

112TH CONGRESS
1ST SESSION

H. R. 2517

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

JULY 13, 2011

Mr. CAPUANO (for himself, Mr. ACKERMAN, Mr. BLUMENAUER, Mr. BUTTERFIELD, Mr. COHEN, Mr. CONYERS, Mr. DEFazio, Ms. DELAURO, Ms. EDWARDS, Mr. ELLISON, Ms. ESHOO, Mr. FILNER, Mr. GRIJALVA, Mr. HEINRICH, Mr. HINCHEY, Ms. HIRONO, Mr. JACKSON of Illinois, Ms. KAPTUR, Mr. LARSON of Connecticut, Ms. LEE of California, Mr. LYNCH, Mrs. MALONEY, Mr. McDERMOTT, Mr. MCGOVERN, Ms. MOORE, Mr. MORAN, Ms. NORTON, Mr. OLVER, Mr. PALLONE, Mr. PASCRELL, Ms. PINGREE of Maine, Mr. POLIS, Mr. RANGEL, Mr. ROTHMAN of New Jersey, Ms. ROYBAL-ALLARD, Mr. SARBANES, Ms. SLAUGHTER, Mr. STARK, Mr. TONKO, Ms. WATERS, Mr. WELCH, Ms. WOOLSEY, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Financial Services

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Shareholder Protection
3 Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

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

23 (4) Corporations should be accountable to their
24 shareholders in making political contributions or ex-
25 penditures affecting Federal governance and public
26 policy. Requiring the express approval of a corpora-

1 tion’s shareholders prior to making political con-
2 tributions or expenditures will establish necessary
3 accountability.

4 **SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLIT-**
5 **ICAL ACTIVITY.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a
7 et seq.) is amended by inserting after section 14B (15
8 U.S.C. 78n-2) the following:

9 **“SEC. 14C. SHAREHOLDER APPROVAL OF CERTAIN POLIT-**
10 **ICAL EXPENDITURES AND DISCLOSURE OF**
11 **VOTES OF INSTITUTIONAL INVESTORS.**

12 “(a) DEFINITIONS.—In this section—

13 “(1) the term ‘expenditure for political activi-
14 ties’—

15 “(A) means—

16 “(i) an independent expenditure, as
17 such term is defined in section 301(17) of
18 the Federal Election Campaign Act of
19 1971 (2 U.S.C. 431(17));

20 “(ii) an electioneering communication,
21 as such term is defined in section
22 304(f)(3) of such Act (2 U.S.C. 434(f)(3))
23 and any other public communication (as
24 such term is defined in section 301(22) of
25 such Act (2 U.S.C. 431(22))) that would

1 be an electioneering communication if it
2 were a broadcast, cable, or satellite com-
3 munication; or

4 “(iii) dues or other payments to trade
5 associations or organizations described in
6 section 501(c) of the Internal Revenue
7 Code of 1986 and exempt from tax under
8 section 501(a) of such Code that are, or
9 could reasonably be anticipated to be, used
10 or transferred to another association or or-
11 ganization for the purposes described in
12 clauses (i) or (ii); and

13 “(B) does not include—

14 “(i) direct lobbying efforts through
15 registered lobbyists employed or hired by
16 the issuer;

17 “(ii) communications by an issuer to
18 its shareholders and executive or adminis-
19 trative personnel and their families; or

20 “(iii) the establishment and adminis-
21 tration of contributions to a separate seg-
22 regated fund to be utilized for political
23 purposes by a corporation; and

24 “(2) the term ‘issuer’ does not include an in-
25 vestment company registered under section 8 of the

1 Investment Company Act of 1940 (15 U.S.C. 80a–
2 8).

3 “(b) SHAREHOLDER AUTHORIZATION FOR POLIT-
4 ICAL EXPENDITURES.—Each solicitation of proxy, con-
5 sent, or authorization by an issuer with a class of equity
6 securities registered under section 12 of this title shall—

7 “(1) contain—

8 “(A) a description of the specific nature of
9 any expenditure for political activities proposed
10 to be made by the issuer for the forthcoming
11 fiscal year that has not been authorized by a
12 vote of the shareholders of the issuer, to the ex-
13 tent the specific nature is known to the issuer;
14 and

15 “(B) the total amount of expenditures for
16 political activities proposed to be made by the
17 issuer for the forthcoming fiscal year; and

18 “(2) provide for a separate vote of the share-
19 holders of the issuer to authorize such expenditures
20 for political activities in the total amount described
21 in paragraph (1).

22 “(c) VOTE REQUIRED TO MAKE EXPENDITURES.—
23 No issuer shall make an expenditure for political activities
24 in any fiscal year unless such expenditure—

1 “(1) is of the nature of those proposed by the
2 issuer in subsection (b)(1); and

3 “(2) has been authorized by a vote of the ma-
4 jority of the outstanding shares of the issuer in ac-
5 cordance with subsection (b)(2).

6 “(d) FIDUCIARY DUTY; LIABILITY.—

7 “(1) FIDUCIARY DUTY.—A violation of sub-
8 section (c) shall be considered a breach of a fidu-
9 ciary duty of the officers and directors who author-
10 ized the expenditure for political activities.

11 “(2) LIABILITY.—An officer or director of an
12 issuer who authorizes an expenditure for political ac-
13 tivities in violation of subsection (c) shall be jointly
14 and severally liable in any action brought in a court
15 of competent jurisdiction to any person or class of
16 persons who held shares at the time the expenditure
17 for political activities was made for an amount equal
18 to 3 times the amount of the expenditure for polit-
19 ical activities.

20 “(e) DISCLOSURE OF VOTES.—

21 “(1) DISCLOSURE REQUIRED.—Each institu-
22 tional investment manager subject to section 13(f)
23 shall disclose not less frequently than annually how
24 it voted on any shareholder vote under subsection

1 (a), unless the vote is otherwise required by rule of
2 the Commission to be reported publicly.

3 “(2) RULES.—Not later than 6 months after
4 the date of enactment of this section, the Commis-
5 sion shall issue rules to carry out this subsection
6 that require that a disclosure required under para-
7 graph (1)—

8 “(A) be made not later than 30 days after
9 a vote described in paragraph (1); and

10 “(B) be made available to the public
11 through the EDGAR system as soon as prac-
12 ticable.

13 “(f) SAFE HARBOR FOR CERTAIN DIVESTMENT DE-
14 CISIONS.—Notwithstanding any other provision of Federal
15 or State law, if an institutional investment manager makes
16 the disclosures required under subsection (e), no person
17 may bring any civil, criminal, or administrative action
18 against the institutional investment manager, or any em-
19 ployee, officer, or director thereof, based solely upon a de-
20 cision of the investment manager to divest from, or not
21 to invest in, securities of an issuer due to an expenditure
22 for political activities made by the issuer.”.

1 **SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDI-**
2 **TURES FOR POLITICAL ACTIVITIES.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78
4 et seq.) is amended by adding after section 16 (15 U.S.C.
5 78p) the following:

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

8 “(a) DEFINITIONS.—In this section, the terms ‘ex-
9 penditure for political activities’ and ‘issuer’ have the same
10 meaning as in section 14C.

11 “(b) LISTING ON EXCHANGES.—Not later than 180
12 days after the date of enactment of this section, the Com-
13 mission shall, by rule, direct the national securities ex-
14 changes and national securities associations to prohibit the
15 listing of any class of equity security of an issuer that
16 is not in compliance with the requirements of any portion
17 of subsection (c).

18 “(c) REQUIREMENT FOR VOTE IN CORPORATE BY-
19 LAWS.—

20 “(1) VOTE REQUIRED.—The bylaws of an
21 issuer shall expressly provide for a vote of the board
22 of directors of the issuer on—

23 “(A) any expenditure for political activities
24 in excess of \$50,000; and

25 “(B) any expenditure for political activities
26 that would result in the total amount spent by

1 the issuer for a particular election (as such
2 term is defined in section 301(1) of the Federal
3 Election Campaign Act of 1971 (2 U.S.C.
4 431(1))) in excess of \$50,000.

5 “(2) PUBLIC AVAILABILITY.—An issuer shall
6 make the votes of each member of the board of di-
7 rectors for a vote required under paragraph (1) pub-
8 licly available not later than 48 hours after the vote,
9 including in a clear and conspicuous location on the
10 Web site of the issuer.

11 “(d) NO EFFECT ON DETERMINATION OF COORDINA-
12 TION WITH CANDIDATES OR CAMPAIGNS.—For purposes
13 of the Federal Election Campaign Act of 1971, an expend-
14 iture for political activities by an issuer shall not be treat-
15 ed as made in concert or cooperation with, or at the re-
16 quest or suggestion of, any candidate or committee solely
17 because a member of the board of directors of the issuer
18 voted on the expenditure as required under this section.”.

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

20 Section 13 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78m) is amended by adding at the end the
22 following:

23 “(r) REPORTING REQUIREMENTS RELATING TO CER-
24 TAIN POLITICAL EXPENDITURES.—

1 “(1) DEFINITIONS.—In this subsection, the
2 terms ‘expenditure for political activities’ and
3 ‘issuer’ have the same meaning as in section 14C.

4 “(2) QUARTERLY REPORTS.—

5 “(A) REPORTS REQUIRED.—Not later than
6 180 days after the date of enactment of this
7 subsection, the Commission shall amend the re-
8 porting rules under this section to require each
9 issuer with a class of equity securities reg-
10 istered under section 12 of this title to submit
11 to the Commission and the shareholders of the
12 issuer a quarterly report containing—

13 “(i) a description of any expenditure
14 for political activities made during the pre-
15 ceding quarter;

16 “(ii) the date of each expenditure for
17 political activities;

18 “(iii) the amount of each expenditure
19 for political activities;

20 “(iv) the votes of each member of the
21 board of directors authorizing the expendi-
22 ture for political activity, as required under
23 section 16A(c);

24 “(v) if the expenditure for political ac-
25 tivities was made in support of or opposed

1 to a candidate, the name of the candidate
2 and the office sought by, and the political
3 party affiliation of, the candidate; and

4 “(vi) the name or identity of trade as-
5 sociations or organizations described in
6 section 501(c) of the Internal Revenue
7 Code of 1986 and exempt from tax under
8 section 501(a) of such Code which receive
9 dues or other payments as described in
10 section 14C(a)(1)(A)(iii).

11 “(B) PUBLIC AVAILABILITY.—The Com-
12 mission shall ensure that, to the greatest extent
13 practicable, the quarterly reports required
14 under this paragraph are publicly available
15 through the Web site of the Commission and
16 through the EDGAR system in a manner that
17 is searchable, sortable, and downloadable, con-
18 sistent with the requirements under section 24.

19 “(3) ANNUAL REPORTS.—Not later than 180
20 days after the date of enactment of this subsection,
21 the Commission shall, by rule, require each issuer to
22 include in the annual report of the issuer to share-
23 holders a summary of each expenditure for political
24 activities made during the preceding year in excess
25 of \$10,000, and each expenditure for political activi-

1 ties for a particular election if the total amount of
2 such expenditures for that election is in excess of
3 \$10,000.”.

4 **SEC. 6. REPORTS.**

5 (a) SECURITIES AND EXCHANGE COMMISSION.—The
6 Securities and Exchange Commission shall—

7 (1) conduct an annual assessment of the com-
8 pliance of issuers and officers and members of the
9 boards of directors of issuers with sections 14C,
10 16A, and 13(r) of the Securities Exchange Act, as
11 added by this Act; and

12 (2) submit to Congress an annual report of con-
13 taining the results of the assessment under para-
14 graph (1).

15 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—The
16 Comptroller General of the United States shall periodically
17 evaluate and report to Congress on the effectiveness of the
18 oversight by the Securities and Exchange Commission of
19 the reporting and disclosure requirements under sections
20 14C, 16A, and 13(r) of the Securities Exchange Act, as
21 added by this Act.

22 **SEC. 7. SEVERABILITY.**

23 If any provision of this Act, an amendment made by
24 this Act, or the application of such provision or amend-
25 ment to any person or circumstance is held to be unconsti-

1 tutional, the remainder of this Act, the amendments made
2 by this Act, and the application of such provision or
3 amendment to any person or circumstance shall not be af-
4 fected thereby.

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