
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 -8.

17 "Benefit enforcement proceeding" means a claim or action
18 brought directly by a sustainable business corporation, or



1 derivatively on behalf of a sustainable business corporation,
2 against a director or officer for:

3 (1) Failure to pursue the general public benefit purpose
4 of the sustainable business corporation or any
5 specific public benefit purpose set forth in its
6 articles; or

7 (2) Violation of a duty or standard of conduct under this
8 chapter.

9 "Benefit officer" means the individual designated as the
10 benefit officer of a sustainable business corporation under
11 section -10.

12 "General public benefit" means a material positive impact
13 on society and the environment, taken as a whole and as measured
14 by a third-party standard under section -13, from the
15 business and operations of a sustainable business corporation.

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

18 "Minimum status vote" means that in addition to any other
19 approval or vote required by this chapter or the bylaws adopted
20 by the shareholders:

21 (1) The holders of shares of every class or series shall
22 be entitled to vote on the corporate action regardless



1 of any limitation stated in the articles of
2 incorporation or bylaws on the voting rights of any
3 class or series; and

4 (2) The corporate action shall be approved by vote of the
5 shareholders of each class or series entitled to cast
6 at least two-thirds of the votes that all shareholders
7 of the class or series are entitled to cast thereon.

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

14 "Sustainable business corporation" means a domestic
15 corporation, as defined in section 414-3, that has elected to
16 become subject to this chapter and whose status as a sustainable
17 business corporation has not been terminated as provided in this
18 chapter.

19 "Third-party standard" means a standard for defining,
20 reporting, and assessing overall corporate social and
21 environmental performance that conforms to the requirements of
22 this chapter.



1 § -3 **Formation of sustainable business corporations.** A
2 sustainable business corporation shall be a corporation in
3 accordance with chapter 414. Its articles shall state that it
4 is a sustainable business corporation.

5 § -4 **Election of an existing domestic corporation to**
6 **become a sustainable business corporation.** (a) An existing
7 domestic corporation may become a sustainable business
8 corporation under this chapter by amending its articles so that
9 they contain, in addition to the requirements of chapter 414,
10 part XI, a statement that the corporation is a sustainable
11 business corporation. An amendment pursuant to this subsection
12 shall not be effective unless it is adopted by at least the
13 minimum status vote.

14 (b) If a corporation that is not a sustainable business
15 corporation is a party to a merger, consolidation, or division,
16 or is the exchanging corporation in a share exchange and the
17 surviving, new, or any resulting corporation in the merger,
18 consolidation, division, or share exchange is to be a
19 sustainable business corporation, then the plan of merger,
20 consolidation, division, or share exchange shall not be
21 effective unless it is adopted by the corporation by at least
22 the minimum status vote.



1 **§ -5 Termination of sustainable business corporation**
2 **status.** (a) A sustainable business corporation may terminate
3 its status as such and cease to be subject to this chapter by
4 amending its articles to delete the statement that the
5 corporation is a sustainable business corporation, as required
6 by section -3. An amendment pursuant to this subsection
7 shall not be effective unless it is adopted by at least the
8 minimum status vote.

9 (b) If a plan of merger, consolidation, division, or share
10 exchange would have the effect of terminating the status of a
11 business corporation as a sustainable business corporation, the
12 plan shall not be effective unless it is adopted by at least the
13 minimum status vote.

14 **§ -6 Corporate purposes.** (a) Every sustainable
15 business corporation shall have among its purposes the creation
16 of a general public benefit.

17 (b) In addition to the purposes described in subsection
18 (a), the articles of a sustainable business corporation may
19 identify one or more specific public benefits for which the
20 sustainable business corporation was created. The
21 identification of a specific public benefit under this
22 subsection does not limit the obligation of a sustainable



1 business corporation to create a general public benefit.

2 Allowable specific benefits for sustainable business

3 corporations subject to this chapter include:

4 (1) Providing low-income or underserved individuals or
5 communities with beneficial products or services;

6 (2) Promoting economic opportunity for individuals or
7 communities beyond the creation of jobs in the normal
8 course of business;

9 (3) Preserving the environment;

10 (4) Improving human health;

11 (5) Promoting the arts, sciences, or advancement of
12 knowledge;

13 (6) Increasing the flow of capital to entities with a
14 public benefit purpose; and

15 (7) The accomplishment of any other particular benefit for
16 society or the environment.

17 (c) The creation of general and specific public benefits
18 as provided in subsections (a) and (b) of this section shall be
19 in the best interests of the sustainable business corporation.

20 (d) A sustainable business corporation may amend its
21 articles to add, amend, or delete the identification of a
22 specific public benefit for which the sustainable business



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

4 **§ -7 Standard of conduct for directors.** (a) In
5 discharging the duties of their respective positions, the board
6 of directors, committees of the board, and individual directors
7 of a sustainable business corporation, in considering the best
8 interests of the sustainable business corporation:

9 (1) Shall consider the effects of any action of the
10 sustainable business corporation upon:

11 (A) The shareholders of the sustainable business
12 corporation;

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

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

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



- 1 corporation or its subsidiaries or suppliers are
2 located;
- 3 (E) The local and global environment;
- 4 (F) 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; and
- 11 (G) The ability of the sustainable business
12 corporation to accomplish its general public
13 benefit purpose and any specific public benefit
14 purpose;
- 15 (2) May consider:
- 16 (A) The resources, intent, and conduct of any person
17 seeking to acquire control of the corporation;
18 and
- 19 (B) Any other pertinent factors or the interests of
20 any other group that they deem appropriate; and
- 21 (3) Shall not be required to give priority to the
22 interests of any particular person or group specified



1 in paragraphs (1) or (2) over the interests of any
2 other person or group unless the sustainable business
3 corporation has stated its intention to give priority
4 to interests related to a specific public benefit
5 purpose identified in its articles.

6 (b) The consideration of interests and factors in the
7 manner required by subsection (a) shall not constitute a
8 violation of a director's fiduciary duties.

9 (c) A director shall not be personally liable for monetary
10 damages for any action taken as a director if the director
11 performed the duties of the director's office in compliance with
12 the general standards of conduct pursuant to section 414-221 and
13 this section or for failure of the sustainable business
14 corporation to create a general public benefit or a specific
15 public benefit.

16 (d) A director shall not have a fiduciary duty to a person
17 that is a beneficiary of the general or specific public benefit
18 purposes of a sustainable business corporation arising from the
19 status of the person as a beneficiary.

20 § -8 **Benefit director.** (a) The board of directors of a
21 sustainable business corporation shall include one director who
22 shall be designated the "benefit director" and who shall have,



1 in addition to all of the powers, duties, rights, and immunities
2 of the other directors of the sustainable business corporation,
3 the powers, duties, rights, and immunities provided in this
4 section.

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

12 (c) The benefit director shall prepare, and the
13 sustainable business corporation shall include in the annual
14 benefit report to shareholders required by section -12, a
15 statement whether, in the opinion of the benefit director, the
16 sustainable business corporation acted in accordance with its
17 general, and any specific, public benefit purpose in all
18 material respects during the period covered by the report and
19 whether the directors and officers complied with sections
20 -7(a) and -9(a), respectively. If in the opinion of the
21 benefit director the sustainable business corporation or its
22 directors or officers failed to act according to the



1 requirements of this chapter, then the statement of the benefit
2 director shall include a description of the ways in which the
3 sustainable business corporation or its directors or officers
4 failed to act according to the requirements of this chapter.

5 (d) For all purposes, the acts of an individual in the
6 capacity of a benefit director shall constitute acts of that
7 individual in the capacity of a director of the sustainable
8 business corporation.

9 (e) If the bylaws of a sustainable business corporation
10 provide that the powers and duties conferred or imposed upon the
11 board of directors shall be exercised or performed by a person
12 or persons other than the directors or if the bylaws of a
13 statutory close corporation that is a sustainable business
14 corporation provide that the business and affairs of the
15 corporation shall be managed by or under the direction of the
16 shareholders, then the bylaws of the sustainable business
17 corporation shall provide that the person, persons, or
18 shareholders who perform the duties of the board of directors
19 shall include a person with the powers, duties, rights, and
20 immunities of a benefit director.

21 (f) Regardless of whether the bylaws of a sustainable
22 business corporation include a provision eliminating or limiting



1 the personal liability of directors, a benefit director shall
2 not be personally liable for any act or omission committed in
3 the capacity of a benefit director unless the act or omission
4 constitutes self-dealing, wilful misconduct, or a knowing
5 violation of law.

6 (g) A benefit director shall be independent of and shall
7 have no material relationship with the sustainable benefit
8 corporation; provided that a material relationship between a
9 person and a sustainable business corporation or any of its
10 subsidiaries shall be conclusively presumed to exist if any of
11 the following apply:

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

16 (2) The person is related by blood, marriage, or adoption
17 to; is a party to a civil union; is a reciprocal
18 beneficiary or a member of the household of; or
19 resides with an officer or director of the sustainable
20 business corporation or any of its subsidiaries, other
21 than a benefit officer; or



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

11 § -9 Standard of conduct for officers. (a) Each
 12 officer of a sustainable business corporation shall consider the
 13 interests and factors described in section -7(a) in the
 14 manner provided in that section when:

15 (1) The officer has discretion to act with respect to a
 16 matter; and

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

19 (A) The creation of general or specific public
 20 benefit by the sustainable business corporation;
 21 or



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

3 (b) The consideration of interests and factors pursuant to
4 subsection (a) shall not constitute a violation of the officer's
5 fiduciary duties.

6 (c) An officer shall not be personally liable for monetary
7 damages for any action taken as an officer if the officer
8 performed the duties of the position in compliance with the
9 general standards of conduct pursuant to section 414-233 and
10 this section or for failure of the sustainable business
11 corporation to create a general or specific public benefit.

12 (d) An officer shall not have a fiduciary duty to a person
13 that is a beneficiary of the general or specific public benefit
14 purposes of a sustainable business corporation arising from the
15 status of the person as a beneficiary.

16 § -10 **Benefit officer.** (a) A sustainable business
17 corporation may have an officer designated as the benefit
18 officer who shall have the authority and shall perform the
19 duties in the management of the sustainable business corporation
20 relating to the purpose of the corporation to create general or
21 specific public benefit as may be provided by or pursuant to the
22 bylaws or, in the absence of controlling provisions in the



1 bylaws, as may be determined by or pursuant to resolutions or
2 orders of the board of directors. If a sustainable business
3 corporation has a benefit officer, the duties of the benefit
4 officer shall include preparing the benefit report required by
5 section -12.

6 (b) A benefit officer shall be independent of and shall
7 have no material relationship with the sustainable benefit
8 corporation; provided that a material relationship between a
9 person and a sustainable business corporation or any of its
10 subsidiaries shall be conclusively presumed to exist if any of
11 the following apply:

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

16 (2) The person is related by blood, marriage, or adoption
17 to; is party to a civil union with; is a reciprocal
18 beneficiary or a member of the household of; or
19 resides with an officer or director of the sustainable
20 business corporation or any of its subsidiaries, other
21 than a benefit officer; or



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

11 § -11 Right of action. (a) Except as provided in
12 sections -12(e) and -12(f), the duties of directors and
13 officers under this chapter, and the general and any specific
14 public benefit purpose of a sustainable business corporation,
15 shall be enforced only in a benefit enforcement proceeding.
16 Except as provided in section -12(e) and -12(f), no person
17 may bring an action or assert a claim against a sustainable
18 business corporation or its directors or officers with respect
19 to the duties of directors and officers under this chapter and
20 the general and any specific public benefit purpose of the
21 sustainable business corporation, except in a benefit
22 enforcement proceeding.



1 (b) A benefit enforcement proceeding may be commenced or
2 maintained only:

3 (1) Directly by the sustainable business corporation; or

4 (2) Derivatively by:

5 (A) A shareholder;

6 (B) A director;

7 (C) A person or group of persons that owns
8 beneficially or of record five per cent or more
9 of the equity interests in an association of
10 which the sustainable business corporation is a
11 subsidiary; or

12 (D) Any other persons as may be specified in the
13 articles or bylaws of the sustainable business
14 corporation.

15 § -12 **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 -13 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 their
- 22 capacity as director;



- 1 (5) The name of each person that owns five per cent or
2 more of the outstanding shares of the sustainable
3 business corporation either beneficially, to the
4 extent known to the sustainable business corporation
5 without independent investigation, or of record;
- 6 (6) The statement of the benefit director described in
7 section -8(c);
- 8 (7) A statement of any connection to the third-party
9 standard under section -13, or its directors,
10 officers, or material owners from the sustainable
11 business corporation, or its directors, officers, and
12 material owners, including any financial or governance
13 relationship that might materially affect the
14 credibility of the objective assessment of the third-
15 party standard; and
- 16 (8) A statement that, as a private corporation under the
17 direction of its board and accountable to its
18 shareholders and the articles and bylaws of the
19 sustainable benefit corporation, including those
20 governing the general or specific public benefit
21 purpose of the sustainable benefit corporation, are
22 subject to the oversight of the board of the



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

4 (b) The benefit report shall be sent annually to each
5 shareholder within one hundred twenty days following the end of
6 the fiscal year of the sustainable business corporation.

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

15 § -13 **Third-party standard.** A third-party standard for
16 purposes of defining, reporting, and assessing overall corporate
17 social and environmental performance of a sustainable business
18 corporation subject to this chapter shall be:

19 (1) Comprehensive in its assessment of the effect of the
20 business and its operations upon the interest listed
21 in section -7(a);



- 1 (2) Developed by an organization that is independent of
- 2 the sustainable business corporation;
- 3 (3) Credible because the standard is developed by an
- 4 organization that:
- 5 (A) Has access to necessary expertise to assess
- 6 overall corporate social and environmental
- 7 performance; and
- 8 (B) Uses a balanced multi-stakeholder approach
- 9 including a public comment period of at least
- 10 thirty days to develop the standard; and
- 11 (4) Transparent because the following information is
- 12 publicly available:
- 13 (A) The criteria considered when measuring the
- 14 overall social and environmental performance of a
- 15 business, as well as the relative weightings of
- 16 those criteria;
- 17 (B) The identity of the directors, officers, any
- 18 material owners, and the governing body of the
- 19 organization that developed and controls
- 20 revisions to the standard;
- 21 (C) The process by which revisions to the standard
- 22 are made;



1 (D) The process by which changes to the membership of
2 the governing body of the organization that
3 developed and controls revisions to the standard
4 are made; and

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

11 § -14 No representation by state. (a) In accepting
12 annual corporate filings or recognizing the good standing of a
13 sustainable business corporation, the State makes no
14 representation regarding the accuracy of the sustainable
15 business corporation's annual benefit report or the value of any
16 public benefit described in the report.

17 (b) Absent a specific statement by an agency of the State,
18 no sustainable business corporation shall use or exploit the
19 fact that the sustainable business corporation makes annual
20 corporate filings so as to lead the public to believe that the
21 State makes any representation regarding the accuracy of the



1 sustainable business corporation's annual benefit report or the
2 value of any public benefit described in the report."

3 SECTION 2. This Act shall take effect on October 3, 2011.

4



Report Title:

Business Regulation; Sustainable Business Corporations

Description:

Establishes an organizational and regulatory framework for sustainable benefits corporations. Effective 10/3/2011. (SD2)

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

