
A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO LANDS.

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

1 SECTION 1. The legislature finds that taro lands are
2 essential as culturally important agricultural lands for
3 Hawaii's future food security, representing the smallest portion
4 of agricultural lands but the highest-yielding staple food crop
5 acreage in the State. The legislature also finds that the taro
6 security and purity task force established under Act 211,
7 Session Laws of Hawaii 2008, reported to the legislature in the
8 2010 legislative report *E ola hou ke kalo; ho'i hou ka 'āina*
9 *lā'ia: The taro lives; abundance returns to the land* and
10 recommended improved protections for taro-growing lands,
11 including lo'i (wet fields and terraces), mala (dry fields and
12 terraces), kuana or paepae pohaku (stone walls), and 'auwai
13 (irrigation ditches). The task force found that these key
14 structural elements for viable taro production represent the
15 fastest dwindling subset of agricultural land as the lands are
16 destroyed, severed, and built upon by private and public
17 development because of gaps in land use, historic preservation,

1 and planning laws and policies. Current department of
2 agriculture class designations for intensive agricultural lands
3 do not adequately recognize productive taro lands or protect
4 them for future use. Existing policies do not encourage state
5 or private landowners to protect or rehabilitate ancient taro
6 infrastructure.

7 The purpose of this Act is to improve protections for taro
8 lands and ancient agricultural structures.

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

12 "Taro lands" means any lands in wetland taro cultivation
13 prior to statehood, or any traditional taro lands that retain
14 historic structural evidence of lo'i kalo, for example, 'auwai
15 irrigation ditches, terraces, or walls."

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

18 **"§171-10 Classes of lands.** The board of land and natural
19 resources shall classify all public lands and in doing so be
20 guided by the following classifications:

21 1. Intensive agricultural use



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

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

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

8 (T) Fourth class--Taro lands. This class does not make a
9 determination of productivity and recognizes the cultural,
10 social, economic, and food self-sufficiency value of preserving
11 traditional taro lands for wetland cultivation.

12 2. Special livestock use

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

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

22 3. Pasture use



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

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

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

16 4. Commercial timber use

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



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

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

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

19 (E) Fifth class--Lands of relatively low suitability for
20 growth of merchantable timber having mean annual growth
21 potential less than an amount such as five hundred board feet



1 per acre, and with location and terrain presenting favorable
2 logging, transportation, and marketing conditions.

3 (F) Sixth 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 less
7 favorable logging, transportation, and marketing conditions.

8 5. Quarry use

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

11 6. Mining use

12 Lands bearing sufficient quantity and quality of mineral
13 products for purpose of commercial mining and use.

14 7. Recreational use

15 Lands suitable for use and development as parks,
16 playgrounds, historical sites, natural area, camp grounds,
17 wildlife refuge, scenic sites, and other such uses.

18 8. Watershed use

19 Lands suitable for the use and development as watersheds or
20 for the development of water, and requiring necessary
21 restrictions on other uses.



1 9. Residential use
2 Lands suitable and economically feasible for residential
3 development and use.

4 10. Commercial and industrial use
5 Lands suitable and economically feasible for commercial and
6 industrial development and use.

7 11. Hotel, apartment, and motel use
8 Lands suitable and economically feasible for hotel,
9 apartment, and motel development and use.

10 12. Resort use
11 Lands suitable and economically feasible for resort
12 development and use.

13 13. Unclassified uses
14 Lands not otherwise classifiable under the foregoing
15 sections."

16 SECTION 4. Section 205-3.5, Hawaii Revised Statutes, is
17 amended by amending its title and subsection (a) to read as
18 follows:

19 " ~~[§]205-3.5[§]~~ **Reclassification of land contiguous to an**
20 **agricultural district; approval conditions.** (a) Any decision
21 approving a petition for a boundary amendment pursuant to this
22 chapter where lands in the petition area are contiguous or



1 adjacent to lands in the agricultural district, shall include
2 the following conditions in the decision granting approval:

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

21 SECTION 5. Section 205-4.5, Hawaii Revised Statutes, is
22 amended by amending subsections (a) and (b) to read as follows:



1 (a) Within the agricultural district, all lands with soil
2 classified by the land study bureau's detailed land
3 classification as overall (master) productivity rating class A
4 or B, or classified as 1.(T), fourth class--taro lands, pursuant
5 to section 171-10, shall be restricted to the following
6 permitted uses:

- 7 (1) Cultivation of crops, including crops for bioenergy,
8 flowers, vegetables, foliage, fruits, forage, and
9 timber;
- 10 (2) Game and fish propagation;
- 11 (3) Raising of livestock, including poultry, bees, fish,
12 or other animal or aquatic life that are propagated
13 for economic or personal use;
- 14 (4) Farm dwellings, employee housing, farm buildings, or
15 activities or uses related to farming and animal
16 husbandry. "Farm dwelling", as used in this
17 paragraph, means a single-family dwelling located on
18 and used in connection with a farm, including clusters
19 of single-family farm dwellings permitted within
20 agricultural parks developed by the State, or where
21 agricultural activity provides income to the family
22 occupying the dwelling;



- 1 (5) Public institutions and buildings that are necessary
2 for agricultural practices;
- 3 (6) Public and private open area types of recreational
4 uses, including day camps, picnic grounds, parks, and
5 riding stables, but not including dragstrips,
6 airports, drive-in theaters, golf courses, golf
7 driving ranges, country clubs, and overnight camps;
- 8 (7) Public, private, and quasi-public utility lines and
9 roadways, transformer stations, communications
10 equipment buildings, solid waste transfer stations,
11 major water storage tanks, and appurtenant small
12 buildings such as booster pumping stations, but not
13 including offices or yards for equipment, material,
14 vehicle storage, repair or maintenance, treatment
15 plants, corporation yards, or other similar
16 structures;
- 17 (8) Retention, restoration, rehabilitation, or improvement
18 of buildings, walls, terraces, and supporting
19 structures for lo'i taro fields, or sites of historic
20 or scenic interest;
- 21 (9) Agricultural-based commercial operations as described
22 in section [†]205-2(d)(15)[†];



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



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



1 shall apply only to a county that includes at least
2 three islands and has adopted ordinances regulating
3 agricultural tourism activities pursuant to section
4 205-5; provided further that the agricultural tourism
5 activities coexist with a bona fide agricultural
6 activity. For the purposes of this paragraph, "bona
7 fide agricultural activity" means a farming operation
8 as defined in section 165-2;

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

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



1 For the purposes of this paragraph:

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

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

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

1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 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,
21 feedstock, fuels, and other products of agricultural-
22 energy facilities;



- 1 (18) Construction and operation of wireless communication
2 antennas; provided that, for the purposes of this
3 paragraph, "wireless communication antenna" means
4 communications equipment that is either freestanding
5 or placed upon or attached to an already existing
6 structure and that transmits and receives
7 electromagnetic radio signals used in the provision of
8 all types of wireless communications services;
9 provided further that nothing in this paragraph shall
10 be construed to permit the construction of any new
11 structure that is not deemed a permitted use under
12 this subsection;
- 13 (19) Agricultural education programs conducted on a farming
14 operation as defined in section 165-2, for the
15 education and participation of the general public;
16 provided that the agricultural education programs are
17 accessory and secondary to the principal agricultural
18 use of the parcels or lots on which the agricultural
19 education programs are to occur and do not interfere
20 with surrounding farm operations. For the purposes of
21 this section, "agricultural education programs" means
22 activities or events designed to promote knowledge and



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

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; provided that this
7 use shall not be permitted on lands with soil
8 classified by the land study bureau's detailed land
9 classification as overall (master) productivity rating
10 class A; or

11 [+] (21) [+] Geothermal resources exploration and geothermal
12 resources development, as defined under section 182-1.

13 (b) Uses not expressly permitted in subsection (a) shall
14 be prohibited, except the uses permitted as provided in sections
15 205-6 and 205-8, and construction of single-family dwellings on
16 lots existing before June 4, 1976. Any other law to the
17 contrary notwithstanding, no subdivision of land within the
18 agricultural district with soil classified by the land study
19 bureau's detailed land classification as overall (master)
20 productivity rating class A or B, or classified as 1.(T), fourth
21 class--taro lands pursuant to section 171-10, shall be approved
22 by a county unless those A, ~~and~~ B, or 1.(T) classification

1 lands within the subdivision are made subject to the restriction
2 on uses as prescribed in this section and to the condition that
3 the uses shall be primarily in pursuit of an agricultural
4 activity.

5 Any deed, lease, agreement of sale, mortgage, or other
6 instrument of conveyance covering any land within the
7 agricultural subdivision shall expressly contain the restriction
8 on uses and the condition, as prescribed in this section that
9 these restrictions and conditions shall be encumbrances running
10 with the land until such time that the land is reclassified to a
11 land use district other than agricultural district. Taro lands
12 classified as 1.(T), fourth class--taro lands pursuant to
13 section 171-10 shall not be reclassified.

14 If the foregoing requirement of encumbrances running with
15 the land jeopardizes the owner or lessee in obtaining mortgage
16 financing from any of the mortgage lending agencies set forth in
17 the following paragraph, and the requirement is the sole reason
18 for failure to obtain mortgage financing, then the requirement
19 of encumbrances shall, insofar as such mortgage financing is
20 jeopardized, be conditionally waived by the appropriate county
21 enforcement officer; provided that the conditional waiver shall



1 become effective only in the event that the property is
2 subjected to foreclosure proceedings by the mortgage lender.

3 The mortgage lending agencies referred to in the preceding
4 paragraph are the Federal Housing Administration, Federal
5 National Mortgage Association, Veterans Administration, Small
6 Business Administration, United States Department of
7 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
8 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
9 other federal, state, or private mortgage lending agency
10 qualified to do business in Hawaii, and their respective
11 successors and assigns."

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

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

- 17 (1) Viability of Hawaii's sugar and pineapple industries.
18 (2) Growth and development of diversified agriculture
19 throughout the State.
20 (3) An agriculture industry that continues to constitute a
21 dynamic and essential component of Hawaii's strategic,
22 economic, and social well-being.



1 (4) The growth and perpetuation of all traditional
2 Hawaiian crops."

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2013.



Report Title:

Taro Lands; Protection; Agricultural Land Use

Description:

Amends public lands classifications to add taro lands for wetland cultivation as a fourth class of agricultural lands. Defines taro lands. Requires retention of supporting structures for taro fields. Adds growth and perpetuation of all traditional Hawaiian crops to agricultural planning objectives. Effective July 1, 2013. (HB734 HD1)

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