



GOV. MSG. NO. 1313

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 8, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

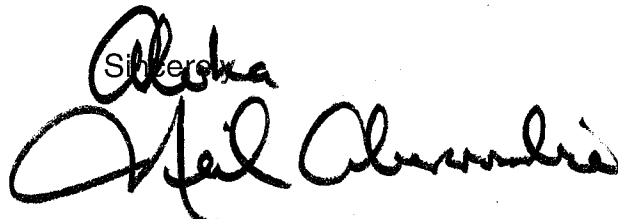
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 8, 2011, the following bill was signed into law:

SB298 SD3 HD3 CD1

RELATING TO BUSINESS REGULATION  
Act 209 (11)



NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

JUL 8 2011

on

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 209  
S.B. NO. 298  
S.D. 3  
H.D. 3  
C.D. 1

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## A BILL FOR AN ACT

RELATING TO BUSINESS REGULATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 SUSTAINABLE BUSINESS CORPORATIONS

6 § -1 Purpose and findings. This chapter authorizes a  
7 designation and code of conduct for a business corporation to  
8 offer entrepreneurs and investors the option to build and invest  
9 in businesses that operate in a socially and environmentally  
10 sustainable manner. Enforcement of those responsibilities comes  
11 not from governmental oversight, but rather from new provisions  
12 on transparency and accountability included in this chapter.

13 § -2 Definitions. As used in this chapter:

14 "Benefit director" means the director designated as the  
15 benefit director of a sustainable business corporation under  
16 section -7.



1 "Benefit officer" means the individual designated as the  
2 benefit officer of a sustainable business corporation under  
3 section -9.

4 "General public benefit" means a material positive impact  
5 on society and the environment, taken as a whole and as measured  
6 by a third-party standard under section -12, from the  
7 business and operations of a sustainable business corporation.

8 "Independent" means having no material relationship with a  
9 sustainable business corporation or any of its subsidiaries.

10 "Material owner" means a shareholder who holds either  
11 beneficially or of record five per cent or more of the  
12 outstanding shares of a sustainable business corporation.

13 "Material relationship" means a relationship between a  
14 person and a sustainable business corporation where:

15 (1) The person is, or has been within the last three  
16 years, an employee other than a benefit officer of the  
17 sustainable business corporation or any of its  
18 subsidiaries;

19 (2) The person is related by blood, marriage, or adoption  
20 to; is a party to a civil union with; is a reciprocal  
21 beneficiary or household member of; or resides with an  
22 officer other than a benefit officer or director of



1 the sustainable business corporation or any of its  
2 subsidiaries; or  
3 (3) The person or an association of which the person is a  
4 director, officer, or manager or in which the person  
5 owns beneficially or of record five per cent or more  
6 of the outstanding equity interests or the outstanding  
7 shares of the sustainable business corporation;  
8 provided that percentage ownership in an association  
9 shall be calculated as if all outstanding rights to  
10 acquire equity interests in the association had been  
11 exercised.

12 "Minimum status vote" means that in addition to any other  
13 approval or vote required by this chapter or the bylaws adopted  
14 by the shareholders:

15 (1) The holders of shares of every class or series shall  
16 be entitled to vote on the corporate action regardless  
17 of any limitation stated in the articles of  
18 incorporation or bylaws on the voting rights of any  
19 class or series; and

20 (2) The corporate action shall be approved by vote of the  
21 shareholders of each class or series entitled to cast



1 at least two-thirds of the votes that all shareholders  
2 of the class or series are entitled to cast thereon.

3 "Subsidiary" of a person means an association in which the  
4 person owns beneficially or of record fifty per cent or more of  
5 the outstanding equity interests; provided that a percentage of  
6 ownership in an association shall be calculated as if all  
7 outstanding rights to acquire equity interests in the  
8 association had been exercised.

9 "Sustainable business corporation" means a domestic  
10 corporation, incorporated under chapter 414, that has elected to  
11 also become subject to this chapter and whose status as a  
12 sustainable business corporation has not been terminated as  
13 provided in this chapter.

14 "Third-party standard" means a standard for defining,  
15 reporting, and assessing overall corporate social and  
16 environmental performance that conforms to the requirements of  
17 this chapter.

18 § -3 Election of a domestic corporation to become a  
19 sustainable business corporation. (a) A domestic corporation  
20 incorporated under chapter 414 may elect to become a sustainable  
21 business corporation under this chapter by including in its  
22 articles or amending its articles to include a statement that



1 the corporation is a sustainable business corporation. An  
2 amendment pursuant to this subsection shall not be effective  
3 unless it is adopted by at least the minimum status vote.

4 (b) If a corporation that is not a sustainable business  
5 corporation is a party to a merger, consolidation, or division,  
6 or is the exchanging corporation in a share exchange, and the  
7 surviving, new, or any resulting corporation in the merger,  
8 consolidation, division, or share exchange is to be a  
9 sustainable business corporation, then the plan of merger,  
10 consolidation, division, or share exchange shall not be  
11 effective unless it is adopted by the corporation by at least  
12 the minimum status vote.

13 § -4 Termination of sustainable business corporation  
14 status. (a) A sustainable business corporation may terminate  
15 its status as such and cease to be subject to this chapter by  
16 amending its articles to delete the statement that the  
17 corporation is a sustainable business corporation. An amendment  
18 pursuant to this subsection shall not be effective unless it is  
19 adopted by at least the minimum status vote.

20 (b) If a plan of merger, consolidation, division, or share  
21 exchange would have the effect of terminating the status of a  
22 business corporation as a sustainable business corporation, the



1 plan shall not be effective unless it is adopted by at least the  
2 minimum status vote.

3 § -5 **Corporate purposes.** (a) Every sustainable  
4 business corporation shall have among its purposes the creation  
5 of a general public benefit.

6 (b) In addition to the general public benefit purpose  
7 required by subsection (a), the articles of a sustainable  
8 business corporation may identify one or more specific public  
9 benefits for which the sustainable business corporation was  
10 created. The identification of a specific public benefit under  
11 this subsection shall not limit the obligation of a sustainable  
12 business corporation to create a general public benefit.

13 Allowable specific public benefits for sustainable business  
14 corporations subject to this chapter include:

- 15 (1) Providing low-income or underserved individuals or  
16 communities with beneficial products or services;
- 17 (2) Promoting economic opportunity for individuals or  
18 communities beyond the creation of jobs in the normal  
19 course of business;
- 20 (3) Preserving the environment;
- 21 (4) Improving human health;



- 1 (5) Promoting the arts, sciences, or advancement of  
2 knowledge;
- 3 (6) Increasing the flow of capital to entities with a  
4 public benefit purpose;
- 5 (7) Accomplishing any other particular benefit for society  
6 or the environment; and
- 7 (8) Using the right to exclude, conferred by any and all  
8 patents in which the sustainable business corporation  
9 has an interest in this right through assignment,  
10 license, lien, security agreement, or obligation for  
11 the following purposes:
  - 12 (A) Creating and retaining good jobs within the State  
13 as well as throughout the United States;
  - 14 (B) Upholding fair labor standards nationally and  
15 internationally; provided that for purposes of  
16 this paragraph, "fair labor standards" shall be  
17 construed to prohibit child labor, forced or  
18 compulsory labor, discrimination in employment,  
19 restrictions on freedom of association, and  
20 denial of the right to collective bargaining; and
  - 21 (C) Enhancing environmental protection nationally and  
22 internationally; provided that if the public





1 benefit under this paragraph relating to the use  
2 of patents is specified, section -4 shall not  
3 apply to the corporation and the sustainable  
4 business corporation status shall be permanent,  
5 and this specific public benefit shall not be  
6 deleted from the articles of the corporation  
7 pursuant to subsection (d), unless the annual  
8 statement of the benefit director concludes that  
9 the sustainable business corporation has failed  
10 to pursue this specific public benefit, then the  
11 corporation shall have its status as a  
12 sustainable business corporation terminated.

13 (c) The creation of general and specific public benefits  
14 as provided in subsections (a) and (b) shall be in the best  
15 interests of the sustainable business corporation.

16 (d) A sustainable business corporation may amend its  
17 articles to add, amend, or delete the identification of a  
18 specific public benefit for which the sustainable business  
19 corporation was created. An amendment pursuant to this  
20 subsection shall not be effective unless it is adopted by at  
21 least the minimum status vote.



1           §   -6   Standard of conduct for directors.   (a)   In  
2   discharging the duties of their respective positions, the board  
3   of directors, committees of the board, and individual directors  
4   of a sustainable business corporation, in considering the best  
5   interests of the sustainable business corporation:

6           (1)   Shall consider the effects of any action of the  
7                 sustainable business corporation upon:

8                 (A)   The shareholders of the sustainable business  
9                         corporation; and

10                (B)   The accomplishment of general and specific public  
11                       benefits set forth in the sustainable business  
12                       corporation's purposes; and

13           (2)   May consider:

14                (A)   The employees and workforce of the sustainable  
15                       business corporation and its subsidiaries and  
16                       suppliers;

17                (B)   The interests of customers as beneficiaries of  
18                       the general or specific public benefit purposes  
19                       of the sustainable business corporation;

20                (C)   Community and societal considerations, including  
21                       those of any community in which offices or  
22                       facilities of the sustainable business



1 corporation or its subsidiaries or suppliers are  
2 located;

3 (D) The local and global environment;

4 (E) The short-term and long-term interests of the  
5 sustainable business corporation, including  
6 benefits that may accrue to the sustainable  
7 business corporation from its long-term plans and  
8 the possibility that these interests may be best  
9 served by the continued independence of the  
10 sustainable business corporation;

11 (F) The ability of the sustainable business  
12 corporation to accomplish its general public  
13 benefit purpose and any specific public benefit  
14 purpose;

15 (G) The resources, intent, and conduct of any person  
16 seeking to acquire control of the corporation;  
17 and

18 (H) Any other pertinent factors or the interests of  
19 any other group that they deem appropriate.

20 (b) A director shall not be personally liable for monetary  
21 damages for any action taken as a director if the director  
22 performed the duties of the director's office in compliance with



1 the general standards of conduct pursuant to section 414-221.

2 § -7 **Benefit director.** (a) The board of directors of a  
3 sustainable business corporation shall include one director who  
4 shall be designated the "benefit director" and who shall have,  
5 in addition to all of the powers, duties, rights, and immunities  
6 of the other directors of the sustainable business corporation,  
7 the powers, duties, rights, and immunities provided in this  
8 section.

9 (b) The benefit director shall be elected pursuant to  
10 sections 414-193 and 414-194 and may be removed in the manner  
11 provided by sections 414-198 and 414-199. The benefit director  
12 may serve concurrently as the benefit officer. The articles or  
13 bylaws of a sustainable business corporation may prescribe  
14 additional qualifications of the benefit director; provided that  
15 the qualifications are consistent with this subsection.

16 (c) The benefit director shall prepare, and the  
17 sustainable business corporation shall include in the annual  
18 benefit report to shareholders required by section -11, a  
19 statement whether, in the opinion of the benefit director, the  
20 sustainable business corporation acted in accordance with its  
21 general, and any specific, public benefit purpose in all  
22 material respects during the period covered by the report and



1 whether the directors and officers complied with sections  
2 -6(a) and -8(a), respectively. If in the opinion of the  
3 benefit director the sustainable business corporation or its  
4 directors or officers failed to act according to the  
5 requirements of this chapter, then the statement of the benefit  
6 director shall include a description of the ways in which the  
7 sustainable business corporation or its directors or officers  
8 failed to act according to the requirements of this chapter.  
9 The benefit director's statement included in the final draft of  
10 the benefit report shall include formal responses to all  
11 questions, concerns, comments, and suggestions raised through  
12 the public comment period required by section -11.

13 (d) A benefit director shall be independent of and shall  
14 have no material relationship with the sustainable business  
15 corporation.

16 § -8 Standard of conduct for officers. (a) Each  
17 officer of a sustainable business corporation shall consider the  
18 interests and factors described in section -6(a) in the  
19 manner provided in that section when:

20 (1) The officer has discretion to act with respect to a  
21 matter; and



1 (2) It reasonably appears to the officer that the matter  
2 may have a material effect on:

3 (A) The creation of a general or specific public  
4 benefit by the sustainable business corporation;  
5 or

6 (B) Any of the interests or factors referred to in  
7 section -6(a).

8 (b) An officer shall not be personally liable for monetary  
9 damages for any action taken as an officer if the officer  
10 performed the duties of the position in compliance with the  
11 general standards of conduct pursuant to section 414-233.

12 § -9 **Benefit officer.** (a) A sustainable business  
13 corporation may have an officer designated as the benefit  
14 officer who shall have the authority and shall perform the  
15 duties in the management of the sustainable business corporation  
16 relating to the purpose of the corporation to create general or  
17 specific public benefit as may be provided by or pursuant to the  
18 bylaws or, in the absence of controlling provisions in the  
19 bylaws, as may be determined by or pursuant to resolutions or  
20 orders of the board of directors. If a sustainable business  
21 corporation has a benefit officer, the duties of the benefit



1 officer shall include preparing the benefit report required by  
2 section -11.

3 (b) A benefit officer shall be independent of and shall  
4 have no material relationship with the sustainable business  
5 corporation.

6 § -10 **Right of action.** The shareholders and directors  
7 of a sustainable business corporation shall have the right to  
8 bring direct or derivative claims to enforce corporate purposes  
9 and the standards for directors as set forth in section  
10 414-221(a) and shall have the right to bring direct or  
11 derivative claims to enforce the general or specific public  
12 benefit purposes of the sustainable business corporation and the  
13 standard of conduct for directors pursuant to section  
14 -6(a)(1).

15 § -11 **Annual benefit report.** (a) A sustainable  
16 business corporation shall deliver to each shareholder an annual  
17 benefit report including:

- 18 (1) A narrative description of:
- 19 (A) The ways in which the sustainable business  
20 corporation pursued general public benefits  
21 during the year and the extent to which general  
22 public benefit was created;



1 (B) The ways in which the sustainable business  
2 corporation pursued any specific public benefit  
3 that the articles state as a purpose of the  
4 sustainable business corporation and the extent  
5 to which that specific public benefit was  
6 created; and

7 (C) Any circumstances that have hindered the creation  
8 by the sustainable business corporation of  
9 general or specific public benefits;

10 (2) An assessment of the overall social and environmental  
11 performance of the sustainable business corporation,  
12 prepared in accordance with a third-party standard  
13 under section -12 applied consistently with any  
14 application of that standard in prior benefit reports  
15 or accompanied by an explanation of the reasons for  
16 any inconsistent application;

17 (3) The name of the benefit director and the benefit  
18 officer, if any, and the address to which  
19 correspondence to each of them may be directed;

20 (4) The compensation paid by the sustainable business  
21 corporation during the year to each director in the  
22 person's capacity as director;





- 1 (5) The name of each person who owns five per cent or more  
2 of the outstanding shares of the sustainable business  
3 corporation either beneficially to the extent known to  
4 the sustainable business corporation or of record;
- 5 (6) The statement of the benefit director described in  
6 section -7(c);
- 7 (7) A statement of any connection to the organization that  
8 developed the third-party standard under section -  
9 12, or its directors, officers, or material owners  
10 from the sustainable business corporation, or its  
11 directors, officers, and material owners, including  
12 any financial or governance relationship that might  
13 materially affect the credibility of the objective  
14 assessment of the third-party standard; and
- 15 (8) A statement that, as a private corporation under the  
16 direction of its board and accountable to its  
17 shareholders and the articles and bylaws of the  
18 sustainable business corporation, including those  
19 governing the general or specific public benefit  
20 purpose and the activities of the sustainable business  
21 corporation, the sustainable business corporation and  
22 its activities are subject to the oversight of the



1 board of the sustainable business corporation and are  
2 not subject to the direct oversight, regulation, or  
3 endorsement of any governmental body.

4 (b) A sustainable business corporation shall post a draft  
5 of its benefit report on the public section of its website, or  
6 make it otherwise available to the public, for a sixty-day  
7 public comment period prior to final publication of the benefit  
8 report. The deadline for a commentary shall be published in a  
9 publicly accessible manner.

10 (c) The benefit report shall be sent annually to each  
11 shareholder within one hundred twenty days following the end of  
12 the fiscal year of the sustainable business corporation.

13 (d) A sustainable business corporation shall post its most  
14 recent benefit report on the public portion of its website, if  
15 any, except that the compensation paid to directors and any  
16 financial or proprietary information included in the benefit  
17 report may be omitted from the benefit report as posted. If a  
18 sustainable business corporation does not have a public website,  
19 it shall deliver a copy of its most recent benefit report upon  
20 request and without charge to any person who requests a copy.

21 § -12 **Third-party standard.** A third-party standard for  
22 purposes of defining, reporting, and assessing overall corporate



1 social and environmental performance of a sustainable business  
2 corporation subject to this chapter shall be:

3 (1) Comprehensive in its assessment of the effect of the  
4 business and its operations upon the interests listed  
5 in section -6(a);

6 (2) Developed by an organization that is independent of  
7 the sustainable business corporation; and

8 (3) Transparent because the following information is  
9 publicly available:

10 (A) The criteria considered when measuring the  
11 overall social and environmental performance of a  
12 business, as well as the relative weightings of  
13 those criteria;

14 (B) The identity of the directors, officers, any  
15 material owners, and the governing body of the  
16 organization that developed and controls  
17 revisions to the standard;

18 (C) The process by which revisions to the standard  
19 are made;

20 (D) The process by which changes to the membership of  
21 the governing body of the organization that



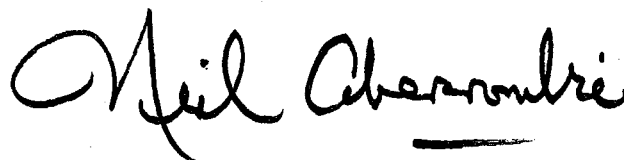
1 developed and controls revisions to the standard  
2 are made; and

3 (E) An accounting of the sources of financial support  
4 for the organization that developed and controls  
5 revisions to the standard, with sufficient detail  
6 to disclose any relationships that could  
7 reasonably be considered to present a potential  
8 conflict of interest.

9 § -13 Ministerial role of department director. Section  
10 414-16 shall apply to any filings made by a sustainable business  
11 corporation."

12 SECTION 2. This Act shall take effect upon its approval.

APPROVED this 8 day of JUL, 2011



GOVERNOR OF THE STATE OF HAWAII