



SENATE BILL 2641

By Roberts

AN ACT to amend Tennessee Code Annotated, Title 9,
Chapter 4, relative to investments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-4-1401(3), is amended by deleting the language "established by law and for which the state treasurer has, or has been delegated, investment authority, oversight, and responsibility." and substituting instead "established by law, resolution, or ordinance and for which the state treasurer or a local governmental entity has, or has been delegated, investment authority, oversight, and responsibility:".

SECTION 2. Tennessee Code Annotated, Section 9-4-1401(3), is amended by adding the following as a new subdivision:

(F) A plan, fund, or program established, maintained, or offered by a political subdivision that does not participate in the Tennessee consolidated retirement system or in a plan under subdivision (3)(C), that does the following:

(i) Provides retirement income or other retirement benefits to employees or former employees; or

(ii) Results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

SECTION 3. Tennessee Code Annotated, Section 9-4-1401, is amended by adding the following as new, appropriately designated subdivisions:

() "Economic analysis" means a written analysis demonstrating the factors considered in evaluating the financial impact of a shareholder-sponsored proposal that addresses:

(A) The subject matter of the shareholder-sponsored proposal;

(B) An evaluation of the issuer's stated reasons for opposition to the shareholder-sponsored proposal;

(C) An evaluation of whether the shareholder-sponsored proposal is consistent with the investment objectives and risk management profile of the program in which the beneficiaries are invested;

(D) An evaluation of the financial benefits and costs of implementing the shareholder-sponsored proposal, as written, over a time horizon that is consistent with the investment objectives and risk management profile of the program;

(E) The quantifiable impact of the shareholder-sponsored proposal, as written, on the investment returns of the beneficiaries of the program; and

(F) An explanation of the modeling, procedures, and processes used to complete the economic analysis;

() "Fiduciary" means:

(A) A person who, with respect to a program under Section 2(F):

(i) Exercises discretionary authority or discretionary control with respect to management of the program or exercises authority or control with respect to acquisition, management, or disposition of the program's assets; or

(ii) Has discretionary authority or discretionary responsibility in the administration of the program, including a plan administrator for the political subdivision; or

(B) A person who, with respect to a program, renders investment advice for a fee or other compensation, direct or indirect, with respect to moneys or other assets of the program or has authority or responsibility to do so;

() "Political subdivision" has the same meaning as defined in § 4-58-102;

() "Proxy advisory firm" means a person who is engaged in the business of:

(A) Providing proxy voting advice, research, analysis, ratings, or recommendations to the state treasurer, a political subdivision, or a fiduciary; or

(B) Providing proxy voting advice, research, analysis, ratings, or recommendations relating to an issuer of securities;

() "Shareholder-sponsored proposal" means a proposal submitted to an issuer of securities by a shareholder under 17 CFR 240.14a-8;

SECTION 4. Tennessee Code Annotated, Section 9-4-1402, is amended by designating the existing language as a new subsection (a) and adding the following new subsection (b):

(b) Consistent with the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management functions pursuant to § 35-14-111, a fiduciary, as defined in § 9-4-1401() (A), and the fiduciary's staff, shall invest, reinvest, manage, and select investment options for assets of a program, as defined in Section 2(F), for financial reasons for the exclusive benefit of the beneficiaries of the program while maximizing long-term shareholder value.

SECTION 5. Tennessee Code Annotated, Title 9, Chapter 4, Part 14, is amended by adding the following as new sections:

9-4-1405. Fiduciary voting responsibilities.

(a) A fiduciary shall vote all shares held directly or indirectly by, subject to, or on behalf of a program for financial reasons for the exclusive benefit of the beneficiaries of the program while maximizing long-term shareholder value.

(b) With respect to a shareholder-sponsored proposal, there is a rebuttable presumption that a fiduciary votes its shares for financial reasons if the fiduciary's vote

follows the recommendation of the board of directors of the issuer of the shares, as long as the board includes a majority of independent directors.

(c) With respect to a shareholder-sponsored proposal, a fiduciary's vote in a manner inconsistent with the recommendation of the board of directors of the issuer of the shares is presumed to be for financial reasons if:

(1) The fiduciary conducts and documents an economic analysis demonstrating that the vote is for financial reasons; or

(2) On behalf of the fiduciary, a third party conducts and documents an economic analysis demonstrating that the vote is for financial reasons, and the fiduciary determines that the economic analysis adequately demonstrates that the vote is for financial reasons.

(d) A fiduciary shall not vote in a manner that:

(1) Subordinates the financial interest of the program's beneficiaries to any environmental, social, and governance interests; or

(2) Promotes any environmental, social, and governance interests, unless, based on an economic analysis, it is determined that the vote is for financial reasons.

(e) With respect to shareholder-sponsored proposals, a fiduciary shall annually disclose in a report to the state treasurer, in the case of a program other than a program as defined in Section 2(F), and to the chief legislative body of a political subdivision, in the case of a program as defined in Section 2(F), that:

(1) Each vote that was inconsistent with the recommendation of an issuer's board of directors composed of a majority of independent directors; and

(2) The economic analysis conducted and documented with respect to each vote described in subsection (c) to determine that the vote was for financial reasons.

(f) The report required under subsection (e) must be certified by the chief executive officer and chief financial officer, or an individual acting in a similar capacity, of the fiduciary.

(g) At least once every three (3) years, a fiduciary shall back test its economic analysis to ensure that the models, procedures, and processes it used to predict the financial reasons were effective, and shall deliver a report detailing the back testing to the state treasurer, in the case of a program other than a program as defined in Section 2(F), and to the chief legislative body of a political subdivision, in the case of a program as defined in Section 2(F). Based on the back testing, the chief executive officer and chief financial officer, or an individual acting in a similar capacity, of the fiduciary shall certify that the economic analysis performed by the fiduciary and included in the report was effective.

9-4-1406. Prohibitions against conflicts of interest; disenfranchising shareholders and undermining independent boards of directors.

(a) The state treasurer, a political subdivision, or a fiduciary shall not enter into an agreement with a proxy advisory firm with respect to the provision of proxy advisory services unless the proxy advisory firm acknowledges in writing and accepts under contract its obligations under this section.

(b) A proxy advisory firm shall not provide proxy voting advice to a program if an actual or potential conflict of interest exists that could reasonably be expected to affect the objectivity or reliability of the proxy voting advice. For purposes of this section, "an

actual or potential conflict of interest" includes the following acts by a proxy advisory firm or any of its affiliates:

(1) Receiving or seeking to receive fees for consulting services from the issuer of the shares or any of its affiliates that are the subject of any proxy voting advice, written report, research, analysis, rating, or recommendation furnished by the proxy advisory firm;

(2) Receiving or seeking to receive fees for consulting services from the sponsor of a shareholder-sponsored proposal or any of its affiliates that is the subject of the proxy voting advice; or

(3) Is a member of an organization that actively supports a shareholder-sponsored proposal that is, or is substantially similar to, the subject of the proxy voting advice.

(c) A proxy advisory firm shall not provide proxy voting advice to a program if its voting recommendation is not consistent with the recommendation of a board of directors or a committee of the program, in either instance which is composed of a majority of independent directors, and the recommendation is based, in whole or in part, on a decision by the applicable company's board of directors, or committee thereof, to:

(1) Pursue the adjudication of a business dispute in federal or state court;

or

(2) Exercise its discretion in connection with executive compensation decisions.

(d) A proxy advisory firm shall not provide proxy voting advice to a program if its negative voting recommendation is based, in whole or in part, on the level of shareholder support received with respect to a previous proposal submitted to a vote at the company;

provided, that the company's previous proposal was approved by shareholders in accordance with the law of the state of incorporation of the applicable company.

SECTION 6. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to SB2641

Briggs
Signature of Sponsor

AMEND Senate Bill No. 2641*

House Bill No. 2476

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 9-4-1401, is amended by adding the following as new, appropriately designated subdivisions:

() "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or another entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, or an affiliate of such entity or business association that exists for the purpose of making a profit;

() "Direct holdings" means, with respect to a company, all public securities with a number assigned by the Committee On Uniform Securities Identification Procedures (CUSIP) or the International Securities Identification Numbers Organization (ISIN) that are held directly by a pension plan, other than indirect holdings, or in an account or fund in which the pension plan owns all shares or interests;

() "Fiduciary" means:

(A) A person, with respect to a pension plan, who:

(i) Exercises discretionary authority or discretionary control with respect to the management of a pension plan or exercises authority or control with respect to the acquisition, management, or disposition of the pension plan's assets; or

(ii) Has discretionary authority or discretionary responsibility in the administration of a pension plan, including, but not limited to, a plan administrator or the governing body of a political subdivision; or

(B) A person, with respect to a pension plan, who renders investment advice for a fee or other compensation, directly or indirectly, with respect to moneys or other assets of the pension plan or who has the authority or responsibility to do so;

() "Financial analysis" means a written analysis demonstrating the financial factors or reasons that a proxy advisory firm considered in evaluating whether to recommend an affirmative vote on a shareholder proposal. This written analysis must include, at a minimum:

(A) The subject matter of the proposal;

(B) An evaluation of the proxy advisory firm's stated reasons for support or opposition to the proposal;

(C) An evaluation of whether the proposal is consistent with the investment objectives and risk management profile of the pension plan in which the participants and beneficiaries are invested;

(D) An evaluation of the economic benefits and costs of implementing the proposal, as written, over a time period that is consistent with the investment objectives and risk management profile of the pension plan;

(E) The quantifiable impact of the proposal, as written, on the investment returns of the participants and beneficiaries of the pension plan; and

(F) An explanation of the modeling, procedures, and processes used to complete the analysis;

() "Indirect holdings" means, with respect to a company, all securities of that company that are held in a commingled fund or other collective investment, including, but not limited to, private equity funds, strategic lending funds, mutual funds, and

exchange-traded funds, in which a pension plan owns shares or interests, together with other investors not subject to this part;

() "Pension plan" means a defined benefit pension plan established and maintained by a political subdivision for its employees that is subject to the Public Employee Defined Benefit Financial Security Act of 2014, compiled in title 9, chapter 3, part 5;

() "Person" means an individual, firm, trust, partnership, corporation, joint venture, association, or such other similar entity;

() "Political subdivision" means a local governmental entity, including, but not limited to, a municipality, metropolitan government, county, utility district, school district, public building authority, housing authority, emergency communications district, and development district created and existing pursuant to the laws of this state, or an instrumentality of government created by one (1) or more local governmental entities;

() "Proxy advisory firm" means a person or entity who, for compensation, is engaged in the business of, with respect to a political subdivision for which neither the person nor any affiliate thereof is a fiduciary:

(A) Providing proxy voting advice, research, analysis, ratings, or recommendations to a political subdivision or a fiduciary thereof; or

(B) Providing proxy voting advice, research, analysis, ratings, or recommendations relating to an issuer of securities;

SECTION 2. Tennessee Code Annotated, Title 9, Chapter 4, Part 14, is amended by adding the following as new sections:

9-4-1405.

With respect to a pension plan, the political subdivision with authority over the pension plan shall comply with this section. The requirements applicable to the pension plans include the following:

(1) Consistent with the prudent investor rule pursuant to § 35-14-103, the standard of care pursuant to § 35-14-104, and the exercise of reasonable care in delegation of investment and management functions pursuant to § 35-14-111, investing, reinvesting, managing, and selecting investment options for the assets of a pension plan for financial reasons for the exclusive financial benefit of the beneficiaries of the pension plan while maximizing long-term shareholder value;

(2) Exercising, in person or by proxy, all voting rights with respect to direct holdings in securities held by or on behalf of a pension plan for financial reasons for the exclusive benefit of the beneficiaries of the pension plan while maximizing long-term shareholder value;

(3) Submitting an annual report no later than September 1 of each year to the finance, ways and means committee of the senate and the standing committee of the house of representatives with jurisdiction over finance, ways and means in a format prescribed by the committees containing, but not limited to, the following, for a pension plan's direct holdings for the annual reporting period from July 1 to June 30:

(A) The name of the proxy advisory firm utilized by the pension plan or fiduciary, if any;

(B) The proxy advisory firm's recommendations for each proposal if different from the final vote; and

(C) An analysis of:

(i) The number of proposals, by proposal type, where the proxy advisory firm's recommendation is different than the company management's recommendation; and

(ii) The number and percentage of votes, by proposal type, cast by or on behalf of a pension plan in which the pension plan's vote was different from either the proxy advisory firm's

recommendation or the company management's recommendation;

and

(4) Ensuring that a pension plan does not enter into an agreement with a proxy advisory firm with respect to the provision of proxy advisory services unless the proxy advisory firm acknowledges in writing and accepts, under contract, its obligations under this section.

9-4-1406.

(a) A proxy advisory firm shall not provide proxy voting advice to a pension plan if an actual or potential conflict of interest exists that could reasonably be expected to affect the objectivity or reliability of the proxy voting advice. As used in this subsection (a), "an actual or potential conflict of interest" includes the following acts by a proxy advisory firm or any of its affiliates:

(1) Receiving or seeking to receive fees for consulting services from the issuer of the shares or any of its affiliates that are the subject of any proxy voting advice, written report, research, analysis, rating, or recommendation furnished by the proxy advisory firm;

(2) Receiving or seeking to receive fees for consulting services from the sponsor of a shareholder-sponsored proposal or any of its affiliates that is the subject of the proxy voting advice; or

(3) Being a member of an organization that actively supports a shareholder-sponsored proposal that is, or that is substantially similar to, the subject of the proxy voting advice.

(b) A proxy advisory firm that provides proxy voting advice to a pension plan must provide a financial analysis supporting every recommendation that the proxy advisory firm makes to the pension plan on a shareholder proposal that differs from the company management's recommendation.

(c) A proxy advisory firm shall not provide proxy voting advice to a pension plan if its negative voting recommendation is based, in whole or in part, on the level of shareholder support received with respect to a previous proposal submitted to a vote at the company; provided, that the company's previous proposal was approved by the shareholders in accordance with the laws of the state of incorporation of the applicable company.

(d) This section does not apply to fiduciaries, asset managers, custodians, consultants, or other service providers that are not proxy advisory firms.

SECTION 3. This act takes effect July 1, 2026, the public welfare requiring it.