

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO SUSTAINABILITY.

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

1           SECTION 1. The legislature finds that Hawaii is a unique  
2 and beautiful State that is largely dependent on the importation  
3 of fuel, food, and supplies to sustain its economy and  
4 communities. In 2005, the legislature enacted Act 8, Special  
5 Session Laws of Hawaii 2005, to establish the Hawaii 2050  
6 sustainability task force. The task force was established to  
7 review the Hawaii state plan and other fundamental components of  
8 community planning, and to develop a Hawaii 2050 sustainability  
9 plan to address the real, serious, and immediate problems the  
10 State faces today and recommend various solutions to preserve  
11 and maintain a healthy future for the State.

12           Since then, the interest in the concept of sustainability  
13 has grown through the efforts of the task force, state and  
14 county departments and agencies, local businesses and community  
15 groups, and community engagement programs and projects. Private  
16 industries and developers have introduced technology and  
17 concepts that can assist communities into becoming more



1 sustainable and independent with minimal detrimental effects to  
2 the environment and the economy. Sustainability has transformed  
3 from the conceptual stage to an actual lifestyle that can be  
4 achieved, but only through a comprehensive joint effort with the  
5 government and the community.

6 The purpose of this Act is to establish a process by which  
7 developers of residential communities may elect to develop  
8 sustainable communities in the State and to provide incentives  
9 for doing so.

10 SECTION 2. The Hawaii Revised Statutes is amended by  
11 adding a new chapter to title 13 to be appropriately designated  
12 and to read as follows:

13 "CHAPTER

14 SUSTAINABLE COMMUNITIES

15 § -1 Sustainable communities; established; objectives.

16 (a) To maintain and preserve a healthy quality of life and  
17 environment for Hawaii's future generations, the State, in a  
18 combined effort with all state departments and agencies, shall  
19 assist in the development and maintenance of sustainable  
20 communities that will:

21 (1) Generate their own energy onsite by utilizing  
22 alternative energy sources to fulfill a large



- 1 percentage of their energy requirements, and become  
2 less reliant on imported fossil fuels;
- 3 (2) Implement extensive recycling programs for their solid  
4 waste management and avoid adding more waste to  
5 landfills, that can result in further pollution and  
6 other harmful effects to the environment;
- 7 (3) Implement an extensive wastewater recycling and  
8 treatment management system that will enable the  
9 communities to conserve water and protect waters in  
10 and around the State;
- 11 (4) Implement an extensive water conservation management  
12 system that will enable the communities to conserve  
13 water and protect waters in and around the State;
- 14 (5) Protect and preserve open space;
- 15 (6) Promote and encourage visitation to any nearby  
16 cultural or historic sites, public beaches, shores,  
17 trails, and other outdoor recreational areas by not  
18 restricting public access to these areas;
- 19 (7) Provide affordable housing units for residents to  
20 enable them to stay in Hawaii and provide shelter for  
21 their families; and



1           (8) Educate and promote awareness that sustainability is  
2           more than a concept, but a lifestyle that can be  
3           achieved and implemented in the daily lives of Hawaii  
4           residents.

5           (b) Any developer of a residential community with a  
6           development plan for fifty or more residential units for which  
7           general planning, development, and construction has commenced  
8           after December 31, 2009, shall have the option of developing the  
9           residential community in a manner that fulfills the criteria  
10          prescribed under this chapter. If a developer elects to be  
11          subject to this chapter, the developer shall be able, upon  
12          approval, to engage in an expedited permit process under  
13          section     -3.

14          §    -2 **Applicability.** This chapter shall only apply to a  
15          residential community in this State with a development plan for  
16          fifty or more residential units for which general planning,  
17          development, and construction has commenced after December 31,  
18          2009, and for which the project developer has elected to be  
19          subject to this chapter and has notified the energy resources  
20          coordinator, in accordance with section     -3, to engage in the  
21          expedited permit process provided under this chapter.



1           §   -3 **Expedited permit process; notice and agreement.** To  
2 engage in the expedited permit process under this chapter for  
3 the development of a residential sustainable community for fifty  
4 of more residential units, a developer shall provide written  
5 notice that includes detailed project development plans to the  
6 energy resources coordinator under section 196-3 who is the  
7 director of business, economic development, and tourism. The  
8 notification shall also include, in writing, a sustainability  
9 agreement executed between the energy resources coordinator and  
10 developer and shall include a statement of the developer's  
11 willingness to comply with the sustainability requirements of  
12 this chapter. The energy resources coordinator shall notify any  
13 applicable state departments and agencies to allow the project  
14 developer to participate in the expedited permit process upon  
15 any executed written development agreement that contains the  
16 sustainability agreement between the energy resources  
17 coordinator, on behalf of an ad hoc development advisory  
18 committee under section       -11, and the developer.

19           §   -4 **Community energy requirements.** (a)  
20 Notwithstanding any provision under chapter 196 to the contrary,  
21 the energy resources coordinator shall advise and coordinate  
22 with other state departments and agencies and a developer who

1 has agreed to be subject to this chapter to develop a plan on a  
2 case-by-case basis that will enable a residential community for  
3 which general planning, development, and construction has  
4 commenced after December 31, 2009, to generate at least fifty  
5 per cent of all of its energy requirements for the entire  
6 community under development, including but residential homes and  
7 areas and services provided for and used by the entire community  
8 under development.

9 (b) The energy resources coordinator shall develop a plan  
10 for the developer's implementation that explores all types of  
11 energy resources, as defined under section 196-2, and determine  
12 which resources are the most feasible for the community under  
13 development to use to meet its energy needs and energy  
14 generating requirements under this section.

15 (c) The energy resources coordinator shall cooperate and  
16 coordinate with any state department or agency to expedite the  
17 application process for any permits relating to generating  
18 energy, and allow the state department or agency three hundred  
19 sixty days to review and decide on the permit application. If  
20 the three hundred sixty-day time period has expired on a state  
21 permit application and no decision has been rendered, the permit  
22 shall be deemed approved.



1 (d) The energy resources coordinator shall adopt rules in  
2 accordance with chapter 91 to carry out the purposes of this  
3 chapter.

4 § -5 State department and agency cooperation and  
5 compliance; required. Each state department and agency shall  
6 cooperate and comply with any request made pursuant to this  
7 chapter from the energy resources coordinator. The department  
8 or agency shall prioritize the energy resources coordinator's  
9 request and expedite the processing thereof.

10 § -6 Community solid waste management requirements. (a)  
11 Notwithstanding any provision under chapter 342G to the  
12 contrary, the director of health shall advise and coordinate  
13 with other state departments and agencies and a developer who  
14 has agreed to be subject to this chapter to develop a plan on a  
15 case-by-case basis that will enable a residential community for  
16 which general planning, development, and construction has  
17 commenced after December 31, 2009, to implement a comprehensive  
18 recycling program. The purpose of the plan shall be to enable  
19 the community to divert at least seventy-five per cent of its  
20 solid waste from the landfills.

21 (b) The solid waste management plan shall include  
22 provisions for recycling, bioconversion, and composting,



1 including recycling provisions for building or structure  
2 demolition. The plan shall also provide safety measures for the  
3 proper disposal and treatment of hazardous waste or materials  
4 with hazardous components under chapter 342J. The director of  
5 health shall explore all types of recycling programs and  
6 determine which programs are the most feasible for the community  
7 under development to implement and fulfill its solid waste  
8 management requirements under this section.

9 (c) Notwithstanding any provision relating to permits  
10 under chapter 342H or any other applicable chapter to the  
11 contrary, the department of health shall expedite the  
12 application process for any permit application from a developer  
13 of a residential community that has agreed to be subject to this  
14 chapter and have three hundred sixty days to review and decide  
15 on the permit application. If the three hundred sixty-day time  
16 period has expired on a permit application and no decision has  
17 been rendered, the permit shall be deemed approved.

18 (d) The director of health shall adopt rules in accordance  
19 with chapter 91 to carry out the purposes of this chapter.

20 § -7 **Community wastewater treatment and recycling.** (a)

21 Notwithstanding any provision under chapter 342D to the  
22 contrary, the director of health shall advise and coordinate





1 with other state departments and agencies and a developer who  
2 has agreed to be subject to this chapter to develop a plan on a  
3 case-by-case basis that will enable a residential community for  
4 which general planning, development, and construction has  
5 commenced after December 31, 2009, to implement a wastewater  
6 treatment and recycling plan.

7 (b) The purpose of the plan is to enable the community  
8 under development to treat and recycle all of its wastewater for  
9 landscaping water requirements onsite of the community and any  
10 agricultural water irrigation requirements offsite of the  
11 community. The plan shall also provide safety measures for the  
12 proper treatment and disposal of wastewater that may contain  
13 hazardous materials under chapter 342J. The director of health  
14 shall explore all types of wastewater treatment and recycling  
15 programs, and determine which programs are the most feasible for  
16 the community under development to fulfill its wastewater  
17 treatment and recycling requirements under this section.

18 (c) Notwithstanding any provision relating to permits  
19 under chapter 342D or any other applicable section to the  
20 contrary, the department of health shall expedite the  
21 application process for any permit application from a developer  
22 of a residential community who has agreed to be subject to this



1 chapter and have three hundred sixty days to review and decide  
2 on the permit application. If the three hundred sixty-day time  
3 period has expired on a permit application and no decision has  
4 been rendered, the permit shall be deemed approved.

5 (d) The director of health shall adopt rules in accordance  
6 with chapter 91 to carry out the purposes of this chapter.

7 § -8 Water conservation management. (a)

8 Notwithstanding any provision under chapter 174C to the  
9 contrary, the chairperson of the board of land and natural  
10 resources shall advise and coordinate with other state  
11 departments and agencies and a developer who has agreed to be  
12 subject to this chapter to develop a plan on a case-by-case  
13 basis that will enable a residential community for which general  
14 planning, development, and construction has commenced after  
15 December 31, 2009, to implement a water conservation management  
16 plan.

17 (b) The purpose of the plan is to enable the community  
18 under development to conserve water by using various methods,  
19 including but not limited to rain water harvesting to use for  
20 landscaping, non-potable uses, low flow toilets and showers.  
21 The chairperson of the board of land and natural resources shall  
22 explore all types of water conservation programs, and determine



1 which programs are the most feasible for the community under  
2 development to fulfill its water conservation requirements under  
3 this section.

4 (c) Notwithstanding any provision relating to permits  
5 under chapter 174C or any other applicable section to the  
6 contrary, the commission on water resource management shall  
7 expedite the application process for any permit application from  
8 a developer of a residential community who has agreed to be  
9 subject to this chapter and have three hundred sixty days to  
10 review and decide on the permit application. If the three  
11 hundred sixty-day time period has expired on a permit  
12 application and no decision has been rendered, the permit shall  
13 be deemed approved.

14 (d) The chairperson of the board of land and natural  
15 resources shall adopt rules in accordance with chapter 91 to  
16 carry out the purposes of this chapter.

17 § -9 Community land use and planning. (a)

18 Notwithstanding any provision under chapter 205 to the contrary,  
19 the developer of any residential community for which general  
20 planning, development, and construction has commenced after  
21 December 31, 2009, and who has agreed to be subject to this  
22 chapter shall coordinate with the land use commission and shall



1 cooperate and coordinate with other state departments and  
2 agencies to develop a residential community land use plan that  
3 is in compliance with this chapter.

4 (b) The development plan for the residential community  
5 shall include but not be limited to:

6 (1) Designate at least fifty per cent of the entire tract  
7 of land for the residential community for open space;  
8 provided that:

9 (A) Open space shall not include areas designated for  
10 golf courses; and

11 (B) Open space shall include the shoreline, if the  
12 planned community abuts and includes shoreline  
13 space;

14 (2) Be designed with the intent to be accessible by the  
15 public and shall not be designed to be a gated  
16 community; and

17 (3) Allow free and open access to any nearby cultural or  
18 historic sites, public beaches, shore, parks, trails,  
19 or other public recreational areas.

20 (c) The land use commission may amend any existing urban  
21 or rural land use designation of land on which the residential  
22 community is planned to be situated to provide for the open



1 space requirements under subsection (b) within three hundred  
2 sixty-days from the filing of the request to amend the land use  
3 designation. If the three hundred sixty-day time period has  
4 expired and no decision has been rendered, the amendment to the  
5 land use designation shall be deemed approved.

6 (d) The land use commission shall adopt rules in  
7 accordance with chapter 91 to carry out the purposes of this  
8 chapter.

9 § -10 **Community affordable units.** (a) Notwithstanding  
10 any provision under chapter 201H to the contrary, the developer  
11 of a residential community for which the general planning,  
12 development, and construction has commenced after December 31,  
13 2009, and who has agreed to be subject to this chapter shall  
14 cooperate and coordinate with the Hawaii housing finance and  
15 development corporation, as necessary, to develop and implement  
16 a residential housing plan that will designate and reserve at  
17 least thirty per cent of all of its residential units within the  
18 planned community for affordable housing units.

19 (b) The Hawaii housing finance and development corporation  
20 shall coordinate with any state department or agency to expedite  
21 the application process for any permit application of a  
22 residential community that is subject to this chapter and



1 relating to affordable residential unit development to allow any  
2 department or agency subject to the three hundred sixty-day  
3 permit processing time period imposed under this chapter to  
4 review and decide on a permit application. If the three hundred  
5 sixty-day time period has expired on a permit application and no  
6 decision has been rendered, the permit shall be deemed approved.

7 (c) The Hawaii housing finance and development corporation  
8 shall adopt rules in accordance with chapter 91 to carry out the  
9 purposes of this chapter.

10 § -11 **Energy resources coordinator; ad hoc development**  
11 **advisory committee convenor.** (a) The energy resources  
12 coordinator shall convene ad hoc development advisory committees  
13 to determine the feasibility of developing an integrated plan  
14 for a sustainable residential community on any proposed tract of  
15 land that fulfills the requirements under this chapter. The  
16 advisory committees shall convene only when the residential  
17 community plan proposes to develop fifty or more residential  
18 units within the proposed community, and the general planning,  
19 development, and construction has commenced after December 31,  
20 2009.

21 (b) The members of the advisory committee shall consist  
22 of:



- 1 (1) The residential community developer;
- 2 (2) The energy resources coordinator;
- 3 (3) The director of planning from the county in which the
- 4 development is planned for or the director's designee;
- 5 (4) The director of the office of planning or the
- 6 director's designee;
- 7 (5) The director of health or the director's designee; and
- 8 (6) The energy resources coordinator of the department of
- 9 business, economic development, and tourism or the
- 10 energy resources coordinator's designee.

11 The energy resources coordinator under section 196-3 shall be  
12 the chairperson of the advisory committee.

13 (c) Any development requirements established and agreed  
14 upon between the energy resources coordinator, on behalf of an  
15 ad hoc development advisory committee and the developer shall be  
16 reduced in writing and shall be included in any executed  
17 development agreement.

18 § -12 **Community association; established.** Within one  
19 year after the completion of development of a residential  
20 community that is subject to this chapter, the residents of the  
21 residential community shall establish a community association.



1 The community association shall serve in an administrative  
2 capacity and adopt rules and bylaws.

3 § -13 Failure to comply; penalty; enforcement. (a) The  
4 energy resources coordinator shall monitor the compliance of any  
5 developer or residential community that is subject to this  
6 chapter.

7 (b) If, up until one year after the completion of  
8 development of a residential community that is subject to this  
9 chapter, or at any point prior to completion, the energy  
10 resources coordinator determines that a developer is not in  
11 compliance with this chapter, the energy resources coordinator  
12 may fine the developer for noncompliance and may require the  
13 developer to suspend development until the noncompliance has  
14 been remedied.

15 (c) If noncompliance with this chapter occurs one year  
16 after completion of the residential community that is subject to  
17 this chapter, or at any time subsequent to one year after the  
18 development of the community is completed, the energy resources  
19 coordinator may enforce the requirements of this chapter against  
20 the community's association.





1           (d) The energy resources coordinator shall establish fines  
2 and penalties for noncompliance with this chapter under rules  
3 adopted pursuant to chapter 91."

4           SECTION 3. This Act shall take effect on July 1, 2009, and  
5 shall be repealed on July 1, 2014.

6

INTRODUCED BY:

Norman Sakunjo



**Report Title:**

Sustainable Communities

**Description:**

Establishes sustainable communities in Hawaii with the combined effort of state departments and agencies.

