

BILL ANALYSIS

Senate Research Center

S.B. 2337
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Proxy advisory firms are hired primarily by institutional investors to conduct research about corporate issuers and to make proxy voting recommendations. They do not themselves owe fiduciary duties to shareholders, but they assist institutional investors (who do owe such fiduciary duties) in making voting decisions on the shareholders' behalf and provide services to facilitate the voting process. The two largest proxy advisory firms hold a dominant market share of approximately 97 percent and are owned by foreign (German and Canadian) entities.

Proxy advisory firms (1) provide voting recommendations and other services that often prioritize non-financial factors, such as ESG or DEI-based standards and (2) provide irreconcilably conflicting recommendations (e.g., "yes" and "no") to different clients on the same company or shareholder proposals, both of which necessarily cannot be in the financial interest of the shareholders. The firms justify these practices on the basis that they do not owe fiduciary duties to the shareholders, while ignoring the reality that their clients do (and that they, in turn, owe fiduciary duties to such clients who rely on them).

Proxy advisory firms also issue corporate governance ratings for public companies, use those corporate governance ratings in formulating their voting recommendations for or against a company, and provide consulting services to companies to assist in raising their corporate governance ratings. Conflicts of interest abound at every step.

What does S.B. 2337 do?

- Helps prevent fraud and deceit by requiring proxy advisory firms to make certain disclosures when their proxy advisory services are based on non-financial factors and/or are in conflict with other proxy advisory services relating to the same company or shareholder proposal.
- Required disclosures include to the recipient client(s), to the subject company, to the attorney general, and to the general public.
- Allows for enforcement of its provisions by reference to existing DTPA and Declaratory Judgment Act procedures and remedies.

(Original Author's/Sponsor's Statement of Intent)

S.B. 2337 amends current law relating to the regulation of the provision of proxy advisory services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the legislature finds that:

- (1) when shareholders in this state hire professionals to provide advice in the exercise of their rights as shareholders, the shareholders expect that service to be performed in their

financial interest as shareholders, and professionals who are hired by shareholders to provide that service and who deviate from that expectation must clearly disclose that fact;

(2) there is a particular need for disclosures for proxy voting advice because that advice is often provided for hundreds or thousands of shareholder votes each year and based on lengthy policies that contain general statements but do not explain whether or how the policy provisions will maximize returns for investors for any particular company or shareholder vote;

(3) proxy advisors:

(A) have recommended votes based on environmental, social, or governance (ESG) investing, diversity, equity, or inclusion (DEI), and social credit or sustainability scores; and

(B) have not conducted financial analyses before making the recommendations described by Paragraph (A) of this subdivision despite having proxy voting policies claiming that the purpose of the recommendation is maximizing and protecting shareholder value;

(4) requiring proxy advisors to provide clear, factual disclosures when the advisors recommend casting a vote for nonfinancial reasons or provide conflicting advice to multiple clients who seek to maximize financial returns is necessary in order to prevent fraudulent or deceptive acts and practices in this state; and

(5) a company that is the subject of a shareholder proposal may have information regarding whether the proposal is in the shareholder's financial interests or regarding the costs of the proposal, and notice would allow the company to provide relevant information to shareholders that may prevent fraudulent or deceptive practices associated with proxy advisors making recommendations for nonfinancial reasons.

SECTION 2. Amends Title 1, Business Organizations Code, by adding Chapter 6A, as follows:

CHAPTER 6A. PROXY ADVISORY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6A.001. DEFINITIONS. Defines "company," "company proposal," "proxy advisor," "proxy advisory service," "proxy proposal," and "shareholder."

SUBCHAPTER B. DISCLOSURE REQUIREMENTS FOR PROXY ADVISORS

Sec. 6A.101. DISCLOSURE OF NONFINANCIAL PROXY VOTING SERVICES TO PREVENT FRAUD OR DECEIT. (a) Provides that, for purposes of this section, a proxy advisory service is not provided solely in the financial interest of the shareholders of a company if the service:

(1) is wholly or partly based on, or otherwise takes into account, one or more nonfinancial factors, including a commitment, initiative, policy, target, or subjective or value-based standard based on:

(A) an environmental, social, or governance (ESG) goal, factor, or investment principle;

(B) diversity, equity, or inclusion (DEI), including any attempt to provide preferential treatment based on characteristics protected under Section 21.051 (Discrimination by Employer), Labor Code;

(C) a social credit or sustainability factor or score; or

(D) membership in or commitment to an organization or group that wholly or partly bases its evaluation or assessment of a company's value over any period on nonfinancial factors;

(2) involves providing a voting recommendation with respect to a shareholder-sponsored proposal that:

(A) is inconsistent with the voting recommendation of the board of directors or a board committee composed of a majority of independent directors; and

(B) subject to Subsection (c), does not include a written economic analysis of the financial impact on shareholders of the proposal;

(3) is not based solely on financial factors and subordinates the financial interests of shareholders to other objectives, including sacrificing investment returns or undertaking additional investment risk to promote nonfinancial factors; or

(4) advises against a company proposal to elect a governing person unless the proxy advisor affirmatively states that the proxy advisory service solely considered the financial interest of the shareholders in making such advice.

(b) Requires a proxy advisor, if the advisor provides a proxy advisory service that is not provided solely in the financial interest of the shareholders of a company, to take certain actions.

(c) Requires that a written economic analysis provided under Subsection (a)(2)(B) include certain information.

Sec. 6A.102. DISCLOSURES IF PROVIDING CONFLICTING VOTER ADVICE OR RECOMMENDATIONS. (a) Defines "materially different."

(b) Requires a proxy advisor, if the advisor provides to different clients who have not expressly requested services for a nonfinancial purpose either advice or a recommendation on how to vote on a proxy or company proposal that is materially different, to take certain actions.

SUBCHAPTER C. ENFORCEMENT

Sec. 6A.201. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter is a deceptive trade practice under Subchapter E (Deceptive Trade Practices and Consumer Protections), Chapter 17 (Deceptive Trade Practices), Business and Commerce Code, and is actionable under Section 17.47 (Restraining Orders) of that code.

Sec. 6A.202. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF. (a) Defines "affected party."

(b) Authorizes an affected party to bring an action seeking a declaratory judgment or injunctive relief under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, against a proxy advisor who violates this chapter. Requires the plaintiff, not later than the seventh day after the date on which an action is brought under this subsection, to provide notice to the attorney general, who is authorized to intervene in the action.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: July 1, 2025, or September 1, 2025.