



Gender Quotas on California Boards

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Editor's note: [Ron Berenblat](#), [Andrew Freedman](#), and [Steve Wolosky](#) are partners at Olshan Frome Wolosky LLP. This post is based on an Olshan publication by Mr. Berenblat, Mr. Freedman, and Mr. Wolosky.

Related research from the Program on Corporate Governance includes [Beyond the Numbers: Ensuring Substantive Gender Diversity in Boardrooms](#) by Yaron Nili (discussed on the Forum [here](#)).

California could become the first state in the nation to enact legislation promoting gender diversity in corporate boardrooms. On May 31, 2018, the State Senate of California passed a bill that would require public companies headquartered in California to comply with certain gender quota requirements with respect to board composition.

The bill, if enacted, would require any “publicly held” domestic and foreign corporation whose principal executive offices, according to the corporation’s Form 10-K, are located in California to have a minimum of one “female” on its board of directors no later than December 31, 2019. No later than December 31, 2021, the required minimum would increase to 2 female directors for corporations with 5 directors or to 3 female directors for corporations with 6 or more directors. The bill defines a “female” as “an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.” A “publicly held” corporation is defined as a corporation with shares listed on “a major United States stock exchange.”

If the bill is enacted, the Secretary of State would publish on its website reports documenting compliance by affected corporations and fines would be imposed on those that fail to comply. For a first violation, the fine would be an amount equal to the average annual cash compensation for the directors of the corporation. For any subsequent violation, the fine would be an amount equal to three times the average annual cash compensation for directors of the corporation.

In the introduction of the bill, the Senate declared that:

More women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace, and protect California taxpayers, shareholders, and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS. Yet studies predict that it will take 40 or 50 years to achieve gender parity, if something is not done proactively.

The California Senate must be commended for taking a leading role in addressing gender diversity. However, there is no certainty the bill will be enacted. It must pass the California State Assembly and then be approved by Governor Jerry Brown before taking effect. In addition, certain special interest groups and other critics are voicing constitutionality and technical concerns with the legislation and warning of unintended consequences such as the potential displacement of racially diverse board members and “overboarding” of the more experienced female directors.

Nevertheless, the volume of research showing a correlation between boards represented by women and improved performance can no longer be ignored, and we expect other states to advance similar legislation. In addition to California, five other states (MA, IL, PA, OH and CO) have already passed precatory resolutions encouraging corporations within their states to promote gender diversity in the boardroom. Major institutional investors are also prioritizing their efforts to foster greater gender diversity within the boards of their portfolio companies. In its latest proxy voting guidelines, BlackRock states that it “would normally expect to see at least two women directors on every board.” State Street will vote against the election of directors at portfolio companies that fail to take adequate measures to address the absence of female directors.