

---

---

# A BILL FOR AN ACT

RELATING TO SUSTAINABILITY.

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

1 PART I

2 SECTION 1. Pursuant to Act 181, Session Laws of Hawaii  
3 2011, the University of Hawaii public policy center, in  
4 consultation with the office of planning, submitted a report to  
5 the legislature identifying the progress made in implementing  
6 the sustainability guidelines and principles set forth in Act  
7 181, and making recommendations for legislation or other action  
8 to facilitate their full implementation.

9 The major recommendations made by the University of Hawaii  
10 public policy center in response to Act 181, Session Laws of  
11 Hawaii 2011, include:

- 12 (1) Convening the Hawaii statewide sustainability  
13 partnership, a statewide network of state, county,  
14 private sector, and community organizations; and  
15 (2) Appropriating funds to the office of planning to  
16 support development of statewide sustainability,  
17 measures of accountability, including benchmarks,  
18 indicators, data, and data sources.



1 SECTION 2. **Hawaii statewide sustainability partnership.**

2 (a) The office of planning may convene the Hawaii  
3 statewide sustainability partnership.

4 (b) The Hawaii statewide sustainability partnership shall  
5 consist of eleven members as follows:

6 (1) The director of the office of planning or the  
7 director's designee;

8 (2) A representative from each of the four counties to be  
9 appointed by the mayor of each county;

10 (3) A representative of the University of Hawaii public  
11 policy center with a degree or certificate in urban  
12 sustainability or a related field to be appointed by  
13 the president of the University of Hawaii;

14 (4) A representative from the Land Use Research Foundation  
15 of Hawaii;

16 (5) A representative from the Building Trades Council;

17 (6) A representative from the Hawaii Farm Bureau  
18 Federation;

19 (7) A representative appointed by the president of the  
20 senate; and

21 (8) A representative appointed by the speaker of the house  
22 of representatives.



- 1 (c) The Hawaii statewide sustainability partnership shall:
- 2 (1) Design and organize a collaborative public-private
- 3 entity that shall be responsible for coordinating the
- 4 implementation of sustainability guidelines and
- 5 priorities;
- 6 (2) Determine key indicators for measuring sustainability
- 7 and establish benchmarks for measuring short-term and
- 8 long-term progress;
- 9 (3) Translate the sustainability principles set forth in
- 10 Act 181, Session Laws of Hawaii 2011, into clear
- 11 objectives, specific actions, and accountability
- 12 measures; and
- 13 (4) Coordinate sustainability progress among the State and
- 14 the counties, including data collection, analysis, and
- 15 reporting of accountability measures.
- 16 (d) Members of the Hawaii statewide sustainability
- 17 partnership shall not be compensated, but shall be reimbursed
- 18 for expenses, including travel expenses, necessary for the
- 19 performance of their duties.
- 20 (e) Any law to the contrary notwithstanding, the meetings
- 21 of the Hawaii statewide sustainability partnership may be
- 22 conducted by telephone or videoconference.



1 (f) The Hawaii statewide sustainability partnership shall  
2 submit to the legislature a report of its findings and  
3 recommendations, including a specific finding as to whether  
4 water allocations are sufficient to support agriculture in the  
5 State of Hawaii to achieve sustainability, no later than twenty  
6 days prior to the convening of the 2013 regular session.

7 (g) The office of planning shall submit to the legislature  
8 no later than twenty days prior to the convening of the 2013  
9 regular session, a report which shall include an account of the  
10 office's efforts to effectuate the purposes of this Act and any  
11 recommended policy changes needed to effectuate the purposes of  
12 this Act.

13 PART II

14 SECTION 3. The legislature has often recognized that  
15 diversified and economically viable agricultural activities are  
16 fundamental to the State's self-sufficiency and sustainability.  
17 Yet, the legislature finds that decisions rendered by the Hawaii  
18 supreme court have the effect of undermining the State's self-  
19 sufficiency and sustainability goals by not affording adequate  
20 water resources for agricultural activities.

21 In *the Matter of Water Use Permit Applications*, 9 P.3d 409  
22 (2000), hereafter *Waiahole I*, in discussing the public trust



1 doctrine, the Hawaii supreme court stated that "the water  
2 resources trust also encompasses a duty to promote the  
3 reasonable and beneficial use of water resources in order to  
4 maximize their social and economic benefit to the people of this  
5 state," and noted that Article XI, section 1 of the state  
6 constitution provides that the State "shall promote the  
7 development and utilization of [water] resources in a manner  
8 consistent with their conservation and in furtherance of the  
9 self-sufficiency of the State." *Id.* at 451. In identifying  
10 public trust uses, however, the Hawaii supreme court failed to  
11 include water for agriculture as a public trust use; however the  
12 court did not declare that agriculture is not a public trust  
13 use, either.

14 The provisions of the State Water Code, chapter 174C,  
15 Hawaii Revised Statutes, which was enacted in 1987 and which the  
16 Hawaii supreme court has subsequently deemed inartfully drafted  
17 in *Koolau Agriculture Co., Ltd. v. Commission on Water Resource*  
18 *Management*, 927 P.2d 1367 (1996), was premised on a balancing of  
19 water needs, rather than on a system of priorities, and  
20 accordingly does not provide sufficient legislative guidance on  
21 the establishment of priorities for water usage. This  
22 combination of the failure of the Hawaii supreme court to cite



1 water for agriculture as a public trust use and the resulting  
2 ambiguities and vagueness of the State Water Code, in light of  
3 the court's decision, has resulted in a categorical  
4 interpretation by some parties, including some state agencies,  
5 that providing water for agriculture is not as important as  
6 providing water for domestic uses, traditional and customary  
7 native Hawaiian rights, conservation of the resource, or uses by  
8 the department of Hawaiian home lands, which are public trust  
9 uses named by the Hawaii supreme court. The legislature  
10 recognizes, however, that adequate water supplies are crucial to  
11 maintaining a diversified and economically viable agricultural  
12 industry, for preserving agricultural lands, and for achieving  
13 agricultural self-sufficiency. In other words, providing  
14 adequate water for agricultural activities is a key component to  
15 meeting the State's goals of self-sufficiency and  
16 sustainability.

17 The Hawaii supreme court noted that public trust uses are  
18 not static, but evolve over time. *Waiahole I*, 9 P.3d at 448,  
19 550. The importance of agriculture to this State has long been  
20 recognized and the people of Hawaii raised this recognition of  
21 the importance of agriculture to constitutional status in 1978  
22 with the adoption of Article XI, section 3 of the state



1 constitution. Today, with the State's focus on sustainability  
2 and self-sufficiency, the State's commitment to agriculture must  
3 be reaffirmed as it is in the state constitution, including by  
4 recognizing that providing adequate water for agriculture is a  
5 public trust use on par with domestic uses, uses for traditional  
6 and customary native Hawaiian rights, for conservation of the  
7 resource, and for uses by the department of Hawaiian home lands.

8 SECTION 4. Section 226-108, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§226-108[+] **Sustainability.** (a) Priority guidelines  
11 and principles to promote sustainability shall include:

- 12 (1) Encouraging balanced economic, social, community, and  
13 environmental priorities;
- 14 (2) Encouraging planning that respects and promotes living  
15 within the natural resources and limits of the State;
- 16 (3) Promoting a diversified and dynamic economy;
- 17 (4) Encouraging respect for the host culture;
- 18 (5) Promoting decisions based on meeting the needs of the  
19 present without compromising the needs of future  
20 generations;
- 21 (6) Considering the principles of the ahupuaa system; and



1 (7) Emphasizing that everyone, including individuals,  
2 families, communities, businesses, and government, has  
3 the responsibility for achieving a sustainable Hawaii.

4 (b) It shall be a policy of the State, through its  
5 programs, authorities, and resources to make adequate provision  
6 of water resources for agricultural activities in furtherance of  
7 the State's self-sufficiency and sustainability. Water for such  
8 agricultural activities shall be deemed a public trust use."

9 PART III

10 SECTION 5. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$ or so much  
12 thereof as may be necessary for fiscal year 2012-2013 to convene  
13 the Hawaii statewide sustainability partnership and to support  
14 development of statewide sustainability measures of  
15 accountability.

16 The sum appropriated shall be expended by the office of  
17 planning for the purposes of this Act.

18 SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 7. This Act shall take effect on July 1, 2012.





**Report Title:**

Sustainability; State Planning; Appropriation

**Description:**

Authorizes the office of planning to convene a statewide sustainability partnership, develop sustainability guidelines, establish benchmarks for measuring sustainability progress, and coordinate sustainability progress made by the State and counties. Makes appropriation. Effective July 1, 2012 (HB2671 HD1)

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

