

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5337  
OFFERED BY MRS. HOUCHIN OF INDIANA**

Strike all after the enacting clause and 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           The fiduciary duty to manage shareholder  
7           rights appurtenant to shares of stock does not  
8           require the voting of every proxy or the exercise  
9           of every shareholder right.

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

16           “(2) REQUIREMENTS FOR EXERCISE OF SHARE-  
17           HOLDER RIGHTS.—A fiduciary, when deciding  
18           whether to exercise a shareholder right and when ex-  
19           ercising a shareholder right—

20           “(A) shall—

21           “(i) act solely in accordance with the  
22           economic interest of the plan and its par-  
23           ticipants and beneficiaries;

24           “(ii) consider any costs involved;

1           “(iii) evaluate material facts that  
2           form the basis for any particular proxy  
3           vote or exercise of shareholder rights; and

4           “(iv) maintain a record of any proxy  
5           vote, proxy voting activity, or other exer-  
6           cise of a shareholder right, including any  
7           attempt to influence management; and

8           “(B) shall not subordinate the interests of  
9           participants and beneficiaries in their retire-  
10          ment income or financial benefits under the  
11          plan to any non-pecuniary objective, or promote  
12          non-pecuniary benefits or goals unrelated to  
13          those financial interests of the plan’s partici-  
14          pants and beneficiaries.

15          “(3) MONITORING.—A fiduciary shall exercise  
16          prudence and diligence in the selection and moni-  
17          toring of a person, if any, selected to advise or oth-  
18          erwise assist with the exercise of shareholder rights,  
19          including by providing research and analysis, rec-  
20          ommendations on exercise of proxy voting or other  
21          shareholder rights, administrative services with re-  
22          spect to voting proxies, and recordkeeping and re-  
23          porting services.

24          “(4) INVESTMENT MANAGERS AND PROXY ADVI-  
25          SORY FIRMS.—Where the authority to vote proxies

1 or exercise other shareholder rights has been dele-  
2 gated to an investment manager pursuant to section  
3 403(a), or a proxy voting advisory firm or other per-  
4 son who performs advisory services as to the voting  
5 of proxies or the exercise of other shareholder rights,  
6 a responsible plan fiduciary shall prudently monitor  
7 the proxy voting activities of such investment man-  
8 ager or advisory firm and determine whether such  
9 activities are in compliance with paragraphs (1) and  
10 (2).

11 “(5) VOTING POLICIES.—

12 “(A) IN GENERAL.—In deciding whether to  
13 vote a proxy pursuant to this subsection, the  
14 plan fiduciary may adopt a proxy voting policy,  
15 including a safe harbor proxy voting policy de-  
16 scribed in subparagraph (B), providing that the  
17 authority to vote a proxy shall be exercised pur-  
18 suant to specific parameters designed to serve  
19 the economic interest of the plan.

20 “(B) SAFE HARBOR VOTING POLICY.—

21 With respect to a decision not to vote a proxy,  
22 a fiduciary shall satisfy the fiduciary respon-  
23 sibilities under this subsection if such fiduciary  
24 adopts and is following a safe harbor proxy vot-  
25 ing policy that—

1           “(i) limits voting resources to par-  
2           ticular types of proposals that the fiduciary  
3           has prudently determined are substantially  
4           related to the business activities of the  
5           issuer or are expected to have a material  
6           effect on the value of the plan investment;  
7           or

8           “(ii) establishes that the fiduciary will  
9           refrain from voting on proposals or par-  
10          ticular types of proposals when the assets  
11          of a plan invested in the issuer relative to  
12          the total assets of such plan are below 5  
13          percent (or, in the event such assets are  
14          under management, when the assets under  
15          management invested in the issuer are  
16          below 5 percent of the total assets under  
17          management).

18          “(C) EXCEPTION.—No proxy voting policy  
19          adopted pursuant to this paragraph shall pre-  
20          clude a fiduciary from submitting a proxy vote  
21          when the fiduciary determines that the matter  
22          being voted on is expected to have a material  
23          economic effect on the investment performance  
24          of a plan’s portfolio (or the investment perform-  
25          ance of assets under management in the case of

1 an investment manager); provided, however,  
2 that in all cases compliance with a safe harbor  
3 voting policy shall be presumed to satisfy fidu-  
4 ciary responsibilities with respect to decisions  
5 not to vote.

6 “(6) REVIEW.—A fiduciary shall periodically re-  
7 view any policy adopted under this subsection.”.

8 (b) EFFECTIVE DATE.—The amendments made by  
9 subsection (a) shall apply to an exercise of shareholder  
10 rights occurring on or after January 1, 2024.

