

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5337
OFFERED BY MR. SCOTT OF VIRGINIA**

In lieu of the matter proposed to be inserted by the amendment, insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Retirement Proxy Pro-
3 tection Act”.

4 SEC. 2. EXERCISE OF SHAREHOLDER RIGHTS.

5 (a) IN GENERAL.—Section 404 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 1104)
7 is amended by adding at the end the following new sub-
8 section:

9 “(f) EXERCISE OF SHAREHOLDER RIGHTS.—

10 “(1) AUTHORITY TO EXERCISE SHAREHOLDER
11 RIGHTS.—

12 “(A) IN GENERAL.—The fiduciary duty to
13 manage plan assets that are shares of stock in-
14 cludes the management of shareholder rights
15 appurtenant to those shares, including the right
16 to vote proxies. When deciding whether to exer-
17 cise a shareholder right and in exercising such
18 right, including the voting of proxies, a fidu-

1 ciary must act prudently and solely in the inter-
2 ests of participants and beneficiaries and for
3 the exclusive purpose of providing benefits to
4 participants and beneficiaries and defraying the
5 reasonable expenses of administering the plan.

6 “(B) EXCEPTION.—This subsection shall
7 not apply to voting, tender, and similar rights
8 with respect to securities that are passed
9 through pursuant to the terms of an individual
10 account plan to participants and beneficiaries
11 with accounts holding such securities.

12 “(2) REQUIREMENTS FOR EXERCISE OF SHARE-
13 HOLDER RIGHTS.—A fiduciary, when deciding
14 whether to exercise a shareholder right and when ex-
15 ercising a shareholder right, shall—

16 “(A) act solely in accordance with the eco-
17 nomic interest of the plan and its participants
18 and beneficiaries;

19 “(B) consider any costs involved;

20 “(C) not subordinate the interests of par-
21 ticipants and beneficiaries in their retirement
22 income or financial benefits under the plan to
23 any objective; and

1 “(D) evaluate relevant facts that form the
2 basis for any particular proxy vote or other ex-
3 ercise of shareholder rights.

4 “(3) MONITORING.—A fiduciary shall exercise
5 prudence and diligence in the selection and moni-
6 toring of a person, if any, selected to advise on or
7 otherwise assist with the exercise of shareholder
8 rights, including by providing research and analysis,
9 recommendations regarding proxy votes, administra-
10 tive services with voting proxies, and recordkeeping
11 and reporting services. A fiduciary may not adopt a
12 practice of following the recommendations of a proxy
13 advisory firm or other service provider without a de-
14 termination that such firm or service provider’s
15 proxy voting guidelines are consistent with the fidu-
16 ciary’s obligations described in this section.

17 “(4) INVESTMENT MANAGERS.—Where the au-
18 thority to manage plan assets has been delegated to
19 an investment manager pursuant to section
20 403(a)(2), the investment manager has exclusive au-
21 thority to vote proxies or exercise other shareholder
22 rights appurtenant to such plan assets in accordance
23 with this section, except to the extent the plan, trust
24 document, or investment management agreement ex-
25 pressly provides that the responsible named fiduciary

1 has reserved to itself (or to another named fiduciary
2 so authorized by the plan document) the right to di-
3 rect a plan trustee regarding the exercise or man-
4 agement of some or all of such shareholder rights.

5 “(5) VOTING POLICIES.—In deciding whether to
6 vote a proxy pursuant to this subsection, the plan fi-
7 duciary may adopt a proxy voting policy, providing
8 that the authority to vote a proxy shall be exercised
9 pursuant to specific parameters designed to serve
10 the plan’s interests in providing benefits to partici-
11 pants and their beneficiaries and defraying reason-
12 able expenses of administering the plan. The plan fi-
13 duciary shall periodically review the proxy voting
14 policy adopted pursuant to this subsection.

15 “(6) EXCEPTION.—No proxy voting policy
16 adopted pursuant to this paragraph shall preclude a
17 fiduciary from submitting a proxy vote when the fi-
18 duciary prudently determines that the matter being
19 voted on is expected to have a significant effect on
20 the value of the investment or the investment per-
21 formance of the plan’s portfolio (or the investment
22 performance of assets under management in the case
23 of an investment manager) after taking into account
24 the costs involved, or refraining from voting when
25 the fiduciary prudently determines that the matter

1 being voted on is not expected to have such an effect
2 after taking into account the costs involved.

3 “(7) REVIEW.—A fiduciary shall periodically re-
4 view any proxy voting policy adopted under this sub-
5 section.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall take effect on December 1, 2023.

