres but no more than five acres; and



(C) Eight thousand square feet plus two per cent of the acreage per zoning lot for lots greater than five acres; provided that each exempted agricultural building is compliant with the square foot area restrictions in subsection (a) or subsection (b);

(2) The minimum horizontal separation between each agricultural building, structure, or appurtenance thereto is fifteen feet;

(3) The agricultural buildings, structures, or appurtenances thereto are located on a commercial farm or ranch and are used for general agricultural or aquacultural operations, or for purposes incidental to such operations;

(4) The agricultural buildings, structures, or appurtenances thereto are constructed or installed on property that is used primarily for agricultural or aquacultural operations, and is two or more contiguous acres in area or one or more contiguous acres in area if located in a nonresidential agricultural or aquacultural park;



1 (5) An owner or [~~occupier~~] occupant that intends to
2 utilize the exemptions under this section shall
3 provide written notice to the appropriate county
4 agency of the size, type, and location of the proposed
5 building, structure, related appurtenances, or
6 development. No work shall commence until the county
7 agency has determined that a building permit for the
8 proposed building, structure, related appurtenances,
9 or development is not required for compliance with
10 county, state, or federal floodplain management
11 development standards, ordinances, codes, statutes,
12 rules, or regulations pursuant to the National Flood
13 Insurance Program requirements;

14 (6) The appropriate county agency shall certify the
15 building, structure, related appurtenances, or
16 development within thirty calendar days upon [~~the~~]
17 receipt of the written notice from the owner or
18 [~~occupier~~] occupant, pursuant to paragraph (5);

19 (7) The owner or [~~occupier~~] occupant shall provide a final
20 as-built written notice to the appropriate county
21 building permitting agency of the final as-built size,



1 type, and location of the building, structure, related
2 appurtenances, or development. Such final as-built
3 written notification shall be provided to the county
4 agency within thirty calendar days of the completion,
5 occupancy, or use of the building, structure, related
6 appurtenances, or development. Failure to provide
7 such written notice may void the building permit or
8 building code exemption, or both, which voidance for
9 such failure is subject to the sole discretion of the
10 appropriate county building permitting agency;

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



1 ~~pole beyond the permit-exempt structure in accordance~~
2 ~~with the installation, inspection, and approval~~
3 ~~requirements in this paragraph;~~

4 ~~(9) Disposal of wastewater from any building or structure~~
5 ~~constructed or installed pursuant to this section~~
6 ~~shall comply with chapter 342D];~~

7 ~~[(10)]~~ (9) Permit-exempt agricultural buildings shall be
8 exempt from any certificate of occupancy requirements;
9 and

10 ~~[(11)]~~ (10) The appropriate county fire department and
11 county building permitting agency shall have the right
12 to enter the property, upon reasonable notice to the
13 owner or occupant, to investigate exempted
14 agricultural buildings for compliance with the
15 requirements of this section; provided that if entry
16 is refused after reasonable notice is given, the
17 applicable department or agency may apply to the
18 district court of the circuit in which the property is
19 located for a warrant, directed to any police officer
20 of the circuit, commanding the police officer to
21 provide sufficient aid and to assist the department or



1 agency in gaining entry onto the property to
2 investigate exempted agricultural buildings for
3 compliance with the requirements of this section.

4 (d) As used in this section:

5 "Agricultural building" means a [~~development, including a~~
6 ~~nonresidential building or structure, built for agricultural or~~
7 ~~aquacultural purposes, located on a commercial farm or ranch~~
8 ~~constructed or installed to house farm or ranch implements,~~
9 ~~agricultural or aquacultural feeds or supplies, livestock,~~
10 ~~poultry, or other agricultural or aquacultural products, used in~~
11 ~~or necessary for the operation of the farm or ranch, or for the~~
12 ~~processing and selling of farm or ranch products.] building or
13 structure used for the sole purpose of providing shelter for
14 agricultural implements, farm products, livestock, poultry, hay,
15 grain, or other horticultural or aquacultural products not
16 illegal under federal or state law.~~

17 "Agricultural operation" means the planting, cultivating,
18 harvesting, processing, or storage of crops, including those
19 planted, cultivated, harvested, and processed for food,
20 ornamental, grazing, feed, or forestry purposes, as well as the



1 feeding, breeding, management, and sale of animals including
2 livestock, poultry, honeybees, and their products.

3 "Agricultural farm plan" means a document, approved by the
4 department of agriculture, assessing site-specific aspects of a
5 property and outlining best management practices identified as
6 necessary to avoid potential negative environmental impacts and
7 includes an assessment of the site and outlines a series of
8 actions developed to meet an agricultural operation's goals
9 while protecting water quality and natural resources.

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

17 "Aquacultural operation" means the propagation,
18 cultivation, farming, harvesting, processing, and storage of
19 aquatic plants and animals in controlled or selected
20 environments for research, commercial, or stocking purposes and



1 includes aquaponics or any growing of plants or animals in or
2 with aquaculture effluents.

3 "Barn" means a building for storing hay, grain, and other
4 horticultural or aquacultural products and often for housing
5 livestock.

6 "Development" means any manmade change to improved or
7 unimproved real estate, including but not limited to buildings
8 or other structures, mining, dredging, filling, grading, paving,
9 excavation or drilling operations, or storage of equipment or
10 materials.

11 [~~"Dwelling" means a structure, or part of a structure,~~
12 ~~which is used as a home, residence, or sleeping place by one~~
13 ~~person or by two or more persons maintaining a common household,~~
14 ~~to the exclusion of all others.]~~

15 "Farm production building" means a building or part thereof
16 which:

- 17 (1) Does not contain residential occupancy;
18 (2) Is associated with the practice of farming; and
19 (3) Is used for the housing of equipment or livestock, or
20 the production, storage, or processing of agricultural
21 and horticultural products or feed.



1 "Greenhouse" means a glass building in which plants are
2 grown that need protection from cold weather.

3 "Manufactured pre-engineered commercial building or
4 structure" means a building or structure whose specifications
5 comply with appropriate county codes[7] and have been pre-
6 approved by a county or building official.

7 ~~["Nonresidential building or structure" means a building or~~
8 ~~structure, including an agricultural building, that is used only~~
9 ~~for agricultural or aquacultural operations and is not intended~~
10 ~~for use as, or used as, a dwelling.]~~

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

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

16 (g) This section shall not apply to development on land in
17 the state land use urban district.

18 (h) The State or any county shall not be liable for claims
19 arising from the construction of agricultural buildings,
20 ~~[structures,]~~ related appurtenances, or other development exempt
21 from the building code and permitting process as described in



1 this section, unless the claim arises out of gross negligence or
2 intentional misconduct by the State or county.

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

6 (j) This section does not exempt any new or existing
7 agricultural buildings, structures, related appurtenances, or
8 other development from building permit requirements and other
9 requirements of county, state, or federal floodplain management
10 development standards, ordinances, codes, statutes, rules, or
11 regulations, pursuant to National Flood Insurance Program
12 requirements.

13 (k) Failure to comply with the conditions of this section
14 shall result in penalties consistent with county building
15 department provisions.

16 (l) Any agricultural building constructed pursuant to this
17 section and exempt from building permits and building codes
18 shall be consistent with the approved agricultural farm plan for
19 the property. The use of the building or structure must be in
20 support of the agricultural activity contained in the plan.



1 Inventory and resources that, at a minimum, shall be considered
2 in a farm plan shall include:

3 (1) Acreage;

4 (2) Soil types;

5 (3) Proximity to streams or water bodies;

6 (4) Water demand for the agricultural operation;

7 (5) Availability and source for the water;

8 (6) Type of livestock or crops;

9 (7) The agricultural operation's goals; and

10 (8) Available resources such as machinery, time, and
11 money.

12 (m) Any agricultural building constructed pursuant to this
13 section and exempt from building permits and building codes
14 shall be made available by the owner or occupant for inspection
15 by a county building official at any time. Failure to allow for
16 an inspection after appropriate notice is provided by mail or by
17 posting on the property shall result in the issuance of a notice
18 of violation and notice of order with appropriate civil fines
19 until corrected.



1 (n) Any agricultural building constructed pursuant to this
2 section and exempt from building permits and building codes
3 shall not contain any of the following:

4 (1) A kitchen or any of its elements, including a stove,
5 sink, or refrigerator;

6 (2) A toilet, shower, or bathtub;

7 (3) A bedroom;

8 (4) A utility connection for potable water, sewer, or
9 electricity;

10 (5) An independent power source, including solar, gas, or
11 generator;

12 (6) A deck, lanai, or balcony; or

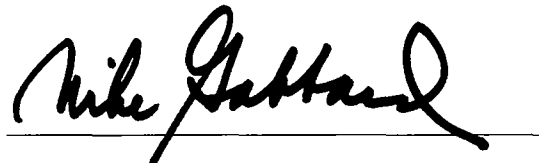
13 (7) Interior drywall."

14 SECTION 2. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

20
INTRODUCED BY:



S.B. NO. 3196

Report Title:

Agricultural Building and Structures; Exemptions from Building Permits and Building Codes; Agricultural Farm Plan; Department of Agriculture

Description:

Amends definitions relating to exemptions from building permits and building codes for agricultural building and structures. Requires certain agricultural buildings or structures exempt from building permits and building codes to be consistent with an approved agricultural farm plan for the property and to be made available by the owner or occupant for inspection by a county building official at any time. Prohibits certain agricultural buildings or structures from containing identified features.

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