

Uldaho Law

## Digital Commons @ Uldaho Law

---

Articles

Faculty Works

---

2016

### Women on State Boards and Commissions: Is Idaho Where it Wants to Be?

Brenda Bauges

*University of Idaho College of law, bbauges@uidaho.edu*

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/faculty\\_scholarship](https://digitalcommons.law.uidaho.edu/faculty_scholarship)



Part of the [Law and Gender Commons](#), and the [State and Local Government Law Commons](#)

---

#### Recommended Citation

59(3-4) Advocate 29 (March/April 2016)

This Article is brought to you for free and open access by the Faculty Works at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Articles by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

# Women on State Boards and Commissions: Is Idaho Where it Wants to Be?

Alexandra S. Grande  
Caitlin Kling  
Brenda Bauges

**D**ocumenting diversity statistics has become relatively commonplace in various levels of government. If a person wants to know how many women are currently serving in the United States Senate, a quick internet search can provide the answer.<sup>1</sup> The same is true of statistics regarding the composition of the Idaho State Senate.<sup>2</sup> These kinds of statistics are vital to people who are committed to having our government representatives proportionately reflect the constituency that they serve. Such statistics, however, are not as easy to come by in all levels of government.

Recognizing how little work had been done to document whether or not women are proportionately represented in less visible governmental bodies, Professors Jaclyn Kettler and Justin Vaughn at Boise State University created the Idaho Boards Project.<sup>3</sup> They describe the project as “an initiative that seeks to document and analyze the gender balance on public boards and commissions throughout the state of Idaho from cities and counties to state organizations.”<sup>4</sup>

Through that effort the professors did just that, publishing the first comprehensive study of gender balance on Idaho’s public boards and commissions in mid-September of last year. The study shows that the percentage of female appointees who serve on Idaho’s boards and commissions is approximately 30%.<sup>5</sup> The study also identified evidence of gender sorting as women are dis-

The study shows that the percentage of female appointees who serve on Idaho’s boards and commissions is approximately 30%.<sup>5</sup>



proportionately appointed to those boards the professors identified as having “stereotypically feminine missions.”<sup>6</sup> By comparison, where a state board has “stereotypically masculine core functions” the gender imbalance is even steeper — the percentage of women appointed drops to roughly 15%.<sup>7</sup>

Recent discussions and studies on gender imbalance on state boards and commissions is not just a concern in Idaho. In North Carolina, which, like Idaho, has no legislation encouraging gender diversity on boards and commissions, gender imbalances on so called “power boards” has been studied since 1999.<sup>8</sup> There are 14 boards that are considered “power boards” due to prestige, size of their budgets, and influence in the state.<sup>9</sup> Much like the characterization of masculine boards in Idaho, examples of power boards in North Carolina include: Banking Commission, Board of Transportation, and the Economic Development Board.<sup>10</sup>

In 2009, and again in 2013, the Women’s Forum of North Carolina studied the 14 power boards to determine membership and gender balance over time.<sup>11</sup> In 2009, women

made up a minimum of 30% membership — the number determined to be the tipping point for women to significantly affect the appointed body — on only five of the 14 boards.<sup>12</sup>

However, by 2013, women made up a minimum of 30% membership on only two of the 14 boards.<sup>13</sup> The Lottery Commission, for example, had an approximate drop in membership of 30% from 2009 to 2013, while the second largest decrease was the Utilities Commission, which had an approximate drop in membership of 10%.<sup>14</sup>

From these figures, it is clear that underrepresentation of women on these power boards persists over time, and unless a significant number of women are appointed over the next few years, the gender imbalance will remain.

In Alaska, Governor Bill Walker recently came under fire for the underrepresentation of women on state boards and commissions.<sup>15</sup> A study completed over this past summer concluded that of the 104 people Governor Walker has appointed during his tenure, only 34 have been women.<sup>16</sup> After taking into account

that some public officials serve on multiple boards, the result was that more than half of Alaska's boards are still strongly occupied by men.<sup>17</sup> Like the masculine boards characterized in Idaho, and the "power boards" in North Carolina, women in Alaska are either underrepresented, or not at all, on the state's boards and commissions.

For example, the following boards have no female members: Alaska Commercial Fishing and Agriculture Bank Board of Directors, Occupational Safety, and the Worker's Compensation Appeals Commission.<sup>18</sup> Women make up a majority of the membership on only 24 of the 134 state boards and commissions, including boards such as the Board of Certified Direct-Entry Midwives and the Advisory Council on Libraries.<sup>19</sup> Like Idaho, Alaska has no gender diversity legislation, and struggles to proportionately represent women on some of its more powerful boards.

### **Action is underway**

Prior to the publication of the Idaho Boards Project's study, Idaho Senator Cherie Buckner-Webb, had already begun drafting legislation to encourage gender balance in state board appointments.<sup>20</sup> Senator Buckner-Webb, who has the distinction of being both Idaho's first elected African-American state legislator and first African-American woman legislator, is one of the 29 women who hold one of Idaho's 105 total seats in the legislature.<sup>21</sup> Senator Buckner-Webb was gracious enough to be interviewed for this article. The senator hopes to add Idaho to the growing number of states with codified requirements to consider gender when making appointments to state boards and commissions.<sup>22</sup>

A passionate advocate of the proposition that government "needs to be representative of our population," Buckner-Webb believes her proposed legislation recognizes what she identifies as the "unique vitality, different sensibilities and intelligence, and valuable contributions" that women can bring to all levels of governance. "Women should be represented in every endeavor in American life, and need a seat at the table." Noting that her bill is "simplistic by design," Buckner-Webb believes that increasing the number of women on

A recent Thomson Reuters study showed that companies with greater board gender diversity outperformed those without gender diversity.

state boards and commissions "just makes sense." "Study after study has shown that the more diversity, the better the product is."

Indeed, studies do support the proposition that diversity on boards increases the quality of work done by the board at issue. There is no doubt that all candidates should be independently qualified, regardless of gender, to serve on any board. These studies indicate, however, compelling reasons to pare down the pool of qualified candidates with an eye towards gender diversity. A

2006 study of corporate governance found that women in the boardroom brought "a collaborative leadership style that benefits boardroom dynamics by increasing the amount of listening, social support, and win-win problem-solving."<sup>23</sup> A 2015 publication found that gender diversity in the boardroom increases dialogue and decision-making, making the quality of conversations better, more professional, and more effective.<sup>24</sup>

Yet another article found that "[w]omen are particularly good at defining responsibilities clearly as well as being strong on mentoring and coaching employees" indicating that gender diversity in boards would "foster a better balance in leadership skills."<sup>25</sup> Indeed, a recent Thomson Reuters study showed that companies with greater board gender diversity outperformed those without gender diversity in that they had lower volatility in stock market price, while having similar or better gains in stock price overall.<sup>26</sup>

Additionally, in the judicial context, diversity is considered to improve decision-making and add insights that otherwise would be absent.<sup>27</sup> Though these sources do not study state government boards specifically, the principles they espouse relating to women's strengths and skills are easily translatable into that context.

### **The practical realities of the appointment process**

Armed with studies supporting legislative action, the question arises, what part of the appointment process should the legislation target? In order to answer that question, one must have a grasp of how a person gets appointed to a board or commission in Idaho. The authors had the opportunity to sit down with

Anne Beebe, the Governor's Special Assistant for Boards and Commissions, to learn about the process.

When there is an opening on a board or commission, Ms. Beebe considers who she is aware of that would be qualified and she also checks with the respective board or commission for their suggestions of candidates as well. With 250 boards and commissions, Ms. Beebe indicated that the State does not currently advertise every position that comes open. However, though not all open positions are advertised, any member of the public can keep track of upcoming vacancies online, and obtain an application in anticipation of the vacancy.<sup>28</sup> Ms. Beebe will accept applications at any time, even if there is not a current open position on the relevant board. She will keep these applications on file until the next vacancy and may consider the application at that time.

Ms. Beebe is single-handedly responsible for recommending candidates to the Governor for appointment to all of Idaho's 250 boards and commissions. Under her tenure, multiple boards and commissions have their first female member in state history. Recalling a relatively recent instance where she had to "lobby hard" to the Idaho Potato Commission for a woman to receive an appointment to that commission, Ms. Beebe notes that the Governor's Office has received occasional "push-back" to female applicants. She recalls that when she first started her job, Governor Otter made it clear that bringing diversity to Idaho's boards and commissions, both in terms of gender and geography, was a priority.

On the topic of gender diversity Ms. Beebe relates that she is "looking for good women to be on Idaho's

---

Under her tenure, multiple boards and commissions have their first female member in state history.

---

boards" although she is "limited by who applies." She may be further limited by specific statutory requirements of certain boards that govern board composition, including party affiliation, occupation, geographic location, and licensure. Regardless, Ms. Beebe encourages all Idahoans, regardless of gender or party affiliation to get involved and welcomes any interested party to call her for further information about applying for a state board or commission appointment.

#### Legislation in other states

Another consideration that might affect the form any proposed legislation might take is how other states have crafted their gender diversity statutes. In its introductory section, this article outlined the situation in states without gender diversity legislation. To see the improvement gender diversity legislation can make, Connecticut and North Dakota provide guiding examples.

Since 1993, Connecticut law has required appointing authorities — including the governor, agency heads, and other non-legislative appointing authorities — to "make a good faith effort" to ensure that appointments reflect the "gender and racial diversity of the state."<sup>29</sup> The law also requires state boards, commissions,

committees, and councils to biennially submit reports to the Secretary of State that document gender and racial composition of their membership, for maintenance as public record.

In a 2011 report issued by the Secretary of State assessing the reported information of 175 state boards and commissions, Connecticut saw a 4.2% increase over a two-year span in appointed membership of women.<sup>30</sup> As a result of this increase, women comprised 40.1% of the aggregate appointed membership of the reporting boards and commissions.<sup>31</sup> Despite this advance, 13.7% of reporting boards and commissions reported having no female appointed membership.<sup>32</sup>

The boards and commissions that reported no female membership included, among others: Board of Mediation and Arbitration, Connecticut Maritime Commission, and the State Properties Review Board.<sup>33</sup> The result of these figures show that although great strides have been made, there is still room for improvement for gender diversity on specific types of boards. This concern also arises in North Dakota.

Like Connecticut, North Dakota law requires appointments to state boards, commissions, committees, and councils to be "gender balanced

to the extent possible and to the extent that appointees are qualified to serve on those boards, commissions, committees, and councils.”<sup>34</sup> As of 2013, Governor Jack Dalrymple had made approximately 390 appointments to state boards and commissions, 41% of which were women.<sup>35</sup>

That is a slight increase from the appointments of previous governors, in which appointments of women made up approximately 37%.<sup>36</sup> Although progress has been made, there are still masculine boards — such as the Game and Fish Advisory Board and the Natural Resources Trust Board of Directors — that do not have a single female member.<sup>37</sup> And, where masculine boards do have female members, they are often the minority.<sup>38</sup>

Complicating the efficacy of gender diversity legislation, is how it works in conjunction with legislation relating to individual board requirements. Directly on this point is a concern from Gov. Dalrymple. Although North Dakota law requires gender diversity, for many boards state law requires certain elected officials to serve, or the governor to appoint from an industry group’s shortlist.<sup>39</sup> If there are few women in the legislature or in the industry, these restrictions often limit the opportunity for women to serve on boards and commissions.

Like Gov. Dalrymple, Ms. Beebe expressed frustration with certain statutes mandating who the Governor is to appoint for certain boards and commissions. Statutes inhibiting the Governor’s discretion — requiring mandatory appointment from an industry short list or from the pool of elected officials — narrow the opportunities for women to be appointed to serve on boards and commissions.

The various enabling acts for each state board or commission necessarily limit the eligible pool of applicants by specifically designating who may serve. By example, of the nine “practical potato persons” who are to comprise the Potato Commission, five members shall be growers, two shall be shippers, and two shall be processors.<sup>40</sup> All members must be residents of Idaho for at least three years, and must be currently engaged in their respective occupations.<sup>41</sup> The growers and shippers must be nominated from different “districts” as defined by the statute.<sup>42</sup>

Although progress has been made, there are still masculine boards — such as the Game and Fish Advisory Board and the Natural Resources Trust Board of Directors — that do not have a single female member.<sup>37</sup>

Nevertheless, Connecticut and North Dakota have seen an increase in female membership on boards and commissions. Additionally, the difference in membership compared to North Carolina and Alaska, states that do not have diversity legislation, is about 10%.<sup>43</sup>

While gender diversity legislation does make a difference, and an important one, it is only a first step. A 10% difference, though significant, indicates that it is unlikely legislation alone can cure the absence of women on boards and commissions.

## **Legislation – The first step but not the only option**

Assuming Idaho passes legislation regarding gender diversity on boards, the next question becomes what else can it do to increase diversity beyond the mere 10%? Although in the context of diversity in the judiciary, a publication by the Brennan Center for Justice at the New York University School of Law has described ten “best practices” to increase diversity.<sup>44</sup> Many of these suggestions could be adapted to the context of Idaho boards and commissions. The first suggestion is to “grapple fully with implicit bias.”<sup>45</sup>

Because implicit bias is not something a person is consciously aware of doing, it is important to acknowledge its probable existence.<sup>46</sup> In Idaho, implicit bias would certainly appear to be an issue by the data that women are being categorized into “gender appropriate” boards and commissions, when they are being appointed at all. The first step to increasing diversity is to identify at what point in the process implicit bias might be an issue and acknowledge its existence.

The second suggestion is to increase strategic recruitment.<sup>47</sup> This can be done by widely advertising open positions and actively reaching out to diverse candidates.<sup>48</sup> A third suggestion is to be clear about the role of diversity in the nominating process through state statutes.<sup>49</sup> This suggestion, of course, has already been addressed above.

Other suggestions include keeping the application, appointment, and interview process transparent, training those involved in the process to be effective recruiters and nominators, appointing a diversity compliance authority, creating diverse commissions by statute to

oversee the process, and improving record keeping of the gender make-up of the applicant pool, interview pool, and successful candidates pool for any given opening.<sup>50</sup>

All of these suggestions, however, should operate within the framework of maintaining high standards and quality.<sup>51</sup> These suggestions operate under the theory that qualified candidates with diverse backgrounds, such as women, exist as a resource that can be cultivated if an attempt is made to search out and recruit these candidates when openings occur. These suggestions are not intended to sacrifice quality for diversity. Rather, the premise is that quality and diversity should not be viewed as mutually exclusive; with a little effort they can exist simultaneously.<sup>52</sup> And, as the sources discussed above indicate, Idaho would be better served by such boards and commissions.

## Endnotes

1. There are twenty. *Women in the Senate*, SENATE.GOV, [www.senate.gov/reference/Index/Women.htm](http://www.senate.gov/reference/Index/Women.htm) (last visited December 17, 2015).
2. There are ten. *Senate Membership*, IDAHO.GOV, <http://legislature.idaho.gov/senate/membership.cfm> (last visited December 17, 2015).
3. Jaclyn Kettler & Justin S. Vaughn, *Gender representation on Idaho state and local appointed boards*, THE BLUE REVIEW Sept. 15, 2015, available at <https://thebluereview.org/gender-balance-idaho-boards/>.
4. *Id.*
5. *Id.*
6. *Id.* "Stereotypically feminine" was defined as "those concerning stereotypically feminine roles, such as areas related to children and family, education, health, culture and community affairs."
7. *Id.* "Stereotypically masculine" functions were defined as those "consistent with masculine stereotypes" such as "commerce, environment, energy, natural resources, and science & technology."
8. Women's Forum of North Carolina, Inc., *Boardroom or Boy's Room? Gender Composition on North Carolina's Power Boards*

The premise is that quality and diversity should not be viewed as mutually exclusive.

1 (Nov. 7, 2009), available at <http://womensforumnc.org/wp-content/uploads/2009/11/2009BoardsandCommissionsWF-NC.pdf>.

9. *Id.* at 2.

10. *Id.* The full list of the fourteen power boards includes: Banking Commission, Board of Education, Board of Transportation, Economic Development Board, Employment Security Commission, Environmental Management Commission, Golden Leaf Foundation Board of Directors, Governor's Crime Commission, Health and Wellness Trust, Lottery Commission, State Board of Community Colleges, Social Services Commission, UNC Board of Directors, and Utilities Commission.

11. Compare note xxvi with Dana Jennings, *Closing the Leadership Gap: Achieving Gender Equity on North Carolina Boards and Commissions* (December 8, 2013), <http://www.womenadvancenc.org/2013/12/08/closing-the-leadership-gap-achieving-gender-equity-on-north-carolina-boards-and-commissions/> (last visited Dec. 14, 2015).

12. Jennings, note xi.

13. *Id.*

14. *Id.*

15. Lisa Phu, *Alaska boards, commissions skew male 2 to 1*, ALASKA PUBLIC MEDIA (Nov. 5, 2015), <http://www.alaskapublic.org/2015/11/05/alaska-boards-commissions-skew-male-2-to-1/> (last visited Dec. 10, 2015).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Betsy Russell, *Idaho boards, commissions lack women, study says*, THE SPOKESMAN-REVIEW September 18, 2015, available at <http://www.spokesman.com/stories/2015/sep/18/idaho-boards-commissions-lack-women-study-says/>.

missions-lack-women-study-says/.

21. *Women in State Legislatures for 2015*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 4, 2015), <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2015.aspx> (last visited December 17, 2015).

22. These states include Missouri, Connecticut, Florida, Kentucky, North Carolina, Oregon, Rhode Island, and Tennessee, among others.

23. Vicki W. Kramer, Alison M. Konrad, & Sumru Erkut, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, WELLESLEY CENTERS FOR WOMEN, 2006, at 2 (Special Report).

24. Diane Lerner and Christine Oberholzer Skizas, *Where Women Are on Board: Perspectives from Gender Diverse Boardrooms*, Harvard Law School Forum on Corporate Governance and Financial Regulation 2015, available at <http://corp.gov.law.harvard.edu/2015/07/31/>.

25. Credit Suisse, *Does Gender Diversity Improve Performance?*, July 31, 2012, available at <https://www.credit-suisse.com/us/en/about-us/responsibility/news-stories/articles/news-and-expertise/2012/07/en/does-gender-diversity-improve-performance.html>.

26. Andre Chanavat and Katharine Ramsden, *Mining the Metrics of Board Diversity*, Thomson Reuters (2013), available at [https://risk.thomsonreuters.com/sites/default/files/mining\\_the\\_metrics\\_of\\_board\\_diversity.pdf](https://risk.thomsonreuters.com/sites/default/files/mining_the_metrics_of_board_diversity.pdf).

27. Ciara Torres-Spelliscy, Monique Chase, & Emma Greenman, *Improving Judicial Diversity*, Brennan Center for Justice at New York University School of Law, 2nd ed. 2010, at 5.

28. <http://www.gov.idaho.gov/boards/boards.cfm> (last visited December 17, 2015).

29. Conn. Gen. Stat. § 4-9b (Rev. 2011).

30. Denise W. Merrill, *Gender and Racial*

Composition of Connecticut State Boards and Commissions 2011 Report, May 14, 2012, at 6, available at <http://www.ct.gov/sots/lib/sots/capitol/bdscomms/bdscomms/gr2011report.pdf> (last visited on Dec. 14, 2015).

31. *Id.*

32. *Id.* at 10.

33. *Id.* at App. B.

34. N.D. Cent. Code § 54-06-19 (2015).

35. Kyle Potter, *4-in-10 governor appointments are women*, DICKINSON PRESS (Dec. 15, 2013), <http://www.thedickinsonpress.com/content/4-10-governor-appointments-are-women> (last visited Dec. 14, 2015).

36. *Id.*

37. *Id.*

38. North Dakota Office of Governor, *Boards and Commissions*, <http://governor.nd.gov/boards> (last visited Dec. 10, 2015). For example, the Agricultural Products Utilization Commission has eleven members, only one of which is female; the Energy Policy Commission has seventeen members, only three of which are females; and the North Dakota State Investment Board has eleven members, only two of which are appointed females (the third is the State Treasurer and she is statutorily required to be on the Board).

39. Potter, note xxi.

40. See Idaho Code § 22-1202 (2015).

41. *Id.*

42. *Id.*

43. This figure is arrived at by considering the roughly 30-33% representations of women found in both North Carolina and Alaska, compared with the 40% representation of women from Connecticut and North Dakota.

44. Torres-Spelliscy, note xxvi at 36-42.

45. *Id.* at 36.

46. *Id.*

47. *Id.* at 37.

48. *Id.*

49. *Id.*

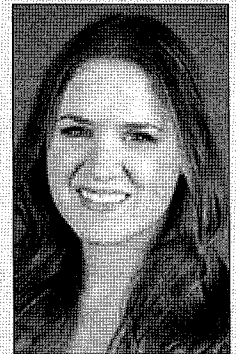
50. *Id.* at 38-42.

51. *Id.* at 41.

52. These suggestions presume, of course, sufficient resources can be committed to the goal of increasing gender diversity. Part of the problem in Idaho could be a resources issue. According to Ms. Beebe, her Kansas counterpart who deals with approximately 150 boards, has seven people working to handle the work that Ms. Beebe does on her own for 250 boards and commissions.



**Alexandra S. Grande** is an associate at Holland & Hart LLP where she is a member of the firm's Commercial Litigation team. An Idaho native, Ms. Grande received her Bachelor of Arts in History and Political Economy from The College of Idaho and her law degree from The University of Idaho College of Law. She is a member of the Idaho Women Lawyers and involved in the Litigation Section of the bar. Ms. Grande can often be found skiing, hiking, or enjoying a single malt scotch.



**Caitlin Kling** is a staff attorney for the Honorable Jason D. Scott in Idaho's Fourth Judicial District. She is an Idaho native and a 2014 graduate of the University of Idaho College of Law.



**Brenda M. Bauges** is a Deputy Attorney General for the State of Idaho in the Criminal Law Division. She currently serves on the board of directors for Idaho Women Lawyers, the executive committee of Attorneys for Civic Education, and the Idaho Law Foundation's Law Related Education Committee. The views reflected in this article are the author's own and should not be interpreted to be the views or opinion of the Attorney General, the State of Idaho, or any board or committee on which she serves.

