

# Union Calendar No. 362

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4790

**[Report No. 111-620, Part I]**

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.

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## 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

SEPTEMBER 22, 2010

Reported from the Committee on Financial Services with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 22, 2010

Additional sponsors: Mr. FRANK of Massachusetts, Mr. MCGOVERN, Ms. MOORE of Wisconsin, Mr. ROTHMAN of New Jersey, Mr. GARAMENDI, Mr. GUTIERREZ, Ms. KILROY, Mr. LARSON of Connecticut, Mr. PASCRELL, Mr. CUMMINGS, Mr. HEINRICH, Ms. WATERS, Mr. WEINER, Mr. GRIJALVA, Mr. CONYERS, Mr. GENE GREEN of Texas, Mr. HODES, Mr. LYNCH, Mrs. NAPOLITANO, Mr. OLVER, Mr. SARBANES, Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FOSTER, Mr. HINCHEY, Ms. KILPATRICK of Michigan, Ms. HIRONO, Ms. LINDA T. SÁNCHEZ of California, Ms. SHEAPORTER, Ms. DELAURO, Mr. HALL of New York, Ms. WATSON, Mr. WELCH, Ms. EDWARDS of Maryland, Mr. JACKSON of Illinois, Mr. PERLMUTTER, Mr. POLIS of Colorado, Mr. SHERMAN, Mr. CLAY, and Ms. NORTON

SEPTEMBER 22, 2010

Committee on House Administration discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on March 9, 2010]

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## **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”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 *(1) Corporations make significant political con-*  
9 *tributions and expenditures that directly or indirectly*  
10 *influence the election of candidates and support or*  
11 *oppose political causes. Decisions to use corporate*  
12 *funds for political contributions and expenditures are*  
13 *usually made by corporate boards and executives,*  
14 *rather than shareholders.*

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

18 *(3) Historically, shareholders have not had a*  
19 *way to know, or to influence, the political activities*  
20 *of corporations they own. Shareholders and the public*  
21 *have a right to know how corporations are spending*  
22 *their funds to make political contributions or expend-*  
23 *itures benefitting candidates, political parties, and*  
24 *political causes.*

1           (4) Corporations should be accountable to their  
2           shareholders in making political contributions or ex-  
3           penditures affecting Federal governance and public  
4           policy. Requiring the express approval of a corpora-  
5           tion’s shareholders prior to making political contribu-  
6           tions or expenditures will establish necessary account-  
7           ability.

8   **SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLIT-**  
9                                   **ICAL ACTIVITY.**

10          *The Securities Exchange Act of 1934 is amended by*  
11          *inserting after section 14B the following new section:*

12   **“SEC. 14C. SHAREHOLDER APPROVAL OF CERTAIN POLIT-**  
13                                   **ICAL EXPENDITURES AND DISCLOSURE OF**  
14                                   **VOTES OF INSTITUTIONAL INVESTORS.**

15          “(a) *SHAREHOLDER AUTHORIZATION FOR POLITICAL*  
16          *EXPENDITURES.—Any solicitation of any proxy or consent*  
17          *or authorization in respect of any security of an issuer*  
18          *shall—*

19                 “(1) *contain a description of the specific nature*  
20                 *of any expenditures for political activities proposed to*  
21                 *be made by the issuer for the forthcoming fiscal year*  
22                 *not previously approved, to the extent the specific na-*  
23                 *ture is known to the issuer and including the total*  
24                 *amount of such proposed expenditures; and*

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

3           “(b) *REQUIREMENTS FOR EXPENDITURES.*—No issuer  
4 shall make any expenditure for political activities in any  
5 fiscal year unless—

6           “(1) such expenditure is of the nature of those  
7 proposed by the issuer pursuant to subsection (a)(1);  
8 and

9           “(2) authorization for such expenditures has been  
10 granted by votes representing a majority of out-  
11 standing shares pursuant to subsection (a)(2).

12          “(c) *FIDUCIARY DUTY; LIABILITY.*—A violation of sub-  
13 section (b) shall be considered a breach of a fiduciary duty  
14 of the officers and directors who authorized such an expend-  
15 iture. The officers and directors who authorize such an ex-  
16 penditure without first obtaining such authorization of  
17 shareholders shall be jointly and severally liable in any ac-  
18 tion brought in any court of competent jurisdiction to any  
19 individual or class of individuals who held shares at the  
20 time such expenditure was made for an amount equal to  
21 3 times the amount of such expenditure.

22          “(d) *DEFINITION OF EXPENDITURE FOR POLITICAL*  
23 *ACTIVITIES.*—As used in this section:

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

1           “(A) an independent expenditure, as such  
2 term is defined in section 301(17) of the Federal  
3 Election Campaign Act of 1971 (2 U.S.C.  
4 431(17));

5           “(B) an electioneering communication, as  
6 such term is defined in section 304(f)(3) of such  
7 Act (2 U.S.C. 434(f)(3)) and any other public  
8 communication (as such term is defined in sec-  
9 tion 301(22) of such Act (2 U.S.C. 431(22))) that  
10 would be an electioneering communication if it  
11 were a broadcast, cable, or satellite communica-  
12 tion; or

13           “(C) dues or other payments to trade asso-  
14 ciations or other tax exempt organizations that  
15 are, or could reasonably be anticipated to be,  
16 used or transferred to another association or or-  
17 ganization for the purposes described in subpara-  
18 graph (A) or (B).

19           “(2) Such term shall not include—

20           “(A) direct lobbying efforts through reg-  
21 istered lobbyists employed or hired by the issuer;

22           “(B) communications by an issuer to its  
23 shareholders and executive or administrative per-  
24 sonnel and their families; or

1           “(C) *the establishment and administration*  
2           *of contributions to a separate segregated fund to*  
3           *be utilized for political purposes by a corpora-*  
4           *tion.*

5           “(e) *DISCLOSURE OF VOTES.—Every institutional in-*  
6           *vestment manager subject to section 13(f) shall report at*  
7           *least annually how it voted on any shareholder vote pursu-*  
8           *ant to subsection (a), unless such vote is otherwise required*  
9           *to be reported publicly by rule or regulation of the Commis-*  
10          *sion. Not later than 6 months after the date of enactment*  
11          *of this section, the Commission shall issue rules and regula-*  
12          *tions to implement this subsection. Such rules shall require*  
13          *that such report be made not later than 30 days after such*  
14          *a vote and be made available to the public through the*  
15          *EDGAR system as soon as practicable.*

16          “(f) *SAFE HARBOR FOR CERTAIN DIVESTMENT DECI-*  
17          *SIONS.—Notwithstanding any other provision of Federal or*  
18          *State law, no person may bring any civil, criminal, or ad-*  
19          *ministrative action against any institutional investment*  
20          *manager, or any employee, officer, or director thereof, based*  
21          *solely upon a decision of the investment manager to divest*  
22          *from, or not to invest in, securities of an issuer because*  
23          *of expenditures for political activities made by that issuer.*  
24          *This subsection shall not apply to any institutional invest-*  
25          *ment manager, or any employee, officer, or director thereof,*

1 *unless the institutional investment manager makes disclo-*  
2 *sure in accordance with regulations prescribed by the Com-*  
3 *mission.”.*

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

6 (a) *REQUIRED VOTE.*—*The Securities Exchange Act of*  
7 *1934 is amended by adding after section 16 the following*  
8 *new section:*

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

11 *“(a) LISTING ON EXCHANGES.*—*Effective not later*  
12 *than 180 days after the date of enactment of this section,*  
13 *the Commission shall, by rule, direct the national securities*  
14 *exchanges and national securities associations to prohibit*  
15 *the 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 (b).*

18 *“(b) REQUIREMENT FOR VOTE IN CORPORATE BY-*  
19 *LAWS.*—*The corporate bylaws of an issuer shall expressly*  
20 *provide for a vote of the directors of the issuer on any indi-*  
21 *vidual expenditure for political activities (as such term is*  
22 *defined in section 14C(d)(1)) in excess of \$50,000, or any*  
23 *expenditure that makes the total amount spent by the issuer*  
24 *for the particular election (as such term is defined in sec-*  
25 *tion 301(1) of the Federal Election Campaign Act of 1971*



1 (2 U.S.C. 431(1))) \$50,000 or more. An issuer shall make  
2 publicly available the individual votes of the directors re-  
3 quired by the preceding sentence within 48 hours of the vote,  
4 including in a clear and conspicuous location on the Inter-  
5 net website of the issuer.”.

6 (b) *NO EFFECT ON DETERMINATION OF COORDINA-*  
7 *TION WITH CANDIDATES OR CAMPAIGNS.*—For purposes of  
8 determining whether an expenditure for political activities  
9 by an issuer under the Securities Exchange Act of 1934 is  
10 an independent expenditure under the Federal Election  
11 Campaign Act of 1971, the expenditure may not be treated  
12 as made in concert or cooperation with, or at the request  
13 or suggestion of, any candidate or committee solely on the  
14 grounds that any director of the issuer voted on the expendi-  
15 ture as required under section 16A(b) of the Securities Ex-  
16 change Act of 1934 (as added by subsection (a)).

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

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

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

22 “(1) *QUARTERLY REPORTS.*—Not later than 180  
23 days after the date of enactment of this subsection, the  
24 Commission shall modify its reporting rules under  
25 this section to require issuers to disclose quarterly

1     *any expenditure for political activities (as such term*  
2     *is defined in section 14C(d)(1)) made during the pre-*  
3     *ceding quarter and the individual votes by board*  
4     *members authorizing such expenditures as required*  
5     *under section 16A(b). Such a report shall be filed*  
6     *with the Commission and provided to shareholders*  
7     *and shall include—*

8             *“(A) the date of each expenditure;*

9             *“(B) the amount of each expenditure;*

10            *“(C) if the expenditure was made for or*  
11            *against a candidate, the name of the candidate,*  
12            *the office sought by and the political party affili-*  
13            *ation of the candidate; and*

14            *“(D) the name or identity of trade associa-*  
15            *tions or other tax-exempt organizations which re-*  
16            *ceive dues or other payments as described in sec-*  
17            *tion 14C(d)(1)(B).*

18            *“(2) ANNUAL REPORTS.—Not later than 180*  
19            *days after the date of enactment of this subsection, the*  
20            *Commission shall, by rule, require each issuer to in-*  
21            *clude in its annual report to shareholders an annual*  
22            *summary of all expenditures for political activities*  
23            *(as such term is defined in section 14C(d)(1)) made*  
24            *during the preceding year in excess of \$10,000.*

1           “(3) *DISCLOSURE OF MATERIALS PURCHASED BY*  
2           *POLITICAL EXPENDITURES.*—*The Commission shall,*  
3           *by rule, require each issuer to obtain and disclose in*  
4           *the reports required under this section, any materials*  
5           *created with or purchased by any expenditure for po-*  
6           *litical activities (as such term is defined in section*  
7           *14C(d)) made by the issuer. Such rule shall also re-*  
8           *quire that each issuer disclose such materials in a*  
9           *clear and conspicuous location on the Internet website*  
10           *of the issuer within 48 hours of obtaining the mate-*  
11           *rials.*

12           “(4) *PUBLIC AVAILABILITY.*—*The Commission*  
13           *shall ensure that, to the greatest extent practicable,*  
14           *the quarterly reports required by this subsection are*  
15           *publicly available through the Commission website*  
16           *and through the EDGAR system in a manner that is*  
17           *searchable, sortable, and downloadable, consistent*  
18           *with the requirements of section 24.”.*

19 **SEC. 6. REPORTS.**

20           *The Securities and Exchange Commission shall annu-*  
21           *ally assess the compliance of public corporations and their*  
22           *management with the requirements of the amendments*  
23           *made by this Act, and shall transmit to Congress an annual*  
24           *report of its findings. The Comptroller General of the*  
25           *United States shall periodically evaluate and report to Con-*

1 *gress on the effectiveness of the Securities and Exchange*  
2 *Commission's oversight of the reporting and disclosure re-*  
3 *quirements of the amendments made by this Act.*

4 **SEC. 7. SEVERABILITY.**

5 *If any provision of this Act, an amendment made by*  
6 *this Act, or the application of such provision or amendment*  
7 *to any person or circumstance is held to be unconstitu-*  
8 *tional, the remainder of this Act, the amendments made by*  
9 *this Act, and the application of such provision or amend-*  
10 *ment to any person or circumstance shall not be affected*  
11 *thereby.*



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11<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4790**

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