

Date of Hearing: January 5, 2010

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Perez, Chair

AB 1491 (V. Manuel Perez) – As Amended: January 4, 2010

SUBJECT: California Registry of Corporate Board Candidates

SUMMARY: Updates the requirements and content of the existing registry of potential candidates for corporate boards by, among other items, specifying that the authority and duty to maintain the California Registry of Corporate Board Candidates (Registry) was transferred from the Secretary of State (SOS) to the California State University at Fullerton (CSU Fullerton) in January of 1999.

EXISTING LAW establishes the Corporate Governance Parity Act of 1993. Major provisions of the bill include, but are not limited to:

- 1) Findings and declarations that women and minorities have not achieved equal educational and economic opportunities relative to others in the state.
- 2) Requires the SOS to, by January 1, 1995, develop and maintain a fee-supported registry of distinguished women and minorities who are available to serve on corporate boards of directors, as specified.
- 3) States that the SOS may grant access to the Registry to corporate representatives or other persons who intend to use the information in connection with an actual search for candidates for an open position on a corporate board of directors. The SOS may also restrict access, as necessary.
- 4) Requires the SOS to charge fees--which shall be fixed by regulation--for registering with and gaining access to information in the Registry, as specified.
- 5) Requires the SOS to report to the Legislature at least once each three-year period, during which the Registry is available, about the extent to which the registry has helped women and minorities achieve parity on corporate boards.

FISCAL EFFECT: Fees are authorized to cover administrative costs of the Registry.

COMMENTS:

- 1) Author's purpose: According to the author, the purpose of AB 1491 is to update the statute relative to the Registry. While initially mandated in statute in 1991, later legislation in 1998 authorized the SOS to transfer the Registry to any California State University (CSU) or University of California (UC) campus which was willing to maintain the Registry consistent with state law.

Information obtained from the SOS confirms that the Registry and related materials were transferred to CSU Fullerton in January of 1999. Communications with CSU Fullerton

indicate that the university is no longer maintaining the Registry and CSU Fullerton states that it sent a notification letter to that effect to the SOS sometime after 2002. The SOS, however, has no such letter of communication and is working with the author, who also serves as the Chair to the Assembly Committee on Jobs, Economic Development and the Economy (JEDE), to determine the current legal status of the Registry.

- 2) SOS Office: The SOS has a number of important statutory responsibilities, including serving as the chief elections officer of the state and being responsible for administering and enforcing laws pertaining to filing documents associated with corporations, limited liability companies, partnerships and limited partnerships, among other business entities. The SOS also provides the physical home for the California Museum for History, Women and the Arts and operates several registries, including the:
 - a) Advance Health Care Directive Registry: The Advance Health Care Directive Registry allows a person who has executed an advance health care directive to register information regarding the directive with the Secretary of State. This information is made available upon request to the registrant's health care provider, public guardian, or legal representative.
 - b) Safe at Home Program: The Safe Home Program offers victims of domestic violence, stalking and sexual assault anonymity when undertaking specified activities which might otherwise disclose their identity and put them at risk. The program offers participants a free post office box where they can receive mail (rather than their home address) to help them maintain their privacy when undertaking such activities as receiving first-class mail, opening a bank account, completing a confidential name change, filling out government documents, registering to vote, getting a driver's license, and/or enrolling a child in school. Since its inception in 1999, the program has helped protect the identities of nearly 3,800 victims.
 - c) Domestic Partner Registry: The SOS registers same-sex couples regardless of the age of the partners, and opposite-sex couples in which one partner is at least 62 years old, as domestic partners in California when they file a "Declaration of Domestic Partnership."
- 3) Registry History: In 1993, legislation was enacted [SB 545 (Killea), Chapter 508, Statutes of 1993], which required the SOS to establish a registry of distinguished women and minorities who were interested in being selected for corporate board membership. No appropriation was made to establish the Registry; however, fees were authorized to self-fund the registry. Even with the fee authority, the SOS failed to establish the Registry by its statutory deadline of January 1, 1995.

In 1998, the SOS received statutory permission [SB 1652 (Kopp), Chapter 829, Statutes of 1998] to transfer the registry to a campus of the CSU or UC. In January of 1999, CSU Fullerton officially became responsible for Registry. According to a letter from CSU Fullerton, it had been in communication with the SOS since 1995 regarding its interest in housing the Registry at its campus.

News clippings and a 2002 activity report from CSU Fullerton indicate that the university made a substantial attempt to maintain and expand the Registry from 1999 through 2002,

including approving a \$50,000 initial operating budget, establishing an esteemed advisory board, seeking high-level corporate and nonprofit Registry membership and participating in promotional and networking activities.

Members of the advisory board included, but were not limited to, Dr. Bill Crist, President of the California Public Employees Retirement Board; Assemblywoman Marilyn Brewer (R-Newport Beach); Dr. Jean Lipman-Blument, professor at Claremont Graduate University; and Bill Jones, SOS. Promotional events included attendance at several California Governor's Conferences for Woman, a Bakersfield Business Conference, the 2002 Women's Empowerment Conference, and numerous events with the National Association of Women Business Owners.

Records show that in 2002, CSU Fullerton unsuccessfully sought funding through the Kaufman Center for Entrepreneurial Leadership, the Ford Foundation, and the Sloan Foundation. After 2002, there does not appear to be any further information on the Registry. Implementation of AB 1491 clarifies existing law and could serve as a vehicle for future discussions on the Registry.

- 4) California's changing workforce: As unprecedented numbers of baby boomers prepare to retire from the market place, many corporate boards will be seeking new members to help shape their businesses for the future. This demographic trend reflects not only a generational shift in the U.S., but it also marks a shift in the race and ethnicity of the nation's working age population.

The California Budget Project estimates that by 2020, nearly 60% of the working age population in California will be comprised of Latinos, African Americans, and Asian-Americans. Similarly, the composition of the U.S. consumer-base is changing. Minority purchasing power in the U.S. is expected to triple from \$1.3 trillion in 2000 to over \$4 trillion by 2045. This represents over a 70% growth of total U.S. purchasing power during the same time period. Latino and African American purchasing power is already so significant in the U.S. that if it were compared to national GDPs, it would be greater than all but nine economies in the world.

Companies that want to remain competitive are designing new and adapting existing products and services to meet this expanding market. Corporate leadership, however, has not kept pace with the changing demographics, and there remains a gap in the ethnic and gender diversity on corporate boards. According to a 2008 report by Virtcom Consulting on the leadership of Fortune 100 companies, while women comprise slightly more than half the U.S. population, they hold only 17% of the positions on corporate boards of Fortune 100 companies. The same report states that research suggests that companies with more diverse boards have higher performance and other financial metrics such as return on equity, return on sales, and return on investment.

However, even given this type of empirical evidence for out-performance, there has been very little progress in bringing diversity to boardrooms. The above-referenced report states that Caucasian, non-Latinos still hold a disproportionate share of board seats by occupying 84% of the 1,031 corporate board seats of Fortune 100 companies. African Americans held 10%, Asians 2%, and Latinos 4%. Another study conducted by the Alliance for Board

Diversity examined growth in diversity from 2004 to 2006, revealing that only three net seats were gained by women and minorities.

One of the initial barriers to becoming a candidate for corporate board membership is being recommended by the consultant or "Headhunter" who has been hired by the company to present the board with a slate of prospective candidates. Often these slates have a limited number, if any, of female candidates or candidates of color. With corporate boards most interested in choosing from among the very best prospective board members, increasing the diversity among the "known" pool of qualified candidates is essential.

A self-supporting Registry could assist corporate boards and their consultants to more cost-effectively consider a broader range of individuals when selecting members of the board of directors. The state would also benefit from having stronger corporate boards of directors and the resulting better performing companies through higher taxes based on higher corporate revenues and greater job retention and creation.

- 5) Constitutionality of Registry: In June 1998 Attorney General Daniel Lungren opinioned, No. 98-304, as to the constitutionality of having the Secretary of State maintain a registry of women and minorities who were available to be a member of a corporate board of directors based on Section 31 of Article I of the California Constitution (Proposition 209.)

In his opinion, the Attorney General explained that while Proposition 209 prohibited public institutions from discriminating against or giving preferential treatment to certain individuals or groups in public employment, public education, or public contracting, that these prohibitions did not apply to having a registry of information that was not related to public employment, education or contracting.

- 6) Previous legislation: The list below includes related legislation.
- a) SB 545 (Killea): This bill established the Corporate Governance Parity Act for the purpose of requiring the SOS to, by January 1, 1995, develop and maintain a registry of distinguished women and minorities available to serve on corporate boards of directors, as specified. Status: Signed by the Governor, Chapter 508, Statutes of 1993.
 - b) SB 1652 (Kopp): This bill authorized the SOS to transfer information contained in the registry to a campus of the California State University or the University of California that was interested in maintaining the Registry. Status: Signed by the Governor, Chapter 829, Statutes of 1998.
- 7) Double Referral: This bill was referred by the Assembly Rules Committee to two policy committees for consideration: JEDE and the Assembly Committee on the Judiciary (Judiciary Committee.) Should AB 1491 pass this committee it will be referred to the Judiciary Committee for further action.

REGISTERED SUPPORT / OPPOSITION:

Support

Assembly Committee on Jobs, Economic Development, and the Economy (Sponsor)

Opposition

None received

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