ASSEMBLY, No. 1982

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Requires certain corporations to appoint women to board of directors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 10/22/2020)

AN ACT concerning appointments to corporate boards of directors and supplementing chapter 6 of Title 14A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. Numerous independent studies have concluded that publicly held companies with women serving on their boards of directors perform significantly better and have higher reported earnings per share, higher average return on equity, stronger governance structures and transparency, improved stock performance, and higher net income growth.

b. Outside of the United States, other countries have addressed the lack of gender diversity on corporate boards by instituting quotas mandating 30 to 40 percent of seats to be held by women directors, including in Norway, which since 2003 requires 40 percent female representation on corporate boards, and many other European nations, such as France, Germany, Iceland, the Netherlands, and Spain.

c. If measures are not taken to proactively increase the numbers of women serving on corporate boards, studies estimate that it will take 40 to 50 years to achieve gender parity among directors. This research is supported by: a 2015 study conducted by the United States Government Accountability Office, which estimated that it could take more than 40 years for the numbers of women on boards to match men; the 2017 Equilar Gender Diversity Index (GDI), which revealed that it will take nearly 40 years for the Russell 3000 companies nationwide to reach gender parity — the year 2055; and the fact that nearly one-half of the 75 largest IPOs from 2014 to 2016 went public with no women on their boards.

d. Further, several studies conclude that having three women on the board or in the highest executive ranks, rather than just one token woman or no women on the board, increases the effectiveness of boards by: creating an environment where women are no longer seen as outsiders and are able to influence the content and process of board discussions more substantially; positively affecting the level of organizational innovation within corporations; performing the best in profitability, productivity, and workforce engagement; having fewer governance-related controversies; and scoring even more highly, on average, on the organizational performance profile, than companies without women on the board.

e. According to one nonprofit which tracks women on corporate boards, nationally women hold only 15.5 percent of the board seats. New Jersey is a leader in the nation with 31 Fortune 1000 companies based in the State having boards composed of at

least 20% female directors; however, a number of companies in New Jersey have no women on their boards.

f. More women directors serving on boards of directors of publicly held corporations will boost the New Jersey economy, improve opportunities for women in the workplace, and protect the value of corporations for shareholders and stockholders, including retirees in this State.

g. The Legislature therefore determines that it is in the public interest to encourage equitable and diverse gender representation on corporate boards of directors and in senior management positions of New Jersey companies.

2. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Female" means an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

"Principal executive office" means the principal executive office according to the corporation's Form 10-K reports filed with the Securities and Exchange Commission.

"Publicly held domestic or foreign corporation" means a domestic or foreign corporation with outstanding shares listed on a major United States stock exchange.

3. a. By December 31, 2019, a publicly held domestic or foreign corporation whose principal executive office is located in this State shall have a minimum of one female director on its board. A corporation may increase the number of directors, pursuant to N.J.S.14A:6-2, on its board to comply with this section.

b. By December 31, 2021, a publicly held domestic or foreign corporation whose principal executive office is located in this State shall comply with the following:

(1) a corporation with six or more directors shall have a minimum of three female directors;

(2) a corporation with five directors shall have a minimum of two female directors; or

(3) a corporation with four or fewer directors shall have a minimum of one female director.

c. For the purpose of determining compliance with subsection a. or b. of this section, a publicly held domestic or foreign corporation whose principal executive office is located in this State shall file with the Secretary of State, on an annual basis, a list of all directors and each director's term of service, and identify how many directors are female.

4. A publicly held domestic or foreign corporation that violates the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to the following penalties:

a. For each director seat required to be held by a female, pursuant to subsection a. or b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), which is not held by a female during at least a portion of a calendar year, a corporation shall be subject to a civil penalty of $100,000 for a first violation and $300,000 for each subsequent violation.

For the purposes of this subsection, a female director having held a seat for at least a portion of the year shall not be a violation.

b. For failure to file board member information in a timely manner with the Secretary of State pursuant to subsection c. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), a corporation shall be subject to a civil penalty of $100,000.

c. Any fine collected by the Secretary of State pursuant to this section shall be used by the secretary to offset the cost of administering P.L. , c. (C.) (pending before the Legislature as this bill).

5. a. By July 1, 2019, the Secretary of State shall prepare and submit a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and publish the report on the Department of State Internet website documenting the number of publicly held domestic and foreign corporations whose principal executive office is located in this State and the number of female directors on each corporation's board.

b. By March 1, 2020, and annually thereafter, the Secretary of State shall prepare and submit a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and publish the report on the department's Internet website regarding, at a minimum, all of the following:

(1) a list of publicly held domestic and foreign corporations subject to, and in compliance with, the requirements of subsection a. or b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) during at least one point during the preceding calendar year;

(2) the number of publicly held domestic and foreign corporations that moved their United States headquarters during the preceding calendar year to New Jersey from another state or from New Jersey to another state; and

(3) the number of domestic and foreign corporations that were subject to subsection a. or b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) during the preceding year, but are no longer publicly traded.

6. The Secretary of State shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to implement P.L. , c. (C.) (pending before the Legislature as this bill). The rules and

regulations shall set forth requirements for a publicly held domestic and foreign corporation to file board member information with the Secretary of State in a timely manner.

7. This act shall take effect immediately.

STATEMENT

This bill requires publicly held domestic and foreign corporations based in New Jersey to appoint women to their boards of directors, in order to increase gender diversity in corporate governing roles. Research indicates that women serving on boards of directors of publicly held corporations will boost the economy, improve opportunities for women in the workplace, and improve the performance and protect the value of corporations for shareholders and stockholders, including retirees.

Under the bill, a publicly held domestic or foreign corporation whose principal executive office is located in this State would be required to have a minimum of one female director on its board by December 31, 2019. Additionally, by December 31, 2021 a publicly held domestic or foreign corporation located in this State would be required to have a minimum of: one female director if the corporation has four or fewer directors; two female directors if the corporation has five directors; and at least three female directors if the corporation has six or more directors. To determine compliance with this requirement, the bill requires a corporation to file with the Secretary of State a list of all of its directors and their terms of service and identify the number of directors that are female.

The bill provides that a corporation that violates the bill is subject to the following penalties: $100,000 for a first violation and $300,000 for a subsequent violation for each director seat required to be held by a female which is not held by a female during at least a portion of a calendar year; and $100,000 for failure to file board member information with the Secretary of State in a timely manner. Any fine collected would be used by the Secretary of State to offset the cost of administering the bill's provisions.

Additionally, the bill requires the Secretary of State to report, by July 1, 2019, the number of publicly held domestic and foreign corporations in this State and the number of female directors on each corporation's board. By March 1, 2020, and annually thereafter, the Secretary of State would report: (1) a list of corporations subject to, and in compliance with, the requirements of this bill; (2) the number of publicly held domestic and foreign corporations that moved their United States headquarters to New Jersey from another state or from New Jersey to another state; and (3) the number of corporations that were subject to the bill's

provisions during the preceding year, but are no longer publicly traded.

This bill is similar to a California law to increase the gender diversity of corporate leadership, by requiring California-based publicly held corporations to appoint women to their boards of directors. Other countries have also addressed the lack of gender diversity on corporate boards by instituting quotas mandating 30 to 40 percent of seats to be held by women directors, including in Norway, which since 2003 requires 40 percent female representation on corporate boards, and many other European nations, such as France, Germany, Iceland, the Netherlands, and Spain.