

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 364 (Senator Raskin)  
Judicial Proceedings

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Corporations - Maryland General Corporation Law - Miscellaneous Provisions

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This bill alters various provisions of the Maryland General Corporation Law pertaining to the payment of a dividend, the scope of the board of directors' management, the qualifications of a nominee director, the election of a holdover director, stockholders' meetings, mergers, and the revival of the corporation.

The bill takes effect June 1, 2011.

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Fiscal Summary

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

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Stock Dividends*

The bill repeals a provision prohibiting a corporation from declaring or paying a dividend in shares of one class of stock to the holders of shares of another class of stock unless the dividend has been either approved by the board of directors or approved at a meeting of stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter of each class entitled to vote on it.

### *Board of Directors – Scope of Management*

The bill clarifies that all business and affairs of a corporation, whether or not in the ordinary course, must be managed under the direction of the board. The bill also revises a provision allowing members of the board to unanimously consent to undertake, without a meeting, an action normally required or permitted to be taken at meeting. Specifically, the bill requires that the unanimous consent must solely be from the members entitled to vote on the matter. The bill also clarifies how votes are counted when directors have more or less than one vote on any matter.

### *Board of Directors – Qualifications and Tenure*

The bill requires that each nominee for director of a corporation meet the qualifications required by the charter or bylaws of the corporation. In the event a director ceases to meet these qualifications, the director's term is terminated if the charter or bylaws authorizes termination in the event of failure to meet the qualifications.

### *Board of Directors – Election of Holdover Directors*

The bill establishes a procedure to elect directors to serve in the event there is a failure to elect all the directors at the designated time and the number of directors actually elected at the designated time together with the number of directors holding over exceeds the number of directors who were to be elected. If not otherwise specified in the charter or bylaws, a majority vote of the newly elected directors and, if the board is classified, any directors whose terms did not expire determine which of the remaining directors hold over, regardless of whether that amount constitutes a quorum.

### *Meeting of Stockholders*

The bill repeals a provision requiring the board of directors to provide a place for a meeting of the stockholders, if so requested by the stockholders, in the event of a board meeting held solely by means of remote communication.

### *Mergers*

The bill increases the number of mergers that may be approved by means other than an affirmative vote of two-thirds of the shareholders from each corporation. Additionally, in the event of a consolidation, merger, share exchange, or transfer, if the successor is a foreign corporation, foreign partnership, limited partnership, limited liability company, or a foreign business trust, then the name and address of its resident agent in the place where it is organized must be noted in the articles.

### *Revival of a Corporation*

The bill repeals the requirement that, in the event of a corporation's revival, the president or a director of the corporation must call a shareholders' meeting to elect a full board of directors at a specified time.

### **Current Law:**

#### *Stock Dividends*

A dividend payable in shares of one class of stock may not be declared or paid to holders of a different class, unless approved by the board of directors in accordance with the charter or approved at a meeting of stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter of each class entitled to vote on it.

#### *Board of Directors – Scope of Management*

The business and affairs of a corporation must be managed under the direction of a board of directors. Any action required or permitted to be taken at a meeting of the board of directors or board committee may be taken without a meeting if the directors give unanimous consent in writing or by electronic transmission and file the action in paper or electronic form with the minutes of proceedings of the board or committee.

#### *Board of Directors – Qualifications and Tenure*

Each director of a corporation must have the qualifications required by the charter or bylaws of the corporation. Except in specified corporations, directors hold their positions until the earlier of the next annual stockholder meeting and the election and qualification of their successors or the time provided in the terms of any class or series of stock pursuant to which such directors are elected.

#### *Board of Directors – Election of Holdover Directors*

There is no statutory process for the election of holdover directors if the number of holdover directors and newly elected directors exceed the number of directors who were to be elected. In the case of a failure to elect directors at the designated time, the directors holding over must continue to manage the corporation's business and affairs until their successors are elected and qualify.

### *Meeting of Stockholders*

If the board of directors is authorized to determine the place of a meeting of stockholders, the meeting may be held solely by means of remote communication. However, at the request of a stockholder, the board of directors must provide a place for a meeting of the stockholders.

### *Mergers*

A consolidation, merger, share exchange, or transfer of assets must be generally approved by a two-thirds majority of stockholders after having received a resolution from the board of directors stating whether the proposed transaction is advisable. If the merger does not reclassify or change the terms of any class or series of stock that is outstanding immediately before the merger and the number of its shares of stock of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20%, then the merger may instead be approved by a majority of a Maryland successor corporation's directors.

If a merger, transfer of assets, or other similar transaction occurs and the successor is a foreign corporation, foreign corporation, foreign partnership, limited partnership, limited liability company, or a foreign business trust, then the location of its principal office in the place it is organized and the name and address of its resident agent in Maryland must be included in the articles of the action.

### *Revival of a Corporation*

If a corporation's charter is forfeited due to the nonpayment of taxes, unemployment insurance contributions, or reimbursement payments or the failure to file an annual report, the charter may be revived by specified actions. Unless the corporation is registered under the Investment Company Act of 1940 (Act), a president or director of the corporation must call a meeting of the stockholders to elect a full board of directors. If a corporation is registered under this Act, the president or director is not required to call a meeting of stockholders until the corporation is required to hold an annual meeting.

**Background:** The bill is a result of recommendations received from the Corporate Laws Committee of the Business Law Section of the Maryland State Bar Association. According to the committee, it regularly reviews the Maryland General Corporation Law in an attempt to clarify unclear provisions and eliminate outdated language.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 295 (Delegate Feldman) - Economic Matters.

**Information Source(s):** State Department of Assessments and Taxation, Maryland State Bar Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2011  
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