



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 242 (as introduced 3-23-23)
Sponsor: Senator Sylvia Santana
Committee: Economic and Community Development

Date Completed: 9-12-23

CONTENT

The bill would amend the Business Corporation Act to do the following:

- **Require, beginning January 1, 2024, each publicly held domestic corporation or foreign corporation that had principal executive offices in the State to have a minimum of one female director on its board.**
- **Require, beginning January 1, 2026, each publicly held domestic corporation or foreign corporation that had principal executive offices in the State to have a specified number of female directors on its board, depending on the board's size.**
- **Require the Department of Licensing and Regulatory Affairs (LARA) to publish annually a report on its website concerning the number of compliant corporations and changes to the number of publicly held corporations in the State.**
- **Prescribe fines for first and subsequent violations of these requirements.**

The U.S. Securities and Exchange Commission (SEC) requires all public companies to file a Form 10-K every year, which presents a financial picture of the company. The bill would require a publicly held domestic corporation or foreign corporation that had principal executive offices in the State, according to the corporation's SEC 10-K form, to have a minimum of one female director on its board beginning January 1, 2024. The bill would allow a corporation to increase the number of directors on its board to comply with this requirement.

Under the bill, "female" would mean an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth. "Publicly held corporation" would mean a corporation that had outstanding shares listed on a major United States stock exchange. These requirements also would apply to a foreign corporation that was a publicly held corporation to the exclusion of the law of the jurisdiction in which the foreign corporation was incorporated.

Beginning January 1, 2026, a publicly held domestic corporation or foreign corporation that had principal executive offices in the State, according to the corporation's SEC 10-K form, would have to comply with one of the following requirements:

- If the corporation had six directors or more, it would have to have at least three female directors.
- If the corporation had five directors, it would have to have at least two female directors.
- If the corporation had four or fewer directors, it would have to have at least one female director.

By July 1, 2023, LARA would have to publish a report on its website that documented the number of domestic corporations and foreign corporations that had principal executive offices in the State, according to the corporation's SEC 10-K form, and that had at least one female

director. By March 1, 2025, and by March 1 of each subsequent year, LARA would have to publish a report on its website that concerned, at a minimum, all the following:

- The number of corporations that complied with the bill's requirements during at least one point during the preceding calendar year.
- The number of publicly held corporations that moved their United States headquarters to Michigan from another state or out of Michigan into another state during the preceding calendar year.
- The number of publicly held corporations that were subject to the bill during the preceding year but were no longer publicly traded.

A corporation that violated these requirements, or that failed to timely file board member information with LARA, would be subject to an administrative fine of up to \$100,000 for a first violation, or a fine of up to \$300,000 for a second or subsequent violation. Administrative fines collected would have to be available, upon appropriation, for use by LARA to offset the cost of administering these requirements.

If a female director held a director seat required to be held by a female for at least a portion of a calendar year, it would not be considered a violation; however, each director seat required to be held by a female, and that was not held by a female during at least a portion of a calendar year, would be a separate violation.

Additionally, the Act specifies that it does not authorize the State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the State; however, the bill specifies that its requirements would apply to the exclusion of the law under which the foreign corporation was incorporated.

MCL 450.2002 et al.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

The bill would have little to no fiscal impact on the State. There would be administrative costs associated with promulgating the reporting. These costs would likely be offset by existing appropriations to LARA and the collection of fines from boards found to be in violation of the bill's requirements.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.