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# A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO.

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

1           SECTION 1. The legislature finds that section 205-41,  
2 Hawaii Revised Statutes, states that there is a compelling  
3 interest in conserving agricultural lands. Protecting these  
4 resources for Hawaii's future food security on public, as well  
5 as private, lands is in strong alignment with Governor  
6 Abercrombie's 2010 *A New Day in Hawaii* plan for food and  
7 agriculture. The legislature also finds that the taro security  
8 and purity task force established under Act 211, Session Laws of  
9 Hawaii 2008, reported to the legislature in the 2010 legislative  
10 report *E ola hou ke kalo; ho'i hou ka 'āina lē'ia: The taro*  
11 *lives; abundance returns to the land* and recommended improved  
12 protections for taro growing lands, including lo'i (wet fields  
13 and terraces), mala (dry fields and terraces), kuauna or paepae  
14 pohaku (stone walls), and 'auwai (irrigation ditches). The taro  
15 task force found that these key structural elements for viable  
16 wetland taro production were being destroyed, severed, and built



1 upon by private and public development because of gaps in land  
2 use, historic preservation, and planning laws and policies.

3 The purpose of this Act is to improve protections for  
4 wetland taro lands (lo'i kalo) and ancient wetland agricultural  
5 structures on undeveloped state-owned or -acquired lands.

6 SECTION 2. Section 171-1, Hawaii Revised Statutes, is  
7 amended by adding a new definition to be appropriately inserted  
8 and to read as follows:

9 "Taro lands" means any undeveloped land in wetland taro  
10 cultivation prior to statehood that retains historic structural  
11 evidence of lo'i kalo, such as 'auwai irrigation ditches,  
12 terraces, and walls."

13 SECTION 3. Section 171-10, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§171-10 **Classes of lands.** The board of land and natural  
16 resources shall classify all public lands and in doing so be  
17 guided by the following classifications:

18 1. Intensive agricultural use

19 (A) First class--Lands highly productive of intensive  
20 crops such as sugarcane, pineapples, truck crops, and orchard  
21 crops.



1 (B) Second class--Lands having medium productivity for  
2 intensive crops.

3 (C) Third class--Lands having fair to marginal  
4 productivity for intensive crops.

5 (D) Fourth class--Taro land of high productivity  
6 determination and having cultural, social, economic, and food  
7 self-sufficiency value if preserved for wetland taro  
8 cultivation. District boundary amendment of fourth class taro  
9 lands shall be prohibited. Notwithstanding any other law to the  
10 contrary, public lands classified as fourth class taro lands  
11 pursuant to this section shall not be subject to a district  
12 boundary amendment.

13 2. Special livestock use

14 (A) First class--Lands highly suitable for special  
15 livestock uses such as swine, dairy, and poultry production. In  
16 making the determination, consideration shall be given to  
17 drainage, climate, topography, proximity to market, and  
18 transportation and compatibility to adjoining land use, among  
19 other considerations. "Dairy" as used for disposition purposes  
20 means a "dry lot" dairy without allowance for grazing.



1 (B) Second class--Lands suitable for special livestock  
2 uses, but inferior to those of first class.

3 3. Pasture use

4 (A) First class--Lands having a potentially high economic  
5 animal unit carrying capacity and capable of correspondingly  
6 high liveweight gains per acre per year, such as, less than five  
7 acres per animal unit per year and more than one hundred pounds  
8 live beef gains per animal unit per acre per year.

9 (B) Second class--Lands having a potentially medium  
10 economic animal unit carrying capacity and capable of moderate  
11 liveweight gains per acre per year, such as, five to twenty  
12 acres per animal unit per year and twenty to one hundred pounds  
13 live beef gains per animal unit per acre per year.

14 (C) Third class--Lands having a relatively low animal unit  
15 carrying capacity and producing correspondingly low liveweight  
16 gains per acre per year, such as, more than twenty acres per  
17 animal unit per year and less than twenty pounds average live  
18 beef gains per animal unit per acre per year.

19 4. Commercial timber use

20 (A) First class--Lands of high suitability for growth of  
21 merchantable timber having mean annual growth potential under



1 normal forest management practices with yields exceeding amounts  
2 such as one thousand board feet per acre, and with location and  
3 terrain presenting favorable logging, transportation, and  
4 marketing conditions.

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

11 (C) Third class--Lands of medium suitability for growth of  
12 merchantable timber having mean annual growth potential in  
13 amounts such as five hundred to one thousand board feet per acre  
14 under normal forest management practices, and with location and  
15 terrain presenting favorable logging, transportation, and  
16 marketing conditions.

17 (D) Fourth class--Lands of medium suitability for growth  
18 of merchantable timber having mean annual growth potential in  
19 amounts such as five hundred to one thousand board feet per acre  
20 under normal forest management practices, and with location and



1 terrain presenting less favorable logging, transportation, and  
2 marketing conditions.

3 (E) Fifth class--Lands of relatively low suitability for  
4 growth of merchantable timber having mean annual growth  
5 potential less than an amount such as five hundred board feet  
6 per acre, and with location and terrain presenting favorable  
7 logging, transportation, and marketing conditions.

8 (F) Sixth class--Lands of relatively low suitability for  
9 growth of merchantable timber having mean annual growth  
10 potential less than an amount such as five hundred board feet  
11 per acre, and with location and terrain presenting less  
12 favorable logging, transportation, and marketing conditions.

13 5. Quarry use

14 Lands having sufficient quantity and quality of rock,  
15 gravel, and sand for purpose of commercial use.

16 6. Mining use

17 Lands bearing sufficient quantity and quality of mineral  
18 products for purpose of commercial mining and use.

19 7. Recreational use



1           Lands suitable for use and development as parks,  
2 playgrounds, historical sites, natural area, camp grounds,  
3 wildlife refuge, scenic sites, and other such uses.

4           8.    Watershed use

5           Lands suitable for the use and development as watersheds or  
6 for the development of water, and requiring necessary  
7 restrictions on other uses.

8           9.    Residential use

9           Lands suitable and economically feasible for residential  
10 development and use.

11          10.   Commercial and industrial use

12          Lands suitable and economically feasible for commercial and  
13 industrial development and use.

14          11.   Hotel, apartment, and motel use

15          Lands suitable and economically feasible for hotel,  
16 apartment, and motel development and use.

17          12.   Resort use

18          Lands suitable and economically feasible for resort  
19 development and use.

20          13.   Unclassified uses



1           Lands not otherwise classifiable under the foregoing  
2 sections."

3           SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) Within the agricultural district, all lands with soil  
6 classified by the land study bureau's detailed land  
7 classification as overall (master) productivity rating class A  
8 or B and for solar energy facilities, class B or C, shall be  
9 restricted to the following permitted uses:

- 10           (1) Cultivation of crops, including crops for bioenergy,  
11                 flowers, vegetables, foliage, fruits, forage, and  
12                 timber;
- 13           (2) Game and fish propagation;
- 14           (3) Raising of livestock, including poultry, bees, fish,  
15                 or other animal or aquatic life that are propagated  
16                 for economic or personal use;
- 17           (4) Farm dwellings, employee housing, farm buildings, or  
18                 activities or uses related to farming and animal  
19                 husbandry. "Farm dwelling", as used in this  
20                 paragraph, means a single-family dwelling located on  
21                 and accessory to a farm, including clusters of single-



1 family farm dwellings permitted within agricultural  
2 parks developed by the State, or where agricultural  
3 activity provides income to the family occupying the  
4 dwelling;

5 (5) Public institutions and buildings that are necessary  
6 for agricultural practices;

7 (6) Public and private open area types of recreational  
8 uses, including day camps, picnic grounds, parks, and  
9 riding stables, but not including dragstrips,  
10 airports, drive-in theaters, golf courses, golf  
11 driving ranges, country clubs, and overnight camps;

12 (7) Public, private, and quasi-public utility lines and  
13 roadways, transformer stations, communications  
14 equipment buildings, solid waste transfer stations,  
15 major water storage tanks, and appurtenant small  
16 buildings such as booster pumping stations, but not  
17 including offices or yards for equipment, material,  
18 vehicle storage, repair or maintenance, treatment  
19 plants, corporation yards, or other similar  
20 structures;



- 1           (8) Retention, restoration, rehabilitation, or improvement  
2           of [~~buildings~~]:  
3           (A) Buildings or sites of historic or scenic  
4           interest[+]; and  
5           (B) Walls, terraces, or supporting structure for lo'i  
6           taro fields in wetland taro cultivation prior to  
7           statehood;
- 8           (9) Agricultural-based commercial operations as described  
9           in section 205-2(d)(15);
- 10          (10) Buildings and uses, including mills, storage, and  
11          processing facilities, maintenance facilities,  
12          photovoltaic, biogas, and other small-scale renewable  
13          energy systems producing energy solely for use in the  
14          agricultural activities of the fee or leasehold owner  
15          of the property, and vehicle and equipment storage  
16          areas that are normally considered directly accessory  
17          to the above-mentioned uses and are permitted under  
18          section 205-2(d);
- 19          (11) Agricultural parks;
- 20          (12) Plantation community subdivisions, which as used in  
21          this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and  
2 agricultural support buildings on land currently or  
3 formerly owned, leased, or operated by a sugar or  
4 pineapple plantation; provided that the existing  
5 structures may be used or rehabilitated for use, and  
6 new employee housing and agricultural support  
7 buildings may be allowed on land within the  
8 subdivision as follows:

9 (A) The employee housing is occupied by employees or  
10 former employees of the plantation who have a  
11 property interest in the land;

12 (B) The employee housing units not owned by their  
13 occupants shall be rented or leased at affordable  
14 rates for agricultural workers; or

15 (C) The agricultural support buildings shall be  
16 rented or leased to agricultural business  
17 operators or agricultural support services;

18 (13) Agricultural tourism conducted on a working farm, or a  
19 farming operation as defined in section 165-2, for the  
20 enjoyment, education, or involvement of visitors;  
21 provided that the agricultural tourism activity is



1           accessory and secondary to the principal agricultural  
2           use and does not interfere with surrounding farm  
3           operations; and provided further that this paragraph  
4           shall apply only to a county that has adopted  
5           ordinances regulating agricultural tourism under  
6           section 205-5;

7           (14) Agricultural tourism activities, including overnight  
8           accommodations of twenty-one days or less, for any one  
9           stay within a county; provided that this paragraph  
10          shall apply only to a county that includes at least  
11          three islands and has adopted ordinances regulating  
12          agricultural tourism activities pursuant to section  
13          205-5; provided further that the agricultural tourism  
14          activities coexist with a bona fide agricultural  
15          activity. For the purposes of this paragraph, "bona  
16          fide agricultural activity" means a farming operation  
17          as defined in section 165-2;

18          (15) Wind energy facilities, including the appurtenances  
19          associated with the production and transmission of  
20          wind generated energy; provided that the wind energy  
21          facilities and appurtenances are compatible with



1 agriculture uses and cause minimal adverse impact on  
2 agricultural land;  
3 (16) Biofuel processing facilities, including the  
4 appurtenances associated with the production and  
5 refining of biofuels that is normally considered  
6 directly accessory and secondary to the growing of the  
7 energy feedstock; provided that biofuel processing  
8 facilities and appurtenances do not adversely impact  
9 agricultural land and other agricultural uses in the  
10 vicinity.

11 For the purposes of this paragraph:

12 "Appurtenances" means operational infrastructure  
13 of the appropriate type and scale for economic  
14 commercial storage and distribution, and other similar  
15 handling of feedstock, fuels, and other products of  
16 biofuel processing facilities.

17 "Biofuel processing facility" means a facility  
18 that produces liquid or gaseous fuels from organic  
19 sources such as biomass crops, agricultural residues,  
20 and oil crops, including palm, canola, soybean, and  
21 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate  
2 energy;

3 (17) Agricultural-energy facilities, including  
4 appurtenances necessary for an agricultural-energy  
5 enterprise; provided that the primary activity of the  
6 agricultural-energy enterprise is agricultural  
7 activity. To be considered the primary activity of an  
8 agricultural-energy enterprise, the total acreage  
9 devoted to agricultural activity shall be not less  
10 than ninety per cent of the total acreage of the  
11 agricultural-energy enterprise. The agricultural-  
12 energy facility shall be limited to lands owned,  
13 leased, licensed, or operated by the entity conducting  
14 the agricultural activity.

15 As used in this paragraph:

16 "Agricultural activity" means any activity  
17 described in paragraphs (1) to (3) of this subsection.

18 "Agricultural-energy enterprise" means an  
19 enterprise that integrally incorporates an  
20 agricultural activity with an agricultural-energy  
21 facility.



1 "Agricultural-energy facility" means a facility  
2 that generates, stores, or distributes renewable  
3 energy as defined in section 269-91 or renewable fuel  
4 including electrical or thermal energy or liquid or  
5 gaseous fuels from products of agricultural activities  
6 from agricultural lands located in the State.

7 "Appurtenances" means operational infrastructure  
8 of the appropriate type and scale for the economic  
9 commercial generation, storage, distribution, and  
10 other similar handling of energy, including equipment,  
11 feedstock, fuels, and other products of agricultural-  
12 energy facilities;

13 (18) Construction and operation of wireless communication  
14 antennas, including small wireless facilities;  
15 provided that, for the purposes of this paragraph,  
16 "wireless communication antenna" means communications  
17 equipment that is either freestanding or placed upon  
18 or attached to an already existing structure and that  
19 transmits and receives electromagnetic radio signals  
20 used in the provision of all types of wireless  
21 communications services; provided further that "small



1 wireless facilities" shall have the same meaning as in  
2 section 206N-2; provided further that nothing in this  
3 paragraph shall be construed to permit the  
4 construction of any new structure that is not deemed a  
5 permitted use under this subsection;

6 (19) Agricultural education programs conducted on a farming  
7 operation as defined in section 165-2, for the  
8 education and participation of the general public;  
9 provided that the agricultural education programs are  
10 accessory and secondary to the principal agricultural  
11 use of the parcels or lots on which the agricultural  
12 education programs are to occur and do not interfere  
13 with surrounding farm operations. For the purposes of  
14 this paragraph, "agricultural education programs"  
15 means activities or events designed to promote  
16 knowledge and understanding of agricultural activities  
17 and practices conducted on a farming operation as  
18 defined in section 165-2;

19 (20) Solar energy facilities that do not occupy more than  
20 ten per cent of the acreage of the parcel, or twenty  
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section 205-  
2 6; provided that this use shall not be permitted on  
3 lands with soil classified by the land study bureau's  
4 detailed land classification as overall (master)  
5 productivity rating class A;

6 (21) Solar energy facilities on lands with soil classified  
7 by the land study bureau's detailed land  
8 classification as overall (master) productivity rating  
9 B or C for which a special use permit is granted  
10 pursuant to section 205-6; provided that:

11 (A) The area occupied by the solar energy facilities  
12 is also made available for compatible  
13 agricultural activities at a lease rate that is  
14 at least fifty per cent below the fair market  
15 rent for comparable properties;

16 (B) Proof of financial security to decommission the  
17 facility is provided to the satisfaction of the  
18 appropriate county planning commission prior to  
19 date of commencement of commercial generation;  
20 and



1 (C) Solar energy facilities shall be decommissioned  
2 at the owner's expense according to the following  
3 requirements:

4 (i) Removal of all equipment related to the  
5 solar energy facility within twelve months  
6 of the conclusion of operation or useful  
7 life; and

8 (ii) Restoration of the disturbed earth to  
9 substantially the same physical condition as  
10 existed prior to the development of the  
11 solar energy facility.

12 For the purposes of this paragraph, "agricultural  
13 activities" means the activities described in  
14 paragraphs (1) to (3);

15 (22) Geothermal resources exploration and geothermal  
16 resources development, as defined under section 182-1;  
17 or

18 (23) Hydroelectric facilities, including the appurtenances  
19 associated with the production and transmission of  
20 hydroelectric energy, subject to section 205-2;



1 provided that the hydroelectric facilities and their  
2 appurtenances:

3 (A) Shall consist of a small hydropower facility as  
4 defined by the United States Department of  
5 Energy, including:

6 (i) Impoundment facilities using a dam to store  
7 water in a reservoir;

8 (ii) A diversion or run-of-river facility that  
9 channels a portion of a river through a  
10 canal or channel; and

11 (iii) Pumped storage facilities that store energy  
12 by pumping water uphill to a reservoir at  
13 higher elevation from a reservoir at a lower  
14 elevation to be released to turn a turbine  
15 to generate electricity;

16 (B) Comply with the state water code, chapter 174C;

17 (C) Shall, if over five hundred kilowatts in  
18 hydroelectric generating capacity, have the  
19 approval of the commission on water resource  
20 management, including a new instream flow



1 standard established for any new hydroelectric  
2 facility; and

3 (D) Do not impact or impede the use of agricultural  
4 land or the availability of surface or ground  
5 water for all uses on all parcels that are served  
6 by the ground water sources or streams for which  
7 hydroelectric facilities are considered."

8 SECTION 5. Section 206-7, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§206-7 Property that shall not be acquired for  
11 development projects. (a) In declaring development areas, and  
12 acquiring land therein, the board of land and natural resources  
13 shall avoid disturbing existing uses that are in accord with the  
14 highest use permitted under any existing zoning ordinance in the  
15 political subdivision concerned. The board shall not disturb  
16 existing ancient taro-growing systems, ancient wetland taro  
17 lands, or structural elements of ancient wetland taro-growing  
18 systems on undeveloped lands.

19 (b) The board shall not acquire for development projects:

20 (1) Lands already developed and improved as business or  
21 industrial areas where use of the lands for



1 residential purposes or as a part of a development  
2 project would be economically unsound or where an  
3 undue hardship would be suffered by the community  
4 through loss of service because of the acquisition;

5 (2) Lands already in use for residential purposes by the  
6 owner thereof or by a lessee holding a lease with an  
7 original term of twenty years or more, except where  
8 the acquisition of parts of the lands is reasonably  
9 necessary for the proper development of a project, but  
10 in no case shall any part of the lands be taken where  
11 the taking will reduce the parcel to less than three  
12 acres in extent;

13 (3) Lands in the process of subdivision and development  
14 where the owner or the owner's agent has provided that  
15 at least fifty per cent of the lots to be sold shall  
16 be sold in fee simple, prepared subdivision and  
17 construction plans, arranged for financing, and  
18 applied to government agencies and otherwise taken  
19 steps that may be appropriate for the construction of  
20 the proposed development in good faith and filed an  
21 affidavit with the board to that effect; or



1           (4) Lands used or to be used as sites for churches,  
 2           private or parochial schools, clubs, meeting houses,  
 3           or other private uses of a community, civic, social,  
 4           or religious nature; and

5           (5) Undeveloped lands and infrastructure used for wetland  
 6           cultivation prior to statehood and currently in use  
 7           for wetland taro cultivation, including ancient  
 8           wetland taro lands and structural elements of ancient  
 9           wetland taro-growing systems;

10 provided that portions of the lands mentioned under paragraphs  
 11 (1), (2), (3), (4), and (5) or interests therein, may be taken  
 12 to provide access and utility easements where no other  
 13 reasonable means of access or utility easements are available.

14           (c) In acquiring agricultural land for a development  
 15 project, where the land though used for agricultural purposes is  
 16 not being used in accord with the highest use permitted under  
 17 any existing zoning ordinance, the board shall exercise all  
 18 reasonable care not to jeopardize the agricultural enterprise  
 19 concerned. If, however, the board finds that the land is  
 20 necessary for a development project, the board may provide  
 21 assistance, monetary or otherwise, in relocating the enterprise



1 elsewhere or pay damages to the owner or operator of the  
2 enterprise that will reasonably compensate the owner or operator  
3 for the owner's or operator's loss, if the owner or operator has  
4 not already been so compensated under a lease agreement, or  
5 both."

6 SECTION 6. Section 226-7, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Planning for the State's economy with regard to  
9 agriculture shall be directed towards achievement of the  
10 following objectives:

11 (1) Viability of Hawaii's sugar and pineapple industries.

12 (2) Growth and development of diversified agriculture  
13 throughout the State.

14 (3) An agriculture industry that continues to constitute a  
15 dynamic and essential component of Hawaii's strategic,  
16 economic, and social well-being.

17 (4) Growth and perpetuation of traditional Hawaiian  
18 crops."

19 SECTION 7. The board of land and natural resources, in  
20 conjunction with the taro security and purity task force, may  
21 create an inventory, pursuant to chapter 91, Hawaii Revised



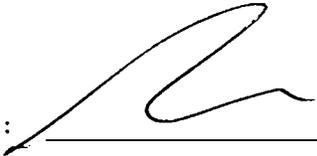
1 Statutes, identifying lands classified as fourth class taro  
2 lands under section 171-10, Hawaii Revised Statutes.

3 SECTION 8. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect upon its approval.

9

INTRODUCED BY:  \_\_\_\_\_



**Report Title:**

Agricultural Lands; Taro Land Protection

**Description:**

Prohibits the Board of Land and Natural Resources, in declaring residential development areas and acquiring lands therein, from disturbing wetland taro lands and infrastructure on undeveloped lands. Establishes a fourth class--taro lands classification for public lands. Permits structures for lo'i taro fields in the agricultural district. Establishes growth and perpetuation of traditional Hawaiian crops as a goal of the State Planning Act. Authorizes the Board of Land and Natural Resources, with the Taro Security and Purity Task Force, to create an inventory of taro lands.

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

