

JAN 25 2017

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**A BILL FOR AN ACT**

RELATING TO EXEMPTION FOR 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 twenty  
18 thousand square feet in area per structure; provided

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

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- 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;
- 9 (8) Raised beds containing soil, gravel, cinders, or other
- 10 growing media or substrates with wood, metal, or
- 11 masonry walls or supports with a maximum height of
- 12 four feet;
- 13 (9) Horticultural tables or benches no more than four feet
- 14 in height supporting potted plants or other crops; and
- 15 (10) Nonresidential indigenous Hawaiian hale that do not
- 16 exceed five hundred square feet in size, have no
- 17 kitchen or bathroom, and are used for traditional
- 18 agricultural activities or education; provided that
- 19 the buildings, structures, and appurtenances thereto
- 20 comply with all applicable state and county zoning
- 21 codes.

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

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

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

- 19 (A) Barns;
- 20 (B) Greenhouses;
- 21 (C) Farm production buildings, including aquaculture  
22 hatcheries and plant nurseries;

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1 (D) Storage buildings for farm equipment, plant or  
2 animal supplies, or feed; or

3 (E) Storage or processing buildings for crops;  
4 provided that the height of any stored items  
5 shall not collectively exceed twelve feet in  
6 height.

7 (c) The exemptions in subsections (a) and (b) shall apply;  
8 provided that:

9 (1) The aggregate floor area of the exempted agricultural  
10 buildings shall not exceed:

11 (A) Five thousand square feet per zoning lot for lots  
12 of two acres or less;

13 (B) Eight thousand square feet per zoning lot for  
14 lots greater than two acres but not more than  
15 five acres; and

16 (C) Eight thousand square feet plus two per cent of  
17 the acreage per zoning lot for lots greater than  
18 five acres; provided that each exempted  
19 agricultural building is compliant with the  
20 square foot area restrictions in subsection (a)  
21 or subsection (b);

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- 1           (2) The minimum horizontal separation between each  
2           agricultural building, structure, or appurtenance  
3           thereto is fifteen feet;
- 4           (3) The agricultural buildings, structures, or  
5           appurtenances thereto are located on a commercial farm  
6           or ranch and are used for general agricultural or  
7           aquacultural operations, or for purposes incidental to  
8           such operations;
- 9           (4) The agricultural buildings, structures, or  
10          appurtenances thereto are constructed or installed on  
11          property that is used primarily for agricultural or  
12          aquacultural operations, and is two or more contiguous  
13          acres in area or one or more contiguous acres in area  
14          if located in a nonresidential agricultural or  
15          aquacultural park;
- 16          (5) An owner or occupier, that intends to utilize the  
17          exemptions under this section, shall provide written  
18          notice to the appropriate county agency of the size,  
19          type, and location of the proposed building,  
20          structure, related appurtenances, or development. No  
21          work shall commence until the county agency has

1 determined that a building permit for the proposed  
2 building, structure, related appurtenances, or  
3 development is not required for compliance with local,  
4 state, or federal floodplain management development  
5 standards, ordinances, codes, statutes, rules, or  
6 regulations pursuant to the National Flood Insurance  
7 Program requirements;

8 [~~5~~] ~~Upon completion of construction or installation, the]~~

9 (6) The owner or occupier shall provide written  
10 notice to the appropriate county fire department and  
11 county building permitting agency of the final as-  
12 built size, type, and [~~locations~~] location of the  
13 building, structure, [~~or appurtenance thereto.~~]  
14 related appurtenances, or development. Such written  
15 notification shall be provided to the county agencies  
16 within thirty calendar days of the completion,  
17 occupancy, or use of the building, structure, [~~or~~]  
18 related appurtenances [~~thereto.~~], or development.

19 Failure to provide such written notice may void the  
20 building permit or building code exemption, or both,  
21 which voidance for such failure is subject to the sole

1 discretion of the appropriate county building  
2 permitting agency;

3 ~~[(6)]~~ (7) No electrical power and no plumbing systems shall  
4 be connected to the building or structure without  
5 first obtaining the appropriate county electrical or  
6 plumbing permit, and all such installations shall be  
7 installed under the supervision of a licensed  
8 electrician or plumber, as appropriate, and inspected  
9 and approved by an appropriate county or licensed  
10 inspector or, if a county building agency is unable to  
11 issue an electrical permit because the building or  
12 structure is permit-exempt, an electrical permit shall  
13 be issued for an electrical connection to a meter on a  
14 pole beyond the permit-exempt structure in accordance  
15 with the installation, inspection, and approval  
16 requirements in this paragraph;

17 ~~[(7)]~~ (8) Disposal of wastewater from any building or  
18 structure constructed or installed pursuant to this  
19 section shall comply with chapter 342D; and

20 ~~[(8)]~~ (9) Permit-exempt structures shall be exempt from any  
21 certificate of occupancy requirements.

22 (d) As used in this section:



1 "Agricultural building" means a nonresidential building or  
2 structure, built for agricultural or aquacultural purposes,  
3 located on a commercial farm or ranch constructed or installed  
4 to house farm or ranch implements, agricultural or aquacultural  
5 feeds or supplies, livestock, poultry, or other agricultural or  
6 aquacultural products, used in or necessary for the operation of  
7 the farm or ranch, or for the processing and selling of farm or  
8 ranch products.

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

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

1 "Aquacultural operation" means the propagation,  
2 cultivation, farming, harvesting, processing, and storage of  
3 aquatic plants and animals in controlled or selected  
4 environments for research, commercial, or stocking purposes and  
5 includes aquaponics or any growing of plants or animals in or  
6 with aquaculture effluents.

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

12 "Dwellings" means buildings or parts thereof designed for  
13 or used for residential occupancy or both.

14 "Manufactured pre-engineered commercial building or  
15 structure" means a building or structure whose specifications  
16 comply with appropriate county codes, and have been pre-approved  
17 by a county or building official.

18 "Nonresidential building or structure" means a building or  
19 structure, including an agricultural building, that is used only  
20 for agricultural or aquacultural operations and is not intended  
21 for use as, or used as, a dwelling.

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

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

6 (g) This section shall not apply to [~~the construction or~~  
7 ~~installation of any building or structure~~] development on land  
8 in [~~an~~] the state land use urban district.

9 (h) The State or any county shall not be liable for claims  
10 arising from the construction of agricultural buildings,  
11 structures, [~~or~~] related appurtenances or other development  
12 thereto exempt from the building code and permitting process as  
13 described in this section, unless the claim arises out of gross  
14 negligence or intentional misconduct by the State or county.

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

18 (j) This section does not exempt any new or existing  
19 agricultural buildings, structures, related appurtenances, or  
20 other development from building permit requirements and other  
21 requirements of local, state, or federal floodplain management

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1 development standards, ordinances, codes, statutes, rules, or  
2 regulations pursuant to National Flood Insurance Program  
3 requirements.

4 [~~j~~] (k) Failure to comply with the conditions of this  
5 section shall result in penalties consistent with county  
6 building department provisions."

7 SECTION 2. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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

10

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INTRODUCED BY:                     *AM D. W.*                    

12

BY REQUEST

S.B. NO. 988

**Report Title:** Exemption; Building Permit and Building Code Requirements; Agricultural Building and Structures

**Description:**

Clarifies procedures for an exemption from building permit and building code requirements pursuant to section 46-88, Hawaii Revised Statutes, and clarifies that section 46-88 does not exempt any new or existing agricultural buildings, structures, related appurtenances, or other development from local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to National Flood Insurance Program requirements.

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

# SB. NO. 988

## JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO EXEMPTION FOR AGRICULTURAL BUILDINGS AND STRUCTURES.

PURPOSE: To clarify procedures for an exemption from building permit and building code requirements pursuant to section 46-88, Hawaii Revised Statutes (HRS); and to clarify that section 46-88, HRS, does not exempt any new or existing agricultural buildings, structures, related appurtenances, or other development from local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to National Flood Insurance Program requirements.

MEANS: Amend section 46-88, HRS.

JUSTIFICATION: Section 46-88, HRS, was put in place to encourage and support diversified agriculture and agricultural self-sufficiency in the State by providing an exemption from building permit requirements for nonresidential buildings, structures, and appurtenances thereto on commercial farms and ranches located outside of the urban district under certain conditions.

The Federal Emergency Management Agency (FEMA) has contended however that these buildings, structures, and appurtenances thereto should still be subject to local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to National Flood Insurance Program requirements, and has since put the State of Hawaii on notice to address and correct any noncompliance, or have new and renewed federal flood insurance policies suspended.

This bill proposes to tighten up statutory language with regard to exempting agricultural buildings, structures, related appurtenances or other development thereto that are not used as dwellings or lodging units from building permit and building code requirements under section 46-88, HRS.

Impact on the public: Non-compliance of local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to National Flood Insurance Program requirements could result in FEMA suspending new and renewed flood insurance policies, leaving thousands of households and prospective home buyers in the State without federal flood insurance and some forms of federal disaster assistance.

Impact on the department and other agencies: This bill proposes to assist county building permitting agencies in regulating and enforcing the provisions of section 46-88, HRS, by:

- (1) Requiring any owner or occupier seeking exemption under section 46-88, HRS, to:
  - (A) Submit a written notice to the appropriate county agency, prior to commencement of work, of the size, type, and locations of the proposed building, structure, related appurtenances, or development, provided that no work shall commence until the county agency has determined that a building permit for the proposed building, structure, related appurtenances, or development complies with local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules or regulations pursuant to the

National Flood Insurance Program requirements; and

- (B) Submit a written notice to the appropriate county fire department and county building permitting agency, upon completion of the work, of the final as-built size, type, and locations of the building, structure, related appurtenances, or development.
- (2) Making clear that section 46-88, HRS, does not exempt any new or existing agricultural buildings, structures, related appurtenances, or other development from building permit requirements and other requirements of local, state, or federal floodplain management development standards, ordinances, codes, statutes, rules, or regulations pursuant to National Flood Insurance Program requirements.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 810.

OTHER AFFECTED AGENCIES: County Building Permitting Agencies, County Fire Departments, FEMA, Department of Agriculture.

EFFECTIVE DATE: Upon approval.