

CALIFORNIA STATE TEACHERS'
RETIREMENT SYSTEM

BILL ANALYSIS

SUMMARY:

Assembly Joint Resolution 79 urges the Securities and Exchange Commission (SEC) to adopt its proposed shareholder participation rules in order to improve corporate accountability, restore investor confidence, and to provide shareholders with increased access to proxy to promote greater board oversight of corporate operations and responsiveness to shareholder concerns.

PURPOSE OF THE BILL:

According to the author, "shareholder access to proxy statements is an important incentive for improving director performance and accountability to the shareholders that elect them."

POSITION AND SUPPORTING ARGUMENTS:

Support – The California State Teachers' Retirement System's (CalSTRS) Corporate Governance Program works to provide long-term enhanced shareholder value by promoting corporate disclosure and accountability. The Teachers' Retirement Board (Board) has previously registered support for the SEC proposal to increase shareholder access to corporate board nomination and election procedures. The Board believes that improving corporate disclosure and shareholders' ability to recommend directors to corporate boards will add value to its continued efforts.

SUMMARY OF SUGGESTED AMENDMENTS:

None

ANALYSIS:

AJR 79 expresses the Legislature's concern over recent instances of accounting fraud at major corporations and the negative impact such scandals have had on investors and the California economy, highlighting the need for greater corporate accountability. It also states that corporate boards should provide greater oversight over corporate operations in order to fulfill their traditional role as independent fiduciaries, and that greater corporate accountability can be achieved by increasing shareholder access to the proxy.

Opponents of the proposed SEC rule believe that corporations should be given time to implement recent reforms before they are burdened with additional reforms and the expected costs of compliance that may reduce their competitiveness. They also believe that special interest shareholders may use the proposed rule to promote an agenda that does not serve the interests of investors.

CalSTRS has written in support of the proposed SEC rule and suggested several additional reforms. The long-term nature of our liabilities focuses our interests in efforts to restore investor

confidence in the capital markets. Since a large portion of CalSTRS' U.S. equity portfolio is indexed, the System cannot simply choose not to invest in specific companies. Furthermore, CalSTRS and other public pension systems do not have the resources to wage costly proxy fights for control of unresponsive boards.

CalSTRS believes that the proposed rule will improve director performance, independence and accountability to shareholders. The safeguards it contains prevents abuse by corporate raiders and potentially frivolous nominees while allowing shareholders to participate in the director election process as partners without being classified dissidents.

LEGISLATIVE HISTORY:

AB 2752 (Chu) a companion measure to AJR 79, requires California-based, publicly traded corporations to establish corporate election procedures that allow shareholders to recommend candidates for election as directors, and post those election procedures on their Web site, if they have a Web site. It also requires all corporations doing business in California to make their election procedures available to shareholders upon request, and file those procedures with the Secretary of State.

PROGRAM BACKGROUND:

Early last year, SEC formally amended its rules concerning nominations of directors of corporations to provide for greater disclosure in nominating directors did not however, change the procedures for making shareholder nominations. On October 14, 2003, the SEC released proposed "shareholder access" rules that, under specific circumstances, would require public companies to include security holder nominees in the company's proxy statement for elections of directors. This proposal represents a significant change to the existing process for nominating and electing public company directors.

If adopted, the new Rule 14a-11 would grant security holders a limited right to place nominees for director in company proxy materials where not prohibited under state law and where specified triggering events suggest that the company has been unresponsive to security holder concerns regarding the proxy process. A company would have to include a maximum of one, two or three security holder nominees, depending on the size of its board of directors. The new nomination procedures would not be available where a security holder seeks either control of a board of directors or the election of a director with a financial relationship with the security holder.

FISCAL IMPACT:

Benefit Program Costs – None

Administrative Costs – None

ECONOMIC IMPACT:

Unknown, but likely nominal.

SUPPORT/OPPOSITION

Support:

Secretary of State Kevin Shelly (Sponsor)

CalPERS

Opposition:

None Known