

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4790
OFFERED BY MR. HUIZENGA OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Guiding Uniform and Responsible Disclosure Require-
4 ments and Information Limits Act of 2023” or the
5 “GUARDRAIL Act of 2023”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; Table of contents.

TITLE I—MANDATORY MATERIALITY REQUIREMENT

Sec. 101. Limitation on disclosure requirements.

TITLE II—SEC JUSTIFICATION OF NON-MATERIAL DISCLOSURE
MANDATES

Sec. 201. SEC justification of non-material disclosure mandates.

TITLE III—PUBLIC COMPANY ADVISORY COMMITTEE

Sec. 301. Public Company Advisory Committee.

TITLE IV—PROTECTING U.S. BUSINESS SOVEREIGNTY

Sec. 401. Study on detrimental impact of the Directive on Corporate Sustainability Due Diligence and Corporate Sustainability Reporting Directive.

1 **TITLE I—MANDATORY**
2 **MATERIALITY REQUIREMENT**

3 **SEC. 101. LIMITATION ON DISCLOSURE REQUIREMENTS.**

4 (a) SECURITIES ACT OF 1933.—Section 2(b) of the
5 Securities Act of 1933 (15 U.S.C. 77b(b)) is amended—

6 (1) in the subsection heading, by inserting “;
7 LIMITATION ON DISCLOSURE REQUIREMENTS” after
8 “FORMATION”;

9 (2) by striking “Whenever” and inserting the
10 following:

11 “(1) IN GENERAL.—Whenever”; and

12 (3) by adding at the end the following:

13 “(2) LIMITATION.—

14 “(A) IN GENERAL.—Whenever pursuant to
15 this title the Commission is engaged in rule-
16 making regarding disclosure obligations of
17 issuers, the Commission shall expressly provide
18 that an issuer is only required to disclose infor-
19 mation in response to such disclosure obliga-
20 tions to the extent the issuer has determined
21 that such information is material with respect
22 to a voting or investment decision regarding the
23 securities of such issuer.

24 “(B) APPLICABILITY.—Subparagraph (A)
25 shall not apply with respect to the removal of

1 any disclosure requirement with respect to an
2 issuer.

3 “(C) RULE OF CONSTRUCTION.—For the
4 purposes of this paragraph, information is con-
5 sidered material with respect to a voting or in-
6 vestment decision regarding the securities of an
7 issuer if there is a substantial likelihood that a
8 reasonable investor would view the failure to
9 disclose that information as having significantly
10 altered the total mix of information made avail-
11 able to the investor.”.

12 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
13 3(f) of the Securities Exchange Act of 1934 (15 U.S.C.
14 78c(f)) is amended—

15 (1) in the subsection heading, by inserting “;
16 LIMITATION ON DISCLOSURE REQUIREMENTS” after
17 “FORMATION”;

18 (2) by striking “Whenever” and inserting the
19 following:

20 “(1) IN GENERAL.—Whenever”; and

21 (3) by adding at the end the following:

22 “(2) LIMITATION.—

23 “(A) IN GENERAL.—Whenever pursuant to
24 this title the Commission is engaged in rule-
25 making regarding disclosure obligations of

1 issuers, the Commission shall expressly provide
2 that an issuer is only required to disclose infor-
3 mation in response to such disclosure obliga-
4 tions to the extent the issuer has determined
5 that such information is material with respect
6 to a voting or investment decision regarding the
7 securities of such issuer.

8 “(B) APPLICABILITY.—Subparagraph (A)
9 shall not apply with respect to the removal of
10 any disclosure requirement with respect to an
11 issuer.

12 “(C) RULE OF CONSTRUCTION.—For the
13 purposes of this paragraph, information is con-
14 sidered material with respect to a voting or in-
15 vestment decision regarding the securities of an
16 issuer if there is a substantial likelihood that a
17 reasonable investor would view the failure to
18 disclose that information as having significantly
19 altered the total mix of information made avail-
20 able to the investor.”.

1 **TITLE II—SEC JUSTIFICATION**
2 **OF NON-MATERIAL DISCLO-**
3 **SURE MANDATES**

4 **SEC. 201. SEC JUSTIFICATION OF NON-MATERIAL DISCLO-**
5 **SURE MANDATES.**

6 Section 23 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78w) is amended by adding at the end the fol-
8 lowing:

9 “(e) NON-MATERIAL DISCLOSURE MANDATES.—

10 “(1) DISCLOSURE.—The Commission shall
11 maintain a list on the website of the Commission
12 that contains—

13 “(A) each mandate under the Federal se-
14 curities laws and regulations that requires the
15 disclosure of non-material information; and

16 “(B) for each such disclosure mandate, an
17 explanation of why the mandate is required.

18 “(2) STUDY AND REPORT.—The Commission
19 shall, every 5 years, issue a report to the Congress
20 justifying each disclosure contained on the list re-
21 quired under paragraph (1).

22 “(3) NO PRIVATE LIABILITY FOR FAILING TO
23 MAKE A NON-MATERIAL DISCLOSURE.—A person
24 who fails to disclose non-material information re-
25 quired to be disclosed under the Federal securities

1 laws or regulations shall not be liable for such fail-
2 ure in any private action.”.

3 **TITLE III—PUBLIC COMPANY**
4 **ADVISORY COMMITTEE**

5 **SEC. 301. PUBLIC COMPANY ADVISORY COMMITTEE.**

6 The Securities Exchange Act of 1934 is amended by
7 inserting after section 40 (15 U.S.C. 78qq) the following:

8 **“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.**

9 “(a) ESTABLISHMENT AND PURPOSE.—

10 “(1) ESTABLISHMENT.—There is established
11 within the Commission the Public Company Advi-
12 sory Committee (referred to in this section as the
13 ‘Committee’).

14 “(2) PURPOSE.—The Committee shall—

15 “(A) provide the Commission with advice
16 on its rules, regulations, and policies with re-
17 gard to its mission of protecting investors,
18 maintaining fair, orderly, and efficient markets,
19 and facilitating capital formation, as they relate
20 to the following:

21 “(i) existing and emerging regulatory
22 priorities of the Commission;

23 “(ii) issues relating to the public re-
24 porting and corporate governance of public
25 companies;

1 “(iii) issues relating to the proxy proc-
2 ess for shareholder meetings held by public
3 companies;

4 “(iv) issues relating to trading in the
5 securities of public companies; and

6 “(v) issues relating to capital forma-
7 tion; and

8 “(B) submit to the Commission such find-
9 ings and recommendations as the Committee
10 determines are appropriate, including rec-
11 ommendations for proposed regulatory and leg-
12 islative changes.

13 “(b) MEMBERSHIP.—

14 “(1) IN GENERAL.—The membership of the
15 Committee shall be not fewer than 10, and not more
16 than 20, members appointed by the Commission
17 from among individuals who—

18 “(A) are officers, directors, or senior offi-
19 cials of public companies registered with the
20 Commission under the Securities Act or 1933
21 and this Act, except for those public companies
22 that own asset management, fixed income, in-
23 vestment advisory, broker-dealer, or proxy serv-
24 ices businesses;

1 “(B) are executives or other individuals
2 with senior managerial responsibility in busi-
3 ness, professional, trade, and industry associa-
4 tions that represent the interests of such public
5 companies; or

6 “(C) are professional advisers and service
7 providers to such public companies (including
8 attorneys, accountants, investment bankers, and
9 financial advisers).

10 “(2) QUALIFICATIONS.— At least 50 percent of
11 the Committee membership shall be drawn from in-
12 dividuals who would qualify for membership under
13 paragraph (1)(A).

14 “(3) TERM.—

15 “(A) IN GENERAL.—Each member of the
16 Committee appointed under paragraph (1) shall
17 serve for a term of 4 years.

18 “(B) VACANCIES.—Vacancies among the
19 members, whether caused by the resignation,
20 death, removal, expiration of a term, or other-
21 wise, will be filled consistent with the Commis-
22 sion’s procedures then in effect.

23 “(C) STAGGERED TERMS.—The members
24 of the Committee shall serve staggered terms,

1 with one-third of the initial members of the
2 Committee each serving for 1, 2, or 3 years.

3 “(4) MEMBERS NOT ON OTHER ADVISORY COM-
4 MITTEES.—Public companies and other organiza-
5 tions that are currently represented on any other
6 Commission Advisory Committee are not eligible to
7 have representatives also serve on the Public Com-
8 pany Advisory Committee.

9 “(5) MEMBERS NOT COMMISSION EMPLOY-
10 EES.— Members appointed under paragraph (1)
11 shall not be considered to be employees or agents of
12 the Commission solely because of membership on the
13 Committee.

14 “(c) CHAIR; VICE CHAIR; SECRETARY; ASSISTANT
15 SECRETARY.—

16 “(1) IN GENERAL.—The members of the Com-
17 mittee shall elect, from among the members of the
18 Committee—

19 “(A) a Chair;

20 “(B) a Vice Chair;

21 “(C) a Secretary; and

22 “(D) an Assistant Secretary.

23 “(2) TERM.—Each member elected under para-
24 graph (1) shall serve for a term of two years in the

1 capacity the member was elected under paragraph
2 (1).

3 “(3) SUBCOMMITTEES.—The Chair may create
4 subcommittees that hold public or non-public meet-
5 ings and provide recommendations to the full Com-
6 mittee.

7 “(d) MEETINGS.—

8 “(1) FREQUENCY OF MEETINGS.—The Com-
9 mittee shall meet—

10 “(A) not less frequently than twice annu-
11 ally, at the call of the chair of the Committee;
12 and

13 “(B) from time to time, at the call of the
14 Commission.

15 “(2) NOTICE.—The Chair of the Committee
16 shall give the members of the Committee written no-
17 tice of each meeting, not later than two weeks before
18 the date of the meeting.

19 “(e) COMPENSATION AND TRAVEL EXPENSES.—
20 Each member of the Committee who is not a full-time em-
21 ployee of the United States shall—

22 “(1) be entitled to receive compensation at a
23 rate not to exceed the daily equivalent of the annual
24 rate of basic pay in effect for a position at level V
25 of the Executive Schedule under section 5316 of title

1 5, United States Code, for each day during which
2 the members is engaged in the actual performance
3 of the duties of the Committee; and

4 “(2) while away from the home or regular place
5 of business of the member in the performance of
6 services for the Committee, be allowed travel ex-
7 penses, including per diem in lieu of subsistence, in
8 the same manner as persons employed intermittently
9 in the Government service are allowed expenses
10 under section 5703(b) of title 5, United States Code.

11 “(f) STAFF.—The Commission shall make available
12 to the Committee such staff as the chairman of the Com-
13 mittee determines are necessary to carry out this section.

14 “(g) REVIEW BY COMMISSION.—The Commission
15 shall—

16 “(1) review the findings and recommendations
17 of the Committee; and

18 “(2) each time the Committee submits a finding
19 or recommendation to the Commission, promptly
20 issue a public statement—

21 “(A) assessing the finding or recommenda-
22 tion of the Committee; and

23 “(B) disclosing the action, if any, the Com-
24 mission intends to take with respect to the find-
25 ing or recommendation.

1 “(h) COMMITTEE FINDINGS.—Nothing in this section
2 shall require the Commission to agree to or act upon any
3 finding or recommendation of the Committee.

4 “(i) NONAPPLICABILITY OF FACA.—Chapter 10 of
5 part I of title 5, United States Code, shall not apply to
6 the Committee and its activities.”.

7 **TITLE IV—PROTECTING U.S.**
8 **BUSINESS SOVEREIGNTY**

9 **SEC. 401. STUDY ON DETRIMENTAL IMPACT OF THE DIREC-**
10 **TIVE ON CORPORATE SUSTAINABILITY DUE**
11 **DILIGENCE AND CORPORATE SUSTAIN-**
12 **ABILITY REPORTING DIRECTIVE.**

13 (a) STUDY.—The Securities and Exchange Commis-
14 sion shall conduct a study to examine and evaluate—

15 (1) the detrimental impact and potential detri-
16 mental impact of each of the Directives on—

17 (A) United States companies, consumers,
18 and investors; and

19 (B) the economy of the United States;

20 (2) the extent to which each of the Directives
21 aligns with international conventions and declara-
22 tions on human rights and environmental obliga-
23 tions; and

24 (3) the legal basis for the extraterritorial reach
25 of each of the Directives.

1 (b) REPORT.—Not later than 1 year after the date
2 of the enactment of this Act, the Securities and Exchange
3 Commission shall submit to the Committee on Banking,
4 Housing, and Urban Affairs of the Senate, the Committee
5 on Financial Services of the House of Representatives, the
6 Secretary of State, the Secretary of Commerce, and the
7 United States Trade Representative a report that in-
8 cludes—

9 (1) the results of the study conducted under
10 this section; and

11 (2) recommendations for policymakers and rel-
12 evant stakeholders on potential mitigating measures,
13 alternative approaches, or modifications to each of
14 the Directives that would address any concerns iden-
15 tified in the study.

16 (c) ACCESS TO INFORMATION.—The Securities and
17 Exchange Commission may request from private entities
18 such relevant data and information as the Securities and
19 Exchange Commission determines necessary to carry out
20 the study required under this section and such private en-
21 tities shall provide such requested data and information
22 to the Securities and Exchange Commission.

23 (d) DIRECTIVES DEFINED.—In this section the term
24 “Directives” means—

1 (1) the proposed directive entitled “Corporate
2 Sustainability Due Diligence” adopted by the Euro-
3 pean Commission on February 23, 2022; and

4 (2) the Corporate Sustainability Reporting Di-
5 rective of the European Commission effective Janu-
6 ary 5, 2023.

