COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

KENYAN R. MCDUFFIE
Councilmember, Ward 5
Chair Pro Tempore
Chair, Committee on Business and
Economic Development

Committee Member
Transportation and the Environment
Recreation, Libraries and Youth Affairs
Housing and Executive Administration

April 8, 2021

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 5
Washington, D.C. 20004

Dear Secretary Smith,

Today, I am introducing the "Broadening Diversity in Governance Amendment Act of 2021". Please find enclosed a signed copy of the legislation. The overarching purpose of this legislation is to spur increased diversity in corporate governance. This effort represents one step along the long road toward a more equitable society. Diversity alone is not equity, but it is a means by which we can seek to achieve a more equitable society.

In order to reach our goal, we must take a serious look at the systems and culture that exist in our society and challenge the status quo. And we must do this in the places where decisions are made. The "Broadening Diversity in Governance Amendment Act of 2021" will accomplish this by requiring certain entities to diversify their boards of directors.

This bill would require the governing boards of public utility companies and publicly held entities headquartered in the District to have a certain number of board members who are female and a certain number who are members of underrepresented communities.

The text of this bill is based, in part, on legislation recently passed by the California legislature. In 2018, California passed SB 826, which requires the boards of directors of public companies headquartered in the state to have a certain number of female directors.[1] Since that time, the number of women on California corporate boards has increased by 66.5%.[2] This summer, California passed AB 979, which increases the threshold requirements for female board membership and requires the boards of directors of public companies headquartered in California to include a certain number of members from underrepresented communities.[3]

This bill also draws from proposed SEC rules regarding publicly traded companies. On December 1, 2020, Nasdaq filed a proposal with the SEC to adopt new listing rules to require and

[1] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826
[2] https://www.calpartnersproject.org/claimyourseat
[3] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB979

facilitate corporate board diversity and disclosures.[4] Those rules would, among other things, require companies listed on Nasdaq's US exchange to have one female director and one director from an underrepresented community on its board.

Should you have any questions, please contact my Committee Director, Alicia DiFazio, at adifazio@dccouncil.us.

Best,



Kenyan R. McDuffie

[4] https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01



Councilmember Kenyan R. McDuffie

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require certain entities whose principal office is located in the District of Columbia, each company regulated by the Public Service Commission, and the District of Columbia Water and Sewer Authority to have a certain number of female directors and directors who are members of underrepresented communities on its board of directors; and to amend the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 and An Act Making appropriations for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen to require compliance with Title I of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Broadening Diversity in Governance Amendment Act of 2021".

TITLE I. GOVERNANCE DIVERSITY REQUIREMENTS

Sec. 101. Governance diversity requirements.

(a) A publicly held entity or foreign entity whose principal offices, according to the entity's SEC 10-K form, are located in the District of Columbia ("publicly held entity") and each public utility shall have:

(1) By January 1, 2022, a minimum one female director on its board; and

(2) By January 1, 2023:

"(A) If its number of directors is 6 or more, a minimum of 3 female directors;

"(B) If its number of directors is 5, a minimum of 2 female directors; and

"(C) If its number of directors is 4 or fewer, a minimum of one female director.

(b) A publicly held entity and each public utility shall have:

(1) By January 1, 2022, a minimum one director from an underrepresented community on its board; and

(2) By January 1, 2023:

(A) If its number of directors is 8 or more, a minimum of 3 directors from underrepresented communities;

(B) If its number of directors is more than 4 but fewer than 9, a minimum of 2 directors from underrepresented communities;

(C) If its number of directors is 4 or fewer, a minimum of one director from an underrepresented community.

(c) A publicly held entity may increase the number of directors on its board to comply with the requirements of this title.

(d) For the purposes of this title, the following term:

(1) "Director from an underrepresented community" means an individual who self identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaskan Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

(2) “Female” means an individual who self-identifies their gender as a woman, regardless of the individual’s designated sex at birth.

(3) “Public utility” means a company regulated by the Public Service Commission, established section 493 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 811; D.C. Official Code § 1-204.93), and the District of Columbia Water and Sewer Authority, established by section 202 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.02).

(4) “Publicly held entity” means an entity with outstanding shares listed on a major United States stock exchange, including the New York Stock Exchange, NYSE American, Nasdaq Global Market, and Nasdaq Capital Market.

(5) “SEC 10-K form” means the annual business disclosure report all public traded companies are legal required to file with the Securities and Exchange Commission.

TITLE II. AMENDATORY PROVISIONS

Sec. 202. Section 204(a)(2)(A) of the District of Columbia Water and Sewer Authority, established by section 202 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.04(a)(2)(A)), is amended by striking the phrase “Council, of whom:” and inserting the phrase “Council, and in compliance with the requirements of Title I of the Broadening Diversity in Governance Amendment Act of 2021, as introduced on March __, 2021 (Bill 24-___), of whom:” in its place.

Sec. 203. Paragraph 100 of section 8 of chapter 150 of An Act Making appropriations for the expenses of the government of the District of Columbia for the fiscal year ending June

thirtieth, nineteen hundred and fourteen, approved March 4, 1913 (37 Stat. 996; D.C. Official Code § 43-404), is amended as follows:

(a) The existing text is designated as subsection (a).

(b) The newly designated subsection (a) is amended by striking the phrase "time determine." and inserting the phrase "time determine or to meet the requirements of Title I of the Broadening Diversity in Governance Amendment Act of 2021, as introduced on March __, 2021 (Bill 24-___)." in its place.

(c) A new subsection (b) is added to read as follows:

"(b) The Board of Directors of every public utility shall comply with the requirements of Title I of the Broadening Diversity in Governance Amendment Act of 2021, as introduced on March __, 2021 (Bill 24-___)." in its place.

TITLE III. GENERAL PROVISIONS

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and publication in the District of Columbia Register.