

By: Hughes, et al.
(Leach)

S.B. No. 2337

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the provision of proxy advisory services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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:

(A) provided for hundreds or thousands of shareholder votes each year; and

(B) 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. Title 1, Business Organizations Code, is amended by adding Chapter 6A to read as follows:

CHAPTER 6A. PROXY ADVISORY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6A.001. DEFINITIONS. In this chapter:

(1) "Company" means a publicly traded, for-profit corporation, limited liability company, partnership, or other business entity that is organized or created under the laws of this state or has its principal place of business in this state.

1 (2) "Company proposal" means a proposal made by a
2 company that is included in the company's proxy statement,
3 including a proposal regarding director nominations or elections,
4 executive compensation, corporate transactions and structure,
5 auditor selection, or similar measures.

6 (3) "Proxy advisor" means a person who, for
7 compensation, provides a proxy advisory service to shareholders of
8 a company or to other persons with authority to vote on behalf of
9 shareholders of a company.

10 (4) "Proxy advisory service" means any of the
11 following services that are provided in connection with or in
12 relation to a company:

13 (A) advice or a recommendation on how to vote on a
14 proxy proposal or company proposal;

15 (B) proxy statement research and analysis
16 regarding a proxy proposal or company proposal;

17 (C) a rating or research regarding corporate
18 governance; or

19 (D) development of proxy voting recommendations
20 or policies, including establishing default recommendations or
21 policies.

22 (5) "Proxy proposal" means a proposal made by a
23 company's shareholder that is included in the company's proxy
24 statement, including the nomination of a director.

25 (6) "Shareholder" includes a shareholder, unitholder,
26 limited partner, or other equity owner of a company.

SUBCHAPTER B. DISCLOSURE REQUIREMENTS FOR PROXY ADVISORS

Sec. 6A.101. DISCLOSURE OF NONFINANCIAL PROXY VOTING SERVICES TO PREVENT FRAUD OR DECEIT. (a) 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 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, 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; or

(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.

1 (b) If a proxy advisor provides a proxy advisory service
2 that is not provided solely in the financial interest of the
3 shareholders of a company, the advisor shall:

4 (1) include a conspicuous disclosure to each
5 shareholder or entity or other person acting on behalf of a
6 shareholder receiving the service that:

7 (A) states that the service is not being provided
8 solely in the financial interest of the company's shareholders
9 because it is based wholly or partly on one or more nonfinancial
10 factors; and

11 (B) briefly explains the basis of the proxy
12 advisor's advice and recommendation;

13 (2) immediately provide a copy of the notice under
14 Subdivision (1) to the company that is the subject of the service;
15 and

16 (3) publicly and conspicuously disclose on the home or
17 front page of the proxy advisor's publicly accessible Internet
18 website that the advisor's proxy advisory services include advice
19 and recommendations that are not based solely on the financial
20 interest of shareholders.

21 (c) A written economic analysis provided under Subsection
22 (a)(2)(B) must include:

23 (1) the short-term and long-term economic benefits and
24 costs of implementing the shareholder-sponsored proposal, as
25 written;

26 (2) an analysis of whether the proposal is consistent
27 with the investment policy of the client;

1 (3) the projected quantifiable impact of the proposal,
2 if adopted, on the investment returns of the client; and

3 (4) an explanation of the methods and processes used
4 to prepare the economic analysis.

5 Sec. 6A.102. DISCLOSURES IF PROVIDING CONFLICTING VOTER
6 ADVICE OR RECOMMENDATIONS. (a) For purposes of this section,
7 "materially different," with respect to advice or a recommendation
8 on how to vote on a company proposal or proxy proposal, means
9 simultaneously advising or recommending that:

10 (1) one or more clients vote for the proposal and one
11 or more clients vote against the proposal; or

12 (2) one or more clients vote for a nominee for a
13 company's governing authority and one or more clients vote against
14 or abstain from voting for the same nominee.

15 (b) If a proxy advisor provides to different clients who
16 have not expressly requested services for a nonfinancial purpose
17 either advice or a recommendation on how to vote on a proxy or
18 company proposal that is materially different, the advisor shall:

19 (1) if applicable, comply with disclosure
20 requirements for nonfinancial proxy advisory services under
21 Section 6A.101(b);

22 (2) notify the following persons, in writing or by
23 electronic means, of the conflicting advice or recommendation:

24 (A) each shareholder receiving the advice or
25 recommendation;

26 (B) each entity or other person receiving the
27 advice or recommendation on behalf of a shareholder;

1 (C) the company that is the subject of the
2 company or proxy proposal; and

3 (D) the attorney general; and

4 (3) disclose which of the conflicting advice or
5 recommendations is:

6 (A) provided solely in the financial interest of
7 the shareholders; and

8 (B) supported by any specific financial analysis
9 performed or relied on by the advisor.

10 SUBCHAPTER C. ENFORCEMENT

11 Sec. 6A.201. DECEPTIVE TRADE PRACTICE. A violation of this
12 chapter is a deceptive trade practice under Subchapter E, Chapter
13 17, Business & Commerce Code, and is actionable under Section 17.47
14 of that code.

15 Sec. 6A.202. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF.

16 (a) In this section, "affected party" includes:

17 (1) the recipient of proxy advisory services provided
18 by the proxy advisor;

19 (2) the company that is the subject of the proxy
20 advisory services; or

21 (3) any shareholder of the company described by
22 Subdivision (2).

23 (b) An affected party may bring an action seeking a
24 declaratory judgment or injunctive relief under Chapter 37, Civil
25 Practice and Remedies Code, against a proxy advisor who violates
26 this chapter. Not later than the seventh day after the date on
27 which an action is brought under this subsection, the plaintiff

1 shall provide notice to the attorney general, who may intervene in
2 the action.

3 SECTION 3. The changes in law made by this Act apply only to
4 a proxy advisory service provided on or after the effective date of
5 this Act.

6 SECTION 4. This Act takes effect July 1, 2025, if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for effect on that
10 date, this Act takes effect September 1, 2025.