

JAN 21 2022

A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO.

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

1 SECTION 1. The legislature finds that section 205-41,
2 Hawaii Revised Statutes, states that there is a compelling
3 interest in conserving agricultural lands. Protecting these
4 resources for Hawaii's future food security on public, as well
5 as private, lands is in strong alignment with Governor
6 Abercrombie's 2010 *A New Day in Hawaii* plan for food and
7 agriculture. The legislature also finds that the taro security
8 and purity task force established under Act 211, Session Laws of
9 Hawaii 2008, reported to the legislature in the 2010 legislative
10 report *E ola hou ke kalo; ho'i hou ka 'āina lē'ia: The taro*
11 *lives; abundance returns to the land* and recommended improved
12 protections for taro growing lands, including lo'i (wet fields
13 and terraces), mala (dry fields and terraces), kuauna or paepae
14 pohaku (stone walls), and 'auwai (irrigation ditches). The taro
15 task force found that these key structural elements for viable
16 wetland taro production were being destroyed, severed, and built



1 upon by private and public development because of gaps in land
2 use, historic preservation, and planning laws and policies.

3 The purpose of this Act is to improve protections for
4 wetland taro lands (lo'i kalo) and ancient wetland agricultural
5 structures on undeveloped state-owned or -acquired lands.

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

9 "Taro lands" means any undeveloped land in wetland taro
10 cultivation prior to statehood that retains historic structural
11 evidence of lo'i kalo, such as 'auwai irrigation ditches,
12 terraces, and walls."

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

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

18 1. Intensive agricultural use

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



1 (B) Second class--Lands having medium productivity for
2 intensive crops.

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

5 (D) Fourth class--Taro land of high productivity
6 determination and having cultural, social, economic, and food
7 self-sufficiency value if preserved for wetland taro
8 cultivation. District boundary amendment of fourth class taro
9 lands shall be prohibited. Notwithstanding any other law to the
10 contrary, public lands classified as fourth class taro lands
11 pursuant to this section shall not be subject to a district
12 boundary amendment.

13 2. Special livestock use

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



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

3 3. Pasture use

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

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

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

19 4. Commercial timber use

20 (A) First class--Lands of high suitability for growth of
21 merchantable timber having mean annual growth potential under



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

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

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

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



1 Lands suitable for use and development as parks,
2 playgrounds, historical sites, natural area, camp grounds,
3 wildlife refuge, scenic sites, and other such uses.

4 8. Watershed use

5 Lands suitable for the use and development as watersheds or
6 for the development of water, and requiring necessary
7 restrictions on other uses.

8 9. Residential use

9 Lands suitable and economically feasible for residential
10 development and use.

11 10. Commercial and industrial use

12 Lands suitable and economically feasible for commercial and
13 industrial development and use.

14 11. Hotel, apartment, and motel use

15 Lands suitable and economically feasible for hotel,
16 apartment, and motel development and use.

17 12. Resort use

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

20 13. Unclassified uses



1 Lands not otherwise classifiable under the foregoing
2 sections."

3 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) 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 and for solar energy facilities, class B or C, shall be
9 restricted to the following permitted uses:

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

13 (2) Game and fish propagation;

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

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



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



(8) Retention, restoration, rehabilitation, or improvement
of ~~buildings~~;

(A) Buildings or sites of historic or scenic
interest[+]; and

(B) Walls, terraces, or supporting structure for lo'i
taro fields in wetland taro cultivation prior to
statehood;

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

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

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in
this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and
2 agricultural support buildings on land currently or
3 formerly owned, leased, or operated by a sugar or
4 pineapple plantation; provided that the existing
5 structures may be used or rehabilitated for use, and
6 new employee housing and agricultural support
7 buildings may be allowed on land within the
8 subdivision as follows:

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

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

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

18 (13) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is



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

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

18 (15) Wind energy facilities, including the appurtenances
19 associated with the production and transmission of
20 wind generated energy; provided that the wind energy
21 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 biofuel 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, including small wireless facilities;
15 provided that, for the purposes of this paragraph,
16 "wireless communication antenna" means communications
17 equipment that is either freestanding or placed upon
18 or attached to an already existing structure and that
19 transmits and receives electromagnetic radio signals
20 used in the provision of all types of wireless
21 communications services; provided further that "small



1 wireless facilities" shall have the same meaning as in
2 section 206N-2; provided further that nothing in this
3 paragraph shall be construed to permit the
4 construction of any new structure that is not deemed a
5 permitted use under this subsection;

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

19 (20) Solar energy facilities that do not occupy more than
20 ten per cent of the acreage of the parcel, or twenty
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section 205-
2 6; provided that this use shall not be permitted on
3 lands with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class A;

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

11 (A) The area occupied by the solar energy facilities
12 is also made available for compatible
13 agricultural activities at a lease rate that is
14 at least fifty per cent below the fair market
15 rent for comparable properties;

16 (B) Proof of financial security to decommission the
17 facility is provided to the satisfaction of the
18 appropriate county planning commission prior to
19 date of commencement of commercial generation;
20 and



1 (C) Solar energy facilities shall be decommissioned
2 at the owner's expense according to the following
3 requirements:

4 (i) Removal of all equipment related to the
5 solar energy facility within twelve months
6 of the conclusion of operation or useful
7 life; and

8 (ii) Restoration of the disturbed earth to
9 substantially the same physical condition as
10 existed prior to the development of the
11 solar energy facility.

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

15 (22) Geothermal resources exploration and geothermal
16 resources development, as defined under section 182-1;
17 or

18 (23) Hydroelectric facilities, including the appurtenances
19 associated with the production and transmission of
20 hydroelectric energy, subject to section 205-2;



1 provided that the hydroelectric facilities and their
2 appurtenances:

3 (A) Shall consist of a small hydropower facility as
4 defined by the United States Department of
5 Energy, including:

6 (i) Impoundment facilities using a dam to store
7 water in a reservoir;

8 (ii) A diversion or run-of-river facility that
9 channels a portion of a river through a
10 canal or channel; and

11 (iii) Pumped storage facilities that store energy
12 by pumping water uphill to a reservoir at
13 higher elevation from a reservoir at a lower
14 elevation to be released to turn a turbine
15 to generate electricity;

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

17 (C) Shall, if over five hundred kilowatts in
18 hydroelectric generating capacity, have the
19 approval of the commission on water resource
20 management, including a new instream flow



standard established for any new hydroelectric facility; and

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

SECTION 5. Section 206-7, Hawaii Revised Statutes, is amended to read as follows:

"§206-7 Property that shall not be acquired for development projects. (a) In declaring development areas, and acquiring land therein, the board of land and natural resources shall avoid disturbing existing uses that are in accord with the highest use permitted under any existing zoning ordinance in the political subdivision concerned. The board shall not disturb existing ancient taro-growing systems, ancient wetland taro lands, or structural elements of ancient wetland taro-growing systems on undeveloped lands.

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

(1) Lands already developed and improved as business or industrial areas where use of the lands for



1 residential purposes or as a part of a development
2 project would be economically unsound or where an
3 undue hardship would be suffered by the community
4 through loss of service because of the acquisition;

5 (2) Lands already in use for residential purposes by the
6 owner thereof or by a lessee holding a lease with an
7 original term of twenty years or more, except where
8 the acquisition of parts of the lands is reasonably
9 necessary for the proper development of a project, but
10 in no case shall any part of the lands be taken where
11 the taking will reduce the parcel to less than three
12 acres in extent;

13 (3) Lands in the process of subdivision and development
14 where the owner or the owner's agent has provided that
15 at least fifty per cent of the lots to be sold shall
16 be sold in fee simple, prepared subdivision and
17 construction plans, arranged for financing, and
18 applied to government agencies and otherwise taken
19 steps that may be appropriate for the construction of
20 the proposed development in good faith and filed an
21 affidavit with the board to that effect; or



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

(5) Undeveloped lands and infrastructure used for wetland cultivation prior to statehood and currently in use for wetland taro cultivation, including ancient wetland taro lands and structural elements of ancient wetland taro-growing systems;

provided that portions of the lands mentioned under paragraphs (1), (2), (3), (4), and (5) or interests therein, may be taken to provide access and utility easements where no other reasonable means of access or utility easements are available.

(c) In acquiring agricultural land for a development project, where the land though used for agricultural purposes is not being used in accord with the highest use permitted under any existing zoning ordinance, the board shall exercise all reasonable care not to jeopardize the agricultural enterprise concerned. If, however, the board finds that the land is necessary for a development project, the board may provide assistance, monetary or otherwise, in relocating the enterprise



1 elsewhere or pay damages to the owner or operator of the
2 enterprise that will reasonably compensate the owner or operator
3 for the owner's or operator's loss, if the owner or operator has
4 not already been so compensated under a lease agreement, or
5 both."

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

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

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

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

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

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

19 SECTION 7. The board of land and natural resources, in
20 conjunction with the taro security and purity task force, may
21 create an inventory, pursuant to chapter 91, Hawaii Revised



1 Statutes, identifying lands classified as fourth class taro
2 lands under section 171-10, Hawaii Revised Statutes.

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect upon its approval.

9

INTRODUCED BY:  _____



Report Title:

Agricultural Lands; Taro Land Protection

Description:

Prohibits the Board of Land and Natural Resources, in declaring residential development areas and acquiring lands therein, from disturbing wetland taro lands and infrastructure on undeveloped lands. Establishes a fourth class--taro lands classification for public lands. Permits structures for lo'i taro fields in the agricultural district. Establishes growth and perpetuation of traditional Hawaiian crops as a goal of the State Planning Act. Authorizes the Board of Land and Natural Resources, with the Taro Security and Purity Task Force, to create an inventory of taro lands.

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

