

HOUSE No. 2768

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for sustainability and transparency standards by Massachusetts business entities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/9/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>

HOUSE No. 2768

By Mr. Puppolo of Springfield, a petition (accompanied by bill, House, No. 2768) of Angelo J. Puppolo, Jr., and Bud L. Williams for legislation to establish a sustainability and transparency standards certification for businesses. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act providing for sustainability and transparency standards by Massachusetts business entities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 156E the following
2 chapter:—

3 CHAPTER 156F

4 SUSTAINABILITY AND TRANSPARENCY STANDARDS OF BUSINESS
5 ENTITIES.

6 Section 1. This chapter shall be known and may be identified and referred to as the
7 “certification of adoption of transparency and sustainability standards act”.

8 Section 2. As used in this chapter the following terms shall, unless the context clearly
9 requires otherwise, have the following meanings:—

10 “Acknowledged”, with respect to any document or instrument required to be executed by
11 an authorized person pursuant to this chapter, the authorized person executing such document or
12 instrument has certified, under penalty of perjury, that the information set forth in such document
13 or instrument is accurate and complete to the best of such authorized person’s actual knowledge
14 after due inquiry.

15 “Assessment measures”, with respect to any entity, the policies, procedures or practices
16 adopted by such entity to adduce objective factual information to assess the entity’s performance
17 in meeting its standards, including any procedures for internal or external verification of such
18 information.

19 “Authorized person”, with respect to any entity, any person or entity who has been duly
20 authorized in accordance with the organizational documents of the entity and the laws of this
21 state (whether statutory, common law or otherwise) under which the entity is incorporated,
22 formed or organized to execute such documents and instruments and make such
23 acknowledgments as are required by this chapter.

24 “Certification of adoption of transparency and sustainability standards”, a certificate,
25 issued by the secretary of state, attesting that a reporting entity has filed with the secretary of
26 state a standards statement pursuant to this chapter. Such certificate shall state on its face that the
27 commonwealth has not reviewed the contents or implementation of the matters referenced in the
28 standards statement, nor verified any reports made by the reporting entity.”

29 “Control”, “controlling”, “controlled by” and “under common control with”, the
30 possession, directly or indirectly, of the power to direct or cause the direction of the management

31 and policies of a person or entity, whether through the ownership of equity or other voting
32 securities, by contract or otherwise.

33 “Entity”, any: (i) corporation, partnership (whether general or limited), limited liability
34 company, or statutory trust validly existing under the applicable laws of the commonwealth, or
35 (ii) any association of the kind commonly known as a joint stock association or joint-stock
36 company, and any unincorporated association, trust or other enterprise having members or
37 having outstanding shares of stock or other evidences of financial or beneficial interest therein,
38 the internal affairs of which are governed by the laws of the commonwealth and which has not
39 otherwise been dissolved (whether voluntarily or by any order or decree of any court of
40 competent jurisdiction) or otherwise terminated.

41 “Governing body”, the board of directors or equivalent governing body, person or entity
42 having the power to manage and direct the business and affairs of the entity, and shall include
43 any duly authorized and empowered committee of the board of directors or equivalent governing
44 body.

45 “Non-reporting entity”, any person or entity (including any entity defined in this chapter)
46 that is not a reporting entity.

47 “Organizational documents”, the certificate of incorporation, bylaws, partnership
48 agreement, limited liability company agreement, articles of association or other agreement,
49 document or instrument containing the provisions by which an entity is formed or organized and
50 by which its internal affairs are governed, in each case as amended, modified, supplemented or
51 restated and in effect as of any date of determination.

52 “Provider”, as to any entity, any third party that is engaged to provide professional
53 consulting services or advice to assist entities or enterprises in measuring, managing or reporting
54 the impact of their business and operations on issues of social and environmental impact.

55 “Report”, a report with respect to a reporting period for a reporting entity containing the
56 following: (i) a summary of the standards and assessment measures in effect during the
57 applicable reporting period, which summary shall include the third party criteria and any other
58 source used to develop the entity’s standards and assessment measures and the process by which
59 they were identified, developed and approved by the entity; (ii) a summary of the actions or
60 activities by which the entity has sought to meet the standards during the applicable reporting
61 period, including engagement with and disclosure to stakeholders, if any; (iii) the most recent
62 available objective and factual information developed pursuant to the assessment measures, if
63 any, with respect to the entity’s performance in meeting its standards during the reporting period,
64 and an assessment by the governing body whether the entity has been successful in meeting the
65 standards. and in the case of any failure to meet such standards, a summary of any additional
66 efforts the governing body has determined the entity will undertake to improve its performance
67 in respect thereof, or its determination not to undertake such additional efforts; and in the case of
68 any failure to meet such standards, a summary of any additional efforts the governing body has
69 determined the entity will undertake to improve its performance in respect thereof, or its
70 determination not to undertake such additional efforts; (iv)(1) the identity of any provider
71 assisting the entity in measuring, managing or reporting the impact of the entity’s business and
72 operations in light of its standards; or (2) a statement that the entity has not engaged the services
73 of any provider for such purposes; (v) a summary of any changes to the standards, assessment
74 measures or reporting period, the process by which such changes were identified, developed and

75 approved by the entity, and the third party criteria used to develop any changes to the standards;
76 (vi) a summary of the actions or activities planned for the next succeeding reporting period with
77 respect to measuring, managing and reporting with respect to the standards if such actions and
78 activities are materially different from those described for the applicable reporting period;
79 provided that, no entity shall be required to include in any report any information that such entity
80 determines in good faith is subject to an attorney-client or other applicable privilege or would
81 result in the disclosure of trade secrets or other competitively sensitive information.

82 “Reporting entity”, an entity that has been issued a certificate of adoption of transparency
83 and sustainability standards and that has not become and continues to be a non-reporting entity
84 pursuant to section 3.

85 “Reporting period”, a period of 1 year, the initial such period to begin not more than 1
86 year following the filing of the standards statement, and subsequent reporting periods to begin on
87 the day following the last date of the prior reporting period, unless a governing body elects to
88 shorten the duration of a reporting period that has not begun in order to change the start date for
89 subsequent reporting periods.

90 “Standards”, with respect to an entity, the principles, guidelines or standards adopted by
91 the entity to assess and report the impacts of its activities on society and the environment, which
92 principles, guidelines or standards shall be based on or derived from third party criteria.

93 “Standards statement”, the filing described in section 3.

94 “Third party”, with respect to any entity, any person or entity other than any person or
95 entity that controls, is controlled by or under common control with such entity, including any
96 governmental or non-governmental organization that provides services, standards, or criteria

97 with respect to measuring, managing or reporting the social and environmental impact of
98 businesses or other enterprises.

99 “Third party criteria”, any principles, guidelines or standards developed and maintained
100 by a third party (including a provider) that are used to assist businesses or other enterprises in
101 measuring, managing or reporting the social and environmental impact of businesses or other
102 entities.

103

104 Section 2. (a) The secretary of state shall issue a certificate of adoption of transparency
105 and sustainability standards to any entity if the secretary of state shall have determined that the
106 following conditions have been satisfied:

107 (i) such entity shall have executed and acknowledged, and delivered to the secretary of
108 state, a standards statement;

109 (ii) such entity shall have paid all fees and costs assessed by the secretary of state; and

110 (iii) such entity remains a reporting entity, and if such entity is registered or formed with
111 the secretary of state, it is in good standing upon the records of the secretary of state.

112 (b) Each reporting entity shall, for all purposes of the laws of this state, be authorized and
113 permitted to disclose, publicly or privately, that it is a reporting entity.

114 Section 3. If the governing body of an entity has adopted resolutions setting forth the
115 entity’s standards and assessment measures, the entity may file a standards statement that:

116 (i) acknowledges that the governing body of the entity has adopted resolutions setting
117 forth the entity’s standards and assessment measures;

118 (ii) identifies an internet link on the principal website maintained by or on behalf of the
119 entity at which the standards and assessment measures, the third party criteria used to develop
120 the standards, a description of the process by which such standards were identified, developed
121 and approved and any report filed or to be filed by the entity are and will be readily available at
122 no cost and without the requirement of the provision of any information, and will remain
123 available for so long as the entity remains a reporting entity (the “website”);

124 (iii) acknowledges that the entity has agreed to acknowledge and deliver to the secretary
125 of state, within 30 days after a request therefor by the secretary of state, its most recent report;
126 and

127 (iv) acknowledges that the entity has committed to:

128 (1) use the assessment measures to assess the entity’s performance in meeting its
129 standards;

130 (2) review and assess its standards and assessment measures from time to time, and make
131 such changes thereto as the governing body in good faith determines are necessary or advisable
132 in furtherance of meeting the entity’s standards; and

133 (3) prepare and make readily available to the public at no cost and without the
134 requirement of the provision of any information (by posting on the website at the identified
135 internet link) a copy of its report within 90 days of the end of each reporting period;

136 (v) sets forth the address within the commonwealth to which the secretary of state shall
137 mail any notices; and

138 (vi) is acknowledged by an authorized person.

139 Section 4. (a) A renewal statement shall be submitted to the secretary of state between
140 October 1st and December 31st of each year. A reporting entity shall become a non-reporting
141 entity on January 1st of the following year if the reporting entity shall have failed to submit the
142 renewal statement to the secretary of state in accordance with this chapter without the need for
143 further action by the secretary of state. A reporting entity's renewal statement shall:

144 (i) acknowledge that any changes since its most recent filing of a renewal statement or
145 restoration statement, or, if no renewal statement or restoration statement has been filed, since
146 the filing of its standards statement, to its address within the commonwealth or standards and
147 assessment measures, and a description of the process by which such changes were identified,
148 developed and approved by the entity and the third party criteria used to develop any changes to
149 the standards are available on the website;

150 (ii) acknowledge that, for the most recent reporting period for which a report was
151 required to be made available on or prior to October 1, if any, a report was made available on the
152 website in accordance with this chapter within the time period provided for in section 3;

153 (iii) provide an internet link to the report for the most recent reporting period, if any, on
154 the website; and

155 (iv) be acknowledged by an authorized person.

156 (b) No standards statement shall be accepted by the secretary of state for an entity if it has
157 become a non-reporting entity pursuant to this section within the prior year.

158 (c) On or before September 1 of each year, the secretary of state shall mail to each
159 reporting entity at its address as specified in section 3, a notice specifying that the renewal
160 statement together with applicable fees shall be due on October 1 of the current year and stating
161 that the reporting entity shall become a non-reporting entity on January 1 of the following year if
162 such renewal statement is not filed.

163 Section 5. (a) If any reporting entity shall become a non-reporting entity for failure to file
164 a renewal statement, it may, at any time during the calendar year following such failure, file a
165 restoration statement. The restoration statement shall:

166 (i) acknowledge that any changes since its most recent filing of a renewal statement or
167 restoration statement, or, if no renewal statement or restoration statement has been filed, since
168 the filing of its standards statement, to its address within the commonwealth or standards and
169 assessment measures, and a description of the process by which such changes were identified,
170 developed and approved by the entity and the third party criteria used to develop any changes to
171 the standards are available on the website;

172 (ii) acknowledge that a report for the all reporting periods ended more than 90 days prior
173 to filing the restoration statement have been made available on the website in accordance with
174 this chapter;

175 (iii) provide an internet link on the website to the report for the most recent reporting
176 period and any other reporting period for which an internet link has not been previously provided
177 in a renewal statement or restoration statement; and

178 (iv) be acknowledged by an authorized person.

179 (b) Any non-reporting entity that files a restoration statement shall thereupon
180 automatically become a reporting entity, without the need for further action by the secretary of
181 state.

182 Section 6. Neither the failure by an entity to satisfy any of its standards, nor the selection
183 of specific assessment measures, nor any other action taken by or on behalf of the entity pursuant
184 to this chapter or any omission to take any action required by this chapter to seek, obtain or
185 maintain status as a reporting entity, shall, in and of itself, create any right of action on the part
186 of any person or entity or otherwise give rise to any claim for breach of any fiduciary or similar
187 duty owed to any person or entity.

188 Section 7. No document required to be filed under this chapter shall be effective until the
189 applicable fee required by this section is paid. The following fees shall be paid to and collected
190 by the secretary of state for the use of the commonwealth:

191 (i) upon the receipt of a standards statement under section 3 or a renewal statement under
192 section 4, a fee in the amount of up to \$200;

193 (ii) for issuing a certificate of adoption and availability of transparency and sustainability
194 standards reporting, a fee in the amount of \$50;

195 (iii) upon receipt of a restoration statement under section 5, a fee in the amount of \$500;

196 (iv) for certifying copies of any instrument on file as provided by this chapter, a fee in the
197 amount of \$50 for each copy certified;

198 (v) the secretary of state may issue photocopies or electronic image copies of instruments
199 on file as provided for by this chapter, as well as instruments, documents and other papers not on
200 file, and for all such photocopies or electronic image copies which are not certified by the
201 secretary of state, a fee of \$10 shall be paid for the first page and \$2.00 for each additional page.
202 Notwithstanding any other provision of law granting access to public records, the secretary of
203 state upon request shall issue only photocopies or electronic image copies of public records in
204 exchange for the fees described in this section, and in no case shall the secretary of state be
205 required to provide copies (or access to copies) of such public records (including without
206 limitation bulk data, digital copies of instruments, documents and other papers, databases or
207 other information) in an electronic medium or in any form other than photocopies or electronic
208 image copies of such public records in exchange, as applicable, for the fees described in this
209 section; and

210 (vi) for issuing any certificate of the secretary of state, including a certificate of non-
211 reporting status, other than a certification of a copy under this section, a fee in the amount of
212 \$50.