S T A T E O F N E W Y O R K

2952--A

2013-2014 Regular Sessions

I N S E N A T E

January 25, 2013

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the business corporation law, in relation to requiring the authorization of certain political expenditures by the shareholders and the board of directors of public corporations; and to require the comptroller to annually conduct a study on the compliance with the requirements of this act by public corporations and their management

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "New York shareholder protection act of 2013".

S 2. Legislative intent and purpose. The legislature hereby finds that:

a. Corporations make significant political contributions and expenditures that directly or indirectly influence the election of candidates and support or oppose political causes. Decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders.

b. Corporations, acting through their boards and executives, are obligated to conduct business for the best interests of their owners, the shareholders.

c. Historically, shareholders have not had a way to know, or to influence, the political activities of corporations they own. Shareholders and the public have a right to know how corporations are spending their funds to make political contributions or expenditures benefitting candidates, political parties, and political causes.

d. Corporations should be accountable to their shareholders in making political contributions or expenditures affecting Federal governance and public policy. Requiring the express approval of a corporation's share-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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holders prior to making political contributions or expenditures will establish necessary accountability.

S 3. The business corporation law is amended by adding two new sections 609-a and 609-b to read as follows:

S 609-A. SHAREHOLDER APPROVAL OF CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.

(A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO PUBLICLY-HELD CORPORATION INCORPORATED IN THIS STATE AND SUBJECT TO THE PROVISIONS OF THIS CHAPTER SHALL MAKE ANY EXPENDITURE FOR OR TO FUND STATE, FEDERAL OR LOCAL POLITICAL ACTIVITIES IN ANY FISCAL YEAR UNLESS SUCH EXPENDITURE IS APPROVED IN ADVANCE BY A QUORUM OF SHAREHOLDERS OF ALL CLASSES AND SERIES OF SHARES OF THE CORPORATION.

(B) ANY SOLICITATION OF ANY PROXY OR CONSENT OR AUTHORIZATION SEEKING APPROVAL OF POLITICAL EXPENDITURES BY OR ON BEHALF OF A CORPORATION SHALL BE SUBJECT TO ALL REQUIREMENTS OF SECTION 609 (PROXIES) AND SHALL:

(1) CONTAIN A DESCRIPTION OF THE SPECIFIC NATURE OF ANY EXPENDITURES FOR POLITICAL ACTIVITIES PROPOSED TO BE MADE BY THE ISSUER FOR THE FORTHCOMING FISCAL YEAR, TO THE EXTENT THE SPECIFIC NATURE IS KNOWN TO THE ISSUER AND INCLUDING THE TOTAL AMOUNT OF SUCH PROPOSED EXPENDITURES; AND

(2) PROVIDE FOR A SEPARATE SHAREHOLDER VOTE TO AUTHORIZE SUCH PROPOSED EXPENDITURES IN SUCH AMOUNT.

(C) A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE CONSIDERED A BREACH OF A FIDUCIARY DUTY OF THE OFFICERS AND DIRECTORS OF THE CORPORATION WHO AUTHORIZED SUCH AN EXPENDITURE. THE OFFICERS AND DIRECTORS WHO AUTHORIZE SUCH AN EXPENDITURE WITHOUT FIRST OBTAINING SUCH AUTHORIZATION OF SHAREHOLDERS SHALL BE JOINTLY AND SEVERALLY LIABLE IN ANY ACTION BROUGHT IN ANY COURT OF COMPETENT JURISDICTION TO ANY SHAREHOLDER OR CLASS OF SHAREHOLDERS FOR THE AMOUNT OF SUCH EXPENDITURE.

(D) AS USED IN THIS SECTION:

(1)(A) "EXPENDITURE FOR POLITICAL ACTIVITIES" MEANS:

(I) AN INDEPENDENT EXPENDITURE;

(II) CONTRIBUTIONS TO ANY POLITICAL PARTY, COMMITTEE, OR ELECTIONEERING COMMUNICATION; AND

(III) DUES OR OTHER PAYMENTS TO TRADE ASSOCIATIONS OR OTHER TAX EXEMPT ORGANIZATIONS.

(B) SUCH TERM SHALL NOT INCLUDE:

(I) DIRECT LOBBYING EFFORTS THROUGH REGISTERED LOBBYISTS EMPLOYED OR HIRED BY THE ISSUER;

(II) COMMUNICATIONS BY AN ISSUER TO ITS SHAREHOLDERS AND EXECUTIVE OR ADMINISTRATIVE PERSONNEL AND THEIR FAMILIES; OR

(III) THE ESTABLISHMENT, ADMINISTRATION, AND SOLICITATION OF CONTRIBUTIONS TO A SEPARATE SEGREGATED FUND TO BE UTILIZED FOR POLITICAL PURPOSES BY A CORPORATION.

(C) EACH INSTITUTIONAL INVESTMENT MANAGER SUBJECT TO THIS SECTION SHALL, AT LEAST ANNUALLY, MAKE PUBLIC A STATEMENT OF HOW IT VOTED ON ANY SHAREHOLDER VOTE PROVIDED FOR UNDER THIS SECTION THAT OCCURRED SINCE THE MANAGER'S LAST SUCH STATEMENT, UNLESS SUCH VOTE IS OTHERWISE REQUIRED TO BE REPORTED PUBLICLY BY RULE OR REGULATION OF THE SECRETARY OF STATE, NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF FEDERAL OR STATE LAW, NO PERSON MAY BRING ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION AGAINST ANY INSTITUTIONAL INVESTMENT MANAGER, OR ANY EMPLOYEE, OFFICER, OR DIRECTOR THEREOF, BASED SOLELY UPON A DECISION OF THE INVESTMENT MANAGER TO DIVEST FROM, OR NOT TO INVEST IN, SECURITIES OF A CORPORATION SUBJECT

TO THE PROVISIONS OF THIS SECTION BECAUSE OF EXPENDITURES FOR POLITICAL ACTIVITIES MADE BY THAT CORPORATION.

(E) THE PROVISIONS OF SECTION 613 (LIMITATIONS ON RIGHT TO VOTE) SHALL NOT APPLY TO A VOTE OF THE SHAREHOLDERS AS PROVIDED IN THIS SECTION.

(2) "INDEPENDENT EXPENDITURE" MEANS A MONETARY OR IN-KIND EXPENDITURE IN SUPPORT OF OR OPPOSITION TO ANY STATE, FEDERAL OR LOCAL CANDIDATE IN A COVERED ELECTION OR BALLOT PROPOSAL, WHERE NO CANDIDATE, OR AN AGENT OR POLITICAL COMMITTEE AUTHORIZED BY A CANDIDATE HAS AUTHORIZED, REQUESTED, SUGGESTED, FOSTERED OR COOPERATED IN ANY SUCH ACTIVITY.

(3) "ELECTIONEERING COMMUNICATION" MEANS BROADCAST, CABLE, SATELLITE COMMUNICATIONS, BILLBOARDS, DIRECT MAIL, PRINT ADVERTISING, RADIO OR NEWSPAPERS SEEN BY FIFTY OR MORE PEOPLE WITHIN NINETY DAYS OF ANY PRIMARY OR GENERAL ELECTION.

S 609-B. BOARD APPROVAL OF CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.

(A) ANY INDIVIDUAL EXPENDITURE FOR POLITICAL ACTIVITIES, AS DEFINED IN SECTION 609-A (SHAREHOLDER APPROVAL OF CORPORATE EXPENDITURE FOR POLITICAL ACTIVITIES), IN AN AMOUNT OF FIFTY THOUSAND DOLLARS OR MORE, BY A PUBLICLY-HELD CORPORATION SHALL BE APPROVED IN ADVANCE OF THE MAKING OF THE EXPENDITURE BY A QUORUM, AS DEFINED IN SECTION 707 (QUORUM OF DIRECTORS), OF THE BOARD OF DIRECTORS OF THE CORPORATION. THE CORPORATION SHALL MAKE PUBLICLY AVAILABLE THE INDIVIDUAL VOTES OF THE DIRECTORS REQUIRED BY THIS PARAGRAPH WITHIN FORTY-EIGHT HOURS OF THE VOTE BY THE BOARD OF DIRECTORS, INCLUDING POSTING SUCH RESULTS IN A CLEAR AND CONSPICUOUS LOCATION ON THE INTERNET WEBSITE OF THE CORPORATION.

(B) FOR PURPOSES OF DETERMINING WHETHER AN EXPENDITURE FOR POLITICAL ACTIVITIES BY AN ISSUER UNDER THE SECURITIES EXCHANGE ACT OF 1934 IS AN INDEPENDENT EXPENDITURE UNDER THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, THE EXPENDITURE MAY NOT BE TREATED AS MADE IN CONCERT OR COOPERATION WITH, OR AT THE REQUEST OR SUGGESTION OF, ANY CANDIDATE OR COMMITTEE SOLELY ON THE GROUNDS THAT ANY DIRECTOR OF THE ISSUER VOTED ON THE EXPENDITURE AS REQUIRED UNDER SECTION 609-A (SHAREHOLDER APPROVAL OF CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES).

(C) NOTWITHSTANDING THE PROVISIONS OF SECTION 601-A (BY-LAWS), WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, EVERY CORPORATION SUBJECT TO THE PROVISIONS OF THIS CHAPTER SHALL AMEND ITS CORPORATE BY-LAWS TO EXPRESSLY PROVIDE FOR A VOTE OF THE SHAREHOLDERS ON ANY EXPENDITURE FOR POLITICAL ACTIVITIES, AS PROVIDED IN SECTION 609-A (SHAREHOLDER APPROVAL OF CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES), AND TO PROVIDE FOR A VOTE BY THE DIRECTORS OF THE BOARD OF THE CORPORATION ISSUER ON ANY INDIVIDUAL EXPENDITURE FOR POLITICAL ACTIVITIES IN EXCESS OF FIVE THOUSAND DOLLARS AS PROVIDED IN THIS SECTION. THE BY-LAWS OF EVERY NEW ENTITY INCORPORATED IN THE STATE AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL INCLUDE SUCH PROVISIONS.

(D) A VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE CONSIDERED A BREACH OF A FIDUCIARY DUTY OF THE OFFICERS AND DIRECTORS OF THE CORPORATION WHO AUTHORIZED SUCH AN EXPENDITURE. THE OFFICERS AND DIRECTORS WHO AUTHORIZE SUCH AN EXPENDITURE WITHOUT FIRST OBTAINING SUCH AUTHORIZATION OF SHAREHOLDERS SHALL BE JOINTLY AND SEVERALLY LIABLE IN ANY ACTION BROUGHT IN ANY COURT OF COMPETENT JURISDICTION TO ANY SHAREHOLDER OR CLASS OF SHAREHOLDERS FOR THE AMOUNT OF SUCH EXPENDITURE.

S 4. Not later than one hundred eighty days after the effective date of this act, the secretary of state, or his or her designee, shall implement rules and regulations to require corporations to disclose quarterly any expenditure for political activities (as such term is defined in section 609-a of the business corporation law) made during

the preceding quarter and the individual votes by board members authorizing such expenditures. Such a report shall be filed with the secretary of state and provided to shareholders and shall include:

1. the date of the expenditures;

2. the amount of the expenditures;

3. the name or identity of the candidate, political party, committee, or electioneering communication, as such term is defined in section 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and

4. if the expenditures were made for or against a candidate, including an electioneering communication, the office sought by the candidate and the political party affiliation of the candidate.

The secretary of state, or his or her designee, shall ensure that, to the greatest extent practicable, the reports required by this act are publicly available through the secretary of state website in a manner that is searchable, sortable, and downloadable.

S 5. The state comptroller shall annually conduct a study on the compliance with the requirements of this act by public corporations and their management. Not later than April first of each year, the state comptroller shall submit a report of such study to the governor, the temporary president of the senate and the speaker of the assembly.

S 6. If any provision of this act, an amendment made by this act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this act, the amendments made by this act, and the application of such provision or amendment to any person or circumstance shall not be affected thereby.

S 7. This act shall take effect on the first of January next succeeding the date upon which this act shall have become a law.