
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 462 Session of
2013

INTRODUCED BY COHEN, O'BRIEN, PASHINSKI, MULLERY, STURLA, MUNDY,
CARROLL, KAVULICH, V. BROWN, SANTARSIERO, TRUITT, MURT,
CALTAGIRONE, MOLCHANY, ROZZI AND FREEMAN, JANUARY 30, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 30, 2013

AN ACT

1 Providing for shareholder vote on corporate political
2 activities, for notification and disclosure of corporate
3 political activities, for certain approvals of corporate
4 political expenditures and for duties of the Department of
5 State and the Department of the Auditor General.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Corporate
10 Political Accountability Act.

11 Section 2. Declaration of policy.

12 The General Assembly finds and declares as follows:

13 (1) Although corporations cannot vote, corporations make
14 significant political contributions and expenditures that
15 directly or indirectly influence the election of candidates
16 and support or oppose political causes at the Federal, State
17 and local levels. Decisions to use corporate treasury funds
18 for political contributions and expenditures are currently
19 made by corporate boards and executives, often without the

1 knowledge or consent of shareholders.

2 (2) Corporations acting through their boards and
3 executives have a fiduciary duty to conduct business in the
4 best interests of the shareholders. Corporate boards and
5 executives that use corporate funds to support and oppose
6 political candidates, political parties and political causes
7 in opposition to the interests of many or all of their
8 shareholders may not be acting in the best interests of the
9 corporation.

10 (3) Historically, shareholders of corporations in the
11 United States have not had a way to know of, or to influence,
12 the political activities of corporations they own.
13 Shareholders and the public have a right to know how these
14 corporations are spending their funds to make political
15 contributions or expenditures benefiting candidates,
16 political parties and political causes.

17 (4) Corporations should be accountable to their
18 shareholders prior to making political contributions or
19 expenditures affecting Federal, State and local governance
20 and public policy. Requiring the express approval of a
21 corporation's shareholders prior to making political
22 contributions or expenditures will help establish
23 accountability.

24 (5) If corporations use corporate general treasury funds
25 for political expenditures, then those funds should be
26 clearly reported to shareholders, and shareholders should be
27 able to authorize the use of corporate general treasury funds
28 for political expenditures.

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Contribution" or "expenditure." Includes any monetary and
4 nonmonetary political contributions and expenditures not
5 deductible under section 162(e)(1)(B) of the Internal Revenue
6 Code of 1986 (Public Law 99-514, 26 U.S.C. § 162(e)(1)(B)),
7 including, but not limited to, contributions to or expenditures
8 on behalf of political candidates, political parties, political
9 committees and other political entities organized and operating
10 under section 527 of the Internal Revenue Code of 1986 (26
11 U.S.C. § 527), and any portion of any dues or similar payments
12 made to any tax exempt organization that is used for an
13 expenditure or contribution and that if made directly by the
14 corporation would not be deductible under section 162(e)(1)(B)
15 of the Internal Revenue Code of 1986, any contribution or
16 expenditure, as those terms are defined in section 301 of the
17 Federal Election Campaign Act of 1971 (Public Law 92-225, 2
18 U.S.C. § 431), as well as any contribution or expenditure
19 defined under the act of June 3, 1937 (P.L.1333, No.320), known
20 as the Pennsylvania Election Code. The term also includes any
21 direct or indirect payment, distribution, loan, advance, deposit
22 or gift of money, or any services, or anything of value, except
23 a loan of money by a national or State bank made in accordance
24 with the applicable banking laws and regulations and in the
25 ordinary course of business, to any candidate, campaign
26 committee or political party or organization, in connection with
27 any election to any office. The term does not include:

28 (1) Communications by a corporation to its stockholders
29 and executive or administrative personnel and their families
30 or by a labor organization to its members and their families

1 on any subject.

2 (2) Nonpartisan registration and get-out-the-vote
3 campaigns by a corporation aimed at its stockholders and
4 executive or administrative personnel and their families or
5 by a labor organization aimed at its members and their
6 families.

7 (3) The establishment, administration and solicitation
8 of contributions to a separate segregated fund to be utilized
9 for political purposes by a corporation, labor organization,
10 membership organization, cooperative or corporation without
11 capital stock.

12 "Department." The Department of State of the Commonwealth.

13 "General treasury funds." Those moneys in possession of a
14 corporation incorporated under the laws of Pennsylvania in the
15 normal course of business, including funds from sales, accounts
16 payable, loans, investments, bonds or debt instruments.

17 "Issue advocacy campaign." Contributions or expenditures for
18 any communication to the general public intended to encourage
19 the public to contact a government official regarding pending
20 legislation, public policy or a government rule or regulation.
21 The term does not include contributions or expenditures for
22 registered lobbyists or other persons employed by the
23 corporation to lobby directly Federal or State government
24 officials.

25 "Known at the time of the authorization vote." At the time
26 the corporation seeks authorization from shareholders to spend
27 corporate funds for political activities:

28 (1) the corporation's officers, directors or employees
29 have identified a specific political activity for the
30 corporation to support or oppose;

1 (2) corporate officers, directors or employees have
2 taken steps to obligate funds to a political activity; or

3 (3) the corporation has a regularly scheduled payment to
4 a trade association or other entity to pay for a political
5 activity in the next 12 months.

6 "Majority of shareholders." Fifty percent plus one of all
7 outstanding voting securities. Shareholders not casting votes
8 shall not count toward affirmative authorization under this
9 section.

10 "Political activities." Any contributions or expenditures
11 made directly or indirectly to, or in support of or opposition
12 to, any candidate, political party, committee, electioneering
13 communication, ballot measure campaign or an issue advocacy
14 campaign. The term does not include activities defined as
15 lobbying under any Federal, State or local law.

16 "Separate segregated fund." A political action committee
17 formed by a corporation for the purpose of making contributions
18 to candidates for office or to political parties. A separate
19 segregated fund which supports Federal candidates shall have the
20 same meaning as that found in section 316 of the Federal
21 Election Campaign Act of 1971 (Public Law 92-225, 2 U.S.C. §
22 441b).

23 Section 4. Shareholder vote on corporate political activities.

24 (a) Annual vote.--

25 (1) Any corporation incorporated in this Commonwealth
26 that spends in the aggregate \$10,000 or more of corporate
27 treasury funds on all political activities must comply with
28 the requirements of this section.

29 (2) Any proxy or consent or authorization for an annual
30 meeting of the shareholders of a corporation incorporated in

1 this Commonwealth, or a special meeting in lieu of such
2 meeting, where proxies are solicited in respect of any
3 security occurring on or after six months following the date
4 on which final regulations are published under subsection (d)
5 shall provide for a separate resolution subject to
6 shareholder vote to approve any spending of \$10,000 or more
7 by the corporation for any political activity.

8 (3) Notwithstanding the requirement for an annual
9 shareholder vote to authorize any spending of \$10,000 or more
10 by the corporation for any political activity, a corporation
11 may request authorization for spending on political
12 activities on a more frequent basis. Any authorization
13 request by the corporation that is not made during an annual
14 authorization shall be deemed a special authorization.

15 (4) If a corporation spends less than an aggregate of
16 \$10,000 in a 12-month period for political activities, then
17 it does not have to seek shareholder authorization for such
18 spending.

19 (b) Shareholder approval.--

20 (1) When seeking shareholder authorization for
21 expenditures for political activities, the corporation shall
22 request the authority to spend a maximum dollar amount in the
23 next 12 months.

24 (2) If known at the time of the authorization vote, the
25 company shall articulate whether the corporate treasury funds
26 so authorized are intended to benefit or defeat specific
27 candidates, ballot measures or issue advocacy campaigns or
28 whether it will be paid to specific nonprofits or trade
29 associations for political activities. The following apply:

30 (i) To be effective, the authorization vote must

1 garner support from a majority of shareholders.

2 (ii) A vote by the shareholders to approve or
3 disapprove any spending of \$10,000 or more by a
4 corporation for a political activity shall be binding on
5 the corporation.

6 (iii) Notwithstanding the requirement for an annual
7 shareholder vote to authorize any spending of \$10,000 or
8 more by the corporation for any political activity, a
9 corporation may request a special authorization for
10 additional spending on political activities, provided
11 that:

12 (A) all spending on political activities of
13 \$10,000 or more must be authorized by a shareholder
14 majority vote; and

15 (B) for any special authorization, the company
16 shall articulate whether the corporate treasury funds
17 so authorized are intended to benefit or defeat
18 candidates, ballot measures or issue advocacy
19 campaigns or will be paid to specific nonprofits or
20 trade associations for political activities at the
21 time the special authorization is requested.

22 (c) Director liability.--If a corporation makes an
23 unauthorized contribution or expenditure for a political
24 activity, then the directors at the time that the unauthorized
25 contribution or expenditure was incurred are jointly and
26 severally liable to repay to the corporation the amount of the
27 unauthorized expenditure, with interest at the rate of 8% per
28 year.

29 (d) Rulemaking.--No later than six months after the
30 effective date of this act, the department shall promulgate

1 final regulations to implement this section.

2 (e) Sole proprietorships excluded.--Notwithstanding any
3 other provision of this section, nothing in this section shall
4 apply a new duty to the owner of a sole proprietorship.

5 Section 5. Notification to shareholders of corporate political
6 activities.

7 (a) Notification to shareholders.--

8 (1) At least quarterly during each fiscal year, a
9 corporation incorporated in this Commonwealth that makes
10 contributions or expenditures for political activities must
11 notify its shareholders and the department in writing of the
12 nature of all its political activities, funded by either its
13 separate segregated fund or through its general corporate
14 treasury, including contributions or expenditures made
15 directly or indirectly.

16 (2) A report made pursuant to this section shall include
17 the following:

18 (i) The date of the contributions or expenditures.

19 (ii) The amount of the contributions or
20 expenditures.

21 (iii) The identity of the candidate, political
22 party, committee, electioneering communication, ballot
23 measure campaign or issue advocacy campaign.

24 (iv) If the contributions or expenditures were made
25 for or against a candidate, including an electioneering
26 communication as defined under Federal law, the office
27 sought by the candidate and the political party
28 affiliation of the candidate.

29 (v) If the contributions or expenditures were made
30 for or against a ballot measure, the purpose of the

1 measure and whether the contributions or expenditures
2 were made in support or opposition to the ballot measure.

3 (vi) If the contributions or expenditures were made
4 for or against an issue advocacy campaign, the nature of
5 the political issue and whether the contributions were
6 made in support or opposition to the political issue.

7 (vii) All expenditures made by a separate segregated
8 fund affiliated with the corporation.

9 (b) Public disclosure.--

10 (1) The quarterly reports of political activities by a
11 corporation incorporated in this Commonwealth to shareholders
12 shall be public records.

13 (2) A copy of the reports filed pursuant to subsection
14 (a)(1) shall be posted for at least one year on the
15 corporation's Internet website, if any.

16 Section 6. Public disclosure of corporate political activities
17 by the department.

18 (a) Department duty.--The quarterly reports of political
19 activities by a corporation incorporated in this Commonwealth to
20 shareholders shall be made publicly available by the department.

21 (b) Electronic form.--A quarterly report required to be
22 filed under this section shall be filed in electronic form using
23 filing software approved or developed by the department in
24 addition to filing in any other form that the department may
25 require by regulation.

26 (c) Format.--The department shall ensure that, to the
27 greatest extent practicable, the quarterly reports on political
28 activities are publicly available through the department's
29 Internet website in a format that permits the reports to be
30 searched, sorted and downloaded.

1 Section 7. Report by Department of the Auditor General.

2 (a) Audit.--On an annual basis, the Department of the
3 Auditor General shall audit the extent of compliance or
4 noncompliance with the requirements of this act by corporations
5 incorporated in this Commonwealth, their management and
6 shareholders, as well as the effectiveness of the department in
7 meeting the reporting and disclosure requirements of this act.

8 (b) Report.--Not later than April 1 of each year, the
9 Department of the Auditor General shall submit to the Governor a
10 report on the review required by subsection (a) for the
11 preceding year.

12 Section 8. Board approval for all corporate political
13 expenditures.

14 (a) Approval required.--Notwithstanding any other provision
15 of law, no corporation and no trade, business or professional
16 association shall make any campaign contribution or expenditure
17 unless specifically authorized to do so whether:

18 (1) By the vote of the board of directors of the
19 corporation or of the executive committee of the trade,
20 business or professional association at a regular or special
21 meeting thereof.

22 (2) By the president, vice president, secretary or
23 treasurer of a corporation whom the board has specifically
24 empowered to authorize such contributions or expenditures.

25 (3) For a corporation, by any other person designated by
26 resolution of the board of directors of a corporation to
27 authorize contributions or expenditures.

28 (b) Form of contribution.--No corporation, trade, business
29 or professional association shall make any contribution or
30 expenditure as defined under Federal or State law, other than an

1 in-kind contribution or expenditure, except by check.

2 Section 9. Applicability to foreign corporations.

3 (a) General rule.--A foreign corporation, other than a
4 foreign association or foreign nonprofit corporation, but
5 including a foreign parent corporation even though it does not
6 itself transact intrastate business, is subject to the
7 requirements of sections 4, 5, 6 and 7, if:

8 (1) the average of property, payroll and sales factors,
9 as defined in section 401 of the act of March 4, 1971 (P.L.6,
10 No.2), known as the Tax Reform Code of 1971, with respect to
11 the foreign corporation, is more than 50% during its latest
12 full income year; and

13 (2) more than one-half of its outstanding voting
14 securities are held of record by persons having addresses in
15 this Commonwealth appearing on the books of the corporation
16 on the record date for the latest meeting of shareholders
17 held during its latest full income year or, if no meeting was
18 held during that year, on the last day of the latest full
19 income year.

20 (b) Determination.--The determination of the property,
21 payroll and sales factors under subsection (a) with respect to
22 any parent corporation shall be made on a consolidated basis,
23 including in a unitary computation, after elimination of
24 intercompany transactions, the property, payroll and sales of
25 the parent and all of its subsidiaries in which it owns directly
26 or indirectly more than 50% of the outstanding shares entitled
27 to vote for the election of directors, but deducting a
28 percentage of the property, payroll and sales of any subsidiary
29 equal to the percentage minority ownership, if any, in the
30 subsidiary. For the purpose of this section, any securities held

1 to the knowledge of the issuer in the names of broker-dealers,
2 nominees for broker-dealers, including clearing corporations or
3 banks, associations or other entities holding securities in a
4 nominee name or otherwise on behalf of a beneficial owner,
5 collectively "nominee holders," shall not be considered
6 outstanding. However, if the foreign corporation requests all
7 nominee holders to certify, with respect to all beneficial
8 owners for whom securities are held, the number of shares held
9 for those beneficial owners having addresses as shown on the
10 records of the nominee holder in this Commonwealth and outside
11 of this Commonwealth, then all shares so certified shall be
12 considered outstanding and held of record by persons having
13 addresses either in this Commonwealth or outside of this
14 Commonwealth as so certified, provided that the certification so
15 provided shall be retained with the record of shareholders and
16 made available for inspection and copying. A current list of
17 beneficial owners of a foreign corporation's securities provided
18 to the corporation by one or more nominee holders or agent
19 thereof under the requirements of 17 CFR § 240.14b-1(b) (3)
20 (relating to obligation of registered brokers and dealers in
21 connection with the prompt forwarding of certain communications
22 to beneficial owners) or 240.14b-2(b) (3) (relating to obligation
23 of banks, associations and other entities that exercise
24 fiduciary powers in connection with the prompt forwarding of
25 certain communications to beneficial owners) promulgated under
26 the Securities Exchange Act of 1934 (Public Law 48-881, 15
27 U.S.C. § 78a et seq.) shall constitute an acceptable
28 certification with respect to beneficial owners for the purposes
29 of this subsection.

30 (c) Applicability.--This section does not apply to any

1 corporation:

2 (1) With outstanding securities listed on the New York
3 Stock Exchange or the American Stock Exchange.

4 (2) With outstanding securities designated as qualified
5 for trading on the Nasdaq National Market of the Nasdaq Stock
6 Market, or any successor thereto.

7 (3) If all of its voting shares, other than directors'
8 qualifying shares, are owned directly or indirectly by a
9 corporation or corporations not subject to this section.

10 (d) Liability.--Any party who obtains a final determination
11 by a court of competent jurisdiction that the corporation failed
12 to provide to the party information required to be provided by
13 this act or provided the party information of the kind required
14 to be provided by this act that is incorrect, then the court, in
15 its discretion, shall have the power to include in its judgment
16 recovery by the party from the corporation of all court costs
17 and reasonable attorney fees incurred in that legal proceeding
18 to the extent they relate to obtaining that final determination.

19 Section 20. Effective date.

20 This act shall take effect in 60 days.