

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 169

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “authorizing” in line 3 down through “trust” in line 5 and substitute “clarifying that a corporation may include certain provisions in its charter and bylaws; clarifying that a real estate investment trust may include certain provisions in its declaration of trust or bylaws”; in line 7, after the semicolon insert “providing that the duties of the directors of certain corporations and the trustees of certain real estate investment trusts do not require them to elect or refrain from electing to be subject to certain provisions of certain laws;”; in the same line, strike “the” and substitute “certain”; in line 9, after the semicolon insert “providing that the directors of certain corporations and the trustees of certain real estate investment trusts have certain powers;”; in the same line, after “directors” insert “and trustees”; in line 13, after “Act,” insert “providing that certain provisions of charters, declarations of trust, and bylaws are not invalid; providing that certain actions and determinations of boards of directors of certain corporations and boards of trustees of certain real estate investment trusts are not invalid;”; in line 17, after “1-101(t-1),” insert “2-104(c);”; and in line 19, after the semicolon, insert “8-206;”.

AMENDMENT NO. 2

On page 2, strike beginning with “TO” in line 6 down through “CORPORATION” in line 11 and substitute “UNDER SPECIFIED CIRCUMSTANCES TO PURCHASE STOCK OR OTHER SECURITIES OF A CORPORATION OR ANY OTHER PERSON”; and strike beginning with “AN” in line 12 down through “ARTICLE” in line 13 and substitute “A DESIGNATED PERSON OR CLASSES OF PERSONS UNDER SPECIFIED CIRCUMSTANCES”.

AMENDMENT NO. 3

On page 3, after line 10, insert:

“(C) THE INCLUSION OR OMISSION OF A PROVISION IN THE CHARTER THAT ALLOWS THE BOARD OF DIRECTORS TO CONSIDER THE EFFECT OF A POTENTIAL”

(Over)

ACQUISITION OF CONTROL ON PERSONS SPECIFIED IN SUBSECTION (B)(9) OF THIS SECTION DOES NOT CREATE AN INFERENCE CONCERNING FACTORS THAT MAY BE CONSIDERED BY THE BOARD OF DIRECTORS REGARDING A POTENTIAL ACQUISITION OF CONTROL.”.

On page 13, after line 12, insert:

“(3) THE INCLUSION OR OMISSION OF A PROVISION IN A DECLARATION OF TRUST THAT ALLOWS THE BOARD OF TRUSTEES TO CONSIDER THE EFFECT OF A POTENTIAL ACQUISITION OF CONTROL ON PERSONS SPECIFIED IN PARAGRAPH (2) OF THIS SUBSECTION DOES NOT CREATE AN INFERENCE CONCERNING FACTORS THAT MAY BE CONSIDERED BY THE BOARD OF TRUSTEES REGARDING A POTENTIAL ACQUISITION OF CONTROL.”.

AMENDMENT NO. 4

On page 3, in line 5, strike the second “A” and substitute “THE”; in line 16, after “WARRANTS” insert “UNDER A STOCKHOLDER RIGHTS PLAN”; in line 18, after “WARRANTS” insert “UNDER PARAGRAPH (1) OF THIS SUBSECTION”; and in line 25, strike “REDEEM, MODIFY, OR TERMINATE” and substitute “VOTE FOR THE REDEMPTION, MODIFICATION, OR TERMINATION OF”.

On page 4, in line 21, after “RESPOND” insert “ON BEHALF OF THE CORPORATION”; in line 23, strike “OR” and substitute a comma; in line 24, after “MODIFY” insert a comma; in line 25 after “ELECT” insert “ON BEHALF OF THE CORPORATION”; and in the same line, after “ELECTING” insert “ON BEHALF OF THE CORPORATION”.

On page 5, in line 1, strike “THE DIRECTORS” and substitute “A DIRECTOR”.

On page 6, in line 25, after “FIX” insert “:

(1)”;

in line 28, after “THE” insert “SPECIAL”; in the same line, after “MEETING” insert a semicolon; in lines 28 and 29, strike “TO SET” and substitute “(2)”; and in line 29, after the second “THE” insert

“SPECIAL”.

On page 8, in line 10, strike “HOME” and substitute “PRINCIPAL RESIDENCE”; and strike beginning with “(1)” in line 30 down through “(2)” in line 32.

On page 10, in line 1, strike “MAY APPLY” and substitute “APPLIES”; in line 2, strike “EACH OF WHOM AT THE TIME OF ANY ACT” and substitute “WHO, AT THE TIME OF ANY ELECTION TO BECOME SUBJECT TO THE PROVISIONS OF THIS SUBTITLE”; in line 3, strike “IS NOT AN OFFICER OR EMPLOYEE” and substitute “ARE NOT OFFICERS OR EMPLOYEES”; in line 4, strike “IS NOT AN ACQUIRING PERSON” and substitute “ARE NOT ACQUIRING PERSONS”; in line 5, strike “IS NOT A DIRECTOR, OFFICER, AFFILIATE, OR ASSOCIATE” and substitute “ARE NOT DIRECTORS, OFFICERS, AFFILIATES, OR ASSOCIATES”; in line 7, strike “WAS” and substitute “WERE”; in the same line, strike “A DIRECTOR” and substitute “DIRECTORS”; in line 15, after “OR” insert “BECOME A DIRECTOR”; strike in their entirety lines 21 through 26, inclusive; and in line 29, strike “BECOMES” and substitute “ELECTS TO BE”.

On page 11, in line 27, strike “2-406(B)” and substitute “2-406(B)(3)”; in line 29, after “STOCKHOLDERS” insert “GENERALLY IN THE ELECTION OF DIRECTORS”; and in line 30, strike “2-402” and substitute “2-402(A)”.

On page 12, in line 16, strike “2-502” and substitute “2-502(B)(2) AND (3) AND (E)”.

On page 13, in line 7, strike “A” and substitute “THE”; in line 21, strike “2-405.1” and substitute “2-405.1(D)THROUGH (G)”.

AMENDMENT NO. 5

On page 10, after line 26, insert:

“(C) THE CHARTER OF A CORPORATION MAY CONTAIN A PROVISION OR THE BOARD OF DIRECTORS MAY ADOPT A RESOLUTION THAT PROHIBITS THE CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE.”

(Over)

AMENDMENT NO. 6

On page 7, in line 20, after “THAN” insert “;

(1)”;

and in the same line, after “MEETING” insert “; OR

(2) IN THE CASE OF AN ANNUAL MEETING, 90 DAYS BEFORE THE FIRST ANNIVERSARY OF:

(I) THE MAILING DATE OF THE NOTICE OF THE PRECEDING YEAR’S ANNUAL MEETING; OR

(II) THE PRECEDING YEAR’S ANNUAL MEETING; OR

(3) ANOTHER TIME SPECIFIED IN THE CHARTER OR BYLAWS”.

AMENDMENT NO. 7

On page 9, in line 32, after “BYLAWS;” insert “OR”; strike beginning with the semicolon in line 33 down through “DEPARTMENT” in line 34.

On page 10, in line 20, after “PROVISION” insert “, INCLUDING THE SATISFACTION OF SUBSECTION (D)(1) OF THIS SECTION, IF APPLICABLE”; and before line 27, insert:

“(D) (1) A CORPORATION SHALL FILE ARTICLES SUPPLEMENTARY WITH THE DEPARTMENT IF:

(I) THE CORPORATION ELECTS TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE BY RESOLUTION OF THE BOARD OF DIRECTORS OR BYLAW AMENDMENT; OR

(II) THE BOARD OF DIRECTORS ADOPTS A RESOLUTION IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION THAT PROHIBITS THE

CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS SUBTITLE.

(2) THE ARTICLES SUPPLEMENTARY SHALL DESCRIBE ANY PROVISION OF THIS SUBTITLE TO WHICH THE CORPORATION:

(I) HAS ELECTED TO BECOME SUBJECT; OR

(II) MAY NOT ELECT TO BECOME SUBJECT IN ACCORDANCE WITH THE RESOLUTION OF THE BOARD.

(3) STOCKHOLDER APPROVAL IS NOT REQUIRED FOR THE FILING OF ARTICLES SUPPLEMENTARY IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.”.

AMENDMENT NO. 8

On page 13, after line 18, insert:

“8-206.

THE DECLARATION OF TRUST OR BYLAWS OF A REAL ESTATE INVESTMENT TRUST MAY PROVIDE FOR ONE OR MORE COMMITTEES OF THE BOARD OF TRUSTEES COMPOSED OF ONE OR MORE TRUSTEES AND FOR THE DELEGATION TO THOSE COMMITTEES OF ANY OF THE POWERS OF THE BOARD OF TRUSTEES.”.

AMENDMENT NO. 9

On page 13, after line 22, insert:

“SECTION 2. AND BE IF FURTHER ENACTED, That the changes made to § 2-104(b) of the Corporations and Associations Article by this Act may not be construed or interpreted to invalidate a provision contained in the charter of a corporation before the effective date of this Act that allows the board of directors of the corporation, in considering a potential acquisition of control of the corporation, to consider the effect of the potential acquisition of control on stockholders,

(Over)

employees, customers, suppliers, and creditors of the corporation, and communities in which offices or other establishments of the corporation are located.

SECTION 3. AND BE IT FURTHER ENACTED, That the changes made to § 8-202(b) of the Corporations and Associations Article by this Act may not be construed or interpreted to invalidate a provision contained in the declaration of trust of a real estate investment trust before the effective date of this Act that allows the board of trustees of the real estate investment trust, in considering a potential acquisition of control of the real estate investment trust, to consider the effect of the potential acquisition of control on shareholders, employees, customers, suppliers, and creditors of the real estate investment trust, and communities in which offices or other establishments of the real estate investment trust are located.

SECTION 4. AND BE IT FURTHER ENACTED, That the changes made to § 2-504 of the Corporations and Associations Article by this Act may not be construed or interpreted to invalidate a provision contained in the charter or bylaws of a corporation before the effective date of this Act that allows a corporation to require a stockholder to provide advance notice of a nomination or proposal to the corporation before a meeting of the stockholders.

SECTION 5. AND BE IT FURTHER ENACTED, That the addition of §§ 2-201(c), 2-405.1(d) through (g), and 2-502(e) to the Corporation and Associations Article by this Act may not be construed or interpreted to invalidate an action or determination of the board of directors of a corporation before the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That the addition of §§ 8-206 and 8-601.1 to the Corporations and Associations Article by this Act may not be construed or interpreted to invalidate:

(1) A provision that was contained in the declaration of trust or bylaws of a real estate investment trust before the effective date of this Act and that allows the real estate investment trust to require a shareholder to provide advance notice of a nomination or proposal to the real estate investment trust before a meeting of the shareholders or allows for one or more committees of the board of trustees composed of one or more trustees and for the delegation to those committees of any powers of the board of trustees; or

(2) An action or determination of the board of trustees or a committee of the board of trustees of a real estate investment trust before the effective date of this Act.”;

and in line 23, strike “2.” and substitute “7.”.