

JAN 25 2012

S.B. NO. 3024

A BILL FOR AN ACT

RELATING TO CORPORATIONS.

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

1 SECTION 1. Section 414-313, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§414-313 Action plan.** (a) After adopting a plan of
4 merger or share exchange, the board of directors of each
5 corporation party to the merger, and the board of directors of
6 the corporation whose shares will be acquired in the share
7 exchange, shall submit the plan of merger (except as provided in
8 subsection [~~(h)~~] (i)) or share exchange for approval by its
9 shareholders.

10 (b) For a plan of merger or share exchange to be approved:

11 (1) The board of directors shall recommend the plan of
12 merger or share exchange to the shareholders, unless
13 the board of directors determines that because of
14 conflict of interest or other special circumstances it
15 should make no recommendation and communicates the
16 basis for its determination to the shareholders with
17 the plan; and



(2) The shareholders entitled to vote shall approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 414-125. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) With respect to corporations incorporated on or after July 1, 1987, or any publicly traded corporation, at such a meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision that, if contained in a proposed amendment to articles of incorporation, would entitle that class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.



1 (f) With respect to corporations incorporated before July
2 1, 1987, but excluding any publicly traded corporation, at such
3 meeting, a vote of the shareholders shall be taken on the
4 proposed plan. The plan shall be approved upon receiving the
5 affirmative vote of the holders of three-fourths of all the
6 issued and outstanding shares of stock having voting power even
7 though their right to vote is otherwise restricted or denied by
8 the articles, bylaws, or resolutions of any [~~such~~] corporation.
9 The articles of incorporation may be amended by the vote set
10 forth in the preceding sentence to provide for a lesser
11 proportion of shares, or of any class or series thereof, than is
12 provided in the preceding sentence, in which case the articles
13 of incorporation shall control; provided that the lesser
14 proportion shall be not less than the proportion set forth in
15 subsection (e).

16 (g) As used in subsections (e) and (f), "publicly traded
17 corporation" means any corporation listed on a national
18 securities exchange.

19 [~~(g)~~] (h) Separate voting by voting groups is required:

20 (1) On a plan of merger if the plan contains a provision
21 that, if contained in a proposed amendment to articles
22 of incorporation, would require action by one or more



1 separate voting groups on the proposed amendment under
2 section 414-284; or

- 3 (2) On a plan of share exchange by each class or series of
4 shares included in the exchange, with each class or
5 series constituting a separate voting group.

6 [~~h~~] (i) Action by the shareholders of the surviving
7 corporation on a plan of merger is not required if:

- 8 (1) The articles of incorporation of the surviving
9 corporation will not differ (except for amendments
10 enumerated in section 414-282) from the articles of
11 incorporation before the merger;

- 12 (2) Each shareholder of the surviving corporation whose
13 shares were outstanding immediately before the
14 effective date of the merger will hold the same number
15 of shares, with identical designations, preferences,
16 limitations, and relative rights, immediately after
17 the merger;

- 18 (3) The number of voting shares outstanding immediately
19 after the merger, plus the number of voting shares
20 issuable as a result of the merger (either by the
21 conversion of securities issued pursuant to the merger
22 or the exercise of rights and warrants issued pursuant



1 to the merger), will not exceed by more than twenty
2 per cent the total number of voting shares of the
3 surviving corporation outstanding immediately before
4 the merger; and

5 (4) The number of participating shares outstanding
6 immediately after the merger, plus the number of
7 participating shares issuable as a result of the
8 merger (either by the conversion of securities issued
9 pursuant to the merger or exercise of rights and
10 warrants issued pursuant to the merger), will not
11 exceed by more than twenty per cent the total number
12 of participating shares outstanding immediately before
13 the merger.

14 [~~(i)~~] (j) As used in subsection [~~(h)~~] (i):

15 "Participating shares" means shares that entitle their
16 holders to participate without limitations in distributions.

17 "Voting shares" means shares that entitle their holders to
18 vote unconditionally in elections of directors.

19 [~~(j)~~] (k) After a merger or share exchange is authorized,
20 and at any time before articles of merger or share exchange are
21 filed, the planned merger or share exchange may be abandoned
22 (subject to any contractual rights), without further shareholder



1 action, in accordance with the procedure set forth in the plan
2 of merger or share exchange or, if none is set forth, in the
3 manner determined by the board of directors. A plan of merger
4 may provide that at any time prior to the time that the plan
5 becomes effective, the plan may be terminated by the board of
6 directors of any constituent corporation notwithstanding
7 approval of the plan by the stockholders of all or any of the
8 constituent corporations. If the plan of merger is terminated
9 after the filing of the articles but before the plan has become
10 effective, a certificate of termination shall be filed with the
11 department director. A plan of merger may allow the boards of
12 directors of the constituent corporations to amend the plan at
13 any time prior to the time that the plan becomes effective;
14 provided that an amendment made subsequent to the adoption of
15 the plan by the stockholders of any constituent corporation
16 shall not:

- 17 (1) Alter or change the amount or kind of shares,
18 securities, cash, property, or rights or any of them
19 to be received in exchange for or on conversion of all
20 or any of the shares of any class or series thereof of
21 the constituent corporation;



(2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or

(3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

~~[(k)]~~ (1) A merger or share exchange takes effect on the filing date of the articles of merger or share exchange, or on the date subsequent to the filing as set forth in the articles of merger or share exchange; provided that the effective date shall not be more than thirty days from the filing date."

SECTION 2. Section 414-318, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Mergers under this section shall also be subject to sections ~~[414-313(k)]~~ 414-313(1) and 414-315(a) and (b)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Ag. 12



S.B. NO. 3024

Report Title:
Corporations

Description:

Extends applicability of an action plan of a merger or share exchange to publicly traded corporations, in certain circumstances.

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