

Date of Hearing: April 12, 2011

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

AB 1255 (V. Manuel Perez) – As Introduced: February 18, 2011

SUBJECT: Notice of Corporate Board Candidate Registries

SUMMARY: Requires the Secretary of State (SOS) to provide corporations with a listing of corporate board candidate directories for the purpose of expanding the qualified pool of candidates for corporate board membership. Corporate boards are not required to choose from the list. Specifically the bill:

- 1) Makes findings and declarations of the Legislature including the following:
 - a) As an unprecedented number of baby boomers prepare to retire from the market place, many corporate boards will be seeking new members to shape the future of their companies.
 - b) While companies want to remain competitive, there remains a significant gap in the ethnic and gender diversity of corporate boards.
 - c) Increasing awareness of corporate board candidate directories will assist corporate boards and their consultants to more cost effectively consider a broader range of candidates.
- 2) Requires the SOS, to the extent that registries are known and available, to provide corporations with information regarding the registries of potentially qualified candidates for corporate directorships.
- 3) Authorizes the SOS to collaborate with specified offices and entities in connection with these duties, including the Public Employees' Retirement System, the State Teachers' Retirement System, the Council of Institutional Investors and other corporate governance associations, Commission on the Status of Women and other women-focused organizations, minority organizations, business and professional organizations, and any other individual or entity the Secretary of State deems appropriate.

EXISTING LAW:

- 1) Provides for the formation and operation of a corporation and prescribes the powers and duties of a corporation's board of directors.
- 2) Authorizes one or more natural persons, partnerships, associations or corporations, domestic or foreign, to form a corporation by executing and filing articles of incorporation with the SOS, as specified. Articles of incorporation may be filed prior to initial board of directors being selected and named in the articles.

- 3) Requires the SOS to develop a registry of distinguished women and minorities who are available to serve on corporate boards of directors and authorizes the SOS to contract this responsibility to a state university.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's purpose: According to the author, the purpose of AB 1255 is to provide corporations and investors access to a larger pool of qualified individuals from which to select new corporation board members. With unprecedented numbers of corporate board members retiring in the next decade, it is imperative that qualified individuals be efficiently identified to fill those seats and that those individuals reflect the changing demographics of the state. Given the diversity of the California population and the broad array of skill sets that modern day corporate boards need to possess, it is not reasonable to assume that boards are aware of every possible qualified individual or that they are aware of reliable sources for such information.

Requiring the SOS to provide corporations with a listing of current board of director registries will help them access a wider set of choices. This enables boards to be even more selective, helping to ensure the highest quality board composition. It is in the state's interest that California businesses have strong, diverse boards that help them to remain competitive. The state benefits through higher taxes based on higher corporate revenues and greater job retention and creation. Nothing in this bill requires that the candidates in the registries be selected, rather it offers useful information to a select and targeted audience.

- 2) Market impacts of California's demographic shift: 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.

- 3) Barriers to corporate board diversity: 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.

Investors, as well as nonprofit professional organizations, are responding to this need for new pools of qualified corporate board candidates. On April 5, 2011, California's two largest pension funds announced they were working with an advisory board to develop a new digital resource from which to recruit corporate board directors. The new database, called the Diverse Director Datasource (3D), will be administered through the Corporate Library, an independent corporate governance researcher. Other registries exist, including a directory sponsored by the National Association of Corporate Directors.

- 4) Post-recession economy requires top quality board directors: As California moves slowly out of the recession, growth will need to take place within a post-recession economy that will likely be more resource and capital constrained. In addition, some analysts believe the global economy will transition through a great "rebalancing of economic power," whereby the U.S.' dominant economic position will be challenged by other large economies like those in Japan, China and the European Union.

In fact, the U.S. has slipped to third place among G-20 nations in terms of clean energy sector investments according to the Clean Edge News. Until 2008, the U.S. had been the world leader, a position now held by China. Globally, 2010 clean-energy finance and investments grew by 30% to a record \$243 billion. The United States received \$34 billion in equity last year, a 51% increase from 2009. However, the gap with China, which attracted a record \$54.4 billion, continues to widen. Germany also attracted more money than the U.S. with \$41.2 billion, claiming the number two spot, up from third the previous year.

The Brookings Metropolitan Policy Program has published its own assessment of how the great rebalancing will be experienced in the U.S. and has noted four key trends to watch in the post-recession economy. The first trend is that the economy will be more export oriented and second, it will be fueled by new, lower-carbon energy sources. The third trend identified is that the next economy will be based on a higher level of global innovation, which will require "a relentless pace of innovation, adaptation, and embracement of new markets and

processes." The fourth key trend is that next economy will be led by major metropolitan areas – not nations and not states.

A February 2011 report released by McKinsey & Company (M&C), "Growth and Renewal in the United States: Retooling America's Economic Engine" underscores the importance of addressing the challenges of creating environments supportive of innovation-based business models as a means for achieving increased productivity. In its report, M&C notes that between 2000 and 2008, increased productivity contributed 80% of the U.S. annual GDP growth and that the loss of its large and skilled labor force represented by the retirement of the Baby Boomer generation jeopardizes the U.S.' economic growth unless productivity is significantly increased among remaining workers. Over the next decade, M&C predicts the U.S. could face a 1.9 million shortfall in technical and analytical workers.

For many companies their success is highly dependent on expanded cross-border supply chains, broad consumer bases and networked financial markets. Markets are changing and the next corporate leaders will require new skill sets and capabilities. Facilitating the dissemination of information regarding directories and databases that introduce new corporate board candidates, as proposed by AB 1255, supports sound private sector decision making.

- 5) Author's amendments: The author's office has been meeting with the SOS to discuss the agency's opposition to the bill due to its potential implementation costs. The author has agreed to consider cost containment amendments offered by the SOS. If recommendations come back prior to the hearing, the author may offer these amendments in committee in which case a mock-up and proposed amendment analysis will be provided.
- 6) Related legislation: 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 it. 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 California State University (CSU) or University of California. In January of 1999, CSU Fullerton accepted the transfer of the Registry. 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. While the state registry appeared to have had a strong start, CSU Fullerton was not able to fund the program beginning in 2002.

In 2010, AB 1491 (V. Manuel Pérez) was introduced to clarify existing law regarding the transfer of the California Registry of Corporate Board Candidates. Due to conflicting legal opinions as to which entities (SOS or CSU) had responsibility for the registry, the bill was put aside by the author and the issue of the state registry remains in dispute.

This bill, AB 1255, takes a different approach to encouraging greater diversity among corporate boards by highlighting the availability of other registries and databases of qualified corporate director candidates.

- 7) Demographic shifts require new economic models: For the past several sessions, the Assembly Committee on Jobs, Economic Development, and the Economy (JEDE) has examined the impact of changing demographics on California communities. Among other activities, JEDE has convened advisory groups, hosted workshops, held hearings and sponsored legislation focusing on how companies, investors and other economic professionals are addressing the impact of millions of workers retiring within a very short span of years and the ability of the remaining workers to sustain and grow the California economy.

The primary objectives of the work is to identify practical, cost effective models to smooth this economic transition by encouraging entrepreneurship, the development of quality jobs, and increasing private investment in historically underserved areas. This session, JEDE is sponsoring a number of bills, in addition to AB 1255, to address this issue. The package includes legislation affecting regulatory reforms, modernizing Below is a list.

- a) AB 893 (V. Manuel Pérez) California Infrastructure and Economic Development Bank: This bill modernizes the operations of the California I-Bank, such as the inclusion of the economic development community on the Board, mandating outreach to communities, and adding new reporting requirements about the number of jobs created and retained and industries served. Status: The bill is pending in JEDE.
- b) AB 894 California Manufacturing Competitiveness Act of 2011: This bill establishes a loan and loan guarantee program to enable the state to draw down federal dollars to support the retooling and expansion of manufacturing in California. Among other eligible projects, the funding can be used to purchase and install renewable energy and conservation upgrades, as well as build green certified buildings. Status: The bill is pending in JEDE.
- c) AB 1037 (V. Manuel Pérez) Small Business Regulatory Reform: This bill removes statutory barriers that inhibit the full consideration of the impacts of state rules and regulations on the economy, including the small business sector, and requires a review of all regulations on small businesses after five years to identify opportunities to mitigate negative impacts. Status: The bill is pending in JEDE.
- d) AB 1137 (V. Manuel Pérez) Small Business Export Assistance and Attracting Private Investment: This bill facilitates local economic development and job creation by assisting small business to access new export markets for their goods and services, updating the law relating to free trade zones, and authorizing the use of new federal funds under the Small Business Jobs Act of 2010. Status: The bill is pending in JEDE.

- e) AB 1233 (V. Manuel Pérez) Economic Development Strategy: This bill modernizes California's economic development activities and promotes the state's competitiveness by requiring an integrated economic and workforce development strategy consistent with the needs of all Californians. Status: The bill is pending in JEDE.

- f) AB 1379 (Bradshaw) Public Pension Fund Investment in Underserved Areas: This bill requires public pension funds with assets over \$4 billion to annual report on their investments in historically underserved areas including job creation. Status: This bill is pending in the Assembly Committee on Public Employees Retirement and Social Security.

- g) AB 1409 (JEDE) Goods Movement Update to State Economic Strategy: This bill institutes policy goals, objectives and recommendations adopted in the Goods Movement Action Plan that are necessary to provide the trade infrastructure needed to implement a comprehensive international trade and investment program for the State of California. Status: The bill is pending in JEDE.

REGISTERED SUPPORT / OPPOSITION:

Support

Assembly Committee on Jobs, Economic Development and the Economy (Sponsor)
CDC Small Business Finance
San Francisco Department on the Status of Women
SEIU Local 1000
The Greenlining Institute

Opposition

California Secretary of State

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