

JAN 17 2014

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# 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.

9           The legislature also finds that the taro security and  
10 purity task force established under Act 211, Session Laws of  
11 Hawaii 2008, submitted to the legislature in 2010, its  
12 legislative report entitled *E ola hou ke kalo; ho'i hou ka 'āina*  
13 *lē'ia: The taro lives; abundance returns to the land*, and  
14 recommended improved protections for taro-growing lands,  
15 including lo'i (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 taro production represent the  
2 fastest dwindling subset of agricultural land, as the lands are  
3 destroyed, severed, and built upon by private and public  
4 development due to gaps in land use, historic preservation, and  
5 planning laws and policies.

6 The legislature further finds that the increasing interest  
7 in the development of public lands in recent years adds urgency  
8 to the protection of wetland taro sites on lands under state  
9 jurisdiction. Current department of agriculture and department  
10 of land and natural resources class designations for intensive  
11 agricultural lands do not adequately recognize productive taro  
12 lands or protect them for future use. Existing policies do not  
13 encourage state or private landowners to protect or rehabilitate  
14 ancient taro infrastructure.

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

18 SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
19 amended by adding a new section to part I to be appropriately  
20 designated and to read as follows:

21 "§205- District boundary amendment of fourth class-taro  
22 land prohibited. Notwithstanding any law to the contrary,



1 public land classified as fourth class-taro lands pursuant to  
2 section 171-10 shall not be subject to district boundary  
3 amendment."

4 SECTION 3. Section 171-1, Hawaii Revised Statutes, is  
5 amended by adding a new definition to be appropriately inserted  
6 and to read as follows:

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

11 SECTION 4. 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) Fourth class--Taro lands of no particular productivity  
4 determination but having cultural, social, economic, and food  
5 self-sufficiency value if preserved for wetland taro  
6 cultivation.

7 2. Special livestock use

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

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

17 3. Pasture use

18 (A) First class--Lands having a potentially high economic  
19 animal unit carrying capacity and capable of correspondingly  
20 high liveweight gains per acre per year, such as[7] less than  
21 five acres per animal unit per year and more than one hundred  
22 pounds live beef gains per animal unit per acre per year.



1 (B) Second class--Lands having a potentially medium  
2 economic animal unit carrying capacity and capable of moderate  
3 liveweight gains per acre per year, such as[7] five to twenty  
4 acres per animal unit per year and twenty to one hundred pounds  
5 live beef gains per animal unit per acre per year.

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

11 4. Commercial timber use

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

18 (B) Second class--Lands of high suitability for growth of  
19 merchantable timber having mean annual growth potential under  
20 normal forest management practices with yields exceeding amounts  
21 such as one thousand board feet per acre, and with location and



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

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

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

15 (E) Fifth 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 favorable  
19 logging, transportation, and marketing conditions.

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



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

3 5. Quarry use

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

6 6. Mining use

7 Lands bearing sufficient quantity and quality of mineral  
8 products for purpose of commercial mining and use.

9 7. Recreational use

10 Lands suitable for use and development as parks,  
11 playgrounds, historical sites, natural area, camp grounds,  
12 wildlife refuge, scenic sites, and other such uses.

13 8. Watershed use

14 Lands suitable for the use and development as watersheds or  
15 for the development of water, and requiring necessary  
16 restrictions on other uses.

17 9. Residential use

18 Lands suitable and economically feasible for residential  
19 development and use.

20 10. Commercial and industrial use

21 Lands suitable and economically feasible for commercial and  
22 industrial development and use.



1 11. Hotel, apartment, and motel use

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

4 12. Resort use

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

7 13. Unclassified uses

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

10 SECTION 5. Section 205-3.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

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

- 17 (1) A prohibition on any action that would interfere with
- 18 or restrain farming operations[+], including blockage,
- 19 disturbance, or destruction of traditional 'auwai
- 20 irrigation ditches that may cross property boundaries;
- 21 provided that the farming operations are conducted in
- 22 a manner consistent with generally accepted





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

13 SECTION 6. Section 205-4.5, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) Within the agricultural district, all lands with soil  
16 classified by the land study bureau's detailed land  
17 classification as overall (master) productivity rating class A  
18 or B, or public lands classified as fourth class-taro lands  
19 pursuant to section 171-10, shall be restricted to the following  
20 permitted uses:



- 1           (1) Cultivation of crops, including crops for bioenergy,  
2           flowers, vegetables, foliage, fruits, forage, and  
3           timber;
- 4           (2) Game and fish propagation;
- 5           (3) Raising of livestock, including poultry, bees, fish,  
6           or other animal or aquatic life that are propagated  
7           for economic or personal use;
- 8           (4) Farm dwellings, employee housing, farm buildings, or  
9           activities or uses related to farming and animal  
10          husbandry. "Farm dwelling", as used in this  
11          paragraph, means a single-family dwelling located on  
12          and used in connection with a farm, including clusters  
13          of single-family farm dwellings permitted within  
14          agricultural parks developed by the State, or where  
15          agricultural activity provides income to the family  
16          occupying the dwelling;
- 17          (5) Public institutions and buildings that are necessary  
18          for agricultural practices;
- 19          (6) Public and private open area types of recreational  
20          uses, including day camps, picnic grounds, parks, and  
21          riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf  
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, treatment  
10 plants, corporation yards, or other similar  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of [~~buildings~~]:
- 14 (A) Buildings or sites of historic or scenic  
15 interest; and
- 16 (B) Walls, terraces, or supporting structures for lo'i  
17 taro fields;
- 18 (9) Agricultural-based commercial operations as described  
19 in section [†]205-2(d)(15)[†];
- 20 (10) Buildings and uses, including mills, storage, and  
21 processing facilities, maintenance facilities,  
22 photovoltaic, biogas, and other small-scale renewable



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

7 (11) Agricultural parks;

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

18 (A) The employee housing is occupied by employees or  
19 former employees of the plantation who have a  
20 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  
22 agricultural tourism activities pursuant to section



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

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

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

20 For the purposes of this paragraph:

21 "Appurtenances" means operational infrastructure  
22 of the appropriate type and scale for economic



1 commercial storage and distribution, and other similar  
2 handling of feedstock, fuels, and other products of  
3 biofuel processing facilities.

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

11 (17) Agricultural-energy facilities, including  
12 appurtenances necessary for an agricultural-energy  
13 enterprise; provided that the primary activity of the  
14 agricultural-energy enterprise is agricultural  
15 activity. To be considered the primary activity of an  
16 agricultural-energy enterprise, the total acreage  
17 devoted to agricultural activity shall be not less  
18 than ninety per cent of the total acreage of the  
19 agricultural-energy enterprise. The agricultural-  
20 energy facility shall be limited to lands owned,  
21 leased, licensed, or operated by the entity conducting  
22 the agricultural activity.



1           As used in this paragraph:

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

4           "Agricultural-energy enterprise" means an  
5 enterprise that integrally incorporates an  
6 agricultural activity with an agricultural-energy  
7 facility.

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

14           "Appurtenances" means operational infrastructure  
15 of the appropriate type and scale for the economic  
16 commercial generation, storage, distribution, and  
17 other similar handling of energy, including equipment,  
18 feedstock, fuels, and other products of agricultural-  
19 energy facilities;

20           (18) Construction and operation of wireless communication  
21 antennas; provided that, for the purposes of this  
22 paragraph, "wireless communication antenna" means





1           communications equipment that is either freestanding  
2           or placed upon or attached to an already existing  
3           structure and that transmits and receives  
4           electromagnetic radio signals used in the provision of  
5           all types of wireless communications services;  
6           provided further that nothing in this paragraph shall  
7           be construed to permit the construction of any new  
8           structure that is not deemed a permitted use under  
9           this subsection;

10       (19) Agricultural education programs conducted on a farming  
11       operation as defined in section 165-2, for the  
12       education and participation of the general public;  
13       provided that the agricultural education programs are  
14       accessory and secondary to the principal agricultural  
15       use of the parcels or lots on which the agricultural  
16       education programs are to occur and do not interfere  
17       with surrounding farm operations. For the purposes of  
18       this section, "agricultural education programs" means  
19       activities or events designed to promote knowledge and  
20       understanding of agricultural activities and practices  
21       conducted on a farming operation as defined in section  
22       165-2;



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

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

10          (b) Uses not expressly permitted in subsection (a) shall  
11       be prohibited, except the uses permitted as provided in sections  
12       205-6 and 205-8, and construction of single-family dwellings on  
13       lots existing before June 4, 1976. Any other law to the  
14       contrary notwithstanding, no subdivision of land within the  
15       agricultural district with soil classified by the land study  
16       bureau's detailed land classification as overall (master)  
17       productivity rating class A or B, or subdivision of public land  
18       within the agricultural district classified as fourth class-taro  
19       lands pursuant to section 171-10, shall be approved by a county  
20       unless those class A [~~and~~] or B or fourth class-taro lands  
21       within the subdivision are made subject to the restriction on



1 uses as prescribed in this section and to the condition that the  
2 uses shall be primarily in pursuit of an agricultural activity.

3 Any deed, lease, agreement of sale, mortgage, or other  
4 instrument of conveyance covering any land within the  
5 agricultural subdivision shall expressly contain the restriction  
6 on uses and the condition, as prescribed in this section that  
7 these restrictions and conditions shall be encumbrances running  
8 with the land until such time that the land is reclassified to a  
9 land use district other than agricultural district.

10 If the foregoing requirement of encumbrances running with  
11 the land jeopardizes the owner or lessee in obtaining mortgage  
12 financing from any of the mortgage lending agencies set forth in  
13 the following paragraph, and the requirement is the sole reason  
14 for failure to obtain mortgage financing, then the requirement  
15 of encumbrances shall, insofar as such mortgage financing is  
16 jeopardized, be conditionally waived by the appropriate county  
17 enforcement officer; provided that the conditional waiver shall  
18 become effective only in the event that the property is  
19 subjected to foreclosure proceedings by the mortgage lender.

20 The mortgage lending agencies referred to in the preceding  
21 paragraph are the Federal Housing Administration, Federal  
22 National Mortgage Association, Veterans Administration, Small



1 Business Administration, United States Department of  
2 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
3 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
4 other federal, state, or private mortgage lending agency  
5 qualified to do business in Hawaii, and their respective  
6 successors and assigns."

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

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

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

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

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

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

20 SECTION 8. No later than December 1, 2015, the board of  
21 land and natural resources, in conjunction with the taro  
22 security and purity task force, shall adopt rules under



# S.B. NO. 2407

1 chapter 91, Hawaii Revised Statutes, regarding lands classified  
 2 as fourth class-taro lands and the protection of historic  
 3 agricultural structures associated with taro farming.

4 SECTION 9. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect upon its approval.  
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INTRODUCED BY: ~~SEN. KEVIN JOY~~

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# S.B. NO. 2407

**Report Title:**

Taro Lands; Protection; Agricultural Land; Boundary Amendments

**Description:**

Prohibits district boundary amendments of taro lands. 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.*

