JAN 2 5 2023

A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO LANDS.

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

1 SECTION 1. The legislature finds that taro lands are 2 essential as culturally important agricultural lands for Hawaii's future food security, representing the smallest portion 3 4 of agricultural lands but the highest-yielding staple food crop acreage in the State. Commercial, subsistence, and 5 6 education-based taro farms contribute substantially to Hawaii's 7 cultural, social, and economic health and wellbeing, not to 8 mention the role their presence plays in the advertising and 9 tourist industry. The legislature also recognizes that Act 211, 10 Session Laws of Hawaii 2008, as amended by Act 196, Session Laws 11 of Hawaii 2010, established a taro security and purity task 12 force that was responsible for developing guidelines, protocols, and recommendations for taro policy, among other duties. 13 In its 14 2010 and 2015 legislative reports, the task force recommended 15 improved protections for taro growing lands, including loi kalo (wet fields and terraces), mala or maloo (dry fields and 16 17 terraces), kuauna or paepae pohaku (stone walls), and auwai

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1 (irrigation ditches). The task force found that these key 2 structural elements for viable taro production represent the 3 fastest dwindling subset of agricultural land as the lands are 4 destroyed, severed, and built upon by private and public 5 development because of gaps in land use, historic preservation, and planning laws, policies, and statutes. Current department 6 7 of land and natural resources and department of agriculture 8 class designations for intensive agricultural lands do not 9 adequately recognize productive taro lands or protect them for 10 future use. Existing policies do not encourage state or private 11 landowners to maintain, protect, or rehabilitate ancient taro 12 infrastructure and taro farmers find themselves increasingly 13 challenged and blocked from maintaining auwai and water flows 14 that feed their crops where such structures cross multiple 15 properties.

16 The legislature recognizes that section 165-3, Hawaii
17 Revised Statutes, which is part of the Hawaii Right to Farm Act,
18 declares that the "preservation and promotion of farming is
19 declared to be in the public purpose and deserving of public
20 support". Further, pursuant to section 226-7(b)(17), Hawaii
21 Revised Statutes, which is part of the Hawaii State Planning

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Act, it is a state policy to "perpetuate, promote, and increase
 use of traditional Hawaiian farming systems", including the use
 of loko ia, mala, and irrigated loi, and growth of traditional
 Hawaiian crops, such as kalo, uala, and ulu.

5 The purpose of this Act is to improve protections for taro 6 lands and ancient agricultural structures and systems to retain 7 and support the opportunity for future use and productivity and 8 to provide consistency across statutes to allow for that 9 support.

SECTION 2. Section 165-2, Hawaii Revised Statutes, is amended by amending the definition of "farming operation" to read as follows:

13 ""Farming operation" means a commercial, subsistence, or 14 education-based agricultural, silvicultural, or aquacultural 15 facility or pursuit conducted, in whole or in part, including 16 the care and production of livestock and livestock products, 17 poultry and poultry products, apiary products, and plant and 18 animal production for nonfood uses; the planting, cultivating, 19 harvesting, and processing of crops; and the farming or ranching 20 of any plant or animal species in a controlled salt, brackish,

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1	or freshwa	ater environment. "Farming operation" includes but
2	shall not	be limited to:
3	(1)	Agricultural-based commercial, subsistence, or
4		education-based operations as described in section
5		[+]205-2(d)(15)[+];
6	(2)	Noises, odors, dust, and fumes emanating from a
7		commercial agricultural or an aquacultural facility or
8		pursuit;
9	(3)	Operation of machinery and irrigation pumps;
10	(4)	Ground and aerial seeding and spraying;
11	(5)	The application of chemical fertilizers, conditioners,
12		insecticides, pesticides, and herbicides; and
13	(6)	The employment and use of labor.
14	A farming	operation that conducts processing operations or salt,
15	brackish,	or freshwater aquaculture operations on land that is
16	zoned for	industrial, commercial, or other nonagricultural use
17	shall not,	by reason of that zoning, fall beyond the scope of
18	this defir	nition; provided that those processing operations form
19	an integra	al part of operations that otherwise meet the
20	requiremen	nts of this definition."

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1	SECTION 3. Section 171-1, Hawaii Revised Statutes, is			
2	amended by adding a new definition to be appropriately inserted			
3	and to read as follows:			
4	""Taro lands" means any currently undeveloped lands that			
5	were in wetland or dryland taro cultivation at any time prior to			
6	statehood."			
7	SECTION 4. Section 171-10, Hawaii Revised Statutes, is			
8	amended to read as follows:			
9	"§171-10 Classes of lands. The board of land and natural			
10	resources shall classify all public lands and in doing so be			
11	guided by the following classifications:			
12	1. Intensive agricultural use			
13	(A) First classLands highly productive of intensive			
14	crops such as sugarcane, pineapples, truck crops, and orchard			
15	crops.			
16	(B) Second classLands having medium productivity for			
17	intensive crops.			
18	(C) Third classLands having fair to marginal			
19	productivity for intensive crops.			
20	(T) Fourth classTaro lands. This class does not make a			
21	determination of productivity and recognizes the cultural,			



1	social, economic, and food security value of preserving
2	traditional taro lands for wetland and dryland cultivation.
3	2. Special livestock use
4	(A) First classLands highly suitable for special
5	livestock uses such as swine, dairy, and poultry production. In
6	making the determination, consideration shall be given to
7	drainage, climate, topography, proximity to market, and
8	transportation and compatibility to adjoining land use, among
9	other considerations. "Dairy" as used for disposition purposes
10	means a "dry lot" dairy without allowance for grazing.
11	(B) Second classLands suitable for special livestock
12	uses, but inferior to those of first class.
13	3. Pasture use
14	(A) First classLands having a potentially high economic
15	animal unit carrying capacity and capable of correspondingly
16	high liveweight gains per acre per year, such as, less than five
17	acres per animal unit per year and more than one hundred pounds
18	live beef gains per animal unit per acre per year.
19	(B) Second classLands having a potentially medium
20	economic animal unit carrying capacity and capable of moderate
21	liveweight gains per acre per year, such as, five to twenty

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acres per animal unit per year and twenty to one hundred pounds
 live beef gains per animal unit per acre per year.

3 (C) Third class--Lands having a relatively low animal unit
4 carrying capacity and producing correspondingly low liveweight
5 gains per acre per year, such as, more than twenty acres per
6 animal unit per year and less than twenty pounds average live
7 beef gains per animal unit per acre per year.

8

4. Commercial timber use

9 (A) First class--Lands of high suitability for growth of 10 merchantable timber having mean annual growth potential under 11 normal forest management practices with yields exceeding amounts 12 such as one thousand board feet per acre, and with location and 13 terrain presenting favorable logging, transportation, and 14 marketing conditions.

(B) Second class--Lands of high suitability for growth of merchantable timber having mean annual growth potential under normal forest management practices with yields exceeding amounts such as one thousand board feet per acre, and with location and terrain presenting less favorable logging, transportation, and marketing conditions.

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1	(C) Third classLands of medium suitability for growth of
2	merchantable timber having mean annual growth potential in
3	amounts such as five hundred to one thousand board feet per acre
4	under normal forest management practices, and with location and
5	terrain presenting favorable logging, transportation, and
6	marketing conditions.
7	(D) Fourth classLands of medium suitability for growth
8	of merchantable timber having mean annual growth potential in
9	amounts such as five hundred to one thousand board feet per acre
10	under normal forest management practices, and with location and
11	terrain presenting less favorable logging, transportation, and
12	marketing conditions.
13	(E) Fifth classLands of relatively low suitability for
14	growth of merchantable timber having mean annual growth
15	potential less than an amount such as five hundred board feet
16	per acre, and with location and terrain presenting favorable
17	logging, transportation, and marketing conditions.
18	(F) Sixth classLands of relatively low suitability for
19	growth of merchantable timber having mean annual growth
20	potential less than an amount such as five hundred board feet

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1	per acre, and with location and terrain presenting less
2	favorable logging, transportation, and marketing conditions.
3	5. Quarry use
4	Lands having sufficient quantity and quality of rock,
5	gravel, and sand for purpose of commercial use.
6	6. Mining use
7	Lands bearing sufficient quantity and quality of mineral
8	products for purpose of commercial mining and use.
9	7. Recreational use
10	Lands suitable for use and development as parks,
11	playgrounds, historical sites, natural area, camp grounds,
12	wildlife refuge, scenic sites, and other such uses.
13	8. Watershed use
14	Lands suitable for the use and development as watersheds or
15	for the development of water, and requiring necessary
16	restrictions on other uses.
17	9. Residential use
18	Lands suitable and economically feasible for residential
19	development and use.
20	10. Commercial and industrial use

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1 Lands suitable and economically feasible for commercial and industrial development and use. 2 3 11. Hotel, apartment, and motel use 4 Lands suitable and economically feasible for hotel, 5 apartment, and motel development and use. 6 12. Resort use 7 Lands suitable and economically feasible for resort 8 development and use. 9 13. Unclassified uses 10 Lands not otherwise classifiable under the foregoing 11 sections." 12 SECTION 5. Section 205-3.5, Hawaii Revised Statutes, is 13 amended by amending its title and subsection (a) to read as 14 follows: "[+]§205-3.5[+] Reclassification of land contiguous to a 15 16 rural or an agricultural district; approval conditions. (a) 17 Any decision approving a petition for a boundary amendment 18 pursuant to this chapter where lands in the petition area are 19 contiguous or adjacent to lands in the agricultural district, 20 shall include the following conditions in the decision granting 21 approval:

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1	(1)	A prohibition on any action that would interfere with		
2		or restrain farming operations [+], including blockage,		
3		disturbance, or destruction of traditional auwai		
4		irrigation rights of water access and delivery that		
5		may cross property boundaries; provided the farming		
6		operations are conducted in a manner consistent with		
7		generally accepted agricultural and management		
8		practices on adjacent or contiguous lands in the		
9		agricultural district; and		
10	(2)	Notification to all prospective developers or		
11		ourchasers of land or interest in land in the petition		
12		area and subsequent notification to lessees or tenants		
13		of the land, that farming operations and practices on		
14		adjacent or contiguous land in the agricultural		
15		district are protected under chapter 165, the Hawaii		
16		right to farm act, and that the notice shall be		
17		included in any disclosure required for the sale or		
18		transfer of real property or any interest in real		
19		property."		

1	SECTI	ION 6. Section 205-4.5, Hawaii Revised Statutes, is
2	amended by	y amending subsections (a) through (c) to read as
3	follows:	
4	"(a)	Within the agricultural district, all lands with soil
5	classified	d by the land study bureau's detailed land
6	classifica	ation as overall (master) productivity rating class A
7	[or] B <u>, or</u>	<u>T,</u> and for solar energy facilities, class B or C,
8	shall be r	restricted to the following permitted uses:
9	(1)	Cultivation of crops, including crops for bioenergy,
10		flowers, vegetables, foliage, fruits, forage, and
11		timber;
12	(2)	Game and fish propagation;
13	(3)	Raising of livestock, including poultry, bees, fish,
14		or other animal or aquatic life that are propagated
15		for economic or personal use;
16	(4)	Farm dwellings, employee housing, farm buildings, or
17		activities or uses related to farming and animal
18		husbandry. "Farm dwelling", as used in this
19		paragraph, means a single-family dwelling located on
20		and accessory to a farm, including clusters of
21		single-family farm dwellings permitted within

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1		parioultural parks developed by the State or where
I		agricultural parks developed by the State, or where
2		agricultural activity provides income to the family
3		occupying the dwelling;
4	(5)	Public institutions and buildings that are necessary
5		for agricultural practices;
6	(6)	Public and private open area types of recreational
7		uses, including day camps, picnic grounds, parks, and
8		riding stables, but not including dragstrips,
9		airports, drive-in theaters, golf courses, golf
10		driving ranges, country clubs, and overnight camps;
11	(7)	Public, private, and quasi-public utility lines and
12		roadways, transformer stations, communications
13		equipment buildings, solid waste transfer stations,
14		major water storage tanks, and appurtenant small
15		buildings such as booster pumping stations, but not
16		including offices or yards for equipment, material,
17		vehicle storage, repair or maintenance, treatment
18		plants, corporation yards, or other similar
19		structures;
20	(8)	Retention, restoration, rehabilitation, or improvement
21		of buildings, and walls, terraces, auwai and

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1		supporting structures for taro fields, or sites of			
2		historic or scenic interest;			
3	(9)	Agricultural-based commercial operations as described			
4		in section 205-2(d)(15);			
5	(10)	Buildings and uses, including mills, storage, and			
6		processing facilities, maintenance facilities,			
7		photovoltaic, biogas, and other small-scale renewable			
8		energy systems producing energy solely for use in the			
9		agricultural activities of the fee or leasehold owner			
10		of the property, and vehicle and equipment storage			
11		areas that are normally considered directly accessory			
12		to the above-mentioned uses and are permitted under			
13		section 205-2(d);			
14	(11)	Agricultural parks;			
15	(12)	Plantation community subdivisions, which as used in			
16		this chapter means an established subdivision or			
17		cluster of employee housing, community buildings, and			
18		agricultural support buildings on land currently or			
19		formerly owned, leased, or operated by a sugar or			
20		pineapple plantation; provided that the existing			
21		structures may be used or rehabilitated for use, and			

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1		new employee housing and agricultural support				
2		buildings may be allowed on land within the				
3		subdivision as follows:				
4		(A) The employee housing is occupied by employees or				
5		former employees of the plantation who have a				
6		property interest in the land;				
7		(B) The employee housing units not owned by their				
8		occupants shall be rented or leased at affordable				
9		rates for agricultural workers; or				
10		(C) The agricultural support buildings shall be				
11		rented or leased to agricultural business				
12		operators or agricultural support services;				
13	(13)	Agricultural tourism conducted on a working farm, or a				
14		farming operation as defined in section 165-2, for the				
15		enjoyment, education, or involvement of visitors;				
16		provided that the agricultural tourism activity is				
17		accessory and secondary to the principal agricultural				
18		use and does not interfere with surrounding farm				
19		operations; and provided further that this paragraph				
20		shall apply only to a county that has adopted				

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1 ordinances regulating agricultural tourism under 2 section 205-5; 3 (14) Agricultural tourism activities, including overnight 4 accommodations of twenty-one days or less, for any one 5 stay within a county; provided that this paragraph shall apply only to a county that includes at least 6 7 three islands and has adopted ordinances regulating 8 agricultural tourism activities pursuant to 9 section 205-5; provided further that the agricultural 10 tourism activities coexist with a bona fide 11 agricultural activity. For the purposes of this 12 paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2; 13 (15) Wind energy facilities, including the appurtenances 14 associated with the production and transmission of 15 wind generated energy; provided that the wind energy 16 17 facilities and appurtenances are compatible with 18 agriculture uses and cause minimal adverse impact on 19 agricultural land; Biofuel processing facilities, including the 20 (16) appurtenances associated with the production and 21

1 refining of biofuels that is normally considered 2 directly accessory and secondary to the growing of the 3 energy feedstock; provided that biofuel processing 4 facilities and appurtenances do not adversely impact 5 agricultural land and other agricultural uses in the 6 vicinity.

For the purposes of this paragraph:

8 "Appurtenances" means operational infrastructure
9 of the appropriate type and scale for economic
10 commercial storage and distribution, and other similar
11 handling of feedstock, fuels, and other products of
12 biofuel processing facilities.

13 "Biofuel processing facility" means a facility 14 that produces liquid or gaseous fuels from organic 15 sources such as biomass crops, agricultural residues, 16 and oil crops, including palm, canola, soybean, and 17 waste cooking oils; grease; food wastes; and animal 18 residues and wastes that can be used to generate 19 energy;

20 (17) Agricultural-energy facilities, including
21 appurtenances necessary for an agricultural-energy

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1	enterprise; provided that the primary activity of the
2	agricultural-energy enterprise is agricultural
3	activity. To be considered the primary activity of an
4	agricultural-energy enterprise, the total acreage
5	devoted to agricultural activity shall be not less
6	than ninety per cent of the total acreage of the
7	agricultural-energy enterprise. The
8	agricultural-energy facility shall be limited to lands
9	owned, leased, licensed, or operated by the entity
10	conducting the agricultural activity.
11	As used in this paragraph:
12	"Agricultural activity" means any activity
13	described in paragraphs (1) to (3) of this subsection.
14	"Agricultural-energy enterprise" means an
15	enterprise that integrally incorporates an
16	agricultural activity with an agricultural-energy
17	facility.
18	"Agricultural-energy facility" means a facility
19	that generates, stores, or distributes renewable
20	energy as defined in section 269-91 or renewable fuel
21	including electrical or thermal energy or liquid or

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1 gaseous fuels from products of agricultural activities 2 from agricultural lands located in the State. "Appurtenances" means operational infrastructure 3 4 of the appropriate type and scale for the economic 5 commercial generation, storage, distribution, and other similar handling of energy, including equipment, 6 7 feedstock, fuels, and other products of 8 agricultural-energy facilities; 9 Construction and operation of wireless communication (18)antennas, including small wireless facilities; 10 11 provided that, for the purposes of this paragraph, 12 "wireless communication antenna" means communications 13 equipment that is either freestanding or placed upon 14 or attached to an already existing structure and that transmits and receives electromagnetic radio signals 15 used in the provision of all types of wireless 16 17 communications services; provided further that "small wireless facilities" shall have the same meaning as in 18 19 section 206N-2; provided further that nothing in this paragraph shall be construed to permit the 20

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1 construction of any new structure that is not deemed a 2 permitted use under this subsection; 3 (19) Agricultural education programs conducted on a farming 4 operation as defined in section 165-2, for the 5 education and participation of the general public; 6 provided that the agricultural education programs are 7 accessory and secondary to the principal agricultural 8 use of the parcels or lots on which the agricultural 9 education programs are to occur and do not interfere 10 with surrounding farm operations. For the purposes of 11 this paragraph, "agricultural education programs" 12 means activities or events designed to promote 13 knowledge and understanding of agricultural activities 14 and practices conducted on a farming operation as 15 defined in section 165-2; 16 (20)Solar energy facilities that do not occupy more than 17 ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a 18 special use permit is granted pursuant to 19 20 section 205-6; provided that this use shall not be 21 permitted on lands with soil classified by the land

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1		stud	study bureau's detailed land classification as overall			
2		(mas	(master) productivity rating class A;			
3	(21)	Sola	Solar energy facilities on lands with soil classified			
4		by t	by the land study bureau's detailed land			
5		clas	sification as overall (master) productivity rating			
6		B or	B or C for which a special use permit is granted			
7		purs	oursuant to section 205-6; provided that:			
8		(A)	The area occupied by the solar energy facilities			
9			is also made available for compatible			
10			agricultural activities at a lease rate that is			
11			at least fifty per cent below the fair market			
12			rent for comparable properties;			
13		(B)	Proof of financial security to decommission the			
14			facility is provided to the satisfaction of the			
15			appropriate county planning commission prior to			
16			date of commencement of commercial generation;			
17			and			
18		(C)	Solar energy facilities shall be decommissioned			
19			at the owner's expense according to the following			
20			requirements:			

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1		(i)	Removal of all equipment related to the		
2			solar energy facility within twelve months		
3			of the conclusion of operation or useful		
4			life; and		
5		(ii)	Restoration of the disturbed earth to		
6			substantially the same physical condition as		
7			existed prior to the development of the		
8			solar energy facility.		
9		For the purposes of this paragraph, "agricultural			
10		activities" means the activities described in			
11		paragraph	s (1) to (3);		
12	(22)	Geothermal resources exploration and geothermal			
13		resources development, as defined under section 182-1;			
14	(23)	Hydroelectric facilities, including the appurtenances			
15		associated with the production and transmission of			
16		hydroelectric energy, subject to section 205-2;			
17		provided that the hydroelectric facilities and their			
18		appurtena	nces:		
19		(A) Shal	l consist of a small hydropower facility as		
20		defi	ned by the United States Department of		
21		Ener	gy, including:		

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1		(i)	Impoundment facilities using a dam to store
2			water in a reservoir;
3		(ii)	A diversion or run-of-river facility that
4			channels a portion of a river through a
5			canal or channel; and
6	(iii)	Pumped storage facilities that store energy
7			by pumping water uphill to a reservoir at
8			higher elevation from a reservoir at a lower
9			elevation to be released to turn a turbine
10			to generate electricity;
11	(B)	Compl	ly with the state water code, chapter 174C;
12	(C)	Shall	l, if over five hundred kilowatts in
13		hydro	pelectric generating capacity, have the
14		appro	oval of the commission on water resource
15		manaç	gement, including a new instream flow
16		stand	dard established for any new hydroelectric
17		facil	ity; and
18	(D)	Do no	ot impact or impede the use of agricultural
19		land	or the availability of surface or ground
20		water	for all uses on all parcels that are served

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1 by the ground water sources or streams for which 2 hydroelectric facilities are considered; or 3 (24) Notwithstanding any other law to the contrary, composting and co-composting operations; provided that 4 5 operations that process their own green waste and do not require permits from the department of health 6 7 shall use the finished composting product only on the 8 operation's own premises to minimize the potential 9 spread of invasive species.

10 Uses not expressly permitted in subsection (a) shall (b) be prohibited, except the uses permitted as provided in sections 11 205-6 and 205-8, and construction of single-family dwellings on 12 13 lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the 14 agricultural district with soil classified by the land study 15 bureau's detailed land classification as overall (master) 16 productivity rating class A [or], B, or T shall be approved by a 17 county unless those A [and], B, or T lands within the 18 subdivision are made subject to the restriction on uses as 19 prescribed in this section and to the condition that the uses 20 shall be primarily in pursuit of an agricultural activity. 21

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1 Any deed, lease, agreement of sale, mortgage, or other 2 instrument of conveyance covering any land within the 3 agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that 4 5 these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a 6 land use district other than agricultural district. Taro lands 7 with T designations shall not be reclassified. 8

9 If the foregoing requirement of encumbrances running with 10 the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in 11 12 the following paragraph, and the requirement is the sole reason 13 for failure to obtain mortgage financing, then the requirement 14 of encumbrances shall, insofar as such mortgage financing is jeopardized, be conditionally waived by the appropriate county 15 enforcement officer; provided that the conditional waiver shall 16 become effective only in the event that the property is 17 subjected to foreclosure proceedings by the mortgage lender. 18 The mortgage lending agencies referred to in the preceding 19

21 National Mortgage Association, Department of Veterans Affairs,

paragraph are the Federal Housing Administration, Federal



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1	Small Business Administration, United States Department of
2	Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
3	Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
4	other federal, state, or private mortgage lending agency
5	qualified to do business in Hawaii, and their respective
6	successors and assigns.
7	(c) Within the agricultural district, all lands with soil
8	classified by the land study bureau's detailed land
9	classification as overall (master) productivity rating class C,
10	D, E, \underline{T} , or U shall be restricted to the uses permitted for
11	agricultural districts as set forth in section 205-5(b)."
12	SECTION 7. This Act does not affect rights and duties that
13	matured, penalties that were incurred, and proceedings that were
14	begun before its effective date.
15	SECTION 8. Statutory material to be repealed is bracketed
16	and stricken. New statutory material is underscored.
17	SECTION 9. This Act shall take effect on July 1, 2023.
18	
	INTRODUCED BY: MM M.M.

BY REQUEST



Report Title:

Taro Lands; Protection; Unique Land Use

Description:

Amends land use classifications to add taro lands to unique agricultural lands. Requires retention of supporting structures for taro fields. Adds growth and perpetuation of taro and crops native to Hawaii to agricultural planning policies.

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

