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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 public lands of high  
10 productivity determination situated in the land use conservation  
11 district established pursuant to chapter 205 in wetland taro  
12 cultivation prior to statehood, or any undeveloped public lands  
13 that were traditional taro lands situated in the land use  
14 conservation district established pursuant to chapter 205 that  
15 retain historic structural evidence of lo'i kalo, such as 'auwai  
16 irrigation ditches, terraces, or walls."

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

19 **"§171-10 Classes of lands.** The board of land and natural  
20 resources shall classify all public lands and in doing so be  
21 guided by the following classifications:



1           1. Intensive agricultural use

2           (A) First class--Lands highly productive of intensive  
3 crops such as sugarcane, pineapples, truck crops, and orchard  
4 crops.

5           (B) Second class--Lands having medium productivity for  
6 intensive crops.

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

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

18           2. Special livestock use

19           (A) First class--Lands highly suitable for special  
20 livestock uses such as swine, dairy, and poultry production. In  
21 making the determination, consideration shall be given to



1 drainage, climate, topography, proximity to market, and  
2 transportation and compatibility to adjoining land use, among  
3 other considerations. "Dairy" as used for disposition purposes  
4 means a "dry lot" dairy without allowance for grazing.

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

7 3. Pasture use

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

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

18 (C) Third class--Lands having a relatively low animal unit  
19 carrying capacity and producing correspondingly low liveweight  
20 gains per acre per year, such as, more than twenty acres per



1 animal unit per year and less than twenty pounds average live  
2 beef gains per animal unit per acre per year.

3 4. Commercial timber use

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

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

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



1 (D) Fourth class--Lands of medium suitability for growth  
2 of 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 less favorable logging, transportation, and  
6 marketing conditions.

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

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

17 5. Quarry use

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

20 6. Mining use



1           Lands bearing sufficient quantity and quality of mineral  
2 products for purpose of commercial mining and use.

3           7. Recreational use

4           Lands suitable for use and development as parks,  
5 playgrounds, historical sites, natural area, camp grounds,  
6 wildlife refuge, scenic sites, and other such uses.

7           8. Watershed use

8           Lands suitable for the use and development as watersheds or  
9 for the development of water, and requiring necessary  
10 restrictions on other uses.

11          9. Residential use

12          Lands suitable and economically feasible for residential  
13 development and use.

14          10. Commercial and industrial use

15          Lands suitable and economically feasible for commercial and  
16 industrial development and use.

17          11. Hotel, apartment, and motel use

18          Lands suitable and economically feasible for hotel,  
19 apartment, and motel development and use.

20          12. Resort use



1       Lands suitable and economically feasible for resort  
2 development and use.

3       13.   Unclassified uses

4       Lands not otherwise classifiable under the foregoing  
5 sections."

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

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

13       (1)   Cultivation of crops, including crops for bioenergy,  
14           flowers, vegetables, foliage, fruits, forage, and  
15           timber;

16       (2)   Game and fish propagation;

17       (3)   Raising of livestock, including poultry, bees, fish,  
18           or other animal or aquatic life that are propagated  
19           for economic or personal use;

20       (4)   Farm dwellings, employee housing, farm buildings, or  
21           activities or uses related to farming and animal





1 husbandry. "Farm dwelling", as used in this  
2 paragraph, means a single-family dwelling located on  
3 and accessory to a farm, including clusters of single-  
4 family farm dwellings permitted within agricultural  
5 parks developed by the State, or where agricultural  
6 activity provides income to the family occupying the  
7 dwelling;

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

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

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



1 plants, corporation yards, or other similar  
2 structures;

3 (8) Retention, restoration, rehabilitation, or improvement  
4 of [~~buildings~~];

5 (A) Buildings or sites of historic or scenic  
6 interest [+]; and

7 (B) Walls, terraces, or supporting structure for lo'i  
8 taro fields in wetland taro cultivation prior to  
9 statehood and currently in use for wetland taro  
10 cultivation;

11 (9) Agricultural-based commercial operations as described  
12 in section 205-2(d)(15);

13 (10) Buildings and uses, including mills, storage, and  
14 processing facilities, maintenance facilities,  
15 photovoltaic, biogas, and other small-scale renewable  
16 energy systems producing energy solely for use in the  
17 agricultural activities of the fee or leasehold owner  
18 of the property, and vehicle and equipment storage  
19 areas that are normally considered directly accessory  
20 to the above-mentioned uses and are permitted under  
21 section 205-2(d);



(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

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

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

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



1       (13)   Agricultural tourism conducted on a working farm, or a  
2            farming operation as defined in section 165-2, for the  
3            enjoyment, education, or involvement of visitors;  
4            provided that the agricultural tourism activity is  
5            accessory and secondary to the principal agricultural  
6            use and does not interfere with surrounding farm  
7            operations; and provided further that this paragraph  
8            shall apply only to a county that has adopted  
9            ordinances regulating agricultural tourism under  
10          section 205-5;

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



1       (15) Wind energy facilities, including the appurtenances  
2           associated with the production and transmission of  
3           wind generated energy; provided that the wind energy  
4           facilities and appurtenances are compatible with  
5           agriculture uses and cause minimal adverse impact on  
6           agricultural land;

7       (16) Biofuel processing facilities, including the  
8           appurtenances associated with the production and  
9           refining of biofuels that is normally considered  
10          directly accessory and secondary to the growing of the  
11          energy feedstock; provided that biofuel processing  
12          facilities and appurtenances do not adversely impact  
13          agricultural land and other agricultural uses in the  
14          vicinity.

15               For the purposes of this paragraph:

16               "Appurtenances" means operational infrastructure  
17               of the appropriate type and scale for economic  
18               commercial storage and distribution, and other similar  
19               handling of feedstock, fuels, and other products of  
20               biofuel processing facilities.



1 "Biofuel processing facility" means a facility  
2 that produces liquid or gaseous fuels from organic  
3 sources such as biomass crops, agricultural residues,  
4 and oil crops, including palm, canola, soybean, and  
5 waste cooking oils; grease; food wastes; and animal  
6 residues and wastes that can be used to generate  
7 energy;

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

20 As used in this paragraph:



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

3 "Agricultural-energy enterprise" means an  
4 enterprise that integrally incorporates an  
5 agricultural activity with an agricultural-energy  
6 facility.

7 "Agricultural-energy facility" means a facility  
8 that generates, stores, or distributes renewable  
9 energy as defined in section 269-91 or renewable fuel  
10 including electrical or thermal energy or liquid or  
11 gaseous fuels from products of agricultural activities  
12 from agricultural lands located in the State.

13 "Appurtenances" means operational infrastructure  
14 of the appropriate type and scale for the economic  
15 commercial generation, storage, distribution, and  
16 other similar handling of energy, including equipment,  
17 feedstock, fuels, and other products of agricultural-  
18 energy facilities;

19 (18) Construction and operation of wireless communication  
20 antennas, including small wireless facilities;  
21 provided that, for the purposes of this paragraph,



1 "wireless communication antenna" means communications  
2 equipment that is either freestanding or placed upon  
3 or attached to an already existing structure and that  
4 transmits and receives electromagnetic radio signals  
5 used in the provision of all types of wireless  
6 communications services; provided further that "small  
7 wireless facilities" shall have the same meaning as in  
8 section 206N-2; provided further that nothing in this  
9 paragraph shall be construed to permit the  
10 construction of any new structure that is not deemed a  
11 permitted use under this subsection;

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





1 knowledge and understanding of agricultural activities  
2 and practices conducted on a farming operation as  
3 defined in section 165-2;

4 (20) Solar energy facilities that do not occupy more than  
5 ten per cent of the acreage of the parcel, or twenty  
6 acres of land, whichever is lesser or for which a  
7 special use permit is granted pursuant to section 205-  
8 6; provided that this use shall not be permitted on  
9 lands with soil classified by the land study bureau's  
10 detailed land classification as overall (master)  
11 productivity rating class A;

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

17 (A) The area occupied by the solar energy facilities  
18 is also made available for compatible  
19 agricultural activities at a lease rate that is  
20 at least fifty per cent below the fair market  
21 rent for comparable properties;



1 (B) Proof of financial security to decommission the  
2 facility is provided to the satisfaction of the  
3 appropriate county planning commission prior to  
4 date of commencement of commercial generation;  
5 and

6 (C) Solar energy facilities shall be decommissioned  
7 at the owner's expense according to the following  
8 requirements:

9 (i) Removal of all equipment related to the  
10 solar energy facility within twelve months  
11 of the conclusion of operation or useful  
12 life; and

13 (ii) Restoration of the disturbed earth to  
14 substantially the same physical condition as  
15 existed prior to the development of the  
16 solar energy facility.

17 For the purposes of this paragraph, "agricultural  
18 activities" means the activities described in  
19 paragraphs (1) to (3);



1       (22) Geothermal resources exploration and geothermal  
2           resources development, as defined under section 182-1;  
3           or

4       (23) Hydroelectric facilities, including the appurtenances  
5           associated with the production and transmission of  
6           hydroelectric energy, subject to section 205-2;  
7           provided that the hydroelectric facilities and their  
8           appurtenances:

9           (A) Shall consist of a small hydropower facility as  
10           defined by the United States Department of  
11           Energy, including:

12           (i) Impoundment facilities using a dam to store  
13           water in a reservoir;

14           (ii) A diversion or run-of-river facility that  
15           channels a portion of a river through a  
16           canal or channel; and

17           (iii) Pumped storage facilities that store energy  
18           by pumping water uphill to a reservoir at  
19           higher elevation from a reservoir at a lower  
20           elevation to be released to turn a turbine  
21           to generate electricity;



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

2 (C) Shall, if over five hundred kilowatts in  
3 hydroelectric generating capacity, have the  
4 approval of the commission on water resource  
5 management, including a new instream flow  
6 standard established for any new hydroelectric  
7 facility; and

8 (D) Do not impact or impede the use of agricultural  
9 land or the availability of surface or ground  
10 water for all uses on all parcels that are served  
11 by the ground water sources or streams for which  
12 hydroelectric facilities are considered."

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

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



1 lands, or structural elements of ancient wetland taro-growing  
2 systems on undeveloped lands used for wetland taro cultivation  
3 prior to statehood and currently in use for wetland taro  
4 cultivation.

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

6 (1) Lands already developed and improved as business or  
7 industrial areas where use of the lands for  
8 residential purposes or as a part of a development  
9 project would be economically unsound or where an  
10 undue hardship would be suffered by the community  
11 through loss of service because of the acquisition;

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

20 (3) Lands in the process of subdivision and development  
21 where the owner or the owner's agent has provided that



1 at least fifty per cent of the lots to be sold shall  
2 be sold in fee simple, prepared subdivision and  
3 construction plans, arranged for financing, and  
4 applied to government agencies and otherwise taken  
5 steps that may be appropriate for the construction of  
6 the proposed development in good faith and filed an  
7 affidavit with the board to that effect; [e]

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

12 (5) Undeveloped lands and infrastructure used for wetland  
13 cultivation prior to statehood and currently in use  
14 for wetland taro cultivation, including ancient  
15 wetland taro lands and structural elements of ancient  
16 wetland taro-growing systems;

17 provided that portions of the lands mentioned under paragraphs  
18 (1), (2), (3), (4), and (5) or interests therein, may be taken  
19 to provide access and utility easements where no other  
20 reasonable means of access or utility easements are available.



1 (c) In acquiring agricultural land for a development  
2 project, where the land though used for agricultural purposes is  
3 not being used in accord with the highest use permitted under  
4 any existing zoning ordinance, the board shall exercise all  
5 reasonable care not to jeopardize the agricultural enterprise  
6 concerned. If, however, the board finds that the land is  
7 necessary for a development project, the board may provide  
8 assistance, monetary or otherwise, in relocating the enterprise  
9 elsewhere or pay damages to the owner or operator of the  
10 enterprise that will reasonably compensate the owner or operator  
11 for the owner's or operator's loss, if the owner or operator has  
12 not already been so compensated under a lease agreement, or  
13 both."

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

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

- 19 (1) Viability of Hawaii's sugar and pineapple industries.
- 20 (2) Growth and development of diversified agriculture
- 21 throughout the State.



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

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

SECTION 7. The land use commission, in conjunction with the taro security and purity task force, may create an inventory, pursuant to chapter 91, Hawaii Revised Statutes, and submit the inventory to the board of land and natural resources for approval.

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

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

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





**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 certain wetland taro lands and infrastructure on undeveloped lands within the conservation district established pursuant to chapter 205, Hawaii Revised Statutes. 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 Land Use Commission, with the Taro Security and Purity Task Force, to create an inventory of taro lands. (SD1)

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

