

JAN 26 2022

A BILL FOR AN ACT

RELATING TO AGRICULTURAL BUILDINGS AND STRUCTURES.

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 and structures; exemptions**
4 **from building permit and building code requirements.** (a)

5 Notwithstanding any law to the contrary, the following
6 agricultural buildings, structures, and appurtenances thereto
7 that are not used as dwellings or lodging units are exempt from
8 building permit and building code requirements where they are no
9 more than one thousand square feet in floor area:

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

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

15 (3) Notwithstanding the one thousand square foot floor
16 area restriction, agricultural shade cloth structures,
17 cold frames, or greenhouses not exceeding sixty



1 thousand square feet in area per structure; provided
2 that where multiple structures are erected, the
3 minimum horizontal separation between each shade cloth
4 structure, cold frame, or greenhouse is fifteen feet;

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

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

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

17 (7) One-story masonry or wood-framed buildings or
18 structures with a structural span of less than
19 twenty-five feet and a total square footage of no more
20 than one thousand square feet, including farm
21 buildings used as:



- 1 (A) Barns;
- 2 (B) Greenhouses;
- 3 (C) Farm production buildings including aquaculture
- 4 hatcheries and plant nurseries;
- 5 (D) Storage buildings for farm equipment or plant or
- 6 animal supplies or feed; or
- 7 (E) Storage or processing buildings for crops;
- 8 provided that the height of any stored items
- 9 shall not collectively exceed twelve feet in
- 10 height;
- 11 (8) Raised beds containing soil, gravel, cinders, or other
- 12 growing media or substrates with wood, metal, or
- 13 masonry walls or supports with a maximum height of
- 14 four feet;
- 15 (9) Horticultural tables or benches no more than four feet
- 16 in height supporting potted plants or other crops; and
- 17 (10) Nonresidential indigenous Hawaiian hale that do not
- 18 exceed five hundred square feet in size, have no
- 19 kitchen or bathroom, and are used for traditional
- 20 agricultural activities or education;



1 provided that the buildings, structures, and appurtenances
2 thereto comply with all applicable state and county zoning
3 codes.

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

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

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



- 1 (A) Barns;
- 2 (B) Greenhouses;
- 3 (C) Farm production buildings, including aquaculture
- 4 hatcheries and plant nurseries;
- 5 (D) Storage buildings for farm equipment, plant or
- 6 animal supplies, or feed; or
- 7 (E) Storage or processing buildings for crops;
- 8 provided that the height of any stored items
- 9 shall not collectively exceed twelve feet in
- 10 height.

11 (c) The exemptions in subsections (a) and (b) shall apply;

12 provided that:

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

- 15 (A) Five thousand square feet per zoning lot for lots
- 16 of two acres or less;
- 17 (B) Eight thousand square feet per zoning lot for
- 18 lots greater than two acres but no more than five
- 19 acres; and
- 20 (C) Eight thousand square feet plus two per cent of
- 21 the acreage per zoning lot for lots greater than



1 five acres; provided that each exempted
2 agricultural building is compliant with the
3 square foot area restrictions in subsection (a)
4 or subsection (b);

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

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

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

20 (5) An owner or occupier that intends to utilize the
21 exemptions under this section shall provide written



1 notice to the appropriate county agency of the size,
2 type, and location of the proposed building,
3 structure, related appurtenances, or development. No
4 work shall commence until the county agency has
5 determined that a building permit for the proposed
6 building, structure, related appurtenances, or
7 development is not required for compliance with
8 county, state, or federal floodplain management
9 development standards, ordinances, codes, statutes,
10 rules, or regulations pursuant to the National Flood
11 Insurance Program requirements;

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

17 (7) The owner or occupier shall provide a final as-built
18 written notice to the appropriate county building
19 permitting agency of the final as-built size, type,
20 and location of the building, structure, related
21 appurtenances, or development. Such final as-built



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

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



1 ~~with the installation, inspection, and approval~~
2 ~~requirements in this paragraph,~~

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

6 ~~[+10)]~~ (9) Permit-exempt structures shall be exempt from any
7 certificate of occupancy requirements; provided that
8 no residential occupancy shall be allowed in any
9 building agricultural building or structure that is
10 exempt from building permit and building code
11 requirements; and

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



1 of the circuit, commanding the police officer to
2 provide sufficient aid and to assist the department or
3 agency in gaining entry onto the property to
4 investigate exempted agricultural buildings for
5 compliance with the requirements of this section.

6 (d) As used in this section:

7 "Agricultural building" means a ~~[development, including a~~
8 ~~nonresidential building or structure, built for agricultural or~~
9 ~~aquacultural purposes, located on a commercial farm or ranch~~
10 ~~constructed or installed to house farm or ranch implements,~~
11 ~~agricultural or aquacultural feeds or supplies, livestock,~~
12 ~~poultry, or other agricultural or aquacultural products, used in~~
13 ~~or necessary for the operation of the farm or ranch, or for the~~
14 ~~processing and selling of farm or ranch products.]~~ building or
15 structure that is only used to shelter agricultural implements,
16 farm products, livestock, poultry, hay, grain, or other legal
17 horticultural or aquacultural products.

18 "Agricultural farm plan" means a document, approved by the
19 department of agriculture, that assesses site specific aspects
20 of a property, outlines a series of actions developed to meet an
21 agricultural operation's goals, and outlines best management



1 practices identified as necessary to avoid potential negative
2 environmental impacts.

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

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

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



1 "Barn" means a building used to house livestock or store
2 hay, grain, or other agricultural equipment or products; or
3 both.

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

9 ~~["Dwelling" means a structure, or part of a structure,~~
10 ~~which is used as a home, residence, or sleeping place by one~~
11 ~~person or by two or more persons maintaining a common household,~~
12 ~~to the exclusion of all others.]~~ "Farm production building"
13 means a building or any part thereof that is associated with the
14 practice of farming and used to either:

15 (1) House equipment or livestock; or

16 (2) Produce, store, or process agricultural or
17 horticultural product, including feed.

18 "Greenhouse" means a glass building in which plants
19 requiring protection from cold weather are grown.

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 "Site specific aspects of a property" includes the
8 following:

9 (1) Acreage;

10 (2) Soil types;

11 (3) Proximity to streams or other bodies of water;

12 (4) Water demand for the agricultural operation;

13 (5) Availability and sources of water;

14 (6) Types of livestock or crops, or both;

15 (7) Goals of the agricultural operation; and

16 (8) Available resources.

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

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



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

3 (h) The State or any county shall not be liable for claims
4 arising from the construction of agricultural buildings,
5 structures, related appurtenances, or other development exempt
6 from the building code and permitting process as described in
7 this section, unless the claim arises out of gross negligence or
8 intentional misconduct by the State or county.

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

12 (j) This section does not exempt any new or existing
13 agricultural buildings, structures, related appurtenances, or
14 other development from building permit requirements and other
15 requirements of county, state, or federal floodplain management
16 development standards, ordinances, codes, statutes, rules, or
17 regulations, pursuant to National Flood Insurance Program
18 requirements.

19 (k) Failure to comply with the conditions of this section
20 shall result in penalties consistent with county building
21 department provisions.



1 (1) Any person seeking to construct or use an agricultural
2 building that is exempt from building permit and building code
3 requirements pursuant to this section shall have an agricultural
4 farm plan for the affected property approved by the department
5 of agriculture prior to commencing construction or use; provided
6 that the agricultural farm plan shall contain an assessment of
7 the site and describe the actions taken to meet the agricultural
8 operation's goals while protecting water quality and natural
9 resources;

10 (m) Any agricultural building that is exempt from building
11 permit and building code requirements pursuant to this section
12 shall:

13 (1) Be constructed and used in a manner that is consistent
14 with the approved agricultural farm plan for the
15 property and in support of the agricultural activity
16 described in the agricultural farm plan;

17 (2) Be made available by the owner or occupant for
18 inspection by a county building inspection official at
19 any time; provided that failure to allow for an
20 inspection after appropriate notice has been provided
21 by mail or posted at the property shall result in the



1 issuance of a notice of violation and notice of order
2 and imposition of civil fines; and

3 (3) Not include any of the following:

4 (A) Kitchens or any elements commonly contained in a
5 kitchen, including a stove, sink, or
6 refrigerator;

7 (B) Bathrooms or any elements commonly contained in a
8 bathroom, including a toilet, shower, or bathtub;

9 (C) Bedrooms;

10 (D) Utility connections, including potable water,
11 sewer, or electrical connections;

12 (E) Independent power sources, including solar
13 paneling or gas generators;

14 (F) Decks, lanais, or balconies; or

15 (G) Interior drywall."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19
INTRODUCED BY: 



S.B. NO. 3240

Report Title:

Agricultural Buildings; Agricultural Structures; Residential
Occupancy; Prohibition

Description:

Prohibits residential occupancy of agricultural buildings that are exempt from building permit and building code requirements. Establishes requirements for agricultural buildings that are exempt from building permits and building code requirements.

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

