LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

New Risks Emerge As States Push Proxy Voting Legislation

By **Elizabeth Goldberg and Yara Ismael** (May 4, 2026, 6:06 PM EDT)

Elizabeth Goldberg

Yara Ismael

There has recently been a surge in U.S. state laws that seek to regulate proxy voting. Even where facially neutral, these laws seek to put guardrails and disclosure burdens on proxy voting, especially to disfavor the consideration of factors that the lawmakers have deemed to be nonfinancial.

These legislators are particularly concerned with limiting proxy voting that they view as based upon nonfinancial environmental, social or governance factors. Certain of the rules also disfavor proxy voting that is contrary to recommendations made by issuer boards of directors.

Over the past few months, a flurry of U.S. states have introduced similarly styled legislation regulating proxy voting. Currently, these include Tennessee's H.B. 2476, Mississippi's S.B. 2676, Indiana's H.B. 1273 and similar new bills, including Iowa's H.B. 721, Nebraska's L.B. 728, South Carolina's H.B. 4985 and West Virginia's S.B. 417.[1]

To date, Indiana's S.B. 1273 and Kentucky's S.B. 183 have been enacted.[2] Meanwhile, three comparable bills — Mississippi's S.B. 2676, Wisconsin's S.B. 879 and Wyoming's H.B. 80 — failed to advance.[3]

These bills reflect a broader national trend toward heightened scrutiny of proxy voting practices and shareholder engagement. They follow a Texas law — S.B. 2337, which was passed last year and is presently being challenged in litigation — that imposes disclosure requirements on proxy advisory firms.[4] They also follow a December executive order that directed federal agencies to review the regulation of proxy advisers and ESG-related voting practices within the federal fiduciary framework.

Although these bills are focused on proxy advisory firms, they could have a broader impact.

First, under most of these rules, the definition of proxy adviser is expansive and might be viewed as capturing firms that are not traditionally thought of as proxy advisers. Second, the rules could have a downstream impact on recipients of proxy advisory services, including institutional investors, like public and private retirement plans, and asset managers. Finally, these rules are part of a broader regulatory battle around proxy voting, especially with regard to ESG investing and the ESG factors considered in such voting.

Taken together, these developments could create compliance challenges and risks for both proxy advisory firms and other stakeholders, like institutional investors and asset managers.

Summary of Bills

At the core, these proxy voting bills fall into one of two types:

- One type, like the Texas and Kentucky rules, requires proxy advisory firms to disclose when recommendations are not based on solely financial factors and where conflicting recommendations are made to different clients.[5]

- The second type, typified by Indiana, requires disclosure based solely on voting against management, regardless of whether the vote against management was supported by an economic analysis.[6]

1. Texas and Kentucky

The Texas and Kentucky bills represent one type of disclosure rule. This disclosure requirement is generally triggered in two circumstances.

One such circumstance is if a proxy adviser provides a service that isn't based solely in the financial interests of shareholders. This disclosure must explain that the advice is based in whole or in part on nonpecuniary factors and briefly describe the rationale.

This disclosure requirement can also be triggered if a proxy adviser gives materially different advice to different clients, such as suggesting that one client vote for it while suggesting to another client to vote against it or abstain. Notably, the bills classify a vote against management recommendations as constituting materially different advice, for this purpose.

If triggered, this disclosure requires notice of the materially different vote and clarification as to which of the conflicting voting suggestions is provided solely in the interest of shareholders and is supported by an economic analysis.

2. Indiana

Under the Indiana law, proxy advisers are required to make a disclosure if the proxy adviser recommends voting against management, including if the recommendation is based upon a default policy.

If triggered, the disclosure must state whether the recommendation is backed by a written financial analysis and that the analysis is available upon request. The proxy adviser must also provide a copy of the analysis to issuer management. If there is no supporting financial analysis, a proxy adviser must disclose this fact to the client and the issuer, plus make the disclosure publicly available.

Like the Texas rule, the Indiana law has also been challenged in litigation.

Implications

These proxy voting bills both represent a broader trend and present a number of potential implications

for stakeholders, including proxy advisory firms, as broadly defined under these rules, and potentially indirectly for other stakeholders, like institutional investors and asset managers.

These implications include an emphasis on economic focus. By favoring economic analysis as the basis for proxy decisions, the bills attempt to shift stewardship activity away from broader stakeholder considerations and toward a narrowly defined economic focus.

This mirrors recent federal debates about the appropriate role of ESG considerations in fiduciary decision-making, particularly within Employee Retirement Income Security Act plans and investment manager standards, such as the U.S. Securities and Exchange Commission and the U.S. Department of Labor dialogues.

These bills also feature operational and compliance burdens. Because they require compliance steps, including disclosure, documented economic analyses and enhanced reporting, they will likely require substantial administrative costs and create potential litigation risk.

Stakeholders that are advising or managing across multiple states may also face operational fragmentation if similar, but not identical, statutes proliferate.

For example, Indiana's H.B. 1273 triggers disclosure whenever a proxy adviser recommends a vote against management. By contrast, Texas' S.B. 2337 allows disclosure to be avoided under certain conditions, such as aligning recommendations across clients or framing advice as grounded solely in financial considerations.

These differences could complicate efforts to maintain consistent proxy voting policies, voting rationales and documentation across jurisdictions, increasing compliance complexity and cost. Further, regulated parties could be required to create state-specific proxy voting policies, voting rationales and documentation processes, likewise increasing compliance complexity and cost.

Contextualizing Proxy Voting Rules

These bills do not arise in isolation. Rather, they reflect a broader, multilevel regulatory movement in which both federal and state policymakers are reassessing the role of proxy voting, fiduciary discretion, and the influence of ESG considerations in investment decision-making.

While the mechanisms differ across jurisdictions, a common theme has emerged: elevation of economic return as a singular focus and heightened scrutiny of proxy advisory firms and stewardship practices, particularly those that elevate ESG considerations.

For example, the aforementioned executive order directs multiple federal agencies to review the regulatory framework governing proxy advisory firms and fiduciary proxy voting practices, with a particular focus on whether existing rules adequately ensure that voting recommendations are grounded in economic considerations.

The order takes the position that certain large proxy advisory firms wield too much influence — including with respect to corporate governance, shareholder proposals, board composition, executive compensation, capital markets and retirement investing — and are using that influence "to advance and prioritize radical politically-motivated agendas" related to ESG. Further, it aims to increase federal oversight over the proxy adviser industry.

The order aligns with parallel congressional inquiries into proxy voting and the Federal Trade Commission's previously initiated proxy adviser investigation efforts to reinforce a pecuniary-only approach to fiduciary decision-making, and it may serve as a catalyst for further regulatory action across agencies, such as the DOL and the SEC.

Similar developments are occurring in Congress. For example, in October, Sens. Bill Cassidy, R-La., and Jim Banks, R-Ind., introduced bills addressing fiduciary duties and investment disclosures under ERISA. The Restoring Integrity in Fiduciary Duty Act, introduced by Cassidy, would require 401(k) plans and pension funds to consider only pecuniary factors when making investment decisions.[7] The proposal builds on similar legislation, the Protecting Prudent Investment of Retirement Savings Act, which a House committee advanced last June.

Meanwhile, the Providing Complete Information to Retirement Investors Act, introduced by Banks, would require employer-sponsored retirement plans to disclose specified information to employees, distinguishing fiduciary-managed investments from participant-directed investments.[8]

On Jan. 15, the U.S. House of Representatives passed the Protecting Prudent Investment of Retirement Savings Act by a narrow 213-205 vote.[9] The bill, sponsored by Rep. Rick W. Allen, R-Ga., would codify a pecuniary-only investment standard for ERISA retirement plan fiduciaries, effectively requiring plan sponsors and advisers to prioritize financial returns and economic factors over ESG considerations when making investment decisions on behalf of participants and beneficiaries.

Under the legislation, fiduciaries must base decisions on factors that are expected to have a material effect on risk or return, consistent with the plan's objectives, and may consider nonpecuniary factors only where it can be demonstrated that alternatives are indistinguishable based on pecuniary factors alone.

The Protecting Prudent Investment of Retirement Savings Act, which has moved to the U.S. Senate for further consideration, would also largely supersede the DOL guidance from President Joe Biden's era that permitted consideration of ESG factors in retirement investing and aimed to reinforce ERISA's loyalty and prudence requirements for plan fiduciaries.

Similar developments are continuing at federal agencies. Most recently, the DOL **issued** a technical release, which opines that proxy advisory firms can be ERISA fiduciaries. It also takes the position that fiduciaries must manage proxy rights solely to advance the economic interests of participants and beneficiaries. This development is one more example of the increasing regulatory focus on proxy advisory firms and proxy voting by institutional investors.

Looking Ahead

As these rules are passed, stakeholders that are directly covered by the rules, like regulated proxy advisory firms, or indirectly affected, such as institutional investors and asset managers, will need to evaluate key issues, including the following:

- How a sole economic interest proxy voting standard can be operationalized in practice, especially proxy proposals that involve long-term governance risks — such as climate transition planning — that may not lend themselves to immediate quantitative and performance-based measurement;

- Whether these rules will meaningfully reduce independent stewardship in favor of formalistic votes — and if so, how such approaches could be squared with applicable fiduciary standards;
- The interplay between state requirements and federal fiduciary standards, particularly for public pension funds interacting with ERISA-governed managers or operating across multiple jurisdictions;
- Potential constitutional challenges, including First Amendment arguments from proxy advisory firms or federal preemption arguments related to securities regulation; and
- Whether similar legislation in other states will create a patchwork compliance regime.

As such, stakeholders — including proxy advisers, retirement systems and other institutional investors, and asset managers — will need to assess compliance risks and governance impacts.

Elizabeth S. Goldberg is a partner, deputy leader of the fiduciary duty task force, and co-leader of the ESG and sustainability advisory practice at Morgan Lewis & Bockius LLP.

Yara Ismael is an associate at the firm.

Morgan Lewis legal practice assistant Brian Harbaugh contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://legiscan.com/TN/drafts/HB2476/2025; https://legiscan.com/MS/drafts/SB2676/2026; https://legiscan.com/IN/drafts/HB1273/2026;
https://legiscan.com/IA/bill/HF721/2025; https://legiscan.com/NE/bill/LB728/2025; https://legiscan.com/SC/bill/H4985/2025; https://legiscan.com/WV/bill/SB417/2026.

[2] https://legiscan.com/IN/drafts/HB1273/2026; https://legiscan.com/KY/text/SB183/2026.

[3] https://legiscan.com/MS/bill/SB2676/2026; https://legiscan.com/WI/bill/SB879/2025; https://legiscan.com/WY/bill/HB0080/2025.

[4] https://legiscan.com/TX/drafts/SB2337/2025.

[5] https://legiscan.com/TX/drafts/SB2337/2025; https://legiscan.com/KY/text/SB183/2026.

[6] https://legiscan.com/IN/drafts/HB1273/2026.

[7] https://www.congress.gov/bill/119th-congress/senate-bill/3086.

[8] https://www.congress.gov/bill/119th-congress/senate-bill/3083.

[9] https://www.congress.gov/bill/119th-congress/house-bill/2988.