SENATE BILL **No. 982**

Introduced by Senator Evans

January 23, 2012

An act to add Chapter 7.5 (commencing with Section 750) to Division 1 of Title 1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as introduced, Evans. Corporations: political activities: shareholder disclosure.

Existing law, the General Corporation Law, provides for the regulation of corporations. Under existing law, the board of directors of a corporation is required, except as specified, to send an annual report to shareholders containing, among other things, a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected officers, candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received and the identities of donors.

This bill would require a corporation, as defined, that has shareholders located in this state and that makes a contribution or expenditure to, or in support of, or in opposition to, a candidate, ballot measure campaign, or a signature-gathering effort on behalf of a ballot measure, political party, or political action committee to issue a report on the planned political expenditures of the corporation in the forthcoming fiscal year as well as expenditures in the previous fiscal year by specified means, including posting the report on the corporation's Internet Web site, if any.

This bill would provide for a civil cause of action for damages by a shareholder against a corporation for violations of the bill's provisions. The bill would require a corporation to maintain records that include copies of the reports on its political activities for 5 years, and to make copies of these reports available to the Secretary of State upon request. The bill would also state findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Corporations make substantial political contributions and expenditures to support and oppose candidates, ballot measures, political parties, and political causes. However, decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than the shareholders who own the corporations.

(b) Shareholders have a right to know how corporations are spending shareholder funds to make political contributions and expenditures to support or oppose candidates, ballot measures, political parties, and political causes.

(c) Most shareholders have no means by which they may learn of, influence, or object to the political activities of the corporations in which they have invested. Moreover, most shareholders have no means by which they may influence whether their invested funds not be used to make political contributions or expenditures to support candidates, ballot measures, political parties, or political causes to which the shareholders are opposed.

(d) By limiting the extent to which corporate political contributions and expenditures may be regulated, the United States Supreme Court, through its decision in Citizens United v. Federal Election Com'n (2010) 130 S.Ct. 876, has increased the need for greater accountability of corporations to their shareholders with regard to political contributions and expenditures.

(e) The Citizens United decision was handed down in January 2010, but the debate over whether the invested funds of shareholders should be used for political activities without their consent is not a new one. In 1905, President Theodore Roosevelt said, “All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders’ money for such purposes.”

(f) It is the intent of the Legislature in enacting this act to inform shareholders and the public of how corporations are spending funds to make political contributions and expenditures benefitting candidates, political parties, and political causes.

SEC. 2. Chapter 7.5 (commencing with Section 750) is added to Division 1 of Title 1 of the Corporations Code, to read:

Chapter 7.5. Political Activity

750. As used in this chapter, the following terms have the following meanings:

(a) “Ballot measure” means a constitutional amendment or other proposition that is submitted to a popular vote at an election by action of a legislative body, or that is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it qualifies for the ballot.

(b) “Corporation” means any of the following:

(1) A publicly held corporation with shareholders.

(2) An entity in which a corporation with shareholders has an equity interest.

(3) The parent corporation of a subsidiary or affiliate of a corporation with shareholders.

(c) “Political activity” means a contribution or expenditure made to, or in support of, or in opposition to, a candidate, ballot measure campaign, signature-gathering effort on behalf of a ballot measure, political party, or political action committee.

(d) “Public corporation” means a corporation that is required to file periodic reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (15 U.S.C. Secs. 78m(a), 78o(d)).

(e) “Shareholder” has the same meaning as set forth in Section 185.

751. A corporation that has shareholders with legal residency in California and that engages in political activity shall do all of the following:

(a) (1) Issue a report on the planned political expenditures of the corporation in the forthcoming fiscal year as well as expenditures in the previous fiscal year. The report shall include all of the following:

(A) A description of the political activities.

(B) The name of the person, candidate, committee, or political party, or a description of the political cause, to which each contribution or expenditure was made.

(C) The aggregate amount of the contribution or contributions and expenditure or expenditures for each candidate, ballot measure campaign, signature-gathering effort on behalf of a ballot measure, political party, or political action committee.

(D) If a contribution or expenditure was made in support of or in opposition to a candidate, the office sought by the candidate and the political party affiliation of the candidate.

(E) If a contribution or expenditure was made for or against a ballot measure, a description of the ballot measure and a statement as to whether the contribution or expenditure was made in support of or in opposition to the ballot measure.

(2) A public corporation is deemed to have complied with this subdivision if it includes the report required by paragraph (1) in its annual report to shareholders under a separate caption entitled "Political Activity Report," if the annual report is provided to shareholders within 90 days of the fiscal yearend.

(3) If the corporation maintains an Internet Web site, the corporation shall post the report required by this subdivision on its Internet Web site.

(b) This section shall not apply to a corporation's use of segregated accounts, political action committees, or political committees, as long as the funds in those accounts or committees come from shareholders, board members, or employees of the corporation who, as individuals, choose to contribute to those accounts or committees.

752. (a) A corporation subject to Section 751 shall maintain records of its political activities, including the report required by subdivision (a), for a minimum of five years.

(b) Upon a request by the Secretary of State, a corporation shall file with the Secretary of State a copy of each report produced pursuant to subdivision (a) of Section 751.

753. No provision of Section 751 shall be construed to relieve a corporation of its obligations under existing law, including but not limited to, the following:

(a) Section 604, or a successor statute or regulation.

(b) Any state or federal statute or regulation that regulates the solicitation of proxies.

(c) With respect to a corporation with an outstanding class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78l), the proxy rules promulgated under that act.

754. (a) A violation of Section 751 by a corporation shall create a civil cause of action for damages against the corporation that may be brought by any shareholder of the corporation.

(b) The remedies provided in this section are in addition to any other rights or remedies available under any other provision of law.

755. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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