

Senate Study Bill 3161 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON DANIELSON)

A BILL FOR

1 An Act relating to approval, notification, and reporting of
2 political activities by certain corporations and other
3 entities and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUBCHAPTER VIII

Section 1. NEW SECTION. 68A.801 Short title — declaration of policy.

1. This subchapter shall be known and may be cited as the "*Corporate Political Accountability Act*".

2. The general assembly finds and declares as follows:

a. Although corporations cannot vote, corporations make significant political contributions and expenditures that directly or indirectly influence the election of candidates and support or oppose political causes at the federal, state, and local levels. Decisions to use corporate treasury funds for political contributions and expenditures are currently made by corporate boards and executives, often without the knowledge or consent of shareholders.

b. Corporations acting through their boards and executives have a fiduciary duty to conduct business in the best interests of the shareholders. Corporate boards and executives that use corporate funds to support and oppose political candidates, political parties, and political causes in opposition to the interests of many or all of their shareholders may not be acting in the best interests of the shareholders.

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

d. Corporations should be accountable to their shareholders prior to making political contributions or expenditures affecting federal, state, and local governance and public policy. Requiring the express approval of a corporation's shareholders prior to making political contributions or expenditures and requiring reporting to shareholders of such expenditures will help establish accountability.

1 Sec. 2. NEW SECTION. **68A.802 Definitions.**

2 For purposes of this subchapter unless the context otherwise
3 requires:

4 1. "*Contribution*" or "*expenditure*" includes any
5 contributions and expenditures not deductible under section
6 162(e)(1)(B) of the Internal Revenue Code including but not
7 limited to contributions to or expenditures on behalf of
8 political candidates, political parties, political committees,
9 and other political entities organized and operating under
10 section 527 of the Internal Revenue Code, and any portion of
11 any dues or similar payments made to any organization exempt
12 from taxation under section 501(a) of the Internal Revenue
13 Code that is used for an expenditure or contribution and if
14 made directly by the corporation would not be deductible
15 under section 162(e)(1)(B) of the Internal Revenue Code, any
16 contribution or expenditure, as those terms are defined in
17 section 302 of the Federal Election Campaign Act of 1971, as
18 codified at 2 U.S.C. § 431, as well as any contribution defined
19 in section 68A.102. The term also includes any direct or
20 indirect payment, distribution, loan, advance, deposit or gift
21 of money, or any services, or anything of value, except a loan
22 of money by a national or state bank made in accordance with
23 the applicable banking laws and regulations and in the ordinary
24 course of business, to any candidate, campaign committee,
25 or political party or organization in connection with any
26 election to any office. "*Contribution*" or "*expenditure*" does
27 not include:

28 a. Communications by a corporation to its shareholders and
29 executive or administrative personnel and their families or by
30 a labor organization to its members and their families on any
31 subject.

32 b. Nonpartisan registration and get-out-the-vote campaigns
33 by a corporation aimed at its shareholders and executive or
34 administrative personnel and their families or by a labor
35 organization aimed at its members and their families.

1 *c.* The establishment and administration of a separate
2 segregated fund and the solicitation of contributions to such
3 separate segregated fund to be utilized for political purposes
4 by a corporation, labor organization, membership organization,
5 cooperative, or corporation without capital stock.

6 2. "*Corporation*" means any corporation formed under the
7 laws of this state or a foreign corporation if section 68A.808
8 applies.

9 3. "*General treasury funds*" means funds in possession of a
10 corporation in the normal course of business, including funds
11 from sales, accounts payable, loans, investments, bonds or debt
12 instruments.

13 4. "*Internal Revenue Code*" means the same as defined in
14 section 422.3.

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

23 6. "*Known at the time of the authorization vote*" means at
24 the time the corporation seeks authorization from shareholders
25 to spend corporate funds for political activities, all of the
26 following have occurred:

27 *a.* The corporation's officers, directors, or employees have
28 identified a specific political activity for the corporation to
29 support or oppose.

30 *b.* Corporate officers, directors, or employees have taken
31 steps to obligate funds to a political activity.

32 *c.* The corporation has a regularly scheduled payment to
33 a trade association or other entity to pay for a political
34 activity in the next twelve months.

35 7. "*Majority of shareholders*" means fifty percent plus one

1 of all outstanding voting securities. Shareholders not casting
2 votes shall not count toward affirmative authorization under
3 this subchapter.

4 8. *“Political activities”* means any contributions or
5 expenditures made directly or indirectly to, or in support of
6 or opposition to, any candidate, political party, committee,
7 electioneering communication, ballot measure campaign, or an
8 issue advocacy campaign.

9 9. *“Separate segregated fund”* means a fund established
10 by a corporation for the purpose of soliciting contributions
11 to the fund for the purpose of funding political activities
12 by the corporation. A separate segregated fund that makes
13 expenditures in federal elections shall have the same meaning
14 and limitations as that found in 2 U.S.C. § 441b.

15 10. *“Shareholders”* means:

16 a. In the case of a foreign corporation described in section
17 68A.808, all shareholders of the corporation residing in the
18 state.

19 b. In the case of a corporation incorporated in this state,
20 all shareholders of the corporation.

21 **Sec. 3. NEW SECTION. 68A.803 Corporate political activity**
22 **— notification to shareholders and public report required.**

23 1. *Shareholder vote on corporate political activities.*

24 a. Annual vote.

25 (1) Any corporation that spends in the aggregate ten
26 thousand dollars or more of corporate treasury funds on
27 political activities must comply with the requirements of this
28 section.

29 (2) Any proxy or consent or authorization for an annual
30 meeting of the shareholders of a corporation, or a special
31 meeting in lieu of such meeting, where proxies are solicited
32 in respect of any security occurring on or after six months
33 following the date on which rules are made effective under
34 paragraph “e” shall provide for a separate resolution subject
35 to shareholder vote to approve any spending of ten thousand

1 dollars or more by the corporation for any political activity.

2 (3) Notwithstanding the requirement for an annual
3 shareholder vote to authorize any spending of ten thousand
4 dollars or more by the corporation for any political
5 activity, a corporation may request authorization for spending
6 on political activities on a more frequent basis. Any
7 authorization request by the corporation that is not made
8 during an annual authorization shall be deemed a special
9 authorization and must be authorized by a majority of the
10 shareholders voting on the question of authorization.

11 (4) If a corporation spends less than an aggregate of
12 ten thousand dollars in a twelve-month period for political
13 activities, the corporation is not required to seek shareholder
14 authorization for such spending.

15 *b.* Shareholder approval.

16 (1) When seeking shareholder authorization for expenditures
17 for political activities, the corporation shall request
18 authorization to spend a maximum dollar amount in the twelve
19 months following authorization.

20 (2) If known at the time of the authorization vote, the
21 company shall articulate whether the corporate treasury funds
22 so authorized are intended to benefit or defeat specific
23 candidates, ballot measures, or issue advocacy campaigns or
24 whether it will be paid to specific nonprofit entities or trade
25 associations for political activities.

26 (3) To be effective, the authorization vote must garner
27 support from a majority of shareholders voting on the
28 authorization. A vote by the shareholders to approve or
29 disapprove any spending of ten thousand dollars or more by a
30 corporation for a political activity shall be binding on the
31 corporation.

32 (4) Notwithstanding the requirement for an annual
33 shareholder vote to authorize any spending of ten thousand
34 dollars or more by the corporation for any political activity,
35 a corporation may request a special authorization for

1 additional spending on political activities, provided that
2 all spending on political activities of ten thousand dollars
3 or more must be authorized by a majority of the shareholders
4 voting, and for any special authorization, the corporation
5 shall articulate whether the corporate treasury funds so
6 authorized are intended to benefit or defeat candidates,
7 ballot measures, or issue advocacy campaigns or will be paid
8 to specific nonprofits or trade associations for political
9 activities at the time the special authorization is requested.

10 c. Director liability. If a corporation makes an
11 unauthorized contribution or expenditure for a political
12 activity, the directors at the time that the unauthorized
13 contribution or expenditure was incurred are jointly and
14 severally liable to repay to the corporation the amount of the
15 unauthorized contribution or expenditure, with interest at an
16 annual rate of eight per cent.

17 d. Sole proprietorships excluded. Notwithstanding any other
18 provision of this section, nothing in this section shall apply
19 a new duty to the owner of a sole proprietorship.

20 e. Rules. The board shall adopt rules to implement this
21 section.

22 2. *Notification to shareholders — report.*

23 a. At least quarterly during each fiscal year, a corporation
24 that makes contributions or expenditures for political
25 activities must notify its shareholders in writing of the
26 nature of all its political activities funded by either its
27 separate segregated fund or through its general corporate
28 treasury, including contributions or expenditures made directly
29 or indirectly.

30 b. A report made pursuant to this section shall accompany
31 the notification and shall include all of the following:

- 32 (1) The date of the contributions or expenditures.
33 (2) The amount of the contributions or expenditures.
34 (3) The identity of the candidate, political party,
35 committee, electioneering communication, ballot measure

1 campaign, or issue advocacy campaign.

2 (4) If the contributions or expenditures were made
3 for or against a candidate, including an electioneering
4 communication as defined under federal law, the office sought
5 by the candidate, and the political party affiliation of the
6 candidate.

7 (5) If the contributions or expenditures were made for
8 or against a ballot measure, the purpose of the measure and
9 whether the contributions or expenditures were made in support
10 or opposition to the ballot measure.

11 (6) If the contributions or expenditures were made for or
12 against an issue advocacy campaign, the nature of the political
13 issue and whether the contributions were made in support or
14 opposition to the political issue.

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

17 3. *Public disclosure.*

18 a. The quarterly reports of political activities by a
19 corporation to its shareholders are public records open for
20 public inspection.

21 b. A copy of the reports filed shall be posted for at least
22 one year on the corporation's internet site, if any.

23 Sec. 4. NEW SECTION. **68A.804 Public disclosure of corporate**
24 **political activities by the board.**

25 1. A corporation required to provide a notification and
26 report to its shareholders under section 68A.803 must provide a
27 copy of the notification and report to the board, subject to
28 the requirements and penalties provided in this chapter.

29 2. A notification and report required to be filed under this
30 section shall be filed in electronic format as prescribed by
31 the board.

32 3. a. The quarterly reports of political activities by
33 a corporation to its shareholders shall be made publicly
34 available by the board.

35 b. The board shall post the quarterly reports on the board's

1 internet site in a format that permits the reports to be
2 searched, sorted, and downloaded.

3 **Sec. 5. NEW SECTION. 68A.805 Reports by the board.**

4 1. Annually the board shall audit the extent of compliance
5 or noncompliance with the requirements of this subchapter by
6 corporations, their management, and shareholders, as well as
7 the effectiveness of the board in monitoring and enforcing
8 compliance with the reporting and disclosure requirements of
9 this subchapter.

10 2. Not later than June 30 of each year, the board shall
11 submit to the governor and the general assembly a report on the
12 review required by subsection 1 for the preceding year.

13 **Sec. 6. NEW SECTION. 68A.806 Approval for corporate and
14 association political expenditures.**

15 Notwithstanding any provision of the law to the contrary, a
16 trade, business, or professional association or a corporation
17 that has received shareholder authorization under section
18 68A.803, subsection 1, may make any contribution or expenditure
19 only when specifically authorized to do so as follows:

20 1. By the vote of the board of directors of the corporation
21 or of the executive committee of the trade, business, or
22 professional association.

23 2. By the president, vice president, secretary, or
24 treasurer of a corporation if the board has specifically
25 empowered such officer to authorize such contributions or
26 expenditures.

27 3. For a corporation, by any other person designated by
28 resolution of the board of directors of a corporation to
29 authorize contributions or expenditures.

30 **Sec. 7. NEW SECTION. 68A.807 Form of contribution or
31 expenditure.**

32 All contributions or expenditures, other than in-kind
33 contributions, by a corporation or a trade, business, or
34 professional association shall be made by check.

35 **Sec. 8. NEW SECTION. 68A.808 Applicability to foreign**

1 **corporations.**

2 1. A foreign corporation, other than a foreign association
3 or foreign nonprofit corporation, but including a foreign
4 parent corporation even though it does not itself transact
5 intrastate business, is subject to the requirements of this
6 subchapter if both of the following apply:

7 a. The foreign corporation derives more than one-half of its
8 income from real, tangible, or intangible property located or
9 having a situs in Iowa.

10 b. More than one-half of its outstanding voting securities
11 are held of record by persons having addresses in this state
12 appearing on the books of the corporation on the record date
13 for the latest meeting of shareholders held during its latest
14 full income tax year or, if no meeting was held during that
15 year, on the last day of the latest full income tax year.

16 2. This section does not apply to any corporation:

17 a. With outstanding securities listed on the New York stock
18 exchange or the American stock exchange.

19 b. With outstanding securities designated as qualified
20 for trading on the NASDAQ national market of the NASDAQ stock
21 market, or its successor.

22 c. If all of its voting shares, other than directors'
23 qualifying shares, are owned directly or indirectly by a
24 corporation or corporations not subject to this section.

25 **Sec. 9. NEW SECTION. 68A.809 Assessment of court costs and**
26 **attorney fees.**

27 Any party who obtains a decision by a court that the
28 corporation failed to provide to the party information
29 required to be provided by this subchapter or provided the
30 party information of the kind required to be provided by this
31 subchapter that is incorrect, the court, in its discretion,
32 shall have the power to include in its judgment recovery by the
33 party from the corporation of all court costs and reasonable
34 attorney fees incurred in that legal proceeding to the extent
35 they relate to obtaining that final determination.

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EXPLANATION

This bill requires a shareholder vote and majority approval of shareholders on certain corporate political activities. The requirement applies to a corporation incorporated under the laws of Iowa, or certain foreign corporations, that plan to spend \$10,000 or more of corporate general treasury funds or funds from a segregated account on political activities.

If a corporation makes an unauthorized contribution or expenditure, the directors are jointly and severally liable to repay to the corporation the amount of the contribution or expenditure and interest at the rate of 8 percent.

The bill requires a corporation to notify its shareholders and the ethics and campaign disclosure board of all its political activities at least quarterly during each fiscal year. The report requires a variety of information, including the date of the contributions or expenditures; the amount of the contributions or expenditures; and the identity of the candidate, political party, committee, electioneering communication, ballot measure campaign, or issue advocacy campaign. These reports are public information and must be published by the board, and the corporation if applicable, on its internet site.

The bill requires the board to annually audit the extent of compliance or noncompliance with the requirements of the bill by corporations, their management, and shareholders, as well as the effectiveness of the board in monitoring and enforcing compliance with the reporting and disclosure requirements.

The bill provides that a corporation authorized by its shareholders or a trade, business, or professional association may make a campaign contribution or expenditure only when specifically authorized to do so by certain specified officials of the corporation or association.

The bill requires that all contributions or expenditures by a corporation or a trade, business, or professional association be made by check, other than in-kind contributions.

1 The bill imposes these same restrictions on some foreign
2 corporations if the foreign corporation derives more than
3 one-half of its income from real, tangible, or intangible
4 property located or having a situs in Iowa and more than
5 one-half of its outstanding voting securities are held of
6 record by persons having addresses in Iowa.

7 The bill provides that a party who obtains a decision by
8 a court that the corporation failed to provide to the party
9 information required to be provided by the bill may be awarded
10 court costs and reasonable attorney fees.

11 As provided in Code section 68A.701, a willful violation of
12 any provision of the campaign finance Code chapter is a serious
13 misdemeanor punishable by confinement for up to one year and
14 a fine of at least \$315 but not more than \$1,875. A variety
15 of civil remedies are also available in Code section 68B.32D
16 for a violation of Code chapter 68A or rules of the ethics and
17 campaign disclosure board, ranging from a reprimand to a civil
18 penalty of not more than \$2,000.