A BILL FOR AN ACT

RELATING TO AGRICULTURAL AND AQUACULTURAL BUILDING PERMITS.

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

SECTION 1. The legislature finds that changes made to the agricultural and aquacultural permit provisions in section 46-88, Hawaii Revised Statutes, by Act 203, Session Laws of Hawaii 2013 ("Act 203"), 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 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 purpose of this Act is to repeal the changes made to agricultural and aquacultural building permit requirements in Act 203, 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 and aquacultural 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.] 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, ___.

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 one thousand square feet in floor area; provided that the aggregate floor area of the exempted agricultural building, structure, or appurtenance thereto shall not exceed five thousand 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 buildings and structures exemption list:

(1) Nonresidential manufactured pre-engineered commercial buildings and structures consisting of no more than one thousand 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 one thousand square foot floor area restriction in subsection (a), 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;

(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 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 zoning
codes[-] and are properly anchored.

(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:

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(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.

(e) 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 percent 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
thereof is fifteen feet;

(3) The agricultural buildings, structures, or
appurtenances thereof 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 thereof 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.

(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.

(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 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) 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.

INTRODUCED BY:

[Signatures]
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.

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