

JAN 24 2013

A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO LANDS AND ANCIENT
AGRICULTURAL STRUCTURES.

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

1 SECTION 1. The legislature finds that taro lands are
2 culturally significant and essential for Hawaii's future food
3 security. Taro lands represent the smallest portion of
4 agricultural lands and some of the highest yielding staple food
5 crop acreage in the state. Act 211, Session Laws of Hawaii
6 2008, established the taro security and purity task force with
7 certain specified duties regarding the cultivation and
8 production of taro. The task force reported to the legislature
9 on December 29, 2009, that ancient taro lands and agricultural
10 field structures, including lo'i (wet fields and terraces), mala
11 (dry fields and terraces), kuauna or paepae pohaku (stone walls)
12 and 'auwai (irrigation ditches), which form the key structural
13 elements for viable taro production, were frequently destroyed,
14 built upon, and severed by private and public development due to
15 gaps in existing state land use, historic preservation, and
16 planning laws and policies. Ancient taro lands represent the
17 fastest dwindling subset of agricultural lands in the State.



1 The department of agriculture's important agricultural
2 lands designations identify only some taro lands as unique (U);
3 the remainder are classed as marginal (C-E) or lack designation
4 altogether. The department of land and natural resources
5 recognizes three classes of intensive agricultural lands (A to
6 C), none of which adequately recognize productive taro lands.
7 Language that supports prime and diversified agriculture is
8 insufficient to protect taro lands for future use.

9 Under current policy, a landowner may be required to record
10 the presence of ancient agricultural field structures on a
11 property but is typically under limited or no obligation to
12 preserve them intact and in place. As a result, lo'i, stone
13 walls, and 'auwai on ancient taro lands with the potential for
14 rehabilitation are some of the least protected ancient
15 structures and agricultural lands in the State, directly
16 impacting Hawaii's food self-sufficiency potential. Existing
17 state and county incentives fail to encourage state or private
18 landowner protection of taro lands in general and rehabilitation
19 for ancient taro infrastructures specifically, on all islands.

20 Section 205-41, Hawaii Revised Statutes, states in
21 pertinent part, "There is a compelling state interest in
22 conserving the State's agricultural land resource base and



1 assuring the long-term availability of agricultural lands for
2 agricultural use"

3 The purpose of this Act is to improve protections for taro
4 lands and ancient Hawaiian agricultural structures.

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

8 "Taro lands" means any lands in taro cultivation prior to
9 statehood, or any lands that retain historic structural evidence
10 of lo'i kalo, such as 'auwai, terraces, and walls."

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

13 **"§171-10 Classes of lands.** The board of land and natural
14 resources shall classify all public lands and in doing so be
15 guided by the following classifications:

16 1. Intensive agricultural use

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

20 (B) Second class--Lands having medium productivity for
21 intensive crops.



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

3 (D) Unique class -- taro lands.

4 2. Special livestock use

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

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

14 3. Pasture use

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

20 (B) Second class--Lands having a potentially medium
21 economic animal unit carrying capacity and capable of moderate
22 liveweight gains per acre per year, such as, five to twenty



1 acres per animal unit per year and twenty to one hundred pounds
2 live beef gains per animal unit per acre per year.

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

8 4. Commercial timber use

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

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

21 (C) Third class--Lands of medium suitability for growth of
22 merchantable timber having mean annual growth potential in



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

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

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

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

21 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

21 Lands suitable and economically feasible for hotel,
22 apartment, and motel development and use.



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

4 13. Unclassified uses
5 Lands not otherwise classifiable under the foregoing
6 sections."

7 SECTION 4. Section 205-3.5, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Any decision approving a petition for a boundary
10 amendment pursuant to this chapter where lands in the petition
11 area are contiguous or adjacent to lands in the agricultural
12 district, shall include the following conditions in the decision
13 granting approval:

14 (1) A prohibition on any action that would interfere with
15 or restrain farming operations[+], including any
16 blockage, disturbance, or destruction of traditional
17 'auwai that may cross property boundaries; provided the
18 farming operations are conducted in a manner
19 consistent with generally accepted agricultural and
20 management practices on adjacent or contiguous lands
21 in the agricultural district; and



1 (2) Notification to all prospective developers or
2 purchasers of land or interest in land in the petition
3 area and subsequent notification to lessees or tenants
4 of the land, that farming operations and practices on
5 adjacent or contiguous land in the agricultural
6 district are protected under chapter 165, the Hawaii
7 right to farm act, and that the notice shall be
8 included in any disclosure required for the sale or
9 transfer of real property or any interest in real
10 property."

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

14 "(a) Within the agricultural district, all lands with soil
15 classified by the land study bureau's detailed land
16 classification as overall (master) productivity rating class A
17 [~~or B~~] or U shall be restricted to the following permitted uses:

- 18 (1) Cultivation of crops, including crops for bioenergy,
19 flowers, vegetables, foliage, fruits, forage, and
20 timber;
- 21 (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 used in connection with a farm, including clusters
9 of 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
22 equipment buildings, solid waste transfer stations,



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

7 (8) Retention, restoration, rehabilitation, or improvement
8 of buildings, lo'i walls, terraces, and supporting
9 structures, or sites of historic or scenic interest;

10 (9) Agricultural-based commercial operations as described
11 in section [‡]205-2(d)(15) [‡];

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

21 (11) Agricultural parks;



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

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

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

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

20 (13) Agricultural tourism conducted on a working farm, or a
21 farming operation as defined in section 165-2, for the
22 enjoyment, education, or involvement of visitors;



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

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

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



1 agriculture uses and cause minimal adverse impact on
2 agricultural land;

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

11 For the purposes of this paragraph:

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

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



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

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

15 As used in this paragraph:

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

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



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

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

13 (18) Construction and operation of wireless communication
14 antennas; provided that, for the purposes of this
15 paragraph, "wireless communication antenna" means
16 communications equipment that is either freestanding
17 or placed upon or attached to an already existing
18 structure and that transmits and receives
19 electromagnetic radio signals used in the provision of
20 all types of wireless communications services;
21 provided further that nothing in this paragraph shall
22 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under
2 this subsection;

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

16 (20) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser; provided that this
19 use shall not be permitted on lands with soil
20 classified by the land study bureau's detailed land
21 classification as overall (master) productivity rating
22 class A; or



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

3 (b) Uses not expressly permitted in subsection (a) shall
4 be prohibited, except the uses permitted as provided in sections
5 205-6 and 205-8, and construction of single-family dwellings on
6 lots existing before June 4, 1976. Any other law to the
7 contrary notwithstanding, no subdivision of land within the
8 agricultural district with soil classified by the land study
9 bureau's detailed land classification as overall (master)
10 productivity rating class A or [B] U shall be approved by a
11 county unless those A [~~and B~~] or U lands within the subdivision
12 are made subject to the restriction on uses as prescribed in
13 this section and to the condition that the uses shall be
14 primarily in pursuit of an agricultural activity.

15 Any deed, lease, agreement of sale, mortgage, or other
16 instrument of conveyance covering any land within the
17 agricultural subdivision shall expressly contain the restriction
18 on uses and the condition, as prescribed in this section that
19 these restrictions and conditions shall be encumbrances running
20 with the land until such time that the land is reclassified to a
21 land use district other than agricultural district. Taro lands
22 with U agricultural designations shall not be reclassified.



1 If the foregoing requirement of encumbrances running with
2 the land jeopardizes the owner or lessee in obtaining mortgage
3 financing from any of the mortgage lending agencies set forth in
4 the following paragraph, and the requirement is the sole reason
5 for failure to obtain mortgage financing, then the requirement
6 of encumbrances shall, insofar as such mortgage financing is
7 jeopardized, be conditionally waived by the appropriate county
8 enforcement officer; provided that the conditional waiver shall
9 become effective only in the event that the property is
10 subjected to foreclosure proceedings by the mortgage lender.

11 The mortgage lending agencies referred to in the preceding
12 paragraph are the Federal Housing Administration, Federal
13 National Mortgage Association, Veterans Administration, Small
14 Business Administration, United States Department of
15 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
16 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
17 other federal, state, or private mortgage lending agency
18 qualified to do business in Hawaii, and their respective
19 successors and assigns.

20 (c) Within the agricultural district, all lands with soil
21 classified by the land study bureau's detailed land
22 classification as overall (master) productivity rating class C,



1 D, or E[~~-or-U~~] shall be restricted to the uses permitted for
2 agricultural districts as set forth in section 205-5(b)."

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

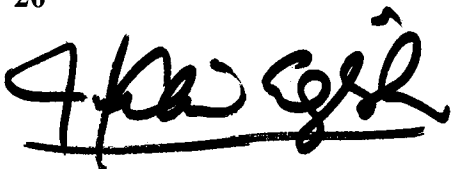
5 "(a) Planning for the State's economy with regard to
6 agriculture shall be directed towards achievement of the
7 following objectives:

- 8 (1) Viability of Hawaii's sugar and pineapple
9 industries[~~-~~];
- 10 (2) Growth and development of diversified agriculture
11 throughout the State[~~-~~];
- 12 (3) An agriculture industry that continues to constitute a
13 dynamic and essential component of Hawaii's strategic,
14 economic, and social well-being[~~-~~]; and
- 15 (4) Growth and perpetuation of native Hawaiian crops,
16 particularly taro and sweet potato."

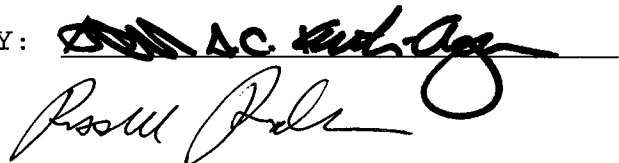
17 SECTION 7. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

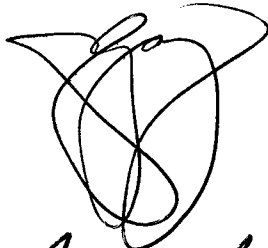
19 SECTION 8. This Act shall take effect on July 1, 2013.

20



INTRODUCED BY:




Milik
Randy H. Bal
Ombudsman



S.B. NO. 1270

Report Title:

Taro Security and Purity Task Force

Description:

Enacts recommendations of the taro security and purity task force to improve protections for taro lands and ancient Hawaiian agricultural structures.

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

