

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 728

(Delegates Feldman and Hammen)

Economic Matters

Judicial Proceedings

Corporations - Objecting Stockholders - Right to Fair Value of Stock

This bill grants stock appraisal rights to the stockholders of a publicly traded corporation chartered in the State in the event of specified transactions that involve the merger, consolidation, or exchange of shares of the corporation.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill permits a stockholder of a Maryland corporation, in the event of a merger, consolidation, or share exchange, to demand the fair value of the stockholder's stock in three situations. First, fair value may be demanded if, in the transaction, stock of the corporation is required to be converted into or exchanged for anything of value except

- stock of the corporation surviving or resulting from the transaction, or depository receipts for such stock;
- stock of any other corporation, or depository receipts for such stock;
- cash in lieu of fractional shares of the aforementioned stock or depository receipts;
- any combination of the preceding items.

Second, fair value may be demanded if the directors and executive officers of the corporation were the beneficial owners, in the aggregate, of 5% or more of the outstanding voting stock of the corporation at any time within the one-year period ending on either • the day the stockholders voted on the transaction objected to; or • the effective date of the merger.

Third, fair value may be demanded if any stock held by the aforementioned individuals as part of or in connection with the transaction, and within the aforementioned one-year period, will be or was converted into or exchanged for the stock of a person or the person's affiliate who is a party to the transaction on terms that are not available to all holders of stock of the same class or series. This third instance does not apply if the stock in question is held in accordance with a compensatory plan or arrangement approved by the board of directors of the corporation and the treatment of such stock in the transaction is also approved by the board. If the directors or executive officers of the corporation are beneficial owners of stock as defined by the bill, the stock is considered outstanding for purposes of determining beneficial ownership by a person in the second instance described above.

The bill defines a beneficial owner of voting stock as a person that • individually or with any affiliates or associates beneficially owns voting stock, directly or indirectly; • individually or with any affiliates or associates has the right to acquire voting stock in accordance with any agreement, arrangement, or understanding, on the exercise of conversion rights, exchange rights, warrants, options, or otherwise; • individually or with any affiliates or associates has the right to vote voting stock in accordance with any agreement, arrangement, or understanding, except solely by virtue of a revocable proxy; or • has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of voting stock, except solely by virtue of revocable proxy, with any other person that beneficially owns the voting stock directly or indirectly.

Current Law/Background: Under current law, publicly traded corporations chartered in the State are not subject to appraisal rights in connection with consolidations, mergers or other similar transactions. The bill would subject Maryland corporations to such appraisal rights in transactions involving conversion of stock into something other than stock of the surviving corporation, such as cash or notes. Appraisal rights would also be available in such transactions where any director or executive officer is treated differently than the public stockholders. Extending appraisal rights to these types of transactions would provide additional safeguards for the public stockholders of corporations that are merging, consolidating, or exchanging shares.

The terms that are specifically defined in the bill are intended to be construed in a manner consistent with that under the Securities Exchange Act of 1934 and the rules, regulations and interpretations of that statute.

Additional Information

Prior Introductions: None.

Cross File: SB 556 (Senator Gladden) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

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