

A Bill for an Act Relating to Land.

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

SECTION 1. The legislature finds that changes made by Act 203, Session Laws of Hawaii 2013 ("Act 203"), will jeopardize Hawaii's ability to participate in the National Flood Insurance Program ("NFIP"). If remedial action is not taken immediately to restore the eligibility of the State and the counties to give the counties land use authority to meet the minimum floodplain management requirements of the NFIP by July 31, 2017, the Federal Emergency Management Agency (FEMA) stated that it will begin the process of suspending the sale of federal flood insurance in the State and to all of Hawaii's communities currently participating in the NFIP. This is a serious matter because suspension from the NFIP would result in the loss of NFIP flood insurance coverage for Hawaii communities. The loss of federal assistance for flood disasters would negatively impact the nearly sixty thousand policies in force for over \$13.2 billion in flood risk covered by NFIP insurance policies in Hawaii.

The legislature further finds that in order for federal flood insurance to be sold within the State, the State must ensure that its political subdivisions with delegated land use authority can regulate development within flood-prone areas and establish minimum state flood plain management regulatory standards that are consistent with NFIP's minimum requirements.

The purpose of this Act is to address and mitigate the concerns raised by FEMA to ensure that Hawaii's communities are not suspended from participation in the NFIP.

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

"§46-88 Agricultural buildings and structures; exemptions from building permit and building code requirements. (a) 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;
- (2) Single stand alone recycled ocean shipping or cargo containers that are used as nonresidential commercial buildings and are properly anchored;
- (3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding 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;

ACT 70

- (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 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 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 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) 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) An owner or occupier that intends to utilize the exemptions under this section shall provide written notice to the appropriate county agency of the size, type, and location of the proposed building, structure, related appurtenances, or development. No work shall commence until the county agency has determined that a building permit for the proposed building, structure, related appurtenances, or development is not required for compliance with county, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to the National Flood Insurance Program requirements;
- (6) The appropriate county agency shall certify the building, structure, related appurtenances, or development within thirty calendar days upon the receipt of the written notice from the owner or occupier, pursuant to paragraph (5);
- ~~(5)~~ (7) ~~[Upon completion of construction or installation, the]~~ The owner or occupier shall provide a final as-built written notice to the appropriate ~~[county fire department and]~~ county building permitting agency of the final as-built size, type, and ~~[locations]~~ location of the building, structure, ~~[or appurtenance thereto.]~~ related appurtenances, or development. Such final as-built written notification shall be provided to the county ~~[agencies]~~ agency within thirty calendar days of the completion, occupancy, or use of the building, structure, ~~[or appurtenance thereto.]~~ related appurtenances, or development. 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)~~ (8) 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)] (9) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D; and

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

(d) As used in this section:

“Agricultural building” means a development, including 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.

“Development” means any manmade 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 or materials.

“Dwelling” means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

“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 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]~~ development on land in ~~[an]~~ the state land use urban district.

(h) The State or any county shall not be liable for claims arising from the construction of agricultural buildings, structures, ~~or~~ related appurtenances, or other development [thereto] exempt from the building code and permitting process as described in this section, 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) This section does not exempt any new or existing agricultural buildings, structures, related appurtenances, or other development from building permit requirements and other requirements of county, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations, pursuant to National Flood Insurance Program requirements.

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

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

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

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

(Approved July 3, 2017.)