Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 578 (Senator Raskin)
Judicial Proceedings Rules and Executive Nominations

Corporations and Real Estate Investment Trusts - Miscellaneous Provisions

This bill makes changes to miscellaneous provisions of the Corporations and Associations Article relating to corporations and real estate investment trusts (REITs).

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

General Powers of a Corporation: The bill authorizes a Maryland corporation to renounce, in its charter or by resolution of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, business opportunities that are presented to the corporation or developed by or presented to its directors or officers. Under current law, unless otherwise provided by law or its charter, a Maryland corporation has 17 statutorily enumerated general powers, including the ability to have perpetual existence.

Stock Dividends and Stock Splits: The bill repeals the requirement that a dividend payable in shares of one class of stock be approved by the board of directors or stockholders in a specified manner before being declared or paid to holders of another class of stock. Under current law, the payment has to have been approved by either the board of directors or 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.

Directors: The bill requires that each *nominee* for director of a corporation have the qualifications required by the corporation's charter or bylaws. If the charter or bylaws so require, the director's term must end upon the failure to meet qualifications required when initially elected. The bill establishes a specified method to determine the directors who will hold over in the event that the number of directors to be elected at the designated time, plus the number of directors who otherwise would hold over, is greater than the number of directors who were to be elected.

The bill also clarifies specified board voting procedures and allows a corporation's charter or bylaws to determine specified powers of the board.

Under current law, each director of a corporation must have the qualifications required by the corporation's charter or bylaws. Generally, the directors of a corporation hold office from the time elected until the earlier of (1) the next annual stockholder meeting and until their successors are elected and qualify or (2) the time provided in the terms of any class or series of stock pursuant to which such directors are elected.

In the event that there is a failure to elect directors to the board, the directors holding over must continue to manage the corporation's business and affairs until their successors are elected and qualify.

Any action required or permitted to be taken at a meeting of the board of directors or committee of the board may be taken without a meeting if unanimous consent is given by each member of the board or committee and the action is filed with the minutes of proceedings of the board or committee. The charter may provide that one or more directors or a class of directors have more or less than one vote per director on any matter.

The board of directors has the sole power to fix specified details concerning a special meeting of the board. Additionally, a stockholder has the right to request that the board of directors provide a place for a stockholder meeting. Otherwise, the board is authorized to determine that the meeting may be held remotely.

Voting Agreement: The bill authorizes two or more stockholders of a corporation to enter into a signed written voting agreement. Any such agreement may be specifically enforced and may be coupled with a proxy.

Under current law, one or more stockholders of a corporation may confer the right to vote or otherwise represent their stock to a trustee by entering into a written voting trust agreement detailing the voting trust's terms and conditions. The stockholders party to the agreement must then deposit an executed copy of the agreement with the corporation at its principal office and transfer the applicable stock to the trustee.

Exemption to Merger Procedure: The bill alters the method by which a specified merger of corporations is approved.

Generally, a consolidation, merger, share exchange, or transfer of assets must be approved in a specified manner. However, State law establishes an exemption for a merger involving a Maryland successor corporation if the merger treats stock in a specified manner or there is no stock outstanding or subscribed for and entitled to be voted on the merger. State law establishes a similar exception for a Maryland successor REIT.

Contents of Articles: The bill authorizes the specified treatment of ownership interests disclosed in articles of consolidation, merger, or share exchange to be made dependent on facts ascertainable outside the articles. The bill also authorizes the description of the nature and amount of the consideration to be paid, transferred, or issued for the assets of the transferor disclosed in articles of transfer to be made dependent on facts ascertainable outside the articles of transfer.

Under current law, articles of consolidation, merger, share exchange, or transfer must include specified information about the nature and treatment of ownership interests. Articles of transfer must include the nature and amount of the consideration to be paid, transferred, or issued for the transferor's assets or a statement detailing how the consideration is to be determined.

Meetings of Stockholders After Revival: The bill repeals the requirement that a president or director of a corporation registered under the Investment Company Act of 1940 must call a meeting of the stockholders to elect a full board of directors promptly after the charter of the corporation is revived.

REIT: The bill clarifies that a REIT is a separate legal entity and requires that a declaration of trust be filed for record with the State Department of Assessments and Taxation before the REIT is formed. The bill also authorizes a REIT to renounce, in its declaration of trust or by resolution of its board of trustees, any interest or expectancy of the REIT in, or in being offered an opportunity to participate in, business opportunities that are presented to the REIT or developed by or presented to its trustees or officers. The bill alters the method by which a specified merger of REITs is approved.

Under current law, a REIT is a permitted form of unincorporated business trust or association and may conduct business in the State if it complies with Title 8 of the

Corporations and Associations Article. A REIT has 15 statutorily enumerated general powers, including the right to perpetual existence if the declaration of trust does not provide otherwise.

Additional Information

Prior Introductions: None.

Cross File: HB 882 (Delegate Feldman) - Economic Matters.

Information Source(s): Department of Legislative Services

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