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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 recognizes that pursuant to  
2 section 205-41, Hawaii Revised Statutes, there is a compelling  
3 state interest in conserving state agricultural lands.  
4 Protecting these resources for Hawaii's future food security on  
5 public and private lands strongly aligns with former Governor  
6 Abercrombie's 2010 *A New Day in Hawaii* plan for food and  
7 agriculture. The legislature also recognizes that Act 211,  
8 Session Laws of Hawaii 2008, as amended by Act 196, Session Laws  
9 of Hawaii 2010, established a taro security and purity task  
10 force that was responsible for developing guidelines, protocols,  
11 and recommendations for taro policy, among other duties. In a  
12 2009 report entitled "E Ola Hou Ke Kalo; Hoi Hou Ka Aina Leia  
13 (The Taro Lives; Abundance Returns to the Land), the task force  
14 recommended improved protections for taro-growing lands,  
15 including loi (wet fields and terraces), mala (dry fields and  
16 terraces), kuana or paepae pohaku (stone walls), and auwai  
17 (irrigation ditches). The task force found that these key



1 structural elements for viable wetland taro production were  
2 being destroyed, severed, and built upon by private and public  
3 development because of gaps in land use, historic preservation,  
4 and planning laws and policies.

5 The purpose of this Act is to improve protections for  
6 wetland taro lands (loi kalo) and ancient wetland agricultural  
7 structures on undeveloped state-owned or -acquired lands.

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

11 ""Taro lands" means any undeveloped public lands of high  
12 productivity determination situated in the conservation district  
13 established pursuant to chapter 205 in wetland taro cultivation  
14 before statehood, or any undeveloped public lands that were  
15 traditional taro lands situated in the conservation district  
16 established pursuant to chapter 205 that retain historic  
17 structural evidence of loi kalo, including auwai irrigation  
18 ditches, terraces, or walls."

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



1           "**§171-10 Classes of lands.** The board of land and natural  
2 resources shall classify all public lands and in doing so be  
3 guided by the following classifications:

4           1. Intensive agricultural use

5           (A) First class--Lands highly productive of intensive  
6 crops such as sugarcane, pineapples, truck crops, and orchard  
7 crops.

8           (B) Second class--Lands having medium productivity for  
9 intensive crops.

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

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

21          2. Special livestock use



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

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

10 3. Pasture use

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

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



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

6 4. Commercial timber use

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

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

19 (C) Third class--Lands of medium suitability for growth of  
20 merchantable timber having mean annual growth potential in  
21 amounts such as five hundred to one thousand board feet per acre



1 under normal forest management practices, and with location and  
2 terrain presenting favorable logging, transportation, and  
3 marketing conditions.

4 (D) Fourth class--Lands of medium suitability for growth  
5 of merchantable timber having mean annual growth potential in  
6 amounts such as five hundred to one thousand board feet per acre  
7 under normal forest management practices, and with location and  
8 terrain presenting less favorable logging, transportation, and  
9 marketing conditions.

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

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

20 5. Quarry use



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

3           6. Mining use

4           Lands bearing sufficient quantity and quality of mineral  
5 products for purpose of commercial mining and use.

6           7. Recreational use

7           Lands suitable for use and development as parks,  
8 playgrounds, historical sites, natural area, camp grounds,  
9 wildlife refuge, scenic sites, and other such uses.

10          8. Watershed use

11          Lands suitable for the use and development as watersheds or  
12 for the development of water, and requiring necessary  
13 restrictions on other uses.

14          9. Residential use

15          Lands suitable and economically feasible for residential  
16 development and use.

17          10. Commercial and industrial use

18          Lands suitable and economically feasible for commercial and  
19 industrial development and use.

20          11. Hotel, apartment, and motel use



1           Lands suitable and economically feasible for hotel,  
2 apartment, and motel development and use.

3           12. Resort use

4           Lands suitable and economically feasible for resort  
5 development and use.

6           13. Unclassified uses

7           Lands not otherwise classifiable under the foregoing  
8 sections."

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

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

- 16           (1) Cultivation of crops, including crops for bioenergy,  
17                 flowers, vegetables, foliage, fruits, forage, and  
18                 timber;
- 19           (2) Game and fish propagation;



- 1           (3) Raising of livestock, including poultry, bees, fish,  
2                    or other animal or aquatic life that are propagated  
3                    for economic or personal use;
- 4           (4) Farm dwellings, employee housing, farm buildings, or  
5                    activities or uses related to farming and animal  
6                    husbandry. "Farm dwelling", as used in this  
7                    paragraph, means a single-family dwelling located on  
8                    and accessory to a farm, including clusters of  
9                    single-family farm dwellings permitted within  
10                  agricultural parks developed by the State, or where  
11                  agricultural activity provides income to the family  
12                  occupying the dwelling;
- 13          (5) Public institutions and buildings that are necessary  
14                  for agricultural practices;
- 15          (6) Public and private open area types of recreational  
16                  uses, including day camps, picnic grounds, parks, and  
17                  riding stables, but not including dragstrips,  
18                  airports, drive-in theaters, golf courses, golf  
19                  driving ranges, country clubs, and overnight camps;
- 20          (7) Public, private, and quasi-public utility lines and  
21                  roadways, transformer stations, communications



1 equipment buildings, solid waste transfer stations,  
2 major water storage tanks, and appurtenant small  
3 buildings such as booster pumping stations, but not  
4 including offices or yards for equipment, material,  
5 vehicle storage, repair or maintenance, treatment  
6 plants, corporation yards, or other similar  
7 structures;

8 (8) Retention, restoration, rehabilitation, or improvement  
9 of [~~buildings~~]:

10 (A) Buildings or sites of historic or scenic  
11 interest; and

12 (B) Walls, terraces, or supporting structures for loi  
13 taro fields in wetland taro cultivation before  
14 statehood and currently in use for wetland taro  
15 cultivation;

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

18 (10) Buildings and uses, including mills, storage, and  
19 processing facilities, maintenance facilities,  
20 photovoltaic, biogas, and other small-scale renewable  
21 energy systems producing energy solely for use in the



1 agricultural activities of the fee or leasehold owner  
2 of the property, and vehicle and equipment storage  
3 areas that are normally considered directly accessory  
4 to the above-mentioned uses and are permitted under  
5 section 205-2(d);

6 (11) Agricultural parks;

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

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



- 1 (B) The employee housing units not owned by their  
2 occupants shall be rented or leased at affordable  
3 rates for agricultural workers; or
- 4 (C) The agricultural support buildings shall be  
5 rented or leased to agricultural business  
6 operators or agricultural support services;
- 7 (13) Agricultural tourism conducted on a working farm, or a  
8 farming operation as defined in section 165-2, for the  
9 enjoyment, education, or involvement of visitors;  
10 provided that the agricultural tourism activity is  
11 accessory and secondary to the principal agricultural  
12 use and does not interfere with surrounding farm  
13 operations; and provided further that this paragraph  
14 shall apply only to a county that has adopted  
15 ordinances regulating agricultural tourism under  
16 section 205-5;
- 17 (14) Agricultural tourism activities, including overnight  
18 accommodations of twenty-one days or less, for any one  
19 stay within a county; provided that this paragraph  
20 shall apply only to a county that includes at least  
21 three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to  
2 section 205-5; provided further that the agricultural  
3 tourism activities coexist with a bona fide  
4 agricultural activity. For the purposes of this  
5 paragraph, "bona fide agricultural activity" means a  
6 farming operation as defined in section 165-2;

7 (15) Wind energy facilities, including the appurtenances  
8 associated with the production and transmission of  
9 wind generated energy; provided that the wind energy  
10 facilities and appurtenances are compatible with  
11 agriculture uses and cause minimal adverse impact on  
12 agricultural land;

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

21 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for economic  
3 commercial storage and distribution, and other similar  
4 handling of feedstock, fuels, and other products of  
5 biofuel processing facilities.

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

13 (17) Agricultural-energy facilities, including  
14 appurtenances necessary for an agricultural-energy  
15 enterprise; provided that the primary activity of the  
16 agricultural-energy enterprise is agricultural  
17 activity. To be considered the primary activity of an  
18 agricultural-energy enterprise, the total acreage  
19 devoted to agricultural activity shall be not less  
20 than ninety per cent of the total acreage of the  
21 agricultural-energy enterprise. The



1 agricultural-energy facility shall be limited to lands  
2 owned, leased, licensed, or operated by the entity  
3 conducting the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an  
8 enterprise that integrally incorporates an  
9 agricultural activity with an agricultural-energy  
10 facility.

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

17 "Appurtenances" means operational infrastructure  
18 of the appropriate type and scale for the economic  
19 commercial generation, storage, distribution, and  
20 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of  
2 agricultural-energy facilities;  
3 (18) Construction and operation of wireless communication  
4 antennas, including small wireless facilities;  
5 provided that, for the purposes of this paragraph,  
6 "wireless communication antenna" means communications  
7 equipment that is either freestanding or placed upon  
8 or attached to an already existing structure and that  
9 transmits and receives electromagnetic radio signals  
10 used in the provision of all types of wireless  
11 communications services; provided further that "small  
12 wireless facilities" shall have the same meaning as in  
13 section 206N-2; provided further that nothing in this  
14 paragraph shall be construed to permit the  
15 construction of any new structure that is not deemed a  
16 permitted use under this subsection;  
17 (19) Agricultural education programs conducted on a farming  
18 operation as defined in section 165-2, for the  
19 education and participation of the general public;  
20 provided that the agricultural education programs are  
21 accessory and secondary to the principal agricultural



1 use of the parcels or lots on which the agricultural  
2 education programs are to occur and do not interfere  
3 with surrounding farm operations. For the purposes of  
4 this paragraph, "agricultural education programs"  
5 means activities or events designed to promote  
6 knowledge and understanding of agricultural activities  
7 and practices conducted on a farming operation as  
8 defined in section 165-2;

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

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



1 (A) The area occupied by the solar energy facilities  
2 is also made available for compatible  
3 agricultural activities at a lease rate that is  
4 at least fifty per cent below the fair market  
5 rent for comparable properties;

6 (B) Proof of financial security to decommission the  
7 facility is provided to the satisfaction of the  
8 appropriate county planning commission prior to  
9 date of commencement of commercial generation;  
10 and

11 (C) Solar energy facilities shall be decommissioned  
12 at the owner's expense according to the following  
13 requirements:

14 (i) Removal of all equipment related to the  
15 solar energy facility within twelve months  
16 of the conclusion of operation or useful  
17 life; and

18 (ii) Restoration of the disturbed earth to  
19 substantially the same physical condition as  
20 existed prior to the development of the  
21 solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;

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

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

14 (i) Impoundment facilities using a dam to store  
15 water in a reservoir;

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

19 (iii) Pumped storage facilities that store energy  
20 by pumping water uphill to a reservoir at  
21 higher elevation from a reservoir at a lower



1                   elevation to be released to turn a turbine  
2                   to generate electricity;

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

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

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

15          (24) Notwithstanding any other law to the contrary,  
16          composting and co-composting operations; provided that  
17          operations that process their own green waste and do  
18          not require permits from the department of health  
19          shall use the finished composting product only on the  
20          operation's own premises to minimize the potential  
21          spread of invasive species."



1 SECTION 5. Section 206-7, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) In declaring development areas, and acquiring land  
4 therein, the board of land and natural resources shall avoid  
5 disturbing existing uses that are in accord with the highest use  
6 permitted under any existing zoning ordinance in the political  
7 subdivision concerned. The board shall not disturb existing  
8 ancient taro-growing systems, ancient wetland taro lands, or  
9 structural elements of ancient wetland taro-growing systems on  
10 undeveloped lands used for wetland taro cultivation before  
11 statehood and currently in use for wetland taro cultivation.

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

13 (1) Lands already developed and improved as business or  
14 industrial areas where use of the lands for  
15 residential purposes or as a part of a development  
16 project would be economically unsound or where an  
17 undue hardship would be suffered by the community  
18 through loss of service because of the acquisition;

19 (2) Lands already in use for residential purposes by the  
20 owner thereof or by a lessee holding a lease with an  
21 original term of twenty years or more, except where



1 the acquisition of parts of the lands is reasonably  
2 necessary for the proper development of a project, but  
3 in no case shall any part of the lands be taken where  
4 the taking will reduce the parcel to less than three  
5 acres in extent;

6 (3) Lands in the process of subdivision and development  
7 where the owner or the owner's agent has provided that  
8 at least fifty per cent of the lots to be sold shall  
9 be sold in fee simple, prepared subdivision and  
10 construction plans, arranged for financing, and  
11 applied to government agencies and otherwise taken  
12 steps that may be appropriate for the construction of  
13 the proposed development in good faith and filed an  
14 affidavit with the board to that effect; [~~or~~]

15 (4) Lands used or to be used as sites for churches,  
16 private or parochial schools, clubs, meeting houses,  
17 or other private uses of a community, civic, social,  
18 or religious nature; or

19 (5) Undeveloped lands and infrastructure used for wetland  
20 taro cultivation before statehood and currently in use  
21 for wetland taro cultivation, including ancient



1           wetland taro lands and structural elements of ancient  
2           wetland taro-growing systems;  
3 provided that portions of the lands [~~mentioned under paragraphs~~  
4 ~~(1), (2), (3), and (4),~~] described in this subsection, or  
5 interests therein, may be taken to provide access and utility  
6 easements where no other reasonable means of access or utility  
7 easements are available."

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

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

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

14           (2) Growth and development of diversified agriculture  
15 throughout the State.

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

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



1 SECTION 7. The land use commission may create an inventory  
2 of taro lands, pursuant to chapter 91, Hawaii Revised Statutes,  
3 and submit the inventory to the board of land and natural  
4 resources for approval. In creating the inventory, the land use  
5 commission may consult with the:

6 (1) Agencies and entities whose representatives served on;  
7 and

8 (2) Former individual members of,  
9 the taro security and purity task force established pursuant to  
10 Act 211, Session Laws of Hawaii 2008, as amended by Act 196,  
11 Session Laws of Hawaii 2010.

12 SECTION 8. 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 9. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect on June 30, 3000.



**Report Title:**

BLNR; Agricultural Lands; Taro Land Protection; LUC; Inventory

**Description:**

Prohibits the Board of Land and Natural Resources from disturbing or acquiring for development certain wetland taro-growing lands. Establishes a taro lands classification for public lands. Permits structures for loi taro fields in the agricultural district. Establishes growth and perpetuation of traditional Hawaiian crops as a goal of the Hawaii State Planning Act. Authorizes the Land Use Commission to create an inventory of taro lands and consult with former members of the Taro Security and Purity Task Force in the creation of the inventory. Effective 6/30/3000. (HD1)

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