

2952

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

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:

- 1 Section 1. This act shall be known and may be cited as the "New York
2 shareholder protection act of 2013".
3 S 2. Legislative intent and purpose. The legislature hereby finds
4 that:
5 a. Corporations make significant political contributions and expendi-
6 tures that directly or indirectly influence the election of candidates
7 and support or oppose political causes. Decisions to use corporate funds
8 for political contributions and expenditures are usually made by corpo-
9 rate boards and executives, rather than shareholders.
10 b. Corporations, acting through their boards and executives, are obli-
11 gated to conduct business for the best interests of their owners, the
12 shareholders.
13 c. Historically, shareholders have not had a way to know, or to influ-
14 ence, the political activities of corporations they own. Shareholders
15 and the public have a right to know how corporations are spending their
16 funds to make political contributions or expenditures benefitting candi-
17 dates, political parties, and political causes.
18 d. Corporations should be accountable to their shareholders in making
19 political contributions or expenditures affecting Federal governance and
20 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 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 SIX HUNDRED NINE OF THIS ARTICLE 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) "EXPENDITURE FOR POLITICAL ACTIVITIES" MEANS:

(A) AN INDEPENDENT EXPENDITURE, AS SUCH TERM IS DEFINED IN SECTION 301(17) OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 (2 U.S.C. 431(17));

(B) CONTRIBUTIONS TO ANY 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

(C) DUES OR OTHER PAYMENTS TO TRADE ASSOCIATIONS OR OTHER TAX EXEMPT ORGANIZATIONS THAT ARE, OR COULD REASONABLY BE ANTICIPATED TO BE, USED FOR THE PURPOSES DESCRIBED IN CLAUSE (A) OF THIS SUBPARAGRAPH.

(2) SUCH TERM SHALL NOT INCLUDE:

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

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

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

(E) 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.

(F) 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.

(G) THE PROVISIONS OF SECTION SIX HUNDRED THIRTEEN OF THIS ARTICLE SHALL NOT APPLY TO A VOTE OF THE SHAREHOLDERS AS PROVIDED IN THIS SECTION.

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

(A) ANY INDIVIDUAL EXPENDITURE FOR POLITICAL ACTIVITIES, AS DEFINED IN SECTION SIX HUNDRED NINE-A OF THIS ARTICLE, 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 SEVEN HUNDRED SEVEN OF THIS CHAPTER, 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 SIX HUNDRED NINE-A OF THIS ARTICLE.

(C) NOTWITHSTANDING THE PROVISIONS OF SECTION SIX HUNDRED ONE OF THIS ARTICLE, 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 SIX HUNDRED NINE-A OF THIS ARTICLE, 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 FIFTY 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 1. the date of the expenditures;
2 2. the amount of the expenditures;
3 3. the name or identity of the candidate, political party, committee,
4 or electioneering communication, as such term is defined in section
5 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C.
6 434(f)(3)(A)); and
7 4. if the expenditures were made for or against a candidate, including
8 an electioneering communication, the office sought by the candidate and
9 the political party affiliation of the candidate.
10 The secretary of state, or his or her designee, shall ensure that, to
11 the greatest extent practicable, the reports required by this act are
12 publicly available through the secretary of state website in a manner
13 that is searchable, sortable, and downloadable.
14 S 5. The state comptroller shall annually conduct a study on the
15 compliance with the requirements of this act by public corporations and
16 their management. Not later than April 1 of each year, the state comp-
17 troller shall submit a report of such study to the governor, the tempo-
18 rary president of the senate and the speaker of the assembly.
19 S 6. If any provision of this act, an amendment made by this act, or
20 the application of such provision or amendment to any person or circum-
21 stance is held to be unconstitutional, the remainder of this act, the
22 amendments made by this act, and the application of such provision or
23 amendment to any person or circumstance shall not be affected thereby.
24 S 7. This act shall take effect on the first of January next succeed-
25 ing the date upon which this act shall have become a law.