

BILL ANALYSIS

Senate Research Center

S.B. 2337
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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.

As proposed, S.B. 2337 amends current law relating to the provision of proxy advisory services in connection with certain entities domiciled in this state.

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. Amends Title 2, Chapter 21, Business Organizations Code, by adding Subchapter T, as follows:

SUBCHAPTER T. PROXY ADVISORS

Sec. 21.1001. DEFINITIONS. Defines "company," "company proposal," "investment manager," "proxy advisor," "proxy advisory services," "proxy proposal," and "shareholder."

Sec. 21.1002. OBLIGATION TO DISCHARGE DUTY BASED SOLELY ON CERTAIN FINANCIAL INTERESTS. (a) Requires a proxy advisor, except as otherwise provided in this section, to provide proxy advisory services solely in the best financial interest of the shareholders of a company, based on quantitative, impartial standards, for the sole purpose of maximizing financial return and control associated levels of risk.

(b) Provides that, for purposes of this section, proxy advisory services are not provided solely in the best financial interest of the shareholders if based, all or in part, on non-financial factors, including any commitments, initiatives, policies, targets, or subjective or value-based standards pertaining to certain principles and factors.

(c) Requires the proxy advisor, for any proxy advisory services that are not provided solely in the best financial interest of the shareholders, to take certain actions.

Sec. 21.1003. VOTING RECOMMENDATIONS; CONFLICTS. (a) Requires that, if a proxy advisor provides proxy advisory services regarding a company to multiple shareholders or other interested parties that include voting recommendations that differ in any material respect regarding the same proxy proposal or company proposal, the proxy advisory services be considered not to be in the best financial interest of the shareholders.

(b) Requires the proxy advisor, for any proxy advisory services described in Subsection (a), in addition to complying with the requirements of Section 21.1002(c), to immediately take certain actions.

Sec. 21.1004. VIOLATIONS; DECLARATORY JUDGMENT. Authorizes an affected party, including the company that is the subject of the proxy advisory services, any shareholders of the company, or other interested parties, to bring an action under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, to determine whether a proxy advisor has committed a violation of this subchapter.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2025.