

---

# 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, as defined in section 414-3, that has elected to  
11 become subject to this chapter and whose status as a sustainable  
12 business corporation has not been terminated as provided in this  
13 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 may elect to become a sustainable business corporation under  
21 this chapter by including in its articles or amending its  
22 articles to include a statement that the corporation is a



1 sustainable business corporation. An amendment pursuant to this  
2 subsection shall not be effective unless it is adopted by at  
3 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 purposes described in subsection  
7 (a), the articles of a sustainable business corporation may  
8 identify one or more specific public benefits for which the  
9 sustainable business corporation was created. The  
10 identification of a specific public benefit under this  
11 subsection does not limit the obligation of a sustainable  
12 business corporation to create a general public benefit.  
13 Allowable specific 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; and
- 5 (7) The accomplishment of any other particular benefit for  
6 society or the environment.

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

10 (d) A sustainable business corporation may amend its  
11 articles to add, amend, or delete the identification of a  
12 specific public benefit for which the sustainable business  
13 corporation was created. An amendment pursuant to this  
14 subsection shall not be effective unless it is adopted by at  
15 least the minimum status vote.

16 § -6 **Standard of conduct for directors.** (a) In  
17 discharging the duties of their respective positions, the board  
18 of directors, committees of the board, and individual directors  
19 of a sustainable business corporation, in considering the best  
20 interests of the sustainable business corporation:

- 21 (1) Shall consider the effects of any action of the  
22 sustainable business corporation upon:



- 1 (A) The shareholders of the sustainable business  
2 corporation; and
- 3 (B) The general and specific public benefits set  
4 forth in the sustainable business corporation's  
5 purposes; and
- 6 (2) May consider:
- 7 (A) The employees and workforce of the sustainable  
8 business corporation and its subsidiaries and  
9 suppliers;
- 10 (B) The interests of customers as beneficiaries of  
11 the general or specific public benefit purposes  
12 of the sustainable business corporation;
- 13 (C) Community and societal considerations, including  
14 those of any community in which offices or  
15 facilities of the sustainable business  
16 corporation or its subsidiaries or suppliers are  
17 located;
- 18 (D) The local and global environment;
- 19 (E) The short-term and long-term interests of the  
20 sustainable business corporation, including  
21 benefits that may accrue to the sustainable  
22 business corporation from its long-term plans and





1 the possibility that these interests may be best  
2 served by the continued independence of the  
3 sustainable business corporation;

4 (F) The ability of the sustainable business  
5 corporation to accomplish its general public  
6 benefit purpose and any specific public benefit  
7 purpose;

8 (G) The resources, intent, and conduct of any person  
9 seeking to acquire control of the corporation;  
10 and

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

13 (b) A director shall not be personally liable for monetary  
14 damages for any action taken as a director if the director  
15 performed the duties of the director's office in compliance with  
16 the general standards of conduct pursuant to section 414-221.

17 § -7 **Benefit director.** (a) The board of directors of a  
18 sustainable business corporation shall include one director who  
19 shall be designated the "benefit director" and who shall have,  
20 in addition to all of the powers, duties, rights, and immunities  
21 of the other directors of the sustainable business corporation,



1 the powers, duties, rights, and immunities provided in this  
2 section.

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

10 (c) The benefit director shall prepare, and the  
11 sustainable business corporation shall include in the annual  
12 benefit report to shareholders required by section -11, a  
13 statement whether, in the opinion of the benefit director, the  
14 sustainable business corporation acted in accordance with its  
15 general, and any specific, public benefit purpose in all  
16 material respects during the period covered by the report and  
17 whether the directors and officers complied with sections  
18 -6(a) and -8(a), respectively. If in the opinion of the  
19 benefit director the sustainable business corporation or its  
20 directors or officers failed to act according to the  
21 requirements of this chapter, then the statement of the benefit  
22 director shall include a description of the ways in which the



1 sustainable business corporation or its directors or officers  
2 failed to act according to the requirements of this chapter.

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

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

10 (1) The officer has discretion to act with respect to a  
11 matter; and

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

14 (A) The creation of a general or specific public  
15 benefit by the sustainable business corporation;  
16 or

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

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



1           §   -9   **Benefit officer.**   (a)   A sustainable business  
2 corporation may have an officer designated as the benefit  
3 officer who shall have the authority and shall perform the  
4 duties in the management of the sustainable business corporation  
5 relating to the purpose of the corporation to create general or  
6 specific public benefit as may be provided by or pursuant to the  
7 bylaws or, in the absence of controlling provisions in the  
8 bylaws, as may be determined by or pursuant to resolutions or  
9 orders of the board of directors.   If a sustainable business  
10 corporation has a benefit officer, the duties of the benefit  
11 officer shall include preparing the benefit report required by  
12 section   -11.

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

16           §   -10   **Right of action.**   The shareholders and directors  
17 of a sustainable business corporation shall have the right to  
18 bring direct or derivative claims to enforce corporate purposes  
19 and the standards for directors as set forth in section  
20 414-221(a) and shall have the right to bring direct or  
21 derivative claims to enforce the general or specific public  
22 benefit purposes of the sustainable business corporation and the



1 standard of conduct for directors pursuant to section

2 -6(a)(1).

3 § -11 **Annual benefit report.** (a) A sustainable  
4 business corporation shall deliver to each shareholder an annual  
5 benefit report including:

6 (1) A narrative description of:

7 (A) The ways in which the sustainable business  
8 corporation pursued general public benefits  
9 during the year and the extent to which general  
10 public benefit was created;

11 (B) The ways in which the sustainable business  
12 corporation pursued any specific public benefit  
13 that the articles state as a purpose of the  
14 sustainable business corporation and the extent  
15 to which that specific public benefit was  
16 created; and

17 (C) Any circumstances that have hindered the creation  
18 by the sustainable business corporation of  
19 general or specific public benefits;

20 (2) An assessment of the overall social and environmental  
21 performance of the sustainable business corporation,  
22 prepared in accordance with a third-party standard



1 under section -12 applied consistently with any  
2 application of that standard in prior benefit reports  
3 or accompanied by an explanation of the reasons for  
4 any inconsistent application;

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

8 (4) The compensation paid by the sustainable business  
9 corporation during the year to each director in the  
10 person's capacity as director;

11 (5) The name of each person who owns five per cent or more  
12 of the outstanding shares of the sustainable business  
13 corporation either beneficially to the extent known to  
14 the sustainable business corporation or of record;

15 (6) The statement of the benefit director described in  
16 section -7(c);

17 (7) A statement of any connection to the third-party  
18 standard under section -12, or its directors,  
19 officers, or material owners from the sustainable  
20 business corporation, or its directors, officers, and  
21 material owners, including any financial or governance  
22 relationship that might materially affect the



1           credibility of the objective assessment of the third-  
2           party standard; and

3           (8) A statement that, as a private corporation under the  
4           direction of its board and accountable to its  
5           shareholders and the articles and bylaws of the  
6           sustainable benefit corporation, including those  
7           governing the general or specific public benefit  
8           purpose and the activities of the sustainable benefit  
9           corporation, the sustainable benefit corporation and  
10          its activities are subject to the oversight of the  
11          board of the sustainable benefit corporation and are  
12          not subject to the direct oversight, regulation, or  
13          endorsement of any governmental body.

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

17          (c) A sustainable business corporation shall post its most  
18          recent benefit report on the public portion of its website, if  
19          any, except that the compensation paid to directors and any  
20          financial or proprietary information included in the benefit  
21          report may be omitted from the benefit report as posted. If a  
22          sustainable business corporation does not have a public website,



1 it shall deliver a copy of its most recent benefit report upon  
2 request and without charge to any person who requests a copy.

3 § -12 **Third-party standard.** A third-party standard for  
4 purposes of defining, reporting, and assessing overall corporate  
5 social and environmental performance of a sustainable business  
6 corporation subject to this chapter shall be:

- 7 (1) Comprehensive in its assessment of the effect of the  
8 business and its operations upon the interests listed  
9 in section -6(a);
- 10 (2) Developed by an organization that is independent of  
11 the sustainable business corporation; and
- 12 (3) Transparent because the following information is  
13 publicly available:
- 14 (A) The criteria considered when measuring the  
15 overall social and environmental performance of a  
16 business, as well as the relative weightings of  
17 those criteria;
- 18 (B) The identity of the directors, officers, any  
19 material owners, and the governing body of the  
20 organization that developed and controls  
21 revisions to the standard;





- 1 (C) The process by which revisions to the standard
- 2 are made;
- 3 (D) The process by which changes to the membership of
- 4 the governing body of the organization that
- 5 developed and controls revisions to the standard
- 6 are made; and
- 7 (E) An accounting of the sources of financial support
- 8 for the organization that developed and controls
- 9 revisions to the standard, with sufficient detail
- 10 to disclose any relationships that could
- 11 reasonably be considered to present a potential
- 12 conflict of interest.

13 § -13 Ministerial role of department director. Section  
14 414-16 shall apply to any findings made by a sustainable  
15 business corporation."

16 SECTION 2. This Act shall take effect on July 1, 2050.

17



**Report Title:**

Business Regulation; Sustainable Business Corporations

**Description:**

Establishes an organizational and regulatory framework for sustainable benefits corporations. Effective July 1, 2050.

(SD3)

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

