

The DISCLOSE Act Passes the House

July 2010

On June 24, 2010, the United States House of Representatives passed H.R. 5175, known as the "Democracy Is Strengthened by Casting Light on Spending in Elections Act" or the "DISCLOSE Act." The bill was passed by a largely party-line vote of 219-206. A brief overview of the House-passed version of the bill follows. The bill

- Prohibits various political activities, including certain targeted grassroots TV and radio ads during election years, by:
 - Government contractors with contracts of at least \$10 million;
 - Recipients of Troubled Asset Relief Program (TARP) or Emergency Economic Stabilization Act (EESA) funds;
 - Persons who enter into negotiations for an oil or gas exploration, development or production lease under the Outer Continental Shelf Lands Act; and
 - Foreign-controlled or foreign-owned domestic corporations.
- Treats coordinated communications as contributions and defines coordinated communications by whether they refer to a candidate during specified times and are made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate or political party.
- Broadens the definition of a regulated "independent expenditure" to include a communication that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy.
- Substantially expands the time period during which coordinated communications are regulated.

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- Broadens the definition of a regulated "electioneering communication" to include TV and radio ads disseminated 120 days-increased from 60 days-before a general election.
- Imposes, among other things, the following new requirements on corporations, labor unions, tax-exempt and other organizations engaged in communications that qualify as "independent expenditures" or "electioneering communications:"
 - Public disclosures to the Federal Election Commission of donations received by the organization (similar disclosures can also be required of the donating entities);
 - Identification of top donors in the communications;
 - A statement by the highest ranking officer identifying himself or herself and stating that he or she has approved the communication;
 - Disclosures to shareholders, members or donors; and
 - A link on the organization's home page to the location on the Federal Election Commission website where the organization has reported its "independent expenditures" and "electioneering communications."
- These new requirements do not apply to 501(c)(4) tax-exempt organizations that have 500,000 individual members representing each state with corporate and labor union funding that does not exceed 15% of total funding, provided that the organization does not use its corporate and labor union funding for campaign-related activity-known colloquially as the "NRA" exception.

Of course, the foregoing is only a summary of a fairly complex bill. If the DISCLOSE Act becomes law, it will impose new and burdensome requirements, the most complicated of which appear to apply to trade associations and other membership organizations.

The Senate must still pass the DISCLOSE Act before it can become law. Senate Republican Leader Mitch McConnell (R-KY) has publicly stated that he opposes passage of the bill. Stay tuned to *Election Law News* for future updates.