

HOUSE BILL 154

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1999 Regular Session
(9r0741)

ENROLLED BILL
-- Economic Matters/Judicial Proceedings --

Introduced by **Delegate Barve**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Powers of Corporations**
3 **and Boards of Directors - Extraordinary Actions**

4 FOR the purpose of altering the power of a corporation to make certain gifts or
5 contributions by repealing certain restrictions on the power and allowing gifts or
6 contributions to be made in cash, other property, or stock or other securities of
7 the corporation; allowing a corporation to issue stock or other securities of the
8 corporation without consideration of any kind under certain circumstances;
9 allowing certain amendments to be made to the charter of a corporation or to the
10 declaration of trust of a real estate investment trust without stockholder or
11 shareholder approval; allowing a Maryland corporation to consolidate with and
12 merge into a corporation or business trust organized under the laws of a foreign
13 country; clarifying the circumstances under which certain mergers need be
14 approved only by a majority of the entire board of directors of a successor
15 corporation or board of trustees of a successor real estate investment trust;
16 allowing a Maryland real estate investment trust to merge into a business trust
17 organized under the laws of a foreign country; altering the circumstances under

1 which a merger of a 90 percent or more owned subsidiary corporation with or
2 into its parent corporation may be effected without stockholder approval;
3 allowing a declaration of trust of a real estate investment trust to include a
4 provision requiring for any action a greater proportion of votes than provided by
5 statute; allowing proposed amendments to the declaration of trust of a real
6 estate investment trust to be approved by written consent of the shareholders;
7 altering certain definitions; making conforming and stylistic changes; and
8 generally relating to corporations and real estate investment trusts.

9 BY repealing and reenacting, with amendments,
10 Article - Corporations and Associations
11 Section 2-103(13), 2-105(a) and (c), 2-203, 2-306, 2-604, 2-605, 2-607(a),
12 3-101(b) and (e), 3-105(a)(5), 3-106, 3-202(b) and (c), 3-203(a), 8-202(c),
13 8-501, and 8-501.1(a)(3) *and (c)(3)*
14 Annotated Code of Maryland
15 (1993 Replacement Volume and 1998 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Corporations and Associations**

19 2-103.

20 Unless otherwise provided by law or its charter, a Maryland corporation has the
21 general powers, whether or not they are set forth in its charter, to:

22 (13) [If authorized by its board of directors, make] MAKE [reasonable]
23 gifts or contributions [out of profits] IN CASH, OTHER PROPERTY, OR STOCK OR
24 OTHER SECURITIES OF THE CORPORATION to or for the use of:

25 (i) The United States, this State, another state of the United
26 States, a territory, possession, or district of the United States, or any institution,
27 agency, or political subdivision of any of them; and

28 (ii) Any governmental or other organization, whether inside or
29 outside the United States, for religious, charitable, scientific, civic, public welfare,
30 literary, or educational purposes;

31 2-105.

32 (a) A corporation may provide by its charter:

33 (1) For one or more classes of stock, the voting rights of each class, and
34 any restriction on or denial of these rights;

35 (2) As to each class of stock, either the par value of the shares or that the
36 shares are without par value;

1 (3) (i) That the corporation shall set apart dividends for or pay
2 dividends to the holders of a specified class of stock before any dividends are set apart
3 for or paid to the holders of another class of stock;

4 (ii) The rate, amount, and time of payment of the dividends; and

5 (iii) Whether the dividends are cumulative, cumulative to a limited
6 extent, or noncumulative;

7 (4) That any specified class of stock is preferred over another class as to
8 its distributive share of the assets on voluntary or involuntary liquidation of the
9 corporation and the amount of the preference;

10 (5) That any specified class of stock may be redeemed at the option of the
11 corporation or of the holders of the stock and the terms and conditions of redemption,
12 including the time and price of redemption;

13 (6) That any specified class of stock is convertible into shares of stock of
14 one or more other classes and the terms and conditions of conversion;

15 (7) That the holders of any specified securities issued or to be issued by
16 the corporation have any voting or other rights which, by law, are or may be conferred
17 on stockholders;

18 (8) For any other preferences, rights, restrictions, including restrictions
19 on transferability, and qualifications not inconsistent with law;

20 (9) That the board of directors may classify or reclassify any unissued
21 stock from time to time by setting or changing the preferences, conversion or other
22 rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms
23 or conditions of redemption of the stock;

24 (10) (i) For any grant to the holders of the stock of the corporation,
25 including a specified class or series of stock, of the preemptive right to subscribe to:

26 1. Any or all additional issues of the stock; or

27 2. Any securities of the corporation convertible into
28 additional issues of stock; or

29 (ii) For any definition or limitation of the preemptive rights of
30 stockholders to acquire additional stock or securities in the corporation; [and]

31 (11) For restrictions on transferability for any purpose, including
32 restrictions designed to permit a corporation to qualify as:

33 (i) A real estate investment trust under the Internal Revenue Code
34 or regulations adopted under the Internal Revenue Code; or

35 (ii) An investment company under the Investment Company Act of
36 1940 or regulations adopted under the Investment Company Act of 1940; AND

1 (12) THAT THE BOARD OF DIRECTORS, WITH THE APPROVAL OF A
2 MAJORITY OF THE ENTIRE BOARD, AND WITHOUT ACTION BY THE STOCKHOLDERS,
3 MAY AMEND THE CHARTER TO INCREASE OR DECREASE THE AGGREGATE NUMBER
4 OF SHARES OF STOCK OF THE CORPORATION OR THE NUMBER OF SHARES OF STOCK
5 OF ANY CLASS THAT THE CORPORATION HAS AUTHORITY TO ISSUE.

6 (c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE
7 board of directors of a corporation that is registered or intends to register as an
8 open-end company under the Investment Company Act of 1940, after the registration
9 as an open-end company takes effect, may increase or decrease the aggregate number
10 of shares of stock or the number of shares of stock of any class that the corporation
11 has authority to issue, unless a provision has been included in the charter of the
12 corporation after July 1, 1987 prohibiting an action by the board of directors to
13 increase or decrease the aggregate number of shares of stock or the number of shares
14 of stock of any class that the corporation has authority to issue.

15 2-203.

16 (a) Before the issuance of stock or convertible securities, the board of directors
17 shall adopt a resolution which:

18 (1) Authorizes the issuance;

19 (2) Sets the minimum price or value of consideration for the stock or
20 convertible securities or a formula for its determination; and

21 (3) Fairly describes any consideration other than money and states:

22 (i) Its actual value as determined by the board of directors; or

23 (ii) That the board of directors has determined that the actual
24 value is or will be not less than a certain sum.

25 (b) In the absence of actual fraud in the transaction, the value of consideration
26 stated in the charter or determined by the board of directors in its resolution is
27 conclusive for all purposes.

28 (c) For purposes of this section, the consideration for stock issued as a stock
29 dividend is the resulting capitalization of surplus.

30 (d) This section does not apply to the issuance of stock or convertible securities
31 as part of:

32 (1) A reclassification of stock effected by amendment of the charter; or

33 (2) A consolidation, merger, or share exchange.

34 (e) If its issuance is authorized in accordance with this subtitle, stock with par
35 value and securities convertible into stock with par value may be issued as full paid

1 and nonassessable even if the price or value of the consideration received is less than
2 the par value of the stock issued or the stock into which the securities are convertible.

3 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR § 2-204
4 OR § 2-206 OF THIS SUBTITLE, A CORPORATION MAY ISSUE STOCK OR OTHER
5 SECURITIES OF THE CORPORATION PURSUANT TO § 2-103(13) OF THIS TITLE
6 WITHOUT CONSIDERATION OF ANY KIND.

7 2-306.

8 (a) Unless the charter provides otherwise, if stated capital is reduced by
9 retiring stock held by the corporation, the board of directors may approve the
10 reduction without stockholder action.

11 (b) (1) Except as provided in subsection (a) of this section OR IN § 2-605 OF
12 THIS TITLE, a reduction of stated capital of a corporation, whether to be effected with
13 or without a charter amendment, shall be approved in the manner provided in this
14 subsection.

15 (2) The board of directors shall:

16 (i) Adopt a resolution which declares that the charter amendment,
17 if any, and the proposed reduction is advisable; and

18 (ii) Direct that the proposed reduction and any charter amendment
19 be submitted for consideration at either an annual or special meeting of the
20 stockholders.

21 (3) A notice which states that a purpose of the meeting will be to act on
22 the proposed reduction and any charter amendment shall be given in the manner
23 required by Subtitle 5 of this title to each stockholder entitled to vote on the matter.

24 (4) The proposed reduction and any charter amendment shall be
25 approved by the stockholders of the corporation by the affirmative vote of two thirds
26 of all the votes entitled to be cast on the matter.

27 2-604.

28 (A) THIS SECTION DOES NOT APPLY TO A CHARTER AMENDMENT BY THE
29 BOARD OF DIRECTORS IN ACCORDANCE WITH § 2-105(A)(12) ~~AND (C)~~ OF THIS TITLE.

30 [(a)] (B) If there is any stock outstanding or subscribed for AND entitled to be
31 voted on the charter amendment, it shall be approved as provided in this section.

32 [(b)] (C) The board of directors of a corporation proposing a charter
33 amendment shall:

34 (1) Adopt a resolution which sets forth the proposed amendment and
35 declares that it is advisable; and

1 (2) Direct that the proposed amendment be submitted for consideration
2 at either an annual or a special meeting of the stockholders.

3 [(c)] (D) (1) Notice which states that a purpose of the meeting will be to act
4 on the proposed amendment shall be given by the corporation in the manner required
5 by Subtitle 5 of this title to:

6 (i) Each stockholder entitled to vote on the proposed amendment;
7 and

8 (ii) Each stockholder not entitled to vote on the proposed
9 amendment if the contract rights of his stock, as expressly set forth in the charter,
10 would be altered by the amendment.

11 (2) The notice shall include a copy of the amendment or a summary of
12 the changes it will effect.

13 [(d)] (E) The proposed amendment shall be approved by the stockholders of
14 the corporation by the affirmative vote of two thirds of all the votes entitled to be cast
15 on the matter.

16 2-605.

17 (a) Notwithstanding the provisions of § 2-604 of this subtitle, a majority of the
18 entire board of directors, without action by the stockholders, may amend the charter
19 of a corporation to:

20 (1) [Delete from the corporate name the word "The" or the name of a
21 political subdivision or other geographical location of the State;] CHANGE THE NAME
22 OF THE CORPORATION; OR

23 (2) [Abbreviate the word "corporation", "incorporated", "company", or
24 "limited" in the corporate name;] CHANGE THE NAME OR OTHER DESIGNATION OR
25 THE PAR VALUE OF ANY CLASS OR SERIES OF STOCK OF THE CORPORATION AND THE
26 AGGREGATE PAR VALUE OF THE STOCK OF THE CORPORATION.

27 [(3) Substitute in the corporate name for its respective abbreviation the
28 word "corporation", "incorporated", "company", or "limited"; or

29 (4) If the corporation is registered as an open-end company under the
30 Investment Company Act of 1940, change its corporate name or change the name or
31 other designation of any class or series of its stock.]

32 (b) A change in THE name or OTHER designation of a class or series of stock
33 under subsection [(a)(4)] (A)(2) of this section may not change the preferences,
34 conversion or other rights, voting powers, restrictions, limitations as to dividends,
35 qualifications, or terms or conditions of redemption of the class or series of stock.

1 2-607.

2 (a) Articles of amendment shall set forth the amendment and state:

3 (1) That the amendment was advised by the board of directors and
4 approved by the stockholders; or

5 (2) That the amendment was approved by a majority of the entire board
6 of directors and that:

7 (i) No stock entitled to be voted on the matter was outstanding or
8 subscribed for at the time of approval; or

9 (ii) The amendment is limited to a change expressly [permitted by
10 § 2-605 of this subtitle] AUTHORIZED BY §§ 2-105(A)(12) ~~AND (C)~~ AND 2-605 OF THIS
11 TITLE to be made without action by the stockholders [and, if approved under §
12 2-605(a)(4) of this subtitle, that the corporation is registered as an open-end
13 company under the Investment Company Act of 1940].

14 3-101.

15 (b) "Foreign corporation" means a corporation organized under the laws of the
16 United States, another state of the United States, or a territory, possession, or district
17 of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

18 (e) "Foreign business trust" means a business trust organized under the laws
19 of the United States, another state of the United States, or a territory, possession, or
20 district of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

21 3-105.

22 (a) A consolidation, merger, share exchange, or transfer of assets shall be
23 approved in the manner provided by this section, except that:

24 (5) A merger need be approved by a Maryland successor corporation only
25 by a majority of its entire board of directors if:

26 (i) The merger does not reclassify or change THE TERMS OF ANY
27 CLASS OR SERIES OF its [outstanding] stock THAT IS OUTSTANDING IMMEDIATELY
28 BEFORE THE MERGER BECOMES EFFECTIVE or otherwise amend its charter and the
29 number of its shares of stock to be issued or delivered in OF SUCH CLASS OR SERIES
30 OUTSTANDING IMMEDIATELY AFTER THE EFFECTIVE TIME OF the merger ~~is not~~
31 ~~INCREASED DOES NOT INCREASE BY~~ more than 20 percent of the number of its
32 shares of the [same] class or series OF STOCK THAT IS outstanding immediately
33 before the merger becomes effective; or

34 (ii) There is no stock outstanding or subscribed for and entitled to
35 be voted on the merger; and

1 3-106.

2 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a
3 90 percent or more owned subsidiary corporation WITH OR into its parent corporation
4 may be effected as provided in this section[,] if:

5 (1) [the] THE charter of the [parent] SUCCESSOR is not amended in the
6 merger OTHER THAN TO CHANGE ITS NAME, THE NAME OR OTHER DESIGNATION OR
7 THE PAR VALUE OF ANY CLASS OR SERIES OF ITS STOCK, OR THE AGGREGATE PAR
8 VALUE OF ITS STOCK; AND

9 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED
10 IN THE MERGER IN EXCHANGE FOR STOCK OF THE OTHER CORPORATION
11 PARTICIPATING IN THE MERGER ARE IDENTICAL TO THE CONTRACT RIGHTS OF THE
12 STOCK FOR WHICH THE STOCK OF THE SUCCESSOR WAS EXCHANGED.

13 (b) For the purposes of this section, a subsidiary is considered to be 90 percent
14 or more owned if the parent corporation owns shares entitled to cast 90 percent or
15 more of all the votes entitled to be cast of each group or class of shares entitled to vote
16 as a group or class on the merger.

17 (c) (1) The board of directors of each Maryland corporation proposing to
18 become a party to the merger shall adopt a resolution which approves the proposed
19 merger on substantially the terms and conditions set forth or referred to in the
20 resolution. The approval shall be by a majority vote of the entire board of directors. A
21 meeting of the stockholders is not necessary.

22 (2) If a foreign corporation is a party to the articles, the transaction shall
23 be advised, authorized, and approved by the corporation in the manner and by the
24 vote required by its charter and the laws of the place where it is organized.

25 (d) (1) Unless waived by all minority stockholders, at least 30 days before
26 the articles are filed with the Department, a parent corporation which owns less than
27 all of the outstanding stock of the subsidiary shall give notice of the transaction to
28 each of the subsidiary's minority stockholders of record on the date of giving of the
29 notice or on a record date fixed for that purpose which is not more than 10 days before
30 the date of giving notice.

31 (2) A minority stockholder of the subsidiary has the right to demand and
32 receive payment of the fair value of his stock as provided in Subtitle 2 of this title
33 relating to objecting stockholders.

34 3-202.

35 (b) (1) Fair value is determined as of the close of business:

36 (i) With respect to a merger under § 3-106 of this title of a 90
37 percent or more owned subsidiary WITH OR into its parent CORPORATION, on the day
38 notice is given or waived under § 3-106; or

1 (ii) With respect to any other transaction, on the day the
2 stockholders voted on the transaction objected to.

3 (2) Except as provided in paragraph (3) of this subsection, fair value may
4 not include any appreciation or depreciation which directly or indirectly results from
5 the transaction objected to or from its proposal.

6 (3) In any transaction governed by § 3-602 of this title or exempted by §
7 3-603(b) of this title, fair value shall be value determined in accordance with the
8 requirements of § 3-603(b) of this title.

9 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
10 by § 3-603(b) of this title, a stockholder may not demand the fair value of his stock
11 and is bound by the terms of the transaction if:

12 (1) The stock is listed on a national securities exchange or is designated
13 as a national market system security on an interdealer quotation system by the
14 National Association of Securities Dealers, Inc.:

15 (i) With respect to a merger under § 3-106 of this title of a 90
16 percent or more owned subsidiary WITH OR into its parent CORPORATION, on the date
17 notice is given or waived under § 3-106; or

18 (ii) With respect to any other transaction, on the record date for
19 determining stockholders entitled to vote on the transaction objected to;

20 (2) The stock is that of the successor in a merger, unless:

21 (i) The merger alters the contract rights of the stock as expressly
22 set forth in the charter, and the charter does not reserve the right to do so; or

23 (ii) The stock is to be changed or converted in whole or in part in
24 the merger into something other than either stock in the successor or cash, scrip, or
25 other rights or interests arising out of provisions for the treatment of fractional
26 shares of stock in the successor; or

27 (3) The stock is that of an open-end investment company registered with
28 the Securities and Exchange Commission under the Investment Company Act of 1940
29 and the value placed on the stock in the transaction is its net asset value.

30 3-203.

31 (a) A stockholder of a corporation who desires to receive payment of the fair
32 value of his stock under this subtitle:

33 (1) Shall file with the corporation a written objection to the proposed
34 transaction:

1 (i) With respect to a merger under § 3-106 of this title of a 90
2 percent or more owned subsidiary WITH OR into its parent CORPORATION, within 30
3 days after notice is given or waived under § 3-106; or

4 (ii) With respect to any other transaction, at or before the
5 stockholders' meeting at which the transaction will be considered;

6 (2) May not vote in favor of the transaction; and

7 (3) Within 20 days after the Department accepts the articles for record,
8 shall make a written demand on the successor for payment for his stock, stating the
9 number and class of shares for which he demands payment.

10 8-202.

11 (c) Notwithstanding any provision of this title which requires for any action
12 the concurrence of a greater proportion of the votes than a majority of the votes
13 entitled to be cast, a real estate investment trust may provide by its declaration of
14 trust that the action may be taken or authorized on the concurrence of a GREATER OR
15 smaller proportion, but not less than a majority of the number of votes entitled to be
16 cast on the matter.

17 8-501.

18 (a) Except as provided in § 8-202(c) or § 8-203(a)(7) of this title, a declaration
19 of trust may be amended only as provided in this section.

20 (b) The board of trustees of a real estate investment trust proposing an
21 amendment to its declaration of trust shall:

22 (1) Adopt a resolution which sets forth the proposed amendment and
23 declares that it is advisable; and

24 (2) Direct that the proposed amendment be submitted for consideration
25 [at either an annual or a special meeting of] BY the shareholders.

26 (c) (1) [Notice] IF THE PROPOSED AMENDMENT IS TO BE CONSIDERED AT A
27 MEETING OF THE SHAREHOLDERS, NOTICE which states that a purpose of the
28 meeting will be to act upon the proposed amendment shall be given by the real estate
29 investment trust in the manner required by its declaration of trust or bylaws to:

30 (i) Each shareholder entitled to vote on the proposed amendment;
31 and

32 (ii) Each shareholder not entitled to vote on the proposed
33 amendment if the contract rights of the shareholder's shares, as expressly set forth in
34 the declaration of trust, would be altered by the amendment.

35 (2) The notice shall include a copy of the amendment or a summary of
36 the changes it will affect.

1 (d) The proposed amendment shall be approved by the shareholders of the real
2 estate investment trust by the affirmative vote OR WRITTEN CONSENT of two thirds
3 of all the votes entitled to be cast on the matter.

4 (e) A declaration of trust may permit:

5 (1) [the] THE BOARD OF trustees [by a two-thirds vote], WITH THE
6 APPROVAL OF TWO THIRDS OF ITS MEMBERS, AND WITHOUT ACTION BY THE
7 SHAREHOLDERS, to amend [provisions of] the declaration of trust from time to time
8 to qualify as a real estate investment trust under the Internal Revenue Code or under
9 this title; AND

10 (2) A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES, WITHOUT ACTION
11 BY THE SHAREHOLDERS, TO AMEND THE DECLARATION OF TRUST IN ANY RESPECT
12 IN WHICH THE CHARTER OF A CORPORATION MAY BE AMENDED IN ACCORDANCE
13 WITH § 2-605 OF THIS ARTICLE.

14 (f) Articles of amendment, setting forth the amendment and stating the
15 manner in which it was approved, shall be signed and acknowledged by at least a
16 majority of the trustees, or an officer duly authorized by at least a majority of the
17 trustees, and filed with the Department.

18 8-501.1.

19 (a) (3) "Foreign business trust" means a business trust organized under the
20 laws of the United States, another state of the United States, or a territory,
21 possession, or district of the United States, OR UNDER THE LAWS OF A FOREIGN
22 COUNTRY.

23 (c) A merger shall be approved in the manner provided by this section, except
24 that:

25 (3) A merger need be approved by a Maryland real estate investment trust
26 successor only by a majority of its entire board of trustees iff:

27 (i) The] THE merger does not reclassify or change THE TERMS OF
28 ANY CLASS OR SERIES OF its [outstanding] shares THAT ARE OUTSTANDING
29 IMMEDIATELY BEFORE THE MERGER BECOMES EFFECTIVE or otherwise amend its
30 declaration of trust]; and

31 (ii) The] AND THE number of shares [to be issued or delivered in the
32 merger is not more than] OF SUCH CLASS OR SERIES OUTSTANDING IMMEDIATELY
33 AFTER THE EFFECTIVE TIME OF THE MERGER DOES NOT INCREASE BY MORE THAN
34 20 percent of the number of its shares of the [same] class or series OF SHARES
35 outstanding immediately before the merger becomes effective; and

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1999.

