

112TH CONGRESS
1ST SESSION

S. 1360

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 SENATE OF THE UNITED STATES

JULY 13, 2011

Mr. MENENDEZ (for himself, Mr. BLUMENTHAL, Mr. LAUTENBERG, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

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

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

1 **SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLIT-**
2 **ICAL ACTIVITY.**

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

6 **“SEC. 14C. SHAREHOLDER APPROVAL OF CERTAIN POLIT-**
7 **ICAL EXPENDITURES AND DISCLOSURE OF**
8 **VOTES OF INSTITUTIONAL INVESTORS.**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘expenditure for political activi-
11 ties’—

12 “(A) means—

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

17 “(ii) an electioneering communication,
18 as such term is defined in section
19 304(f)(3) of such Act (2 U.S.C. 434(f)(3))
20 and any other public communication (as
21 such term is defined in section 301(22) of
22 such Act (2 U.S.C. 431(22))) that would
23 be an electioneering communication if it
24 were a broadcast, cable, or satellite com-
25 munication; or

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

10 “(B) does not include—

11 “(i) direct lobbying efforts through
12 registered lobbyists employed or hired by
13 the issuer;

14 “(ii) communications by an issuer to
15 its shareholders and executive or adminis-
16 trative personnel and their families; or

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

21 “(2) the term ‘issuer’ does not include an in-
22 vestment company registered under section 8 of the
23 Investment Company Act of 1940 (15 U.S.C. 80a-
24 8).

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

5 “(1) contain—

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

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

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

20 “(c) VOTE REQUIRED TO MAKE EXPENDITURES.—

21 No issuer shall make an expenditure for political activities
22 in any fiscal year unless such expenditure—

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

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

4 “(d) FIDUCIARY DUTY; LIABILITY.—

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

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

18 “(e) DISCLOSURE OF VOTES.—

19 “(1) DISCLOSURE REQUIRED.—Each institu-
20 tional investment manager subject to section 13(f)
21 shall disclose not less frequently than annually how
22 it voted on any shareholder vote under subsection
23 (a), unless the vote is otherwise required by rule of
24 the Commission to be reported publicly.

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

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

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

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

21 **SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDI-**
22 **TURES FOR POLITICAL ACTIVITIES.**

23 The Securities Exchange Act of 1934 (15 U.S.C. 78
24 et seq.) is amended by adding after section 16 (15 U.S.C.
25 78p) the following:

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

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

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

13 “(c) REQUIREMENT FOR VOTE IN CORPORATE BY-
 14 LAWS.—

15 “(1) VOTE REQUIRED.—The bylaws of an
 16 issuer shall expressly provide for a vote of the board
 17 of directors of the issuer on—

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

20 “(B) any expenditure for political activities
 21 that would result in the total amount spent by
 22 the issuer for a particular election (as such
 23 term is defined in section 301(1) of the Federal
 24 Election Campaign Act of 1971 (2 U.S.C.
 25 431(1))) in excess of \$50,000.

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

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

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

16 Section 13 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78m) is amended by adding at the end the
18 following:

19 “(r) REPORTING REQUIREMENTS RELATING TO CER-
20 TAIN POLITICAL EXPENDITURES.—

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

24 “(2) QUARTERLY REPORTS.—

1 “(A) REPORTS REQUIRED.—Not later than
2 180 days after the date of enactment of this
3 subsection, the Commission shall amend the re-
4 porting rules under this section to require each
5 issuer with a class of equity securities reg-
6 istered under section 12 of this title to submit
7 to the Commission and the shareholders of the
8 issuer a quarterly report containing—

9 “(i) a description of any expenditure
10 for political activities made during the pre-
11 ceding quarter;

12 “(ii) the date of each expenditure for
13 political activities;

14 “(iii) the amount of each expenditure
15 for political activities;

16 “(iv) the votes of each member of the
17 board of directors authorizing the expendi-
18 ture for political activity, as required under
19 section 16A(c);

20 “(v) if the expenditure for political ac-
21 tivities was made in support of or opposed
22 to a candidate, the name of the candidate
23 and the office sought by, and the political
24 party affiliation of, the candidate; and

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

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

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

1 **SEC. 6. REPORTS.**

2 (a) SECURITIES AND EXCHANGE COMMISSION.—The
3 Securities and Exchange Commission shall—

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

9 (2) submit to Congress an annual report of con-
10 taining the results of the assessment under para-
11 graph (1).

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

19 **SEC. 7. SEVERABILITY.**

20 If any provision of this Act, an amendment made by
21 this Act, or the application of such provision or amend-
22 ment to any person or circumstance is held to be unconsti-
23 tutional, the remainder of this Act, the amendments made
24 by this Act, and the application of such provision or

1 amendment to any person or circumstance shall not be af-
2 fected thereby.

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