

117TH CONGRESS
1ST SESSION

S. 1677

To establish a process by which participants of employee welfare plans select guidelines to be used by the plan fiduciary for voting proxies on securities held in investment portfolios under the plan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2021

Ms. BALDWIN (for herself, Mr. SANDERS, Ms. WARREN, Mr. MERKLEY, Mr. MARKEY, Mr. BOOKER, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish a process by which participants of employee welfare plans select guidelines to be used by the plan fiduciary for voting proxies on securities held in investment portfolios under the plan, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Encouraging More
5 Proxy voting by Organized Workers, Employees, and Re-
6 tirement Savers Act” or the “EMPOWERS Act”.

1 **SEC. 2. TRUSTEESHIP OF SINGLE-EMPLOYER PLANS.**

2 Section 403(a) of the Employee Retirement Income
3 Security Act of 1974 (29 U.S.C. 1103(a)) is amended—

4 (1) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively;

6 (2) by striking “Except as” and inserting “(1)
7 Except as”; and

8 (3) by adding at the end the following:

9 “(2)(A) The assets of a single-employer plan shall be
10 held in trust by a joint board of trustees, which shall con-
11 sist of 2 or more trustees representing on an equal basis
12 the interests of the employer or employers maintaining the
13 plan and the interests of the participants and their bene-
14 ficiaries.

15 “(B)(i) Except as provided in clause (ii), in any case
16 in which the plan is maintained pursuant to one or more
17 collective bargaining agreements between one or more em-
18 ployee organizations and one or more employers, the trust-
19 ees representing the interests of the participants and their
20 beneficiaries shall be designated by such employee organi-
21 zations.

22 “(ii) In any case in which clause (i) does not apply
23 with respect to a single-employer plan because the plan
24 is not described in clause (i), the trustee or trustees rep-
25 resenting the interests of the participants and their bene-
26 ficiaries shall consist of 1 or more participants under the

1 plan elected to serve as such in accordance with this
2 clause.

3 “(C) Not later than one year after the date of enact-
4 ment of the Encouraging More Proxy voting by Organized
5 Workers, Employees, and Retirement Savers Act, the Sec-
6 retary shall issue rules with respect to the election of
7 trustees and certification of the results of such elections
8 under subparagraph (B)(ii). Such rules shall ensure
9 that—

10 “(i) employee trustee elections are—

11 “(I) fair and democratic and free from in-
12 terference by the employer, the employer’s fidu-
13 ciaries, and the investment managers;

14 “(II) designed to maximize participation by
15 plan participants and their beneficiaries and to
16 be convenient for participants, and their bene-
17 ficiaries when appropriate, to vote;

18 “(III) use the latest technologies to meet
19 the objectives described in subclause (II);

20 “(IV) provide for a secret ballot to be used
21 by the participants of the plan (or, in the case
22 of a deceased participant, by the beneficiary of
23 such participant); and

24 “(V) provide one vote per participant,
25 which, in the event a participant is deceased,

1 may be cast by the deceased participant’s bene-
2 ficiary; and

3 “(ii) trustee vacancies are filled—

4 “(I) by the election process, and not by ap-
5 pointment; and

6 “(II) not later than one month after the
7 trustee position is vacant.”.

8 **SEC. 3. PROXY VOTING GUIDELINES FOR SINGLE EM-**
9 **PLOYER PLANS.**

10 (a) ESTABLISHMENT OF PLAN.—Section 402 of the
11 Employee Retirement Income Security Act of 1974 (29
12 U.S.C. 1102) is amended by adding at the end the fol-
13 lowing:

14 “(d) PROXY VOTING GUIDELINES FOR SINGLE EM-
15 PLOYER PLANS.—

16 “(1) IN GENERAL.—The trustees of a plan shall
17 establish a set of proxy voting guidelines to direct
18 the voting of the plan’s shares of corporate stock by
19 plan fiduciaries, except in the case of an employee
20 stock ownership plan as defined in section
21 407(d)(6).

22 “(2) TRUSTEES.—

23 “(A) TRAINING.—Each plan trustee de-
24 scribed in paragraph (1) shall undergo training,
25 which shall—

1 “(i) include education on proxy voting
2 issues, fund and executive compensation
3 practices, procedural prudence, and appro-
4 priate long-term investing for retirement
5 savers; and

6 “(ii) be administered by a third party
7 nonprofit organization with significant ex-
8 perience in educating trustees for service
9 as employee representatives on employee
10 benefit boards.

11 “(B) TRAINING CURRICULUM.—The train-
12 ing described in subparagraph (A) shall follow
13 a curriculum established by an entity selected
14 by the Secretary.

15 “(C) FIDUCIARY DUTY TO UNDERGO
16 TRAINING.—A failure to undergo training and
17 fulfill the obligation to develop guidelines in ac-
18 cordance with paragraph (1) shall be deemed to
19 be a violation of fiduciary duties under section
20 404.

21 “(3) VOTING GUIDELINES WITH RESPECT TO
22 DIFFERENT INVESTMENT OPTIONS.—A plan may es-
23 tablish multiple voting guidelines, with each set of
24 voting guidelines applicable to specific fiduciaries

1 and investment options available to the plan partici-
2 pants.

3 “(4) AVAILABILITY OF VOTING GUIDELINES.—
4 The voting guidelines established pursuant to this
5 subsection with respect to a plan shall be made
6 available to all plan participants and beneficiaries.

7 “(5) INVESTMENT COMPANIES AND POOLED IN-
8 VESTMENT VEHICLES.—

9 “(A) PROVISION OF VOTING GUIDE-
10 LINES.—If an employee benefit plan is invested
11 in securities issued by an investment company
12 registered under the Investment Company Act
13 of 1940 (15 U.S.C. 80a–1), or any other pooled
14 investment vehicle, the trustees described in
15 paragraph (1) shall provide to the company the
16 voting guidelines established under paragraph
17 (1).

18 “(B) PROXY VOTING.—An investment com-
19 pany or pooled investment vehicle described in
20 subparagraph (A) shall vote in accordance with
21 the guidelines provided under that subpara-
22 graph with respect to the percentage of proxies
23 that is equivalent to the percentage of owner-
24 ship of the employee benefit plan in the invest-
25 ment company.

1 “(C) PROXY VOTING RECORD REPORT.—

2 An investment company described in subpara-
3 graph (A) shall annually provide to the partici-
4 pant representation board a report on all the
5 votes the investment company cast on behalf of
6 the plan in the last year. Each such report shall
7 provide the relevant provision of the plan’s
8 guidelines illustrating how the investment com-
9 pany made its determination.

10 “(D) RULE OF CONSTRUCTION.—Nothing

11 in this paragraph may be construed to deem se-
12 curities issued by investment companies to em-
13 ployee benefit plans to be senior securities, as
14 defined in section 18(g) of the Investment Com-
15 pany Act of 1940 (15 U.S.C. 80–18(g)).

16 “(6) EXEMPTION FOR SMALL PLANS.—The Sec-

17 retary may exempt from the requirements of this
18 subsection any plan with fewer than 100 partici-
19 pants, subject to the same requirements with respect
20 to an exemption to reporting requirements under
21 section 2520.104–46 of title 29, Code of Federal
22 Regulations (or any successor regulations).

23 “(7) CONFORMING WITH SECURE ACT.—Not

24 later than one year after the enactment of this sub-
25 section, the Secretary shall promulgate rules to en-

1 sure that the requirements of this subsection apply
2 to multiple employer plans with pooled providers
3 plans as described in section 413(e) of the Internal
4 Revenue Code of 1986.

5 “(8) INVESTMENT MANAGER PROXY VOTING
6 POLICIES.—No investment manager shall require
7 participating investors to accept the investment
8 manager’s own proxy voting policy as a condition of
9 investment”.

10 (b) PRUDENCE REQUIREMENT.—Section 404(a)(1)
11 of the Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1104(a)(1)) is amended—

13 (1) in subparagraph (C), by striking “and” at
14 the end;

15 (2) in subparagraph (D), by striking the period
16 and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(E) in exercising a plan’s proxy voting rights
19 with respect to plan assets—

20 “(i) may vote proxies in accordance with
21 the plan’s proxy voting guidelines as established
22 by the plan’s trustees, unless the fiduciary de-
23 termines that the casting of any proxy vote
24 would be inconsistent with subparagraphs (A)
25 and (B); and

1 “(ii) may consider—

2 “(I) the distinct and specific invest-
3 ment objectives and horizons of the partici-
4 pants and beneficiaries, especially in con-
5 trast with other market actors engaged in
6 proxy voting; and

7 “(II) the diversified nature of the
8 plan’s investments and the effect of any
9 negative externalities generated by port-
10 folio companies on the plan’s ability to pro-
11 vide benefits to participants and bene-
12 ficiaries by reducing the returns from
13 other plan assets.”.

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