
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 loi 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);



- 1 (11) Agricultural parks;
- 2 (12) Plantation community subdivisions, which as used in
- 3 this chapter means an established subdivision or
- 4 cluster of employee housing, community buildings, and
- 5 agricultural support buildings on land currently or
- 6 formerly owned, leased, or operated by a sugar or
- 7 pineapple plantation; provided that the existing
- 8 structures may be used or rehabilitated for use, and
- 9 new employee housing and agricultural support
- 10 buildings may be allowed on land within the
- 11 subdivision as follows:
- 12 (A) The employee housing is occupied by employees or
- 13 former employees of the plantation who have a
- 14 property interest in the land;
- 15 (B) The employee housing units not owned by their
- 16 occupants shall be rented or leased at affordable
- 17 rates for agricultural workers; or
- 18 (C) The agricultural support buildings shall be
- 19 rented or leased to agricultural business
- 20 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
8 205-6; provided that this use shall not be permitted
9 on lands with soil classified by the land study
10 bureau's detailed land classification as overall
11 (master) 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; [~~or~~]

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; or

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), (5), or interests therein, may be taken to
 19 provide access and utility easements where no other reasonable
 20 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.



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

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

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

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

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 Statutory material to be repealed is bracketed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

16 SECTION 10. This Act shall take effect on July 1, 2050.



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. Effective 7/1/2050. (SD2)

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

