
A BILL FOR AN ACT

RELATING TO AGRICULTURAL AND AQUACULTURAL BUILDING PERMITS.

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

1 SECTION 1. The legislature finds that changes made to the
2 agricultural and aquacultural permit provisions in section 46-
3 88, Hawaii Revised Statutes, by Act 203, Session Laws of Hawaii
4 2013 ("Act 203"), jeopardize Hawaii's ability to participate in
5 the National Flood Insurance Program ("NFIP"). If remedial
6 action is not taken immediately to restore the eligibility of
7 the State and the counties to give the counties land use
8 authority to meet the minimum floodplain management requirements
9 of the NFIP by July 31, 2017, the Federal Emergency Management
10 Agency stated that it will begin the process of suspending the
11 sale of federal flood insurance in the State and to all of
12 Hawaii's communities currently participating in the NFIP. This
13 is a serious matter because suspension from the NFIP would
14 result in the loss of NFIP flood insurance coverage for Hawaii
15 communities. The loss of federal assistance for flood disasters
16 would negatively impact the nearly sixty thousand policies in



1 force for over \$13.2 billion in flood risk covered by NFIP
2 insurance policies in Hawaii.

3 The purpose of this Act is to repeal the changes made to
4 agricultural and aquacultural building permit requirements in
5 Act 203, to ensure that Hawaii's communities are not suspended
6 from participation in the NFIP.

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

9 "§46-88 Agricultural and aquacultural buildings and
10 structures [; exemptions from building permit and building code
11 requirements.]; no building permit required. (a)

12 [~~Notwithstanding any law to the contrary, the following~~
13 ~~agricultural buildings, structures, and appurtenances thereto~~
14 ~~that are not used as dwellings or lodging units are exempt from~~
15 ~~building permit and building code requirements where they are no~~
16 ~~more than one thousand square feet in floor area:]~~

17 Each county
18 shall establish an agricultural buildings and structures
19 exemption list of buildings and structures that are exempt from
20 existing building permit requirements. The list shall be
21 established by each county no later than January 1, _____.
Agricultural buildings, structures, or appurtenances thereto,



1 which are not used as dwelling or lodging units, may be exempted
2 from existing building permit requirements where they are no
3 more than one thousand square feet in floor area; provided that
4 the aggregate floor area of the exempted agricultural building,
5 structure, or appurtenance thereto shall not exceed five
6 thousand square feet per zoning lot and the minimum horizontal
7 separation between each agricultural building, structure, or
8 appurtenance thereto is fifteen feet, and the agricultural
9 buildings, structures, or appurtenances thereto are located on a
10 commercial farm or ranch and are used for general agricultural
11 or aquacultural operations, or for purposes incidental to such
12 operations; provided further that:

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

20 (2) Upon completion of construction or installation, the
21 owner or occupier shall provide written notice to the



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1 appropriate county fire department and county building
2 permitting agency of the size, type, and locations of
3 the building, structure, or appurtenance thereto.

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

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

11 (3) 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; and

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



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

5 (1) Nonresidential manufactured pre-engineered commercial
6 buildings and structures[~~7~~] consisting of no more than
7 one thousand square feet that have no electrical power
8 and have no potable water, sewage, or other plumbing
9 related services, or have such electrical or plumbing
10 related services installed and inspected in accordance
11 with subsection (a) (3) and (4);

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[~~7~~] in subsection (a), agricultural
17 shade cloth structures, cold frames, or greenhouses
18 not exceeding twenty thousand square feet in area per
19 structure; provided that where multiple structures are
20 erected, the minimum horizontal separation between



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



- 1 (C) Farm production buildings including aquaculture
2 hatcheries and plant nurseries;
- 3 (D) Storage buildings for farm equipment or plant or
4 animal supplies or feed; or
- 5 (E) Storage or processing buildings for crops;
6 provided that the height of any stored items
7 shall not collectively exceed twelve feet in
8 height[+] and the storage of any hazardous
9 materials shall comply with any and all
10 applicable statutes, regulations, and codes;
- 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; and
- 15 (9) Horticultural tables or benches no more than four feet
16 in height supporting potted plants or other crops;
17 [and
- 18 ~~(10) Nonresidential indigenous Hawaiian hale that do not~~
19 ~~exceed five hundred square feet in size, have no~~
20 ~~kitchen or bathroom, and are used for traditional~~
21 ~~agricultural activities or education;]~~



1 provided that the buildings, structures, and appurtenances
2 thereto comply with all applicable state and county zoning
3 codes[-] and are properly anchored.

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 twenty-~~
17 ~~five feet and a total square footage greater than one~~
18 ~~thousand square feet but no more than eight thousand~~
19 ~~square feet constructed in accordance with county,~~
20 ~~national, or international prescriptive construction~~
21 ~~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 not more than~~
- 19 ~~five 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) Upon completion of construction or installation, the~~
21 ~~owner or occupier shall provide written notice to the~~



1 ~~appropriate county fire department and county building~~
2 ~~permitting agency of the size, type, and locations of~~
3 ~~the building, structure, or appurtenance thereto.~~
4 ~~Such written notification shall be provided to the~~
5 ~~county agencies within thirty days of the completion~~
6 ~~of the building, structure, or appurtenance thereto.~~
7 ~~Failure to provide such written notice may void the~~
8 ~~building permit or building code exemption, or both,~~
9 ~~which voidance for such failure is subject to the sole~~
10 ~~discretion of the appropriate county building~~
11 ~~permitting agency;~~
12 (6) ~~No electrical power and no plumbing systems shall be~~
13 ~~connected to the building or structure without first~~
14 ~~obtaining the appropriate county electrical or~~
15 ~~plumbing permit, and all such installations shall be~~
16 ~~installed under the supervision of a licensed~~
17 ~~electrician or plumber, as appropriate, and inspected~~
18 ~~and approved by an appropriate county or licensed~~
19 ~~inspector or, if a county building agency is unable to~~
20 ~~issue an electrical permit because the building or~~
21 ~~structure is permit exempt, an electrical permit shall~~



1 ~~be issued for an electrical connection to a meter on a~~
2 ~~pole beyond the permit exempt structure in accordance~~
3 ~~with the installation, inspection, and approval~~
4 ~~requirements in this paragraph;~~

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

8 ~~(8) Permit exempt structures shall be exempt from any~~
9 ~~certificate of occupancy requirements.]~~

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

15 (d) As used in this section:

16 "Agricultural building" or "aquacultural building" means a
17 nonresidential building or structure [~~, built for agricultural or~~
18 ~~aquacultural purposes,~~] located on a commercial farm or ranch
19 constructed or installed to house farm or ranch implements,
20 agricultural or aquacultural feeds or supplies, livestock,
21 poultry, or other agricultural or aquacultural products, used in



1 or necessary for the operation of the farm or ranch, or for the
2 processing and selling of farm or ranch products.

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

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

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

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

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

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



1 ~~the claim arises out of gross negligence or intentional~~
2 ~~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) Failure to comply with the conditions of this section~~
7 ~~shall result in penalties consistent with county building~~
8 ~~department provisions.] "~~

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval.

15

INTRODUCED BY:

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H.B. NO. 866

Report Title:

Act 203, SLH 2013; Agricultural and Aquacultural Building Permits; National Flood Insurance Program (NFIP)

Description:

Repeals the changes made to agricultural and aquacultural building permit requirements in Act 203, SLH 2013, to ensure that Hawaii's communities are not suspended from participation in the NFIP.

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