

## AMENDMENTS TO SENATE BILL NO. 166

Sponsor: SENATOR COSTA

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1 Amend Bill, page 1, line 7, by inserting after "Wages"

2 and Corporate Accountability

3 Amend Bill, page 1, line 9, by striking out all of said line

4 and inserting

5 The General Assembly finds and declares that:

6 (1) It is the public

7 Amend Bill, page 1, by inserting between lines 15 and 16

8 (2) The Commonwealth has a compelling interest in  
9 regulating the affairs of certain business entities and it is  
10 important for the shareholders of corporations to be informed  
11 of the governance of the organizations relating to the  
12 political process.

13 Amend Bill, page 2, by inserting between lines 2 and 3

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

15 Amend Bill, page 2, by inserting between lines 13 and 14

16 "General treasury funds." The money in possession of a  
17 corporation incorporated under the laws of this Commonwealth in  
18 the normal course of business, including funds from sales,  
19 accounts payable, loans, investments, bonds or debt instruments.

20 "Issue advocacy campaign." Political contributions for a  
21 communication to the general public intended to encourage the  
22 public to contact a government official regarding pending  
23 legislation, public policy or a government rule or regulation.  
24 The term shall not include political contributions for  
25 registered lobbyists or other persons employed by the  
26 corporation to lobby directly Federal or State government  
27 officials.

28 "Known at the time of the authorization vote." At the time  
29 the corporation seeks authorization from shareholders to spend  
30 corporate funds for political activities:

31 (1) the corporation's officers, directors or employees  
32 have identified a specific political activity for the  
33 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 Amend Bill, page 2, by inserting between lines 17 and 18

7 "Majority of shareholders." Fifty percent plus one of each  
8 outstanding voting security. A shareholder not casting a vote  
9 shall not count toward affirmative authorization under this act.

10 "Political activity." A political contribution made directly  
11 or indirectly to, or in support of or opposition to, a  
12 candidate, political party, committee, electioneering  
13 communication, ballot measure campaign or an issue advocacy  
14 campaign. The term shall not include an activity defined as  
15 lobbying under a Federal, State or local law.

16 Amend Bill, page 3, by inserting between lines 9 and 10

17 "Separate segregated fund." A political action committee  
18 formed by a corporation for the purpose of making political  
19 contributions to candidates for office or to political parties.  
20 A separate segregated fund which supports a Federal candidate  
21 shall have the same meaning as in section 316 of the Federal  
22 Election Campaign Act of 1971 (Public Law 92-225, 86 Stat. 3).

23 Amend Bill, page 4, lines 3 through 7, by striking out all of  
24 said lines and inserting

25 Section 5. Shareholder vote on corporate and unincorporated  
26 association political activities.

27 (a) Annual vote.--

28 (1) A corporation organized in this Commonwealth that  
29 spends in the aggregate \$10,000 or more of corporate treasury  
30 funds on political activities in this Commonwealth must  
31 comply with the requirements of this section.

32 (2) A proxy, consent or authorization for an annual  
33 meeting of the shareholders of a corporation organized in  
34 this Commonwealth, or a special meeting in lieu of the  
35 meeting, where proxies are solicited in respect to a security  
36 occurring on or after six months following the date on which  
37 final regulations are published under subsection (d), shall  
38 provide for a separate resolution subject to shareholder vote  
39 to approve spending of \$10,000 or more by the corporation for  
40 a political activity.

41 (3) Notwithstanding the requirement for an annual  
42 shareholder vote to authorize spending of \$10,000 or more by  
43 the corporation for a political activity, a corporation may  
44 request authorization for spending on political activities on  
45 a more frequent basis. An authorization request by the  
46 corporation that is not made during an annual authorization

1 shall be deemed a special authorization.

2 (4) If a corporation spends less than an aggregate of  
3 \$10,000 in a 12-month period for political activities, the  
4 corporation shall not have to seek shareholder authorization  
5 for the spending.

6 (b) Shareholder approval.--

7 (1) If seeking shareholder authorization for  
8 expenditures for political activities, the corporation shall  
9 request the authority to spend a maximum dollar amount in the  
10 next 12 months.

11 (2) If known at the time of the authorization vote, the  
12 corporation shall articulate whether the corporate treasury  
13 funds so authorized are intended to benefit or defeat  
14 specific candidates, ballot measures or issue advocacy  
15 campaigns or whether it will be paid to specific nonprofits  
16 or trade associations for political activities. The following  
17 apply:

18 (i) To be effective, the authorization vote must  
19 garner support from a majority of shareholders.

20 (ii) A vote by the shareholders to approve or  
21 disapprove spending of \$10,000 or more by a corporation  
22 for a political activity shall be binding on the  
23 corporation.

24 (iii) Notwithstanding the requirement for an annual  
25 shareholder vote to authorize spending of \$10,000 or more  
26 by the corporation for a political activity, a  
27 corporation may request a special authorization for  
28 additional spending on political activities, provided  
29 that:

30 (A) all spending on political activities of  
31 \$10,000 or more must be authorized by a shareholder  
32 majority vote; and

33 (B) for any special authorization, the  
34 corporation shall articulate whether the corporate  
35 treasury funds so authorized are intended to benefit  
36 or defeat candidates, ballot measures or issue  
37 advocacy campaigns or will be paid to specific  
38 nonprofits or trade associations for political  
39 activities at the time the special authorization is  
40 requested.

41 (c) Director liability.--If a corporation makes an  
42 unauthorized political contribution for a political activity,  
43 then the directors at the time that the unauthorized political  
44 contribution was incurred are jointly and severally liable to  
45 repay to the corporation the amount of the unauthorized  
46 expenditure with interest at the rate of 8% per year.

47 (d) Rulemaking.--The department shall promulgate final  
48 regulations to implement this section no later than six months  
49 after the effective date of this section.

50 (e) Sole proprietorships excluded.--Notwithstanding any  
51 other provision of this section, nothing in this section shall

1 apply a new duty to the owner of a sole proprietorship.  
2 Section 6. Notification to shareholders of corporate political  
3 activities.

4 (a) Notification to shareholders.--

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

13 (2) A report made under this section shall include the  
14 following:

15 (i) The date of the political contributions.

16 (ii) The amount of the political contributions.

17 (iii) The identity of the candidate, political  
18 party, committee, electioneering communication, ballot  
19 measure campaign or issue advocacy campaign.

20 (iv) If the political contributions were made for or  
21 against a candidate, including an electioneering  
22 communication as defined under Federal law, the office  
23 sought by the candidate and the political party  
24 affiliation of the candidate.

25 (v) If the political contributions were made for or  
26 against a ballot measure, the purpose of the measure and  
27 whether the political contributions were made in support  
28 or opposition to the ballot measure.

29 (vi) If the political contributions were made for or  
30 against an issue advocacy campaign, the nature of the  
31 political issue and whether the political contributions  
32 were made in support or opposition to the political  
33 issue.

34 (vii) All political contributions made by a separate  
35 segregated fund affiliated with the corporation.

36 (b) Public disclosure.--

37 (1) The quarterly reports of political activities by a  
38 corporation organized in this Commonwealth to shareholders  
39 shall be public records.

40 (2) A copy of each report filed under subsection (a)(1)  
41 shall be:

42 (i) submitted to the department; and

43 (ii) posted for at least one year on the  
44 corporation's publicly accessible Internet website, if  
45 any.

46 Section 7. Public disclosure of regulated political activities  
47 by the department.

48 (a) Department duty.--The quarterly reports of political  
49 activities by a corporation organized in this Commonwealth to  
50 shareholders shall be made publicly available by the department.

51 (b) Electronic form.--A quarterly report required to be

1 filed under this section shall be filed in electronic form using  
2 filing software approved or developed by the department in  
3 addition to filing in any other form that the department may  
4 require by regulation and shall be published on the department's  
5 publicly accessible Internet website.

6 (c) Format.--The department shall ensure that, to the  
7 greatest extent practicable, the quarterly reports on political  
8 activities are publicly available through the department's  
9 publicly accessible Internet website in a format that can be  
10 searched, sorted and downloaded.

11 Section 8. Report by Department of the Auditor General.

12 (a) Audit.--On an annual basis, the Department of the  
13 Auditor General shall audit the extent of compliance or  
14 noncompliance with the requirements of this act by corporations  
15 incorporated under the laws of this Commonwealth and their  
16 management and shareholders and the effectiveness of the  
17 department in meeting the reporting and disclosure requirements  
18 of this act.

19 (b) Report.--No later than April 1 of each year, the  
20 Department of the Auditor General shall submit to the Governor a  
21 report on the audit required under subsection (a) for the  
22 preceding year.

23 Section 9. Board approval for political expenditures.

24 (a) Approval required.--Notwithstanding any other provision  
25 of law, a corporation may not make a political contribution  
26 unless specifically authorized to do so:

27 (1) by the vote of the board of directors of the  
28 corporation at a regular or special meeting;

29 (2) by the president, vice president, secretary or  
30 treasurer of a corporation whom the board has specifically  
31 empowered to authorize political contributions; or

32 (3) for a corporation, by any other person designated by  
33 resolution of the board of directors of a corporation to  
34 authorize political contributions.

35 (b) Form of political contribution.--A corporation may not  
36 make a political contribution as defined under Federal or State  
37 law, other than an in-kind political contribution, except by  
38 check.

39 Section 10. Applicability to foreign corporations.

40 (a) General rule.--A foreign corporation, other than a  
41 foreign association or foreign nonprofit corporation, but  
42 including a foreign parent corporation, even if it does not  
43 itself transact intrastate business, is subject to the  
44 requirements of this act if the following apply:

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

50 (2) more than one-half of its outstanding voting  
51 securities are held of record by persons having addresses in

1 this Commonwealth appearing on the books of the corporation  
2 on the record date for the latest meeting of shareholders  
3 held during its latest full-income year or, if no meeting was  
4 held during that year, on the last day of the latest full-  
5 income year.

6 (b) Determination.--

7 (1) The determination of the property, payroll and sales  
8 factors under subsection (a) with respect to any parent  
9 corporation shall be made on a consolidated basis, including  
10 in a unitary computation, after elimination of intercompany  
11 transactions, the property, payroll and sales of the parent  
12 corporation and all of its subsidiaries in which it owns  
13 directly or indirectly more than 50% of the outstanding  
14 shares entitled to vote for the election of directors, but  
15 deducting a percentage of the property, payroll and sales of  
16 each subsidiary equal to the percentage minority ownership,  
17 if any, in the subsidiary.

18 (2) For the purpose of this section, any securities held  
19 to the knowledge of the issuer in the names of broker-  
20 dealers, nominees for broker-dealers, including clearing  
21 corporations or banks, associations or other entities holding  
22 securities in a nominee name or otherwise on behalf of a  
23 beneficial owner, collectively considered nominee holders,  
24 shall not be considered outstanding.

25 (3) Notwithstanding paragraph (2), if the foreign  
26 corporation requests all nominee holders to certify, with  
27 respect to all beneficial owners for whom securities are  
28 held, the number of shares held for those beneficial owners  
29 having addresses as shown on the records of the nominee  
30 holder in this Commonwealth and outside of this Commonwealth,  
31 then all shares so certified shall be considered outstanding  
32 and held of record by persons having addresses either in this  
33 Commonwealth or outside of this Commonwealth as so certified,  
34 provided that the certification provided shall be retained  
35 with the record of shareholders and made available for  
36 inspection and copying.

37 (4) A current list of beneficial owners of a foreign  
38 corporation's securities provided to the corporation by one  
39 or more nominee holders or an agent thereof under the  
40 requirements of 17 CFR § 240.14b-1(b)(3) (relating to  
41 obligation of registered brokers and dealers in connection  
42 with the prompt forwarding of certain communications to  
43 beneficial owners) or 240.14b-2(b)(3) (relating to obligation  
44 of banks, associations and other entities that exercise  
45 fiduciary powers in connection with the prompt forwarding of  
46 certain communications to beneficial owners), promulgated  
47 under the Securities Exchange Act of 1934 (48 Stat. 881, 15  
48 U.S.C. 48 Stat. 881) shall constitute an acceptable  
49 certification with respect to beneficial owners for the  
50 purposes of this subsection.

51 (c) Applicability.--This section shall not apply to a

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.

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

19 Section 11.

20 The dollar figures contained in this act shall be adjusted  
21 biennially at a rate determined by the Federal Election  
22 Commission as authorized under 11 CFR Pt. 110 (relating to  
23 contribution and expenditure limitations and prohibitions). The  
24 Secretary of the Commonwealth shall certify the calculation of  
25 the rate as determined by the Federal Election Commission and  
26 shall publish the new dollar figures in the Pennsylvania  
27 Bulletin.

28 Section 12. Effective date.

29 This act shall take effect as follows:

30 (1) Section 4 shall take effect in 60 days.

31 (2) Sections 5, 6, 7, 8, 9, 10 and 11 shall take effect  
32 January 1, 2018, or immediately, whichever is later.

33 (3) This section shall take effect immediately.

34 (4) The remainder of this act shall take effect  
35 immediately.