

California Seeks to Expand its Board Diversity Mandate

Article By:

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After testing the waters with SB 826's gender diversity mandate, California's legislature has further committed the state to equitable board representation with its new measure, [AB 979](#), which was passed on September 1. If Governor Newsom signs the bill into law by the September 30 deadline, California will (once again) lead the way in statutory diversity and inclusion mandates for public company boards.

It remains to be seen whether the measure (if signed) will survive legal challenge. Multiple lawsuits have attacked the constitutionality of its predecessor legislation, SB 826, and while two cases challenging SB 826 have already been dismissed on procedural grounds, one case that taxpayers mounted to its constitutionality has, to date, survived efforts by State Attorney General Xavier Becerra to dismiss the challenge.

If AB 979 is signed into law, it will require, by the end of 2021, that a corporation subject to the law's terms (public companies headquartered in California), must have at least one board member from an underrepresented community (in addition to the mandates for female representation). The law defines an individual from an underrepresented community as someone who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or someone who self-identifies as gay, lesbian, bisexual, or transgender.

The bill notes some of the following metrics in support of the measure:

- There are 662 publicly traded companies headquartered in California; of this number 233 currently have all white boards of directors.
- Of 662 publicly traded companies, 13% have at least one Latino board member, 16% have one African American board member, 42% percent have one Asian board member, and 6% have at least one non-white or "other" board member.
- 100% of the 662 publicly traded company boards have one white board member.

Some critics of the legislative solution to board diversity note the legal challenges that quotas pose and also the significant but potentially more impactful efforts that shareholder activism has on

effectuating diversity and inclusion in the boardroom. That activism – together with the growing significance of the ESG movement – may speed the process more organically and possibly more effectively as corporations recalibrate their mission and purpose in light of current events, such as the demand for racial equity and the impacts of the Coronavirus pandemic on our economy and social welfare generally.

The impact of SB 826 on gender representation on public company boards is [undeniable](#) and perhaps even understated due to potential flaws in the timing and methodology of reporting to the California Secretary of State. That beneficial impact has certainly motivated the California legislature to pursue tackling diversity and inclusion in the boardroom on a much broader scale. If Governor Newsom signs AB 979, it will open a new chapter in the efforts to make the boardroom more closely reflect the communities that its corporation serves.

*Jen Rubin is a Co-Chair of the 2020 Women on Boards Leadership Committee for San Diego.

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