

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 931 (Boerner Horvath) – As Introduced February 20, 2019

SUBJECT: State and local boards and commissions: representation: appointments.

SUMMARY: Requires state and local boards and commissions with appointed members to have specified percentages of women members. Specifically, **this bill:**

- 1) Requires, beginning on and after January 1, 2025, state and local boards and commissions with appointed members to comply with the following:
 - a) If the number of board members or commissioners is five or more, the board or commission shall have a minimum of 50% women board members or commissioners; and,
 - b) If the number of board members or commissioners is four or fewer, the board or commission shall have a minimum of one woman board member or commissioner.
- 2) Requires the office of the Governor to collect and release, annually, at a minimum, and on an aggregate basis, both of the following:
 - a) Demographic data provided by all state and local board and commission applicants relative to ethnicity, race, gender, gender identity, and sexual orientation; and,
 - b) Demographic data provided by all state and local board and commission nominees or appointees relative to ethnicity, race, gender, gender identity, and sexual orientation.
- 3) Specifies that any demographic data disclosed or released pursuant to this bill shall disclose only aggregated statistical data and shall not identify any individual applicant, nominee, or appointed board member or commissioner, and requires any demographic data to indicate the percentage of respondents who declined to respond.
- 4) Requires each local board and commission to provide the demographic information required by this bill to the office of the Governor in a form prescribed by that office.
- 5) Provides that the provisions of this bill are severable, as specified.
- 6) Provides the following definitions for the purposes of this bill:
 - a) “Woman” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth; and,
 - b) “Local board and commission” means all local boards and commissions that include publicly appointed members, including, but not limited to, those of cities, counties, and special districts.

- 7) Specifies that its provisions apply to all cities and counties, including charter cities and counties.
- 8) Makes a number of legislative findings and declarations.

EXISTING LAW:

- 1) Provides, pursuant to the United States Constitution, that no state shall deny any person within its jurisdiction the equal protection of the laws.
- 2) Provides, pursuant to the California Constitution, that a person may not be denied equal protection of the laws.
- 3) Provides, pursuant to the California Constitution, that a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.
- 4) Provides, pursuant to the California Constitution, that the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill requires specified percentages of women members on state and local boards and commissions that have appointed members, which must be met by January 1, 2025. Boards and commissions with five or more members must have at least 50% women and those with four or less must have at least one woman member. The bill defines “woman” to mean an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth. “Local board and commission” means all local boards and commissions that include publicly appointed members, including, but not limited to, those of cities, counties, and special districts.

This bill requires the office of the Governor to collect and release annually demographic data provided by all state and local board and commission applicants, nominees or appointees relative to ethnicity, race, gender, gender identity, and sexual orientation. This data shall disclose only aggregated statistical data and shall not identify any individual applicant, nominee, or appointed board member or commissioner. Each local board and commission must provide this information to the Governor’s office in a form prescribed by that office. The provisions of this bill are severable and apply to all cities and counties, including charter cities and counties (as well as the defined category of local boards and commissions outlined above).

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "The opportunity to serve on a board or a commission allows citizens to have a direct voice and representation. Most often,

membership on boards and commissions can serve as a path to other leadership opportunities in government. Supporting the equitable representation of women in government will ensure women have a role in the policy-making process at the state and local level.”

- 3) **Background.** Existing law establishes various boards, commissions, and task forces within the state government. Existing law also establishes an appointment process for each of these various boards, commissions, and task forces, that sets parameters around the qualifications for board members or commissioners, as well as who is responsible for their appointment. Existing law states that it is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public, including ethnic minorities and women. In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions. However, it is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this provision.

Existing law also provides for appointments to a wide range of local boards and commissions, many of which are advisory bodies, with different appointing entities such as mayors, county supervisors, city selection committees and so forth. These include planning commissions, boards of appeals, parks and recreation commissions, arts commissions and the like. However, appointments also occur on elected bodies, typically when vacancies occur.

Each legislative body of a local agency must prepare an appointments list of all regular and ongoing boards, commissions, and committees that are appointed by that legislative body and to make this list available to the public. This law applies to counties and cities, both chartered and general law. This list, which is maintained by the city or county clerk’s office, must be kept up-to-date, and include notices of unscheduled vacancies of local appointments.

In enacting these requirements, the Legislature declared that a vast and largely untapped reservoir of talent exists among the citizenry of California, and that rich and varied segments of this great human resource are, all too frequently, not aware of the many opportunities which exist to participate in and serve on local regulatory and advisory boards, commissions, and committees. The Legislature further declared that all citizens of the state, regardless of their place of residence, should have equal access to specific and current information about the many local regulating and advisory boards, commissions, and committees, and equal opportunity to be informed of vacancies on these bodies, so that they may pursue the opportunity to participate in and contribute to the operations of local government by serving on such boards, commissions, and committees.

- 4) **Prior Legislation.** Last year, the Legislature approved and the Governor signed SB 826 (Jackson and Atkins), Chapter 954, Statutes of 2018. This landmark legislation required each publicly held, domestic or foreign corporation with its principal executive offices in California to have at least one female director on its board, commencing December 31, 2019. The measure further required these corporations with boards of more than four members to increase the number of female directors on its board by the close of the 2021 calendar year. If the authorized number of directors is five, the corporation must have at least two female directors on its board. If the authorized number of directors is six or more, the corporation must have at least three female directors on its board. SB 826 defined “female” as an

individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

SB 826 also required the Secretary of State (SOS) to publish a report on his or her website by July 1, 2019, documenting the number of such corporations that have at least one female director on their boards and to do the same by March 1, 2020, and annually thereafter regarding all of the following, at a minimum:

- a) The number of corporations subject to the provisions of SB 826 that were in compliance with the requirements of SB 826 during at least one point during the preceding calendar year;
- b) The number of publicly held corporations that moved their United States headquarters into California from another state, or that moved their United States headquarters out of California and into another state during the preceding calendar year; and,
- c) The number of publicly held corporations that were subject to SB 826 during the preceding year, which were taken private.

SB 826 authorized the SOS to fine corporations for violating the provisions of the bill, and counted as a violation each director seat that is required to be held by a female by the end of a calendar year and that is not held by a female during at least a portion of that calendar year. Fines were set at \$100,000 for a first violation, \$300,000 for a second or subsequent violation, and \$100,000 for failure to timely file board member information with the SOS.

Also last year, the Legislature considered a measure that would have applied similar requirements to the appointees of state boards and commissions. SB 984 (Skinner) would have required, beginning on and after January 1, 2024, the composition of each appointed state board and commission to comply with the following:

- a) If the number of board members or commissioners is five or more, the board or commission must have a minimum of 40% women board members or commissioners; and,
- b) If the number of board members or commissioners is four or fewer, the board or commission must have a minimum of one woman board member or commissioner.

SB 984 defined "woman" as an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

SB 984 required the office of the Governor to collect and release, annually, at a minimum, and on an aggregate basis, demographic data provided by all state board and commission applicants, nominees, and appointees relative to ethnicity, race, gender, gender identity, and sexual orientation. Demographic data disclosed or released pursuant to the bill was prohibited from identifying any individual applicant, nominee, or appointed board member or commissioner. SB 984 was held in the Assembly Appropriations Committee.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Other Under-represented Groups.** As was noted in analyses of related bills from last year, while women undoubtedly have been underrepresented in a variety of contexts, many other groups of people have also suffered disproportionately low rates of representation. This bill acknowledges these very groups in the demographic information it would have the Governor’s office collect – specifically, regarding *ethnicity, race, gender, gender identity, and sexual orientation*. The Committee may wish to discuss how these populations, including the growing number of people who identify as non-binary, might be accounted for in this bill.
 - b) **Potential Constitutional Conflicts.** In its analysis of the introduced version of SB 984, the Senate Judiciary Committee stated, “In its present form, subdivision (a) of this bill would require appointed state boards and commissions to be composed of at least 50 percent women. Such a requirement potentially conflicts with a number of federal and state constitutional provisions. Since a statute cannot supersede constitutional mandates, if there are indeed conflicts, then this bill would be unenforceable, at least to the degree of the conflict. If enacted, subdivision (a) of this bill would likely face such a constitutional challenge and might be found invalid.” The Committee may wish to consider whether this bill poses similar constitutional questions.
 - c) **Definition of Local Board and Commission.** This bill defines “local board and commission” to mean “all local boards and commissions that include publicly appointed members, including, but not limited to, those of cities, counties, and special districts.” It is not clear what “publicly appointed members” means. Are these members who are appointed to represent the public or the community at large? Are they members who are appointed in a public meeting? Does this include elected boards that gain appointees when a vacancy occurs? Is the intent to require only local *advisory* boards and commissions to comply? The Committee may wish to ask the author the intended scope of local boards and commissions that would be subject to the requirements of the bill, and may wish to consider a definition that comports with existing law governing local appointments lists.
 - d) **Math and Mechanics.** Many local boards and commissions have uneven numbers of members. In addition, some include members who are appointed by participating cities, counties or other local bodies that each appoint only one or a minor portion of the board or commission. Who shall bear the responsibility for appointing the requisite percentage of women? What if the appointing body is required to appoint a member of an elected body that has no women members? The Committee may wish to ask the author how these situations might be addressed.
 - e) **Demographic Reporting Requirements.** This bill requires each local board and commission to provide demographic information to the Governor’s office, but does not require state boards and commissions to do so. The Committee may wish to ask the author about this discrepancy. Alternatively, the Committee may wish to consider whether counties and cities that must prepare local appointments lists already would be more practical entities to provide information to the Governor’s office.

6) **Arguments in Support.** None on file.

7) **Arguments in Opposition.** The California State Association of Counties and the Urban Counties of California, in opposition, write, “While we certainly understand and appreciate the desire to ensure that boards and commissions that advise elected officials are diverse, we are concerned that the provisions of the bill inappropriately undermine local elected officials’ authority to make appointments as they deem appropriate and have the potential to undercut efforts to ensure that people from other under-represented groups are appointed to these roles.

“County supervisors are duly elected to conduct the business of the county, which includes appointments to various boards and commissions. County supervisors across the state take that responsibility seriously and strive to ensure broad representation is the outcome. We are often challenged, however, to find people of any gender or ethnicity to volunteer their time to serve, especially for appointments that require specific qualifications. AB 931, while well-intentioned, will undoubtedly exacerbate that challenge.

“County supervisors rely on appointees to various board and commissions to advise them on important policy matters in their communities. We recognize that counties have work to do to ensure that representatives on boards and commissions are diverse; however, we are concerned that AB 931 elevates one class of under-represented Californians above all others.”

8) **Double-Referral.** This bill is double-referred to the Accountability and Administrative Review Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California State Association of Counties
Rural County Representatives of California
Urban Counties of California

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958