

SENATE, No. 798

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator M. TERESA RUIZ

District 29 (Essex)

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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: 7/30/2020)

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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that:

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

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

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

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

44 e. According to one nonprofit which tracks women on
45 corporate boards, nationally women hold only 15.5 percent of the
46 board seats. New Jersey is a leader in the nation with 31 Fortune
47 1000 companies based in the State having boards composed of at

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

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

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

12

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

15 “Female” means an individual who self-identifies her gender as a
16 woman, without regard to the individual’s designated sex at birth.

17 “Principal executive office” means the principal executive office
18 according to the corporation’s Form 10-K reports filed with the
19 Securities and Exchange Commission.

20 “Publicly held domestic or foreign corporation” means a
21 domestic or foreign corporation with outstanding shares listed on a
22 major United States stock exchange.

23

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

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

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

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

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

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

44

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

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

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

9 b. For failure to file board member information in a timely
10 manner with the Secretary of State pursuant to subsection c. of
11 section 3 of P.L. , c. (C.) (pending before the Legislature
12 as this bill), a corporation shall be subject to a civil penalty of
13 \$100,000.

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

18
19 5. a. By July 1, 2019, the Secretary of State shall prepare and
20 submit a report to the Governor and the Legislature, pursuant to
21 section 2 of P.L.1991, c.164 (C.52:14-19.1), and publish the report
22 on the Department of State Internet website documenting the
23 number of publicly held domestic and foreign corporations whose
24 principal executive office is located in this State and the number of
25 female directors on each corporation's board.

26 b. By March 1, 2020, and annually thereafter, the Secretary of
27 State shall prepare and submit a report to the Governor and the
28 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
29 19.1), and publish the report on the department's Internet website
30 regarding, at a minimum, all of the following:

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

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

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

44
45 6. The Secretary of State shall adopt, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), rules and regulations to implement P.L. , c. (C.)
48 (pending before the Legislature as this bill). The rules and

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

4
5 7. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill requires publicly held domestic and foreign
11 corporations based in New Jersey to appoint women to their boards
12 of directors, in order to increase gender diversity in corporate
13 governing roles. Research indicates that women serving on boards
14 of directors of publicly held corporations will boost the economy,
15 improve opportunities for women in the workplace, and improve the
16 performance and protect the value of corporations for shareholders
17 and stockholders, including retirees.

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

30 The bill provides that a corporation that violates the bill is
31 subject to the following penalties: \$100,000 for a first violation and
32 \$300,000 for a subsequent violation for each director seat required
33 to be held by a female which is not held by a female during at least
34 a portion of a calendar year; and \$100,000 for failure to file board
35 member information with the Secretary of State in a timely manner.
36 Any fine collected would be used by the Secretary of State to offset
37 the cost of administering the bill's provisions.

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

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

3 This bill is similar to a California law to increase the gender
4 diversity of corporate leadership, by requiring California-based
5 publicly held corporations to appoint women to their boards of
6 directors. Other countries have also addressed the lack of gender
7 diversity on corporate boards by instituting quotas mandating 30 to
8 40 percent of seats to be held by women directors, including in
9 Norway, which since 2003 requires 40 percent female
10 representation on corporate boards, and many other European
11 nations, such as France, Germany, Iceland, the Netherlands, and
12 Spain.