

ACT 203

S.B. NO. 586

A Bill for an Act Relating to Agricultural Building Permits.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that compliance with existing building codes and permitting processes negatively impacts the State's agriculture and aquaculture industries by adding significant time and costs to farming and ranching enterprises for such fundamental activities as constructing or installing greenhouses, shade houses, storage containers, indigenous Hawaiian hale, and many other agricultural and aquacultural buildings and structures, which, by their nature or location, pose little risk to life or property. In contrast to building codes in many other states, county building codes in Hawaii generally do not distinguish between low-risk agricultural structures and residential or commercial buildings. Ultimately, this results in excessive costs for code compliance for farmers and ranchers. While Act 114, Session Laws of Hawaii 2012, may help to reduce the cost and time spent applying for building permits for specified nonresidential agricultural and aquacultural buildings and structures and their appurtenances, Act 114 did not offer relief from county building code requirements, which in turn have prevented Hawaii's farms from realizing their full potential to meet the State's food sustainability goals.

The purpose of this Act is to encourage and support the Governor's "New Day" initiative for diversified agriculture and agricultural self-sufficiency in the State by providing, under certain circumstances, an exemption from building code requirements and expanding existing building permit exemptions for nonresidential buildings or structures on farms and ranches located outside the urban district.

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

~~“[§46-88] Agricultural [and aquacultural] buildings and structures; [no building permit required.] exemptions from building permit and building code requirements. (a) [Each county shall establish an agricultural buildings and structures exemption list of buildings and structures that are exempt from existing building permit requirements. The list shall be established by each county no later than January 1, 2013. Agricultural buildings, structures, or appurtenances thereto, which are not used as dwelling or lodging units, may be exempted from existing building permit requirements where they are no more than 1,000 square feet in floor area; provided that the aggregate floor area of the exempted agricultural building, structure, or appurtenance thereto shall not exceed 5,000 square feet per zoning lot and the minimum horizontal separation between each agricultural building, structure, or appurtenance thereto is fifteen feet, and 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; provided further that:~~

- ~~(1) The agricultural building, structure, or appurtenance thereto is 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;~~
- ~~(2) 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 locations 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. Failure to provide such written notice may void the building permit exemption, which voidance for such failure is subject to the sole discretion of the appropriate county building permitting agency;~~
- ~~(3) No electrical power and no plumbing systems shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit, and all such installations shall be installed under the supervision of a licensed electrician or plumber, as appropriate, and inspected and approved by an appropriate county or licensed inspector; and~~
- ~~(4) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D.~~

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

- ~~(1) Nonresidential manufactured pre-engineered commercial buildings and structures [consisting of no more than 1,000 square feet that have no electrical power and have no potable water, sewage, or other plumbing related services, or have such electrical or plumbing related services installed and inspected in accordance with subsection (a)(3) and (4)];~~
- ~~(2) Single stand alone recycled ocean shipping or cargo containers that are used as nonresidential commercial buildings[;] and are properly anchored;~~

- (3) Notwithstanding the ~~[1,000]~~ one thousand square foot floor area restriction ~~[in subsection (a)],~~ agricultural shade cloth structures, cold frames, or greenhouses not exceeding ~~[20,000]~~ twenty thousand square feet in area per structure; provided that where multiple structures are erected, the minimum horizontal separation between each shade cloth structure, cold frame, or greenhouse is fifteen feet;
- (4) Aquacultural or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet above grade, and in-ground ponds and raceways, and piping systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agricultural or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separated by an air gap from such a source;
- (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;
- (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than ~~[1,000]~~ 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 ~~[and the storage of any hazardous materials shall comply with any and all applicable statutes, regulations, and codes];~~
- (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; ~~[and]~~
- (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 kitchen or bathroom, and are used for traditional agricultural activities or education;

provided that the buildings, structures, and appurtenances thereto comply with all applicable state and county ~~[codes, including but not limited to applicable building, fire, health, safety, and zoning codes and are properly anchored.]~~ zoning codes.

(b) 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:

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

- (2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet but no more than eight thousand 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) [In the event that a county fails to establish the agricultural buildings and structures exemption list within the time period as required under subsection (a), the buildings and structures specified in subsection (b) shall constitute that county's agricultural building and structures exemption list.] 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 not 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;
- (5) 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 locations 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. Failure to provide such written notice may void the building permit or building code exemption, or both, which voidance for such failure is subject to the sole discretion of the appropriate county building permitting agency;
- (6) No electrical power and no plumbing systems shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit, and all such installations

shall be installed under the supervision of a licensed electrician or plumber, as appropriate, and inspected and approved by an appropriate county or licensed inspector or, if a county building agency is unable to issue an electrical permit because the building or structure is permit-exempt, an electrical permit shall be issued for an electrical connection to a meter on a pole beyond the permit-exempt structure in accordance with the installation, inspection, and approval requirements in this paragraph:

(7) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D; and

(8) Permit-exempt structures shall be exempt from any certificate of occupancy requirements.

(d) As used in this section:

“Agricultural building [~~or aquacultural building~~]” means a nonresidential building or structure, built for agricultural or aquacultural purposes, located on a commercial farm or ranch constructed or installed to house farm or ranch implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the operation of the farm or ranch, or for the processing and selling of farm or ranch products.

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

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

“Aquacultural operation” means the propagation, cultivation, farming, harvesting, processing, and storage of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes and includes aquaponics or any growing of plants or animals in or with aquaculture effluents.

“Manufactured pre-engineered commercial building or structure” means a building or structure whose specifications comply with appropriate county codes, and have been pre-approved by a county or building official.

“Nonresidential building or structure” means a building or structure, including an agricultural building, that is used only for agricultural or aquacultural operations [~~including an agricultural building or aquacultural building~~], and is not intended for use as, or used as, a dwelling.

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

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

(g) This section shall not apply to the construction or installation of any building or structure on land in an urban district.

(h) The State or any county shall not be liable for claims arising from the construction of agricultural buildings, structures, or appurtenances thereto exempt from the building code and permitting process as described in this sec-

tion, unless the claim arises out of gross negligence or intentional misconduct by the State or county.

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

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

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

SECTION 4. This Act shall take effect on July 1, 2013.

(Approved June 26, 2013.)