

111TH CONGRESS
2^D SESSION

H. R. 4790

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2010

Mr. CAPUANO (for himself, Mr. ACKERMAN, Mr. FILNER, Mr. GRAYSON, Mr. HIMES, Mr. HOLT, Mrs. MALONEY, Mr. PALLONE, Mr. PETERS, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shareholder Protection
5 Act of 2010”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Corporations make significant political con-
4 tributions and expenditures that directly or indi-
5 rectly influence the election of candidates and sup-
6 port or oppose political causes. Decisions to use cor-
7 porate funds for political contributions and expendi-
8 tures are usually made by corporate boards and ex-
9 cutives, rather than shareholders.

10 (2) Corporations, acting through their boards
11 and executives, are obligated to conduct business for
12 the best interests of their owners, the shareholders.

13 (3) Historically, shareholders have not had a
14 way to know, or to influence, the political activities
15 of corporations they own. Shareholders and the pub-
16 lic have a right to know how corporations are spend-
17 ing their funds to make political contributions or ex-
18 penditures benefitting candidates, political parties,
19 and political causes.

20 (4) Corporations should be accountable to their
21 shareholders in making political contributions or ex-
22 penditures affecting Federal governance and public
23 policy. Requiring the express approval of a corpora-
24 tion's shareholders prior to making political con-
25 tributions or expenditures will establish necessary
26 accountability.

1 **SEC. 2. SHAREHOLDER APPROVAL OF CORPORATE POLIT-**
2 **ICAL ACTIVITY.**

3 The Securities Exchange Act of 1934 is amended by
4 inserting after section 14 the following new section:

5 **“SEC. 14A. SHAREHOLDER APPROVAL OF CERTAIN POLIT-**
6 **ICAL EXPENDITURES.**

7 “(a) SHAREHOLDER AUTHORIZATION FOR POLITICAL
8 EXPENDITURES.—Any solicitation of any proxy or consent
9 or authorization in respect of any security of an issuer
10 shall—

11 “(1) contain a description of the specific nature
12 of any expenditures for political activities proposed
13 to be made by the issuer for the forthcoming fiscal
14 year, to the extent the specific nature is known to
15 the issuer and including the total amount of such
16 proposed expenditures; and

17 “(2) provide for a separate shareholder vote to
18 authorize such proposed expenditures in such
19 amount.

20 “(b) RESTRICTION ON EXPENDITURES.—No issuer
21 shall make any expenditure for political activities in any
22 fiscal year unless—

23 “(1) such expenditure is of the nature of those
24 proposed by the issuer pursuant to subsection (a)(1);
25 and

1 “(2) authorization for such expenditures has
2 been granted by votes representing a majority of
3 outstanding shares pursuant to subsection (a)(2).

4 “(c) FIDUCIARY DUTY; LIABILITY.—A violation of
5 subsection (b) shall be considered a breach of a fiduciary
6 duty of the officers and directors who authorized such an
7 expenditure. The officers and directors who authorize such
8 an expenditure without first obtaining such authorization
9 of shareholders shall be jointly and severally liable in any
10 action brought in any court of competent jurisdiction to
11 any shareholder or class of shareholders for the amount
12 of such expenditure.

13 “(d) DEFINITION OF EXPENDITURE FOR POLITICAL
14 ACTIVITIES.—As used in this section:

15 “(1) The term ‘expenditure for political activi-
16 ties’ means—

17 “(A) an independent expenditure, as such
18 term is defined in section 301(17) of the Fed-
19 eral Election Campaign Act of 1971 (2 U.S.C.
20 431(17));

21 “(B) contributions to any political party,
22 committee, or electioneering communication, as
23 such term is defined in section 304(f)(3)(A) of
24 the Federal Election Campaign Act of 1971 (2
25 U.S.C. 434(f)(3)(A)); and

1 “(C) dues or other payments to trade asso-
2 ciations or other tax exempt organizations that
3 are, or could reasonably be anticipated to be,
4 used for the purposes described in subpara-
5 graph (A).

6 “(2) Such term shall not include—

7 “(A) direct lobbying efforts through reg-
8 istered lobbyists employed or hired by the
9 issuer;

10 “(B) communications by an issuer to its
11 shareholders and executive or administrative
12 personnel and their families; or

13 “(C) the establishment, administration,
14 and solicitation of contributions to a separate
15 segregated fund to be utilized for political pur-
16 poses by a corporation.”.

17 **SEC. 3. DISCLOSURE OF PROXY VOTES BY INSTITUTIONAL**
18 **INVESTORS.**

19 Section 13(f) of the Securities Exchange Act of 1934
20 (15 U.S.C. 78m(f)) is amended by redesignating para-
21 graph (5) as paragraph (7) and inserting after paragraph
22 (4) the following:

23 “(5) DISCLOSURE OF VOTES.—Each institu-
24 tional investment manager subject to this subsection
25 shall include in the reports required under this sub-

1 section, at least annually, a statement of how it
2 voted on any shareholder vote provided for under
3 section 14A(a) that occurred since the manager’s
4 last such statement, unless such vote is otherwise re-
5 quired to be reported publicly by rule or regulation
6 of the Commission. Not later than 6 months after
7 the date of enactment of this paragraph, the Com-
8 mission shall issue rules and regulations to imple-
9 ment this paragraph.

10 “(6) SAFE HARBOR FOR CERTAIN DIVESTMENT
11 DECISIONS.—Notwithstanding any other provision of
12 Federal or State law, no person may bring any civil,
13 criminal, or administrative action against any insti-
14 tutional investment manager, or any employee, offi-
15 cer, or director thereof, based solely upon a decision
16 of the investment manager to divest from, or not to
17 invest in, securities of an issuer because of expendi-
18 tures for political activities made by that issuer.”.

19 **SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDI-**
20 **TURES FOR POLITICAL ACTIVITIES.**

21 (a) **REQUIRED VOTE.**—The Securities Exchange Act
22 of 1934 is amended by adding after section 16 the fol-
23 lowing new section:

1 **“SEC. 16A. REQUIRED BOARD VOTE ON CORPORATE EX-**
2 **PENDITURES FOR POLITICAL ACTIVITIES.**

3 “(a) LISTING ON EXCHANGES.—Effective not later
4 than 180 days after the date of enactment of this section,
5 the Commission shall, by rule, direct the national securi-
6 ties exchanges and national securities associations to pro-
7 hibit the listing of any class of equity security of an issuer
8 that is not in compliance with the requirements of any
9 portion of subsection (b).

10 “(b) REQUIREMENT FOR VOTE IN CORPORATE BY-
11 LAWS.—The corporate bylaws of an issuer shall expressly
12 provide for a vote of the directors of the issuer on any
13 individual expenditure for political activities (as such term
14 is defined in section 14A(d)(1)) in excess of \$50,000. An
15 issuer shall make publicly available the individual votes of
16 the directors required by the preceding sentence within 48
17 hours of the vote, including in a clear and conspicuous
18 location on the Internet website of the issuer.”.

19 (b) NO EFFECT ON DETERMINATION OF COORDINA-
20 TION WITH CANDIDATES OR CAMPAIGNS.—For purposes
21 of determining whether an expenditure for political activi-
22 ties by an issuer under the Securities Exchange Act of
23 1934 is an independent expenditure under the Federal
24 Election Campaign Act of 1971, the expenditure may not
25 be treated as made in concert or cooperation with, or at
26 the request or suggestion of, any candidate or committee

1 solely on the grounds that any director of the issuer voted
2 on the expenditure as required under section 16A(b) of
3 the Securities Exchange Act of 1934 (as added by sub-
4 section (a)).

5 **SEC. 5. REPORTING REQUIREMENTS.**

6 Section 13 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78m) is amended by adding at the end the
8 following:

9 “(m) REPORTING REQUIREMENTS RELATING TO
10 CERTAIN POLITICAL EXPENDITURES.—

11 “(1) IN GENERAL.—Not later than 180 days
12 after the date of enactment of this subsection, the
13 Commission shall modify its reporting rules under
14 this section to require issuers to disclose quarterly
15 any expenditure for political activities (as such term
16 is defined in section 14A(c)(1)) made during the
17 preceding quarter and the individual votes by board
18 members authorizing such expenditures. Such a re-
19 port shall be filed with the Commission and provided
20 to shareholders and shall include—

21 “(A) the date of the expenditures;

22 “(B) the amount of the expenditures;

23 “(C) the name or identity of the candidate,
24 political party, committee, or electioneering
25 communication, as such term is defined in sec-

1 tion 304(f)(3)(A) of the Federal Election Cam-
2 paign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and

3 “(D) if the expenditures were made for or
4 against a candidate, including an electioneering
5 communication, the office sought by the can-
6 didate and the political party affiliation of the
7 candidate.

8 “(2) PUBLIC AVAILABILITY.—The Commission
9 shall ensure that, to the greatest extent practicable,
10 the quarterly reports required by this subsection are
11 publicly available through the Commission website in
12 a manner that is searchable, sortable, and
13 downloadable, consistent with the requirements of
14 section 24.”.

15 **SEC. 5. REPORT.**

16 The Comptroller General of the United States shall
17 annually conduct a study on the compliance with the re-
18 quirements of this Act by public corporations and their
19 management, as well as the effectiveness of the Securities
20 and Exchange Commission in meeting the reporting and
21 disclosure requirements of this Act. Not later than April
22 1 of each year, the Comptroller General shall submit to
23 Congress a report of such study.

1 **SEC. 6. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such provision or amend-
4 ment to any person or circumstance is held to be unconsti-
5 tutional, the remainder of this Act, the amendments made
6 by this Act, and the application of such provision or
7 amendment to any person or circumstance shall not be af-
8 fected thereby.

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