

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2988
OFFERED BY MR. ALLEN OF GEORGIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Protecting Prudent Investment of Retirement Savings
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

DIVISION A—INCREASE RETIREMENT EARNINGS

Sec. 1001. Short title.

Sec. 1002. Limitation on consideration of non-pecuniary factors by fiduciaries.

DIVISION B—NO DISCRIMINATION IN MY BENEFITS

Sec. 2001. Short title.

Sec. 2002. Service provider selection.

DIVISION C—RETIREMENT PROXY PROTECTION

Sec. 3001. Short title.

Sec. 3002. Exercise of shareholder rights.

DIVISION D—PROVIDING COMPLETE INFORMATION TO
RETIREMENT INVESTORS

Sec. 4001. Short title.

Sec. 4002. Brokerage window disclosures.

DIVISION A—INCREASE RETIREMENT EARNINGS

SEC. 1001. SHORT TITLE.

This division may be cited as the “Increase Retirement Earnings Act”.

SEC. 1002. LIMITATION ON CONSIDERATION OF NON-PECUNIARY FACTORS BY FIDUCIARIES.

(a) IN GENERAL.—Section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) is amended by adding at the end the following:

“(3) INTEREST BASED ON PECUNIARY FACTORS.—

“(A) IN GENERAL.—For purposes of paragraph (1), a fiduciary shall be considered to act solely in the interest of the participants and beneficiaries of the plan with respect to an investment or investment course of action only if the fiduciary’s action with respect to such investment or investment course of action is based solely on pecuniary factors (except as provided in subparagraph (B)). The fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or goals. The weight given to any pecuniary factor by

1 a fiduciary shall reflect a prudent assessment of the
2 impact of such factor on risk and return.

3 “(B) USE OF NON-PECUNIARY FACTORS FOR
4 INVESTMENT ALTERNATIVES.—Notwithstanding
5 paragraph (A), if a fiduciary is unable to distinguish
6 between or among investment alternatives or invest-
7 ment courses of action on the basis of pecuniary fac-
8 tors alone, the fiduciary may use non-pecuniary fac-
9 tors as the deciding factor if the fiduciary docu-
10 ments—

11 “(i) why pecuniary factors were not suffi-
12 cient to select a plan investment or investment
13 course of action;

14 “(ii) how the selected investment compares
15 to the alternative investments with regard to
16 the composition of the portfolio with regard to
17 diversification, the liquidity and current return
18 of the portfolio relative to the anticipated cash
19 flow requirements of the plan, and the projected
20 return of the portfolio relative to the funding
21 objectives of the plan; and

22 “(iii) how the selected non-pecuniary factor
23 or factors are consistent with the interests of
24 the participants and beneficiaries in their re-

1 tirement income or financial benefits under the
2 plan.

3 “(C) INVESTMENT ALTERNATIVES FOR PARTICI-
4 PANT-DIRECTED INDIVIDUAL ACCOUNT PLANS.—In
5 selecting or retaining investment options for a pen-
6 sion plan described in subsection (c)(1)(A), a fidu-
7 ciary is not prohibited from considering, selecting, or
8 retaining an investment option on the basis that
9 such investment option promotes, seeks, or supports
10 one or more non-pecuniary benefits or goals, if—

11 “(i) the fiduciary satisfies the requirements
12 of paragraph (1) and subparagraphs (A) and
13 (B) of this paragraph in selecting or retaining
14 any such investment option; and

15 “(ii) such investment option is not added
16 or retained as, or included as a component of,
17 a default investment under subsection (c)(5) (or
18 any other default investment alternative) if its
19 investment objectives or goals or its principal
20 investment strategies include, consider, or indi-
21 cate the use of one or more non-pecuniary fac-
22 tors.

23 “(D) DEFINITIONS.—For the purposes of this
24 paragraph:

1 “(i) The term ‘pecuniary factor’ means a
2 factor that a fiduciary prudently determines is
3 expected to have a material effect on the risk
4 or return of an investment based on appropriate
5 investment horizons consistent with the plan’s
6 investment objectives and the funding policy es-
7 tablished pursuant to section 402(b)(1).

8 “(ii) The term ‘investment course of ac-
9 tion’ means any series or program of invest-
10 ments or actions related to a fiduciary’s per-
11 formance of the fiduciary’s investment duties,
12 and includes the selection of an investment fund
13 as a plan investment, or in the case of an indi-
14 vidual account plan, a designated investment al-
15 ternative under the plan.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to actions taken by a fiduciary on
18 or after the date that is 12 months after the date of enact-
19 ment of this Act.

20 **DIVISION B—NO DISCRIMINA-** 21 **TION IN MY BENEFITS**

22 **SEC. 2001. SHORT TITLE.**

23 This division may be cited as the “No Discrimination
24 in My Benefits Act”.

1 **SEC. 2002. SERVICE PROVIDER SELECTION.**

2 Section 404(a)(1) of the Employee Retirement In-
3 come Security Act of 1974 (29 U.S.C. 1104(a)(1)) is
4 amended—

5 (1) in subparagraph (C), by striking “and”;

6 (2) in subparagraph (D), by striking the period
7 at the end and inserting “; and”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) by selecting, monitoring, and retaining
11 any fiduciary, counsel, employee, or service provider
12 of the plan—

13 “(i) in accordance with subparagraphs (A)
14 and (B); and

15 “(ii) without regard to race, color, religion,
16 sex, or national origin.”.

17 **DIVISION C—RETIREMENT**
18 **PROXY PROTECTION**

19 **SEC. 3001. SHORT TITLE.**

20 This division may be cited as the “Retirement Proxy
21 Protection Act”.

22 **SEC. 3002. EXERCISE OF SHAREHOLDER RIGHTS.**

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

1 “(f) EXERCISE OF SHAREHOLDER RIGHTS.—

2 “(1) AUTHORITY TO EXERCISE SHAREHOLDER
3 RIGHTS.—

4 “(A) IN GENERAL.—The fiduciary duty to
5 manage plan assets that are shares of stock in-
6 cludes the management of shareholder rights
7 appurtenant to those shares, including the right
8 to vote proxies. When deciding whether to exer-
9 cise a shareholder right and in exercising such
10 right, including the voting of proxies, a fidu-
11 ciary must act prudently and solely in the inter-
12 ests of participants and beneficiaries and for
13 the exclusive purpose of providing benefits to
14 participants and beneficiaries and defraying the
15 reasonable expenses of administering the plan.
16 The fiduciary duty to manage shareholder
17 rights appurtenant to shares of stock does not
18 require the voting of every proxy or the exercise
19 of every shareholder right.

20 “(B) EXCEPTION.—This subsection shall
21 not apply to voting, tender, and similar rights
22 with respect to qualifying employer securities or
23 securities held in an investment arrangement
24 that is not a designated investment alternative
25 in the event such rights are passed through

1 pursuant to the terms of an individual account
2 plan to participants and beneficiaries with ac-
3 counts holding such securities.

4 “(2) REQUIREMENTS FOR EXERCISE OF SHARE-
5 HOLDER RIGHTS.—A fiduciary, when deciding
6 whether to exercise a shareholder right and when ex-
7 ercising a shareholder right—

8 “(A) shall—

9 “(i) act solely in accordance with the
10 economic interest of the plan and its par-
11 ticipants and beneficiaries;

12 “(ii) consider any costs involved;

13 “(iii) evaluate material facts that
14 form the basis for any particular proxy
15 vote or exercise of shareholder rights; and

16 “(iv) maintain a record of any proxy
17 vote, proxy voting activity, or other exer-
18 cise of a shareholder right, including any
19 attempt to influence management; and

20 “(B) shall not subordinate the interests of
21 participants and beneficiaries in their retire-
22 ment income or financial benefits under the
23 plan to any non-pecuniary objective, or promote
24 non-pecuniary benefits or goals unrelated to

1 those financial interests of the plan’s partici-
2 pants and beneficiaries.

3 “(3) MONITORING.—A fiduciary shall exercise
4 prudence and diligence in the selection and moni-
5 toring of a person, if any, selected to advise or oth-
6 erwise assist with the exercise of shareholder rights,
7 including by providing research and analysis, rec-
8 ommendations on exercise of proxy voting or other
9 shareholder rights, administrative services with re-
10 spect to voting proxies, and recordkeeping and re-
11 porting services.

12 “(4) INVESTMENT MANAGERS AND PROXY ADVI-
13 SORY FIRMS.—Where the authority to vote proxies
14 or exercise other shareholder rights has been dele-
15 gated to an investment manager pursuant to section
16 403(a), or a proxy voting advisory firm or other per-
17 son who performs advisory services as to the voting
18 of proxies or the exercise of other shareholder rights,
19 a responsible plan fiduciary shall prudently monitor
20 the proxy voting activities of such investment man-
21 ager or advisory firm and determine whether such
22 activities are in compliance with paragraphs (1) and
23 (2).

24 “(5) VOTING POLICIES.—

1 “(A) IN GENERAL.—In deciding whether to
2 vote a proxy pursuant to this subsection, the
3 plan fiduciary may adopt a proxy voting policy,
4 including a safe harbor proxy voting policy de-
5 scribed in subparagraph (B), providing that the
6 authority to vote a proxy shall be exercised pur-
7 suant to specific parameters designed to serve
8 the economic interest of the plan.

9 “(B) SAFE HARBOR VOTING POLICY.—
10 With respect to a decision not to vote a proxy,
11 a fiduciary shall satisfy the fiduciary respon-
12 sibilities under this subsection if such fiduciary
13 adopts and follows a safe harbor proxy voting
14 policy that—

15 “(i) limits voting resources to par-
16 ticular types of proposals that the fiduciary
17 has prudently determined are substantially
18 related to the business activities of the
19 issuer or are expected to have a material
20 effect on the value of the plan investment;
21 or

22 “(ii) establishes that the fiduciary will
23 refrain from voting on proposals or par-
24 ticular types of proposals when the assets
25 of a plan invested in the issuer relative to

1 the total assets of such plan are below 5
2 percent (or, in the event such assets are
3 under management, when the assets under
4 management invested in the issuer are
5 below 5 percent of the total assets under
6 management).

7 “(C) EXCEPTION.—No proxy voting policy
8 adopted pursuant to this paragraph shall pre-
9 clude a fiduciary from submitting a proxy vote
10 when the fiduciary determines that the matter
11 being voted on is expected to have a material
12 economic effect on the investment performance
13 of a plan’s portfolio (or the investment perform-
14 ance of assets under management in the case of
15 an investment manager); provided, however,
16 that in all cases compliance with a safe harbor
17 voting policy shall be presumed to satisfy fidu-
18 ciary responsibilities with respect to decisions
19 not to vote.

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

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to an exercise of shareholder
24 rights occurring on or after January 1, 2026.

1 **DIVISION D—PROVIDING COM-**
2 **plete INFORMATION TO RE-**
3 **TIREMENT INVESTORS**

4 **SEC. 4001. SHORT TITLE.**

5 This division may be cited as the “Providing Com-
6 plete Information to Retirement Investors Act”.

7 **SEC. 4002. BROKERAGE WINDOW DISCLOSURES.**

8 (a) IN GENERAL.—Section 404(c) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1104(c)) is amended by adding at the end the following
11 new paragraph:

12 “(7) NOTICE REQUIREMENTS FOR BROKERAGE
13 WINDOWS.—

14 “(A) IN GENERAL.—In the case of a pen-
15 sion plan which provides for individual accounts
16 and which provides a participant or beneficiary
17 the opportunity to choose from designated in-
18 vestment alternatives, a participant or bene-
19 ficiary shall not be treated as exercising control
20 over assets in the account of the participant or
21 beneficiary unless, with respect to any invest-
22 ment arrangement that is not a designated in-
23 vestment alternative, each time before such a
24 participant or beneficiary directs an investment
25 into, out of, or within such investment arrange-

1 ment, such participant is notified of, and ac-
2 knowledges, each element of the notice de-
3 scribed under paragraph (B).

4 “(B) NOTICE.—The notice described under
5 this paragraph is a four part information that
6 is substantially similar to the following informa-
7 tion:

- “1. Your retirement plan offers designated investment alternatives prudently selected and monitored by fiduciaries for the purpose of enabling you to construct an appropriate retirement savings portfolio. In selecting and monitoring designated investment alternatives, your plan’s fiduciary considers the risk of loss and the opportunity for gain (or other return) compared with reasonably available investment alternatives.
2. The investments available through this investment arrangement are not designated investment alternatives, and have not been prudently selected and are not monitored by a plan fiduciary.
3. Depending on the investments you select through this investment arrangement, you may experience diminished returns, higher fees, and higher risk than if you select from the plan’s designated investment alternatives.
4. The following is a hypothetical illustration of the impact of return at 4 percent, 6 percent, and 8 percent on your account balance projected to age 67.

8 “(C) ILLUSTRATION.—The notice de-
9 scribed under paragraph (B) shall also include
10 a graph displaying the projected retirement bal-
11 ances of such participant or beneficiary at age
12 67 if the account of such individual were to
13 achieve an annual return equal to each of the
14 following:

15 “(i) 4 percent.

16 “(ii) 6 percent.

17 “(iii) 8 percent.”.

1 (b) DESIGNATED INVESTMENT ALTERNATIVE DE-
2 FINED.—Section 3 of such Act (29 U.S.C. 1002) is
3 amended by adding at the end the following new para-
4 graph:

5 “(46) DESIGNATED INVESTMENT ALTER-
6 NATIVE.—

7 “(A) IN GENERAL.—The term ‘designated
8 investment alternative’ means any investment
9 alternative designated by a responsible fiduciary
10 of an individual account plan described in sub-
11 section 404(c) into which participants and bene-
12 ficiaries may direct the investment of assets
13 held in, or contributed to, their individual ac-
14 counts.

15 “(B) EXCEPTION.—The term ‘designated
16 investment alternative’ does not include broker-
17 age windows, self-directed brokerage accounts,
18 or similar plan arrangements that enable par-
19 ticipants and beneficiaries to select investments
20 beyond those designated by a responsible plan
21 fiduciary.”.

22 (c) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on January 1, 2027.

