

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 522

(Delegate Kramer)

Economic Matters

Judicial Proceedings

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**Corporations - Maryland General Corporation Law - Miscellaneous Provisions**

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This bill establishes that, for corporation stock subscriptions, unless the subscription agreement provides otherwise, the subscriber has no voting or other rights with respect to the subscribed stock until the stock is issued and fully paid. The bill allows individuals to prospectively consent to an action by directors, whether or not the individual is then a director and as additionally specified in the bill. The bill also allows a person to prospectively consent to an informal action by stockholders, whether or not the person is then a stockholder and as additionally specified in the bill. The bill also amends specified requirements for merger agreements.

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**Fiscal Summary**

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

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:**

*Consent to Action by Directors*

An individual, whether or not then a director, may assent to an action by directors through a consent that becomes effective up to 60 days after delivery of the consent to the corporation or its agent. The effective time of a consent may be determined on the occurrence of an event up to 60 days after the consent is delivered. Consent is considered to be given at the effective time if the individual is a director at that time and did not revoke

consent before then. The consent is revocable before the effective time, unless otherwise specified in the consent.

### *Stockholder Informal Action*

A person, whether or not then a stockholder, may assent to an informal stockholder action through a consent that becomes effective up to 60 days after delivery of the consent to the corporation or its agent. The effective time of a consent may be determined on the occurrence of an event up to 60 days after the consent is delivered. Consent is considered to be given at the effective time if the person is a stockholder at that time and did not revoke the consent before then. The consent is revocable before the effective time, unless otherwise specified in the consent.

### *Merger Agreements Preceded by a Tender or Exchange Offer by an Acquiring Entity*

For merger agreements that establish the terms for consummation of the merger on or after October 1, 2014, and, unless prohibited by the corporation charter or the declaration of trust of a real estate investment trust, the bill alters the circumstances under which the merger of a subject corporation with or into an acquiring entity may be effected. Among other things, the bill specifies that a merger with or into an acquiring entity may be effected if:

- the agreement to merge specifically allows or requires the merger to be effected and specifies that the merger must be effected following consummation of a tender or exchange offer, as specified;
- except for stock which may be excluded from a tender or exchange offer, the consummation of such offer by an acquiring entity would entitle the holder of the outstanding shares to vote on the merger as authorized by the agreement terms;
- following consummation, the stock that is irrevocably accepted for purchase or exchange and received before the offer's expiration, as specified, together with the stock otherwise owned by specified entities equals at least the percentage of shares and each class or series of shares of the subject corporation that would be required to approve the merger, as specified; these entities are:
  - the acquiring entity; or
  - a person that owns, directly or indirectly, all of the outstanding equity interest in the acquiring entity, and a direct or indirect wholly owned subsidiary of the acquiring entity; or

- a person that owns all of the outstanding equity interest in the acquiring entity either directly or indirectly;
- the acquiring entity merges with or into the subject corporation; and
- each share of each class or series of shares of the subject corporation that is the subject of and *not irrevocably accepted* for purchase or exchange is converted into the same amount of cash, property, rights, or securities that is paid for shares of the class or series of shares of the subject corporation that *are irrevocably accepted* for purchase or exchange in the offer, as specified.

Stock owned by the acquiring entity, by a person that owns all of the outstanding equity interest in the acquiring entity, or by a direct or indirect wholly owned subsidiary at the time of commencement of the offer may be excluded from specified tender or exchange offers.

The bill defines “consummate” as to irrevocably accept, for purchase or exchange, stock tendered in accordance with a tender or exchange offer. “Depository” means an agent appointed to consummate the offer. For certificated shares, “received” means physical receipt and transfer of the stock certificate into the depository account. For uncertificated shares, “received” means receipt from the depository of confirmation of the transfer of the shares into the depository’s account.

### **Current Law:**

#### *Subscription of Stock*

A stock subscription for a corporation not yet formed is irrevocable for a period of three months, unless otherwise specified in the agreement or every subscriber consents to the revocation. A subscription is not void solely because less than all of the authorized stock is subscribed. A subscription for stock must be paid in full or in installments at times set by the board of directors, unless otherwise specified in the agreement.

#### *Consent to Action by Directors*

Unless otherwise specified by law or in the corporation’s charter or bylaws, the action of a majority of the directors present at a meeting at which a quorum is present constitutes the action of the board of directors. An informal action by directors may be taken without a meeting if a unanimous consent which sets forth the action is given in writing or electronically by each member of the board or committee entitled to vote, and is filed in paper or electronically with the minutes of the proceedings.

### *Stockholder Informal Action*

Any stockholder action required or permitted to be taken at a stockholder meeting may be taken without a meeting if a unanimous consent which sets forth the action is given in writing or electronically by each stockholder entitled to vote, and is filed in paper or electronically with the meeting records. Stockholder action may also be taken with less than unanimous consent, under specified conditions.

### *Merger Agreements Preceded by a Tender or Exchange Offer by an Acquiring Entity*

For merger agreements that provide for the consummation of the merger on or after October 1, 2014, a merger may be effectuated if, following the consummation of the offer, the acquiring entity owns at least that percentage of shares, and of each class or series of the shares, of the subject corporation that would, except as otherwise specified, be required to approve the merger under the Corporations and Associations Article and the charter of the subject corporation.

The outstanding shares of each class or series of shares of the subject corporation not canceled in the merger must be converted in the merger into the same amount and kind of securities paid for shares of the class or series of shares of the subject corporation on consummation of the offer.

**Background:** The bill is a result of recommendations by the Committee on Corporation Law of the Business Law Section of the Maryland State Bar Association. According to the committee, it regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 681 (Senators Feldman and Raskin) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - February 24, 2015  
mar/kdm Revised - Clarification - March 19, 2015

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Analysis by: Sasika Subramaniam

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510