

JAN 25 2023

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 recognizes that pursuant to
2 section 205-41, Hawaii Revised Statutes, there is a compelling
3 state interest in conserving state agricultural lands.
4 Protecting these resources for Hawaii's future food security on
5 public, as well as private, lands is in strong alignment with
6 former Governor Abercrombie's 2010 *A New Day in Hawaii* plan for
7 food and agriculture. The legislature also recognizes that Act
8 211, Session Laws of Hawaii 2008, as amended by Act 196, Session
9 Laws of Hawaii 2010, established a taro security and purity task
10 force that was responsible for developing guidelines, protocols,
11 and recommendations for taro policy, among other duties. In a
12 2009 report entitled "E Ola Hou Ke Kalo; Hoi Hou Ka Aina Leia
13 (The Taro Lives; Abundance Returns to the Land), the task force
14 recommended improved protections for taro growing lands,
15 including loi (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 wetland taro production were
2 being 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.

5 The purpose of this Act is to improve protections for
6 wetland taro lands (loi kalo) and ancient wetland agricultural
7 structures on undeveloped state-owned or -acquired lands.

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

11 "Taro lands" means any undeveloped public lands of high
12 productivity determination situated in the land use conservation
13 district established pursuant to chapter 205 in wetland taro
14 cultivation before statehood, or any undeveloped public lands
15 that were traditional taro lands situated in the land use
16 conservation district established pursuant to chapter 205 that
17 retain historic structural evidence of loi kalo, including auwai
18 irrigation ditches, terraces, or walls."

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



1 "**§171-10 Classes of lands.** The board of land and natural
2 resources shall classify all public lands and in doing so be
3 guided by the following classifications:

4 1. Intensive agricultural use

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

8 (B) Second class--Lands having medium productivity for
9 intensive crops.

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

12 (D) Fourth class--Taro land of high productivity
13 determination limited to lands in the conservation district and
14 having cultural, social, economic, and food self-sufficiency
15 value if preserved for wetland taro cultivation. District
16 boundary amendment of fourth class taro lands shall be
17 prohibited. Notwithstanding any other law to the contrary,
18 public lands classified as fourth class taro lands pursuant to
19 this section shall not be subject to a district boundary
20 amendment.

21 2. Special livestock use



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

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

10 3. Pasture use

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

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



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

6 4. Commercial timber use

7 (A) First 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 favorable logging, transportation, and
12 marketing conditions.

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

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



1 under normal forest management practices, and with location and
2 terrain presenting favorable logging, transportation, and
3 marketing conditions.

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

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

15 (F) Sixth 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 less
19 favorable logging, transportation, and marketing conditions.

20 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



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

3 12. Resort use

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

6 13. Unclassified uses

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

9 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Within the agricultural district, all lands with soil
12 classified by the land study bureau's detailed land
13 classification as overall (master) productivity rating class A
14 or B and for solar energy facilities, class B or C, shall be
15 restricted to the following permitted uses:

- 16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;
19 (2) Game and fish propagation;



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- 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 accessory to a farm, including clusters of
9 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



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

8 (8) Retention, restoration, rehabilitation, or improvement
9 of [~~buildings~~]:

10 (A) Buildings or sites of historic or scenic
11 interest; and

12 (B) Walls, terraces, or supporting structure for loi
13 taro fields in wetland taro cultivation before
14 statehood and currently in use for wetland taro
15 cultivation;

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

18 (10) Buildings and uses, including mills, storage, and
19 processing facilities, maintenance facilities,
20 photovoltaic, biogas, and other small-scale renewable
21 energy systems producing energy solely for use in the



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

6 (11) Agricultural parks;

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

17 (A) The employee housing is occupied by employees or
18 former employees of the plantation who have a
19 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



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

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

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

21 For the purposes of this paragraph:



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

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

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



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1 agricultural-energy facility shall be limited to lands
2 owned, leased, licensed, or operated by the entity
3 conducting the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

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

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,



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1 feedstock, fuels, and other products of
2 agricultural-energy facilities;
3 (18) Construction and operation of wireless communication
4 antennas, including small wireless facilities;
5 provided that, for the purposes of this paragraph,
6 "wireless communication antenna" means communications
7 equipment that is either freestanding or placed upon
8 or attached to an already existing structure and that
9 transmits and receives electromagnetic radio signals
10 used in the provision of all types of wireless
11 communications services; provided further that "small
12 wireless facilities" shall have the same meaning as in
13 section 206N-2; provided further that nothing in this
14 paragraph shall be construed to permit the
15 construction of any new structure that is not deemed a
16 permitted use under this subsection;
17 (19) Agricultural education programs conducted on a farming
18 operation as defined in section 165-2, for the
19 education and participation of the general public;
20 provided that the agricultural education programs are
21 accessory and secondary to the principal agricultural



1 use of the parcels or lots on which the agricultural
2 education programs are to occur and do not interfere
3 with surrounding farm operations. For the purposes of
4 this paragraph, "agricultural education programs"
5 means activities or events designed to promote
6 knowledge and understanding of agricultural activities
7 and practices conducted on a farming operation as
8 defined in section 165-2;

9 (20) Solar energy facilities that do not occupy more than
10 ten per cent of the acreage of the parcel, or twenty
11 acres of land, whichever is lesser or for which a
12 special use permit is granted pursuant to
13 section 205-6; provided that this use shall not be
14 permitted on lands with soil classified by the land
15 study bureau's detailed land classification as overall
16 (master) productivity rating class A;

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



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- 1 (A) The area occupied by the solar energy facilities
2 is also made available for compatible
3 agricultural activities at a lease rate that is
4 at least fifty per cent below the fair market
5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
7 facility is provided to the satisfaction of the
8 appropriate county planning commission prior to
9 date of commencement of commercial generation;
10 and
- 11 (C) Solar energy facilities shall be decommissioned
12 at the owner's expense according to the following
13 requirements:
- 14 (i) Removal of all equipment related to the
15 solar energy facility within twelve months
16 of the conclusion of operation or useful
17 life; and
- 18 (ii) Restoration of the disturbed earth to
19 substantially the same physical condition as
20 existed prior to the development of the
21 solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;

6 (23) Hydroelectric facilities, including the appurtenances
7 associated with the production and transmission of
8 hydroelectric energy, subject to section 205-2;
9 provided that the hydroelectric facilities and their
10 appurtenances:

11 (A) Shall consist of a small hydropower facility as
12 defined by the United States Department of
13 Energy, including:

14 (i) Impoundment facilities using a dam to store
15 water in a reservoir;

16 (ii) A diversion or run-of-river facility that
17 channels a portion of a river through a
18 canal or channel; and

19 (iii) Pumped storage facilities that store energy
20 by pumping water uphill to a reservoir at
21 higher elevation from a reservoir at a lower



1 elevation to be released to turn a turbine
2 to generate electricity;

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

4 (C) Shall, if over five hundred kilowatts in
5 hydroelectric generating capacity, have the
6 approval of the commission on water resource
7 management, including a new instream flow
8 standard established for any new hydroelectric
9 facility; and

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

15 (24) Notwithstanding any other law to the contrary,
16 composting and co-composting operations; provided that
17 operations that process their own green waste and do
18 not require permits from the department of health
19 shall use the finished composting product only on the
20 operation's own premises to minimize the potential
21 spread of invasive species."



1 SECTION 5. Section 206-7, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) In declaring development areas, and acquiring land
4 therein, the board of land and natural resources shall avoid
5 disturbing existing uses that are in accord with the highest use
6 permitted under any existing zoning ordinance in the political
7 subdivision concerned. The board shall not disturb existing
8 ancient taro-growing systems, ancient wetland taro lands, or
9 structural elements of ancient wetland taro-growing systems on
10 undeveloped lands used for wetland taro cultivation before
11 statehood and currently in use for wetland taro cultivation.

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

13 (1) Lands already developed and improved as business or
14 industrial areas where use of the lands for
15 residential purposes or as a part of a development
16 project would be economically unsound or where an
17 undue hardship would be suffered by the community
18 through loss of service because of the acquisition;

19 (2) Lands already in use for residential purposes by the
20 owner thereof or by a lessee holding a lease with an
21 original term of twenty years or more, except where



1 the acquisition of parts of the lands is reasonably
2 necessary for the proper development of a project, but
3 in no case shall any part of the lands be taken where
4 the taking will reduce the parcel to less than three
5 acres in extent;

6 (3) Lands in the process of subdivision and development
7 where the owner or the owner's agent has provided that
8 at least fifty per cent of the lots to be sold shall
9 be sold in fee simple, prepared subdivision and
10 construction plans, arranged for financing, and
11 applied to government agencies and otherwise taken
12 steps that may be appropriate for the construction of
13 the proposed development in good faith and filed an
14 affidavit with the board to that effect; [ø]

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

19 (5) Undeveloped lands and infrastructure used for wetland
20 cultivation before statehood and currently in use for
21 wetland taro cultivation, including ancient wetland



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1 taro lands and structural elements of ancient wetland
 2 taro-growing systems;
 3 provided that portions of the lands [~~mentioned under paragraphs~~
 4 ~~(1), (2), (3), and (4),~~] described in this subsection, or
 5 interests therein, may be taken to provide access and utility
 6 easements where no other reasonable means of access or utility
 7 easements are available."

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

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

- 13 (1) Viability of Hawaii's sugar and pineapple
 14 industries[-];
- 15 (2) Growth and development of diversified agriculture
 16 throughout the State[-];
- 17 (3) An agriculture industry that continues to constitute a
 18 dynamic and essential component of Hawaii's strategic,
 19 economic, and social well-being[-]; and
- 20 (4) Growth and perpetuation of traditional Hawaiian
 21 crops."



1 SECTION 7. The land use commission may create an inventory
2 of taro lands, pursuant to chapter 91, Hawaii Revised Statutes,
3 and submit the inventory to the board of land and natural
4 resources for approval. In creating the inventory, the land use
5 commission may consult with the:

6 (1) Agencies and entities whose representatives served on;
7 and

8 (2) Former individual members of,
9 the taro security and purity task force established pursuant to
10 Act 211, Session Laws of Hawaii 2008, as amended by Act 196,
11 Session Laws of Hawaii 2010.

12 SECTION 8. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 9. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect on July 1, 2023.

18

INTRODUCED BY:  _____



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Report Title:

BLNR; Agricultural Lands; Taro Land Protection

Description:

Prohibits the Board of Land and Natural Resources from disturbing or acquiring for development certain wetland taro-growing lands. Establishes a taro lands classification for public lands. Permits structures for loi taro fields in the agricultural district. Establishes growth and perpetuation of traditional Hawaiian crops as a goal of the Hawaii State Planning Act. Authorizes the Land Use Commission to create an inventory of taro lands and consult with former members of the Taro Security and Purity Task Force in the creation of the inventory.

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

