

#21
4

AMENDMENT TO H.R. 5175
OFFERED BY MR. CAPUANO

Insert after subtitle C of title ^{II}~~I~~ the following:

1 **Subtitle D—Amendments to the**
2 **Securities Exchange Act of 1934**

3 **SEC. 231. SHAREHOLDER APPROVAL OF CORPORATE PO-**
4 **LITICAL ACTIVITY.**

5 The Securities Exchange Act of 1934 is amended by
6 inserting after section 14 the following new section:

7 **“SEC. 14A. SHAREHOLDER APPROVAL OF CERTAIN POLIT-**
8 **ICAL EXPENDITURES.**

9 “(a) **SHAREHOLDER AUTHORIZATION FOR POLITICAL**
10 **EXPENDITURES.**—Any solicitation of any proxy or consent
11 or authorization in respect of any security of an issuer
12 shall—

13 “(1) contain a description of the specific nature
14 of any expenditures for political activities proposed
15 to be made by the issuer for the forthcoming fiscal
16 year, to the extent the specific nature is known to
17 the issuer and including the total amount of such
18 proposed expenditures; and

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

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

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

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

13 “(c) FIDUCIARY DUTY; LIABILITY.—A violation of
14 subsection (b) shall be considered a breach of a fiduciary
15 duty of the officers and directors who authorized such an
16 expenditure. The officers and directors who authorize such
17 an expenditure without first obtaining such authorization
18 of shareholders shall be jointly and severally liable in any
19 action brought in any court of competent jurisdiction to
20 any shareholder or class of shareholders for the amount
21 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 Fed-
3 eral 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
7 such Act (2 U.S.C. 434(f)(3)) and any other
8 public communication (as such term is defined
9 in section 301(22) of such Act (2 U.S.C.
10 431(22))) that would be an electioneering com-
11 munication if it were a broadcast, cable, or sat-
12 ellite communication; 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
17 organization for the purposes described in sub-
18 paragraph (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
22 issuer;

23 “(B) communications by an issuer to its
24 shareholders and executive or administrative
25 personnel and their families; or

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

5 **SEC. 232. DISCLOSURE OF PROXY VOTES BY INSTITU-**
6 **TIONAL INVESTORS.**

7 Section 13(f) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78m(f)) is amended by redesignating para-
9 graph (5) as paragraph (7) and inserting after paragraph
10 (4) the following:

11 “(5) DISCLOSURE OF VOTES.—Each institu-
12 tional investment manager subject to this subsection
13 shall include in the reports required under this sub-
14 section, at least annually, a statement of how it
15 voted on any shareholder vote provided for under
16 section 14A(a) that occurred since the manager’s
17 last such statement, unless such vote is otherwise re-
18 quired to be reported publicly by rule or regulation
19 of the Commission. Not later than 6 months after
20 the date of enactment of this paragraph, the Com-
21 mission shall issue rules and regulations to imple-
22 ment this paragraph.

23 “(6) SAFE HARBOR FOR CERTAIN DIVESTMENT
24 DECISIONS.—Notwithstanding any other provision of
25 Federal or State law, no person may bring any civil,

1 criminal, or administrative action against any insti-
2 tutional investment manager, or any employee, offi-
3 cer, or director thereof, based solely upon a decision
4 of the investment manager to divest from, or not to
5 invest in, securities of an issuer because of expendi-
6 tures for political activities made by that issuer.”.

7 **SEC. 233. REQUIRED BOARD VOTE ON CORPORATE EX-**
8 **PENDITURES FOR POLITICAL ACTIVITIES.**

9 (a) **REQUIRED VOTE.**—The Securities Exchange Act
10 of 1934 is amended by adding after section 16 the fol-
11 lowing new section:

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

14 “(a) **LISTING ON EXCHANGES.**—Effective not later
15 than 180 days after the date of enactment of this section,
16 the Commission shall, by rule, direct the national securi-
17 ties exchanges and national securities associations to pro-
18 hibit the listing of any class of equity security of an issuer
19 that is not in compliance with the requirements of any
20 portion of subsection (b).

21 “(b) **REQUIREMENT FOR VOTE IN CORPORATE BY-**
22 **LAWS.**—The corporate bylaws of an issuer shall expressly
23 provide for a vote of the directors of the issuer on any
24 individual expenditure for political activities (as such term
25 is defined in section 14A(d)(1)) in excess of \$50,000, or

1 any expenditure that makes the total amount spent by the
2 issuer for the particular political race \$50,000 or more.
3 An issuer shall make publicly available the individual votes
4 of the directors required by the preceding sentence within
5 48 hours of the vote, including in a clear and conspicuous
6 location on the Internet website of the issuer.”

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

19 **SEC. 234. REPORTING REQUIREMENTS.**

20 Section 13 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78m) is amended by adding at the end the
22 following:

23 “(m) REPORTING REQUIREMENTS RELATING TO
24 CERTAIN POLITICAL EXPENDITURES.—

1 “(1) QUARTERLY REPORTS.—Not later than
2 180 days after the date of enactment of this sub-
3 section, the Commission shall modify its reporting
4 rules under this section to require issuers to disclose
5 quarterly any expenditure for political activities (as
6 such term is defined in section 14A(d)(1)) made
7 during the preceding quarter and the applicable indi-
8 vidual votes by board members authorizing such ex-
9 penditures. Such a report shall be filed with the
10 Commission and provided to shareholders and shall
11 include—

12 “(A) the date of each expenditure;

13 “(B) the amount of each expenditure;

14 “(C) if the expenditure was made for or
15 against a candidate, the name of the candidate,
16 the office sought by and the political party af-
17 filiation of the candidate; and

18 “(D) the name or identity of trade associa-
19 tions or other tax-exempt organizations which
20 receive dues or other payments as described in
21 section 14A(d)(1)(B).

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

1 shareholders an annual summary of all expenditures
2 for political activities (as such term is defined in sec-
3 tion 14A(d)(1)) made during the preceding year in
4 excess of \$10,000.

5 “(3) PUBLIC AVAILABILITY.—The Commission
6 shall ensure that, to the greatest extent practicable,
7 the quarterly reports required by this subsection are
8 publicly available through the Commission website in
9 a manner that is searchable, sortable, and
10 downloadable, consistent with the requirements of
11 section 24.”.

12 **SEC. 235. REPORT.**

13 The Comptroller General of the United States shall
14 annually conduct a study on the compliance with the re-
15 quirements of this subtitle by public corporations and their
16 management, as well as the effectiveness of the Securities
17 and Exchange Commission in meeting the reporting and
18 disclosure requirements of this subtitle. Not later than
19 April 1 of each year, the Comptroller General shall submit
20 to Congress a report of such study.

