

# Calendar No. 446

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3369

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 10, 2012

Mr. WHITEHOUSE (for himself, Mr. UDALL of New Mexico, Mr. FRANKEN, Mr. SCHUMER, Mr. NELSON of Florida, Mr. BENNET, Mr. MERKLEY, Mrs. SHAHEEN, Mr. BROWN of Ohio, Mr. LEAHY, Mr. BINGAMAN, Ms. LANDRIEU, Ms. MIKULSKI, Mr. MENENDEZ, Mrs. HAGAN, Mr. UDALL of Colorado, Ms. STABENOW, Mr. LEVIN, Mr. HARKIN, Mr. COONS, Mr. KOHL, Mr. CONRAD, Mr. INOUE, Mr. SANDERS, Mr. REED, Mrs. MCCASKILL, Mr. BLUMENTHAL, and Mrs. GILLIBRAND) introduced the following bill; which was read the first time

JULY 11, 2012

Read the second time and placed on the calendar

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## A BILL

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Democracy Is  
3 Strengthened by Casting Light On Spending in Elections  
4 Act of 2012” or the “DISCLOSE Act of 2012”.

5 **SEC. 2. CAMPAIGN DISBURSEMENT REPORTING.**

6 (a) INFORMATION REQUIRED TO BE REPORTED.—

7 (1) TREATMENT OF FUNCTIONAL EQUIVALENT  
8 OF EXPRESS ADVOCACY AS INDEPENDENT EXPENDI-  
9 TURE.—Subparagraph (A) of section 301(17) of the  
10 Federal Election Campaign Act of 1971 (2 U.S.C.  
11 431(17)) is amended to read as follows:

12 “(A) that expressly advocates the election  
13 or defeat of a clearly identified candidate, or is  
14 the functional equivalent of express advocacy  
15 because, when taken as a whole, it can be inter-  
16 preted by a reasonable person only as advo-  
17 cating the election or defeat of a candidate, tak-  
18 ing into account whether the communication in-  
19 volved mentions a candidacy, a political party,  
20 or a challenger to a candidate, or takes a posi-  
21 tion on a candidate’s character, qualifications,  
22 or fitness for office; and”.

23 (2) EXPANSION OF PERIOD DURING WHICH  
24 COMMUNICATIONS ARE TREATED AS ELECTION-  
25 EERING COMMUNICATIONS.—Section 304(f)(3)(A)(i)  
26 of such Act (2 U.S.C. 434(f)(3)(A)(i)) is amended—

1 (A) by redesignating subclause (III) as  
2 subclause (IV); and

3 (B) by striking subclause (II) and insert-  
4 ing the following:

5 “(II) in the case of a communica-  
6 tion which refers to a candidate for an  
7 office other than the President or Vice  
8 President, is made during the period  
9 beginning on January 1 of the cal-  
10 endar year in which a general or run-  
11 off election is held and ending on the  
12 date of the general or runoff election  
13 (or in the case of a special election,  
14 during the period beginning on the  
15 date on which the announcement with  
16 respect to such election is made and  
17 ending on the date of the special elec-  
18 tion);

19 “(III) in the case of a commu-  
20 nication which refers to a candidate  
21 for the office of President or Vice  
22 President, is made in any State dur-  
23 ing the period beginning 120 days be-  
24 fore the first primary election, caucus,  
25 or preference election held for the se-

1           lection of delegates to a national  
2           nominating convention of a political  
3           party is held in any State (or, if no  
4           such election or caucus is held in any  
5           State, the first convention or caucus  
6           of a political party which has the au-  
7           thority to nominate a candidate for  
8           the office of President or Vice Presi-  
9           dent) and ending on the date of the  
10          general election; and”.

11           (3) EFFECTIVE DATE; TRANSITION FOR ELEC-  
12          TIONEERING COMMUNICATIONS MADE PRIOR TO EN-  
13          ACTMENT.—The amendment made by paragraph (2)  
14          shall apply with respect to communications made on  
15          or after January 1, 2013, except that no commu-  
16          nication which is made prior to such date shall be  
17          treated as an electioneering communication under  
18          subclause (II) or (III) of section 304(f)(3)(A)(i) of  
19          the Federal Election Campaign Act of 1971 (as  
20          amended by paragraph (2)) unless the communica-  
21          tion would be treated as an electioneering commu-  
22          nication under such section if the amendment made  
23          by paragraph (2) did not apply.

1 (b) DISCLOSURE REQUIREMENTS FOR CORPORA-  
2 TIONS, LABOR ORGANIZATIONS, AND CERTAIN OTHER  
3 ENTITIES.—

4 (1) IN GENERAL.—Section 324 of the Federal  
5 Election Campaign Act of 1971 (2 U.S.C. 441k) is  
6 amended to read as follows:

7 **“SEC. 324. DISCLOSURE OF CAMPAIGN-RELATED DISBURSE-**  
8 **MENTS BY COVERED ORGANIZATIONS.**

9 “(a) DISCLOSURE STATEMENT.—

10 “(1) IN GENERAL.—Any covered organization  
11 that makes campaign-related disbursements aggre-  
12 gating more than \$10,000 in an election reporting  
13 cycle shall, not later than 24 hours after each disclo-  
14 sure date, file a statement with the Commission  
15 made under penalty of perjury that contains the in-  
16 formation described in paragraph (2)—

17 “(A) in the case of the first statement filed  
18 under this subsection, for the period beginning  
19 on the first day of the election reporting cycle  
20 and ending on the first such disclosure date;  
21 and

22 “(B) in the case of any subsequent state-  
23 ment filed under this subsection, for the period  
24 beginning on the previous disclosure date and  
25 ending on such disclosure date.

1           “(2) INFORMATION DESCRIBED.—The informa-  
2           tion described in this paragraph is as follows:

3           “(A) The name of the covered organization  
4           and the principal place of business of such or-  
5           ganization.

6           “(B) The amount of each campaign-related  
7           disbursement made by such organization during  
8           the period covered by the statement of more  
9           than \$1,000, and the name and address of the  
10          person to whom the disbursement was made.

11          “(C) In the case of a campaign-related dis-  
12          bursement that is not a covered transfer, the  
13          election to which the campaign-related disburse-  
14          ment pertains and if the disbursement is made  
15          for a public communication, the name of any  
16          candidate identified in such communication and  
17          whether such communication is in support of or  
18          in opposition to a candidate.

19          “(D) A certification by the chief executive  
20          officer or person who is the head of the covered  
21          organization that the campaign-related dis-  
22          bursement is not made in cooperation, consulta-  
23          tion, or concert with or at the request or sug-  
24          gestion of a candidate, authorized committee, or

1 agent of a candidate, political party, or agent of  
2 a political party.

3 “(E) If the covered organization makes  
4 campaign-related disbursements using exclu-  
5 sively funds in a segregated bank account con-  
6 sisting of funds that were paid directly to such  
7 account by persons other than the covered orga-  
8 nization that controls the account, for each  
9 such payment to the account—

10 “(i) the name and address of each  
11 person who made such payment during the  
12 period covered by the statement;

13 “(ii) the date and amount of such  
14 payment; and

15 “(iii) the aggregate amount of all such  
16 payments made by the person during the  
17 period beginning on the first day of the  
18 election reporting cycle and ending on the  
19 disclosure date;

20 but only if such payment was made by a person  
21 who made payments to the account in an aggre-  
22 gate amount of \$10,000 or more during the pe-  
23 riod beginning on the first day of the election  
24 reporting cycle and ending on the disclosure  
25 date.

1           “(F) If the covered organization makes  
2 campaign-related disbursements using funds  
3 other than funds in a segregated bank account  
4 described in subparagraph (E), for each pay-  
5 ment to the covered organization—

6           “(i) the name and address of each  
7 person who made such payment during the  
8 period covered by the statement;

9           “(ii) the date and amount of such  
10 payment; and

11           “(iii) the aggregate amount of all such  
12 payments made by the person during the  
13 period beginning on the first day of the  
14 election reporting cycle and ending on the  
15 disclosure date;

16 but only if such payment was made by a person  
17 who made payments to the covered organization  
18 in an aggregate amount of \$10,000 or more  
19 during the period beginning on the first day of  
20 the election reporting cycle and ending on the  
21 disclosure date.

22           “(G) Such other information as required in  
23 rules established by the Commission to promote  
24 the purposes of this section.

25           “(3) EXCEPTIONS.—



1           “(A) AMOUNTS RECEIVED IN ORDINARY  
2 COURSE OF BUSINESS.—The requirement to in-  
3 clude in a statement filed under paragraph (1)  
4 the information described in paragraph (2)  
5 shall not apply to amounts received by the cov-  
6 ered organization in commercial transactions in  
7 the ordinary course of any trade or business  
8 conducted by the covered organization or in the  
9 form of investments (other than investments by  
10 the principal shareholder in a limited liability  
11 corporation) in the covered organization.

12           “(B) DONOR RESTRICTION ON USE OF  
13 FUNDS.—The requirement to include in a state-  
14 ment submitted under paragraph (1) the infor-  
15 mation described in subparagraph (F) of para-  
16 graph (2) shall not apply if—

17                   “(i) the person described in such sub-  
18 paragraph prohibited, in writing, the use of  
19 the payment made by such person for cam-  
20 paign-related disbursements; and

21                   “(ii) the covered organization agreed  
22 to follow the prohibition and deposited the  
23 payment in an account which is segregated  
24 from any account used to make campaign-  
25 related disbursements.

1           “(C) AMOUNTS RECEIVED FROM AFFILI-  
2           ATES.—The requirement to include in a state-  
3           ment submitted under paragraph (1) the infor-  
4           mation described in subparagraph (F) of para-  
5           graph (2) shall not apply to any amount which  
6           is described in subsection (f)(3)(A)(i).

7           “(4) OTHER DEFINITIONS.—For purposes of  
8           this section:

9           “(A) DISCLOSURE DATE.—The term ‘dis-  
10          closure date’ means—

11           “(i) the first date during any election  
12           reporting cycle by which a person has  
13           made campaign-related disbursements ag-  
14           gregating more than \$10,000; and

15           “(ii) any other date during such elec-  
16           tion reporting cycle by which a person has  
17           made campaign-related disbursements ag-  
18           gregating more than \$10,000 since the  
19           most recent disclosure date for such elec-  
20           tion reporting cycle.

21           “(B) ELECTION REPORTING CYCLE.—The  
22           term ‘election reporting cycle’ means the 2-year  
23           period beginning on the date of the most recent  
24           general election for Federal office.

1           “(C) PAYMENT.—The term ‘payment’ in-  
2           cludes any contribution, donation, transfer, pay-  
3           ment of dues, or other payment.

4           “(b) COORDINATION WITH OTHER PROVISIONS.—

5           “(1) OTHER REPORTS FILED WITH THE COM-  
6           MISSION.—Information included in a statement filed  
7           under this section may be excluded from statements  
8           and reports filed under section 304.

9           “(2) TREATMENT AS SEPARATE SEGREGATED  
10          FUND.—A segregated bank account referred to in  
11          subsection (a)(2)(E) may be treated as a separate  
12          segregated fund for purposes of section 527(f)(3) of  
13          the Internal Revenue Code of 1986.

14          “(c) FILING.—Statements required to be filed under  
15          subsection (a) shall be subject to the requirements of sec-  
16          tion 304(d) to the same extent and in the same manner  
17          as if such reports had been required under subsection (e)  
18          or (g) of section 304.

19          “(d) CAMPAIGN-RELATED DISBURSEMENT DE-  
20          FINED.—In this section, the term ‘campaign-related dis-  
21          bursement’ means a disbursement by a covered organiza-  
22          tion for any of the following:

23                 “(1) An independent expenditure consisting of a  
24                 public communication.

1           “(2) An electioneering communication, as de-  
2           fined in section 304(f)(3).

3           “(3) A covered transfer.

4           “(e) COVERED ORGANIZATION DEFINED.—In this  
5           section, the term ‘covered organization’ means any of the  
6           following:

7           “(1) A corporation (other than an organization  
8           described in section 501(c)(3) of the Internal Rev-  
9           enue Code of 1986).

10          “(2) An organization described in section  
11          501(c) of such Code and exempt from taxation  
12          under section 501(a) of such Code (other than an  
13          organization described in section 501(c)(3) of such  
14          Code).

15          “(3) A labor organization (as defined in section  
16          316(b)).

17          “(4) Any political organization under section  
18          527 of the Internal Revenue Code of 1986, other  
19          than a political committee under this Act.

20          “(f) COVERED TRANSFER DEFINED.—

21          “(1) IN GENERAL.—In this section, the term  
22          ‘covered transfer’ means any transfer or payment of  
23          funds by a covered organization to another person if  
24          the covered organization—

1           “(A) designates, requests, or suggests that  
2           the amounts be used for—

3                   “(i) campaign-related disbursements  
4                   (other than covered transfers); or

5                   “(ii) making a transfer to another  
6                   person for the purpose of making or pay-  
7                   ing for such campaign-related disburse-  
8                   ments;

9           “(B) made such transfer or payment in re-  
10           sponse to a solicitation or other request for a  
11           donation or payment for—

12                   “(i) the making of or paying for cam-  
13                   paign-related disbursements (other than  
14                   covered transfers); or

15                   “(ii) making a transfer to another  
16                   person for the purpose of making or pay-  
17                   ing for such campaign-related disburse-  
18                   ments;

19           “(C) engaged in discussions with the re-  
20           cipient of the transfer or payment regarding—

21                   “(i) the making of or paying for cam-  
22                   paign-related disbursements (other than  
23                   covered transfers); or

24                   “(ii) donating or transferring any  
25                   amount of such transfer or payment to an-

1 other person for the purpose of making or  
2 paying for such campaign-related disburse-  
3 ments;

4 “(D) made campaign-related disburse-  
5 ments (other than a covered transfer) in an ag-  
6 gregate amount of \$50,000 or more during the  
7 2-year period ending on the date of the transfer  
8 or payment, or knew or had reason to know  
9 that the person receiving the transfer or pay-  
10 ment made such disbursements in such an ag-  
11 gregate amount during that 2-year period; or

12 “(E) knew or had reason to know that the  
13 person receiving the transfer or payment would  
14 make campaign-related disbursements in an ag-  
15 gregate amount of \$50,000 or more during the  
16 2-year period beginning on the date of the  
17 transfer or payment.

18 “(2) EXCLUSIONS.—The term ‘covered transfer’  
19 does not include any of the following:

20 “(A) A disbursement made by a covered  
21 organization in a commercial transaction in the  
22 ordinary course of any trade or business con-  
23 ducted by the covered organization or in the  
24 form of investments made by the covered orga-  
25 nization.

1           “(B) A disbursement made by a covered  
2 organization if—

3                   “(i) the covered organization prohib-  
4 ited, in writing, the use of such disburse-  
5 ment for campaign-related disbursements;  
6 and

7                   “(ii) the recipient of the disbursement  
8 agreed to follow the prohibition and depos-  
9 ited the disbursement in an account which  
10 is segregated from any account used to  
11 make campaign-related disbursements.

12           “(3) EXCEPTION FOR CERTAIN TRANSFERS  
13 AMONG AFFILIATES.—

14                   “(A) EXCEPTION FOR CERTAIN TRANS-  
15 FERS AMONG AFFILIATES.—

16                   “(i) IN GENERAL.—The term ‘covered  
17 transfer’ does not include an amount  
18 transferred by one covered organization to  
19 another covered organization if such trans-  
20 fer—

21                   “(I) is not made directly into a  
22 separate segregated bank account de-  
23 scribed in subsection (a)(2)(E), and

1                   “(II) is treated as a transfer be-  
2                   tween affiliates under subparagraph  
3                   (B).

4                   “(ii) SPECIAL RULE.—If the aggre-  
5                   gate amount of transfers described in  
6                   clause (i) exceeds \$50,000 in any election  
7                   reporting cycle—

8                   “(I) the covered organization  
9                   which makes such transfers shall pro-  
10                  vide to the covered organization re-  
11                  ceiving such transfers the information  
12                  required under subsection (a)(2)(F)  
13                  (applied by substituting ‘the period  
14                  beginning on the first day of the elec-  
15                  tion reporting cycle and ending on the  
16                  date of the most recent transfer de-  
17                  scribed in subsection (f)(3)(A)(i)’ for  
18                  ‘the period covered by the statement’  
19                  in clause (i) thereof); and

20                  “(II) the covered organization re-  
21                  ceiving such transfers shall report the  
22                  information described in subclause (I)  
23                  on any statement filed under sub-  
24                  section (a)(1) as if any contribution,  
25                  donation, or transfer to which such



1 information relates was made directly  
2 to the covered organization receiving  
3 the transfer.

4 “(B) DESCRIPTION OF TRANSFERS BE-  
5 TWEEN AFFILIATES.—A transfer of amounts  
6 from one covered organization to another cov-  
7 ered organization shall be treated as a transfer  
8 between affiliates if—

9 “(i) one of the organizations is an af-  
10 filiate of the other organization; or

11 “(ii) each of the organizations is an  
12 affiliate of the same organization;

13 except that the transfer shall not be treated as  
14 a transfer between affiliates if one of the orga-  
15 nizations is established for the purpose of mak-  
16 ing campaign-related disbursements.

17 “(C) DETERMINATION OF AFFILIATE STA-  
18 TUS.—For purposes of this paragraph, the fol-  
19 lowing organizations shall be considered to be  
20 affiliated with each other:

21 “(i) A membership organization, in-  
22 cluding a trade or professional association,  
23 and the related State and local entities of  
24 that organization.

1           “(ii) A national or international labor  
2           organization and its State or local unions,  
3           or an organization of national or inter-  
4           national unions and its State and local en-  
5           tities.

6           “(iii) A corporation and its wholly  
7           owned subsidiaries.

8           “(D) COVERAGE OF TRANSFERS TO AF-  
9           FILATED SECTION 501(c)(3) ORGANIZA-  
10          TIONS.—This paragraph shall apply with re-  
11          spect to an amount transferred by a covered or-  
12          ganization to an organization described in para-  
13          graph (3) of section 501(c) of the Internal Rev-  
14          enue Code of 1986 and exempt from tax under  
15          section 501(a) of such Code in the same man-  
16          ner as this paragraph applies to an amount  
17          transferred by a covered organization to an-  
18          other covered organization.”.

19          (2) CONFORMING AMENDMENT.—Section  
20          304(f)(6) of such Act (2 U.S.C. 434) is amended by  
21          striking “Any requirement” and inserting “Except  
22          as provided in section 324(b), any requirement”.

1 **SEC. 3. APPLICATION OF DISCLOSURE RULES TO SUPER**  
2 **PACS.**

3 (a) IN GENERAL.—Subsection (e) of section 324 of  
4 the Federal Election Campaign Act of 1971 (2 U.S.C.  
5 441k), as amended by section 2, is amended by adding  
6 at the end the following new paragraph:

7 “(5) A political committee with an account that  
8 accepts donations or contributions that do not com-  
9 ply with the contribution limits or source prohibi-  
10 tions under this Act, but only with respect to such  
11 accounts.”.

12 (b) CONFORMING AMENDMENT.—Paragraph (4) of  
13 section 324(e) of such Act (2 U.S.C. 441k), as amended  
14 by section 2, is amended by inserting “(except as provided  
15 in paragraph (5))” before the period at the end.

16 **SEC. 4. SEVERABILITY.**

17 If any provision of this Act or amendment made by  
18 this Act, or the application of a provision or amendment  
19 to any person or circumstance, is held to be unconstitu-  
20 tional, the remainder of this Act and amendments made  
21 by this Act, and the application of the provisions and  
22 amendment to any person or circumstance, shall not be  
23 affected by the holding.

24 **SEC. 5. EFFECTIVE DATE.**

25 Except as provided in section 2(a)(3), the amend-  
26 ments made by this Act shall apply with respects to dis-

1 bursements made on or after January 1, 2013, and shall  
2 take effect without regard to whether or not the Federal  
3 Election Commission has promulgated regulations to carry  
4 out such amendments.



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## **A BILL**

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

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JULY 11, 2012

Read the second time and placed on the calendar