

JAN 16 2014

A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The legislature finds that taro lands are
2 culturally important agricultural lands and essential for
3 Hawaii's future food security. Taro lands represent the
4 smallest portion of agricultural lands and some of the highest
5 yielding staple food crop acreage in the State. Protecting such
6 resources for Hawaii's future food security is in strong
7 alignment with the Governor's 2010 *A New Day in Hawaii* plan for
8 food and agriculture. The legislature also finds that the taro
9 security and purity task force established under Act 211,
10 Session Laws of Hawaii 2008, reported to the legislature in the
11 2010 legislative report *E ola hou ke kalo; ho'i hou ka 'āina*
12 *lē'ia: The taro lives; abundance returns to the land* and
13 recommended improved protections for taro-growing lands,
14 including lo'i (wet fields and terraces), mala (dry fields and
15 terraces), kuana or paepae pohaku (stone walls), and 'auwai
16 (irrigation ditches). The task force found that these key
17 structural elements for viable taro production represent the



1 fastest dwindling subset of agricultural land as the lands are
2 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. Increasing interest in the
5 development of public lands in recent years adds urgency to the
6 protection of wetland taro sites on lands under state
7 jurisdiction. Current department of agriculture and department
8 of land and natural resources class designations for intensive
9 agricultural lands do not adequately recognize productive taro
10 lands or protect them for future use. Existing policies do not
11 encourage state or private landowners to protect or rehabilitate
12 ancient taro infrastructure.

13 The purpose of this Act is to improve protections for
14 wetland taro (lo'i kalo) lands and ancient agricultural
15 structures.

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

19 "Taro lands" means any lands in wetland taro cultivation
20 prior to statehood, or any traditional taro lands that retain
21 historic structural evidence of lo'i kalo, such as 'auwai
22 irrigation ditches, terraces, or walls."



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

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

6 1. Intensive agricultural use

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

10 (B) Second class--Lands having medium productivity for
11 intensive crops.

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

14 (D) Fourth class--Taro lands of no particular productivity
15 determination but having cultural, social, economic, and food
16 self-sufficiency value if preserved for wetland taro
17 cultivation.

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
22 drainage, climate, topography, proximity to market, and



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

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

6 3. Pasture use

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

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

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

22 4. Commercial timber use



1 (A) First 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 favorable logging, transportation, and
6 marketing conditions.

7 (B) Second 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 less favorable logging, transportation, and
12 marketing conditions.

13 (C) Third class--Lands of medium suitability for growth of
14 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 favorable logging, transportation, and
18 marketing conditions.

19 (D) Fourth class--Lands of medium suitability for growth
20 of merchantable timber having mean annual growth potential in
21 amounts such as five hundred to one thousand board feet per acre
22 under normal forest management practices, and with location and

1 terrain presenting less favorable logging, transportation, and
2 marketing conditions.

3 (E) Fifth 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 favorable
7 logging, transportation, and marketing conditions.

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

13 5. Quarry use

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

16 6. Mining use

17 Lands bearing sufficient quantity and quality of mineral
18 products for purpose of commercial mining and use.

19 7. Recreational use

20 Lands suitable for use and development as parks,
21 playgrounds, historical sites, natural area, camp grounds,
22 wildlife refuge, scenic sites, and other such uses.



1 8. Watershed use
2 Lands suitable for the use and development as watersheds or
3 for the development of water, and requiring necessary
4 restrictions on other uses.

5 9. Residential use
6 Lands suitable and economically feasible for residential
7 development and use.

8 10. Commercial and industrial use
9 Lands suitable and economically feasible for commercial and
10 industrial development and use.

11 11. Hotel, apartment, and motel use
12 Lands suitable and economically feasible for hotel,
13 apartment, and motel development and use.

14 12. Resort use
15 Lands suitable and economically feasible for resort
16 development and use.

17 13. Unclassified uses
18 Lands not otherwise classifiable under the foregoing
19 sections."

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

1 "[\+]§205-3.5[\+] **Reclassification of land contiguous to an**
2 **agricultural district; approval conditions.** (a) Any decision
3 approving a petition for a boundary amendment pursuant to this
4 chapter where lands in the petition area are contiguous or
5 adjacent to lands in the agricultural district, shall include
6 the following conditions in the decision granting approval:

7 (1) A prohibition on any action that would interfere with
8 or restrain farming operations[\+], including blockage,
9 disturbance, or destruction of traditional 'auwai
10 irrigation ditches that may cross property boundaries;
11 provided that the farming operations are conducted in
12 a manner consistent with generally accepted
13 agricultural and management practices on adjacent or
14 contiguous lands in the agricultural district; and

15 (2) Notification to all prospective developers or
16 purchasers of land or interest in land in the petition
17 area and subsequent notification to lessees or tenants
18 of the land, that farming operations and practices on
19 adjacent or contiguous land in the agricultural
20 district are protected under chapter 165, the Hawaii
21 right to farm act, and that the notice shall be
22 included in any disclosure required for the sale or



1 transfer of real property or any interest in real
2 property."

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

5 "(a) Within the agricultural district, all lands with soil
6 classified by the land study bureau's detailed land
7 classification as overall (master) productivity rating class A
8 or B, or lands classified as fourth class-taro lands pursuant to
9 section 171-10, shall be restricted to the following permitted
10 uses:

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

14 (2) Game and fish propagation;

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

18 (4) Farm dwellings, employee housing, farm buildings, or
19 activities or uses related to farming and animal
20 husbandry. "Farm dwelling", as used in this
21 paragraph, means a single-family dwelling located on
22 and used in connection with a farm, including clusters



1 of single-family farm dwellings permitted within
2 agricultural parks developed by the State, or where
3 agricultural activity provides income to the family
4 occupying the dwelling;

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

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

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

21 (8) Retention, restoration, rehabilitation, or improvement
22 of buildings, walls, terraces, supporting structures



1 for lo'i taro fields, or sites of historic or scenic
2 interest;

3 (9) Agricultural-based commercial operations as described
4 in section [†]205-2(d)(15)[†];

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

14 (11) Agricultural parks;

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



1 buildings may be allowed on land within the
2 subdivision as follows:

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

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

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

12 (13) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



- 1 (14) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (15) Wind energy facilities, including the appurtenances
13 associated with the production and transmission of
14 wind generated energy; provided that the wind energy
15 facilities and appurtenances are compatible with
16 agriculture uses and cause minimal adverse impact on
17 agricultural land;
- 18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the
22 energy feedstock; provided that biofuel processing



1 facilities and appurtenances do not adversely impact
2 agricultural land and other agricultural uses in the
3 vicinity.

4 For the purposes of this paragraph:

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

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

17 (17) Agricultural-energy facilities, including
18 appurtenances necessary for an agricultural-energy
19 enterprise; provided that the primary activity of the
20 agricultural-energy enterprise is agricultural
21 activity. To be considered the primary activity of an
22 agricultural-energy enterprise, the total acreage



1 devoted to agricultural activity shall be not less
2 than ninety per cent of the total acreage of the
3 agricultural-energy enterprise. The agricultural-
4 energy facility shall be limited to lands owned,
5 leased, licensed, or operated by the entity conducting
6 the agricultural activity.

7 As used in this paragraph:

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

10 "Agricultural-energy enterprise" means an
11 enterprise that integrally incorporates an
12 agricultural activity with an agricultural-energy
13 facility.

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

20 "Appurtenances" means operational infrastructure
21 of the appropriate type and scale for the economic
22 commercial generation, storage, distribution, and



1 other similar handling of energy, including equipment,
2 feedstock, fuels, and other products of agricultural-
3 energy facilities;

4 (18) Construction and operation of wireless communication
5 antennas; provided that, for the purposes of this
6 paragraph, "wireless communication antenna" means
7 communications equipment that is either freestanding
8 or placed upon or attached to an already existing
9 structure and that transmits and receives
10 electromagnetic radio signals used in the provision of
11 all types of wireless communications services;
12 provided further that nothing in this paragraph shall
13 be construed to permit the construction of any new
14 structure that is not deemed a permitted use under
15 this subsection;

16 (19) Agricultural education programs conducted on a farming
17 operation as defined in section 165-2, for the
18 education and participation of the general public;
19 provided that the agricultural education programs are
20 accessory and secondary to the principal agricultural
21 use of the parcels or lots on which the agricultural
22 education programs are to occur and do not interfere



1 with surrounding farm operations. For the purposes of
2 this section, "agricultural education programs" means
3 activities or events designed to promote knowledge and
4 understanding of agricultural activities and practices
5 conducted on a farming operation as defined in section
6 165-2;

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

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

16 (b) Uses not expressly permitted in subsection (a) shall
17 be prohibited, except the uses permitted as provided in sections
18 205-6 and 205-8, and construction of single-family dwellings on
19 lots existing before June 4, 1976. Any other law to the
20 contrary notwithstanding, no subdivision of land within the
21 agricultural district with soil classified by the land study
22 bureau's detailed land classification as overall (master)



1 productivity rating class A or B, and no land within the
2 agricultural district classified as fourth class-taro lands
3 pursuant to section 171-10 shall be approved by a county unless
4 those class A and B, or fourth class-taro lands within the
5 subdivision are made subject to the restriction on uses as
6 prescribed in this section and to the condition that the uses
7 shall be primarily in pursuit of an agricultural activity.

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

17 If the foregoing requirement of encumbrances running with
18 the land jeopardizes the owner or lessee in obtaining mortgage
19 financing from any of the mortgage lending agencies set forth in
20 the following paragraph, and the requirement is the sole reason
21 for failure to obtain mortgage financing, then the requirement
22 of encumbrances shall, insofar as such mortgage financing is



1 jeopardized, be conditionally waived by the appropriate county
2 enforcement officer; provided that the conditional waiver shall
3 become effective only in the event that the property is
4 subjected to foreclosure proceedings by the mortgage lender.

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

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. No later than December 1, 2014, the chairperson
 7 of the board of land and natural resources, in conjunction with
 8 the taro security and purity task force, shall adopt rules
 9 regarding lands classified as fourth class--taro lands and the
 10 protection of historic agricultural structures associated with
 11 taro farming. Rules adopted pursuant to this section shall be
 12 exempt from the public notice and public hearing requirements of
 13 chapter 91, Hawaii Revised Statutes; provided that the
 14 chairperson and the taro security and purity task force are in
 15 concurrence.

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

18 SECTION 9. This Act shall take effect upon its approval.

19

INTRODUCED BY:

[Handwritten signature]

 D.C. [unclear]
 H. [unclear]

S.B. NO. 2242

Paul P. [Signature]

Amended



S.B. NO. 2242

Report Title:

Taro Lands; Protection; Agricultural Land Use

Description:

Amends public land classifications to add taro lands for wetland cultivation as a fourth class of intensive agricultural use lands. Defines taro lands. Requires retention of supporting structures associated with taro fields. Adds growth and perpetuation of traditional Hawaiian crops to agricultural state planning objectives.

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

