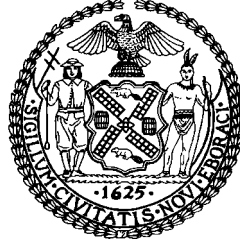


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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE INFRASTRUCTURE DIVISION

Matt Gewolb, Legislative Director

COMMITTEE ON ECONOMIC DEVELOPMENT

Hon. Daniel R. Garodnick, Chairperson

April 6, 2016

Proposed INT. NO. 704-A

Council Members Crowley, Mealy, Chin, Gibson, Palma, Rose, Koslowitz, Ferreras-Copeland, Dickens, Mendez, Cumbo, Barron, Rosenthal, Lancman, Cornegy, King, Espinal, Reynoso, Torres, Kallos, Maisel, Wills, Menchaca and Garodnick

TITLE:

A Local Law in relation to requiring a survey and study of racial, ethnic and gender diversity among the directors, officers, and executive level staff members of city contractors

I. INTRODUCTION

On April 6, 2016, the Committee on Economic Development, chaired by Council Member Daniel Garodnick, will vote on Proposed Int. 704-A, a local law in relation to requiring a survey and study of racial, ethnic and gender diversity among the directors, officers, and executive level staff members of city contractors

II. LEGISLATIVE HISTORY

The Committee previously considered the bills that ultimately became Proposed Int. 704-A (Int. 0704-2015 & Int. 0705-2015) at a hearing held on October 22, 2015 and received testimony from the Economic Development Corporation (“EDC”), the Department of Small Business Services (“SBS”), as well as from a number of advocates representing businesses and trade organizations.

III. BACKGROUND

Studies have come to different conclusions about how the diversity of an organization’s board of directors impacts the stock performance of private companies. A 2008 Financial Research Network study of gender diversity on boards in a sample of U.S. firms found that female directors have better attendance than male directors, male directors have fewer attendance problems if boards are more gender-diverse, and that women are more likely to join monitoring committees.¹ However, the same study found that the average effect of gender diversity on the firm’s performance was negative. The study ultimately concluded that mandating gender quotas for directors can reduce value for firms that are already “well-governed.”² Studies conducted by

¹ See Abstract of “Women in the Boardroom and Their Impact on Governance and Performance,” Renee B. Adams and Daniel Ferreira, October 22, 2008 *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107721.

² *Id*

the American Economic Association and the Oxford Journals' Review of Financial Studies reached similar conclusions.³

The Alliance for Board Diversity ("ABD"), a collaboration of four leadership organizations, promotes inclusion of women and minorities on corporate boards to enhance shareholder value.⁴ In a 2011 study, ABD stated that "diversity at the top can help ensure the sustainability of our businesses and economy."⁵ A 2015 study by Credit Suisse that analyzed gender diversity's role in corporate performance supported ABD's statement, finding that companies with more diversified boards do in fact yield better returns.⁶ The Credit Suisse study found that the presence of at least one woman on a board of directors can make a difference: companies with one woman on the board have seen an average return on equity ("ROE") of 14.1% since 2005 compared to 11.2% for all male boards.⁷ These more recent studies tend to contradict the earlier studies about board diversity.

Despite these recent studies, board diversity remains relatively stagnant; the majority of board directors continue to be white males.⁸ In fact, a recent study in the United Kingdom found that Britain's boards are actually getting less diverse.⁹ After surveying the top 10,000 executives

³ See Abstract of "A Female Style in Corporate Leadership? Evidence from Quotas," David Masta and Amalia Miller, 2013, *available at* <https://www.aeaweb.org/articles.php?doi=10.1257/app.5.3.136>; *see also* Abstract of "How Do CEOs Matter? The Effect of Industry Expertise on Acquisition Returns," Claudio Custodio and Daniel Metzger, June 21, 2013, *available at* <http://rfs.oxfordjournals.org/content/26/8/2008.abstract>.

⁴ See ALLIANCE FOR BOARD DIVERSITY, <http://theabd.org> (last visited Oct. 21, 2015).

⁵ ALLIANCE FOR BOARD DIVERSITY, MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS at 1 (July 21, 2011), *available at* http://theabd.org/ABD_report.pdf.

⁶ See Barbara Lejczack, *Diversity on Board!* CREDIT SUISSE (Oct. 6, 2015) <https://www.credit-suisse.com/us/en/news-and-expertise/economy/articles/news-and-expertise/2015/06/en/diveristy-on-board.html>.

⁷ *See id.*

⁸ See MISSING PIECES, *supra* note 7.

⁹ See Green Park, *Green Park release FTSE 100 Leadership 10,000 report*, GREEN PARK (Feb. 11, 2014) <http://www.green-park.co.uk/press-release-britains-competitiveness-risk-deep-diversity-deficit-says-new-study>.

the study found that the number of ethnic minorities in leadership roles remains low - nearly two-thirds of all companies still have all-white boardrooms in 2015.¹⁰

In November 2014, New York City Comptroller Scott Stringer launched the Boardroom Accountability Project, which is aimed at giving shareowners a say in how corporate boards are elected at U.S. companies.¹¹ The campaign states that to have companies that are managed for the long term, directors need to be more diverse, independent and accountable and argues that shareowners should have the right to nominate directors at U.S. companies. According to the Comptroller, “more than a dozen companies have agreed to enact or support meaningful proxy access”¹² – meaning that shareowners will have the authority to nominate alternate directors to run against the nominees chosen by the company.

However, little is known about the diversity of directors, officers and other executive level staff members of companies that contract with the City. Proposed Int. 704-A would require city agencies to request information from potential contractors regarding the gender and racial diversity of those contractors’ executive boards.

IV. PROPOSED INT. 704-A

Section 1 of Proposed Int. 704-A requires the department of small business services to create a voluntary survey to be distributed to all proposed city contractors and subcontractors in conjunction with employment reports pursuant to subdivision e of section 1305 of the New York city charter. This survey would solicit information regarding the selection and employment practices, policies, and procedures pertaining to the racial, ethnic and gender composition of such entities’ directors, officers, and other executive-level staff members and such entities’ plans for diversity in leadership.

¹⁰ See Kalyeena Makortoff, *Boardroom diversity: It’s getting worse, not better*, CNBC (Jun. 22, 2015, 8:07 AM) <http://www.cnbc.com/2015/06/22/boardroom-diversity-its-getting-worse-not-better.html>.

¹¹ See NEW YORK CITY COMPTROLLER, BOARDROOM ACCOUNTABILITY PROJECT, <http://comptroller.nyc.gov/boardroom-accountability> (last visited Oct. 21, 2015).

¹² *Id.*

The information contained within the survey cannot be used by city agencies as a basis for any procurement decisions.

Subdivision a of section two of Proposed Int. 704-A requires the mayor or the mayor's designee to submit to the speaker and publish on the website of the department of small business services a report analyzing the racial, ethnic and gender diversity of the executive boards of city contractors, and those contractors' plans for improving the diversity of their boardrooms.

Subdivision b of section two of Proposed Int. 704-A states that the report required by subdivision a of section two may be based on the data acquired from the surveys required by section one or any other available source, that the information generated by the report shall not be the basis for any agency procurement decisions, and that no contractor or subcontractor shall be named or identified in the report.

Section three states that the local law takes effect immediately.

V. CHANGES TO INT. 704 & INT. 705

In addition to various technical edits and the combination of the subjects of Int. 704 and Int. 705, Proposed Int. No. 704-A has been substantively amended in the following manner:

- The bill now requires that the department of small business services create a voluntary survey for potential city contractors regarding boardroom diversity rather than placing an affirmative requirement upon those contractors to submit information.
- The bill now requires a single report due July 1, 2018 rather than an annual report.
- The bill now states clearly that the information acquired from the survey of boardroom diversity cannot be used for any decision by the city in relation to a contract award or renewal.
- The bill is unconsolidated rather than amending the city charter.

Proposed Int. No. 704-A

By Council Members Crowley, Mealy, Chin, Gibson, Palma, Rose, Koslowitz, Ferreras-Copeland, Dickens, Mendez, Cumbo, Barron, Rosenthal, Lancman, Cornegy, King, Espinal, Reynoso, Torres, Kallos, Maisel, Wills, Menchaca and Garodnick

A LOCAL LAW

In relation to requiring a survey and study of racial, ethnic and gender diversity among the directors, officers and executive level staff members of city contractors

Be it enacted by the Council as follows:

Section 1. By January 15, 2017, the department of small business services shall create a voluntary survey, to be distributed to and completed by proposed city contractors and subcontractors in conjunction with employment reports pursuant to subdivision e of section 1305 of the New York city charter. That survey shall solicit information regarding the selection and employment practices, policies, and procedures pertaining to the racial, ethnic and gender composition of such entities' directors, officers, and other executive-level staff members and such entities' plans for diversity in leadership. No information submitted to the department through such survey may be the basis for any decision by the city in relation to any contract award or renewal unless otherwise authorized by law.

§ 2. a. By July 1, 2018, the mayor, or such office or agency as the mayor may designate, shall submit to the speaker of the city council and publish on the website of the department of small business services a report analyzing:

1. Racial, ethnic and gender diversity among directors, officers and executive-level staff members of entities holding goods or service contracts with the city;

2. Such entities' plans for improving racial, ethnic and gender diversity in such positions and such entities' efforts to achieve those plans.

b. The report described in subdivision a of this section may be based on data and information from the surveys described in section one of this local law and any other available source. The information generated for or used in preparing such report shall not be the basis for any decision by the city in relation to any contract award or renewal unless otherwise authorized by law. The report shall not name or identify any contracting entity.

§ 3. This local law takes effect immediately.