

Date of Hearing: June 25, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Monique Limón, Chair
SB 826 (Jackson) – As Amended May 25, 2018

SENATE VOTE: 22-11

SUBJECT: Corporations: boards of directors

SUMMARY: Requires each publicly held corporation whose principal executive offices are located in California to have a minimum number of females on its board of directors.

Specifically, **this bill:**

- 1) Defines “female” as an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.
- 2) Defines “publicly held corporation” as a corporation with outstanding shares listed on a major United States stock exchange.
- 3) By the end of calendar year 2019, requires each publicly held corporation whose principal executive offices are located in California to have a minimum of one female director on its board.
- 4) By the end of calendar year 2021, requires each publicly held corporation whose principal executive offices are located in California to comply with the following:
 - a. If its number of directors is six or more, the corporation shall have a minimum of three female directors.
 - b. If its number of directors is five, the corporation shall have a minimum of two female directors.
 - c. If its number of directors is four or fewer, the corporation shall have a minimum of one female director.
- 5) Requires the Secretary of State to report on corporations subject to the requirements summarized in #3 and #4 and those corporations’ compliance with the requirements.
- 6) Authorizes the Secretary of State to impose fines for violations of the requirements in #3 and #4 in amounts based on the cash compensation paid to directors of the corporation.
- 7) Makes findings and declarations regarding the underrepresentation of women on corporate boards of directors and the benefits of more equitable representation of women on corporate boards.

EXISTING LAW:

- 1) Provides for the General Corporation Law (Corporations Code Section 100 et seq.). Defines a domestic corporation as a corporation formed under the laws of this state (Corporations Code Section 167).

- 2) Defines a foreign corporation as a corporation incorporated in another country (Corporations Code Section 171).
- 3) Provides that the board members of a corporation have a fiduciary duty to that corporation.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown, significant costs for Secretary of State (SOS) to comply with reporting requirement. Ongoing costs of about \$600,000 annually for SOS to develop regulations and investigate violations. Unknown revenue from fines.

COMMENTS:

1) PURPOSE

This bill is sponsored by the National Association of Women Business Owners California (NAWBO-CA). The author states:

California women make up 52 percent of the state's population, but only about 28 percent of the directors of our public corporations...Research clearly shows that boards with women members perform better in the marketplace. By having such low participation rates for women in California's corporate leadership ranks, we effectively inhibit our own economic performance as a state. Senate Bill 826 takes the first step towards closing this gender gap.

2) BACKGROUND

Women are significantly underrepresented on corporate boards of directors, relative to women's share of the population and share of the workforce. According to Pew Research Center, women comprised a 47% share of the labor force in 2015. Yet, only 16% of board seats are held by women.¹ The board of directors has the responsibility of hiring the company's chief executive officers (CEOs), and the gender disparity on boards may be a contributing factor to the even larger gender disparity at the CEO level – women hold less than 4% of CEO positions in the largest 3,400 companies worldwide.²

This disparity raises important questions and concerns related to structural discrimination and gender equity, but it also may be hindering the productivity and economic value of corporations based in California. Credit Suisse, a global investment bank and financial services company, has researched the impacts of gender diversity on business performance. Their research finds clear evidence that higher levels of gender diversity in decision-making roles lead to higher return on equity, even while maintaining less risky balance sheets.³

In 2013, the author and sponsor of this bill worked to pass Senate Concurrent Resolution (SCR) 62, which encouraged equitable and diverse gender representation on corporate boards. SCR 62

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<https://static1.squarespace.com/static/56e8489162cd944a6424f542/t/5a3215a40d9297f7991e7582/1513231783352/California+Women+on+Boards+2017+Report.pdf>

² <http://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=5A7755E1-EFDD-1973-A0B5C54AFF3FB0AE>

³ Ibid.

urged public companies in California to have a minimum number of director seats held by women, based on the size of the companies' boards, by December 2016. Fewer than 20% of corporations complied with the targets encouraged by the Legislature, so the author and sponsor introduced this bill to provide impetus for action in closing the gender gap on corporate boards.

3) BOARD MANDATES IN EUROPE

Ten years ago, Norway required publicly-traded companies to appoint women to at least 40% of their board seats. Subsequently, more than a dozen European countries established similar quotas with varying levels of enforceability. The result of these policies is a dramatic increase in female representation on corporate boards, as shown in the chart below.



Economist.com

According to The Economist, these policies were met with concerns that few women would be spread thin between boards and that underqualified women would be appointed to boards.⁴ Those fears have not been realized. The incidence of board members serving on three or more boards does not significantly differ between male and female directors. A study on Italy's quota showed

⁴ <https://www.economist.com/business/2018/02/17/ten-years-on-from-norways-quota-for-women-on-corporate-boards>

that the population of female board members after the policy change was actually more qualified than before the policy change.

On the other hand, The Economist article suggests that the quotas have not been as successful in generating additional benefits beyond more diverse boards. Empirical research has been inconclusive in showing positive benefits related to company performance, corporate decision-making, or beneficial effects on the representation of women in senior management.

4) RISK OF NEGATIVE UNINTENDED CONSEQUENCES UNCLEAR

If enacted into law, the requirements of this bill would likely result in a significant increase in demand for female board candidates by public corporations in California. This increase in demand may result in one or more of the following outcomes, some of which may be intended by the author and others which are likely not intended:

- Higher compensation for the most qualified female board candidates;
- A change, possibly an increase or decrease, in the diversity of boards when measured on other aspects besides gender;
- A decrease in board seats held by females at non-California corporations in the short-run as California corporations outbid non-California corporations for female directors;
- An increase in board seats held by females at non-California corporations in the long-run as more females build experience serving on boards in California, potentially widening and deepening the pool of female board candidates qualified to serve on boards of non-California corporations;
- A shortage of female board candidates who fit the qualifications desired by some California corporations, which may result in such a corporation paying a fine authorized by this bill, rather than comply with the mandate;
- In order to reduce the amount of fines authorized by this bill, corporations may decrease the cash compensation paid to directors and increase noncash forms of compensation.
- Publicly held corporations may move their principal offices from California to another state to avoid compliance with the law; however, it may be more costly to move their principal offices than to pay the fines authorized by this bill.
- The most qualified female board candidates serving simultaneously on three or more boards, which may negatively impact such a candidate's effectiveness on a given board.

5) CONCERNS RELATED TO CONSTITUTIONALITY WILL BE ADDRESSED BY ASSEMBLY JUDICIARY COMMITTEE

Opponents argue that provisions of this bill violate both the California and U.S. Constitutions. This bill is double-referred to this committee and the Assembly Judiciary Committee. Constitutional issues and related case law that apply to this bill will be discussed in the analysis written by the Assembly Judiciary Committee, if this bill passes the Assembly Banking Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

National Association of Women Business Owners –California (source)
Alliance of Chief Executives
Anvaya Solutions
Barnard-Bahn Consulting & Coaching
Berkhemer Clayton, Inc.
Burleson Consulting
Chelette Enterprises
Consumer Attorneys of California
CR&A Custom
DG Consulting
DLC Consulting Services
Dr. Sandra’s Sanctuary
Fraser Communications
Frieda’s Specialty Produce
Garcia Realty
Hiland Consulting
Hispanas Organized For Political Equality (Hope)
Hollifield Creative
Hunter Hawk Inc.
Impact Sciences
Legislative Women’s Caucus
Lentini Design & Marketing
NAWBO Los Angeles
NAWBO Ventura County
Posh Baban
Rose Policy Solutions
Schaub Insurance Agency
Small Business California
Sunrun
Toni’s Kitchen
50 private individuals (female executives)

Opposition

Biocom
Brea Chamber of Commerce
California Ambulance Association
California Association of Winegrape Growers
California Business Properties Association
California Chamber of Commerce
California Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Trucking Association
Camarillo Chamber of Commerce

Cerritos Chamber of Commerce
Construction Employers' Association
Garden Grove Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater Riverside Chambers of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta Chamber of Commerce
North Orange County Chamber
Official Police Garages of Los Angeles
Personal Insurance Federation of California
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Vacaville Chamber of Commerce
Wildomar Chamber of Commerce

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