

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 781
Economic Matters

(Delegate Dumais)

Judicial Proceedings

Corporations and Real Estate Investment Trusts – Miscellaneous

This bill makes various changes to laws governing corporate actions for corporations and real estate investment trusts (REITs) as applicable, including with respect to forum selection requirements, remote stockholders meetings, the Maryland Control Share Acquisition Act (MCSAA), and premature stock issuances. The bill also makes other technical and clarifying changes.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Forum Selection

The bill clarifies that a corporation’s charter or bylaws may require that any internal corporate claim be brought only in specified circuit courts of the State or a federal court sitting in the State. Courts outside the State may also be designated as additional venues. As REITs are subject to this provision of law, the clarification also applies to venues for such internal claims for REITs.

Remote Stockholders Meetings

Under current law, a corporation may allow stockholders to participate in a meeting by means of a conference telephone or other communications equipment if all participants can hear each other at the same time. Under the bill, the requirement is revised to allow for participation by conference telephone or other communications equipment if all participants can read or hear the proceedings of the meeting substantially concurrently with the proceedings.

The bill allows a board to hold a stockholders meeting either partially or entirely remotely. The bill eliminates a provision requiring a board of directors, at the request of a stockholder, to provide a place for a stockholders meeting. The bill also makes REITs subject to this provision of law, so that the authorization for remote meetings also applies to them.

Maryland Control Share Acquisition Act

Under MCSAA, holders of “control shares” of a corporation acquired in a “control share acquisition” have no voting rights with respect to the control shares except to the extent approved by a two-thirds vote of other stockholders (*i.e.*, excluding the interested holders of the control shares themselves). Though MCSAA does not apply to certain types of corporations, a corporation registered under the Investment Company Act of 1940 as a closed-end investment company may opt *in* to MCSAA.

The bill clarifies that shares acquired prior to the time a corporation is subject to MCSAA (*i.e.*, including if and when it opts in to the Act) are excluded from the definition of “control share acquisition” that, in turn, determines voting rights. Under MCSAA, holders of control shares have no voting rights with respect to control shares *acquired in a control share acquisition* (unless two-thirds approval from other stockholders is obtained).

Under current law, “control shares” means shares of stock that would, if aggregated with all other shares of the corporation’s stock (including shares excluded from a control share acquisition), entitle a person, as specified, to vote for corporation directors within three specified ranges of voting power. The bill clarifies that the definition of “control shares” includes shares of stock acquired within the three specified ranges of voting power, even if the initial shares acquired within the applicable range of voting power are excluded from a control share acquisition.

Premature Stock Issuance

Under current law, a corporation must file articles supplementary with the State Department of Assessments and Taxation if, under a power contained in its charter, the

corporation's board of directors classifies or reclassifies any unissued stock. Stock issued by a corporation prior to the time the articles supplementary become effective ceases to be voidable as a result of the failure to file the articles supplementary at the time the articles supplementary become effective. A right or liability accrued because a corporation issued stock before the articles supplementary are effective is extinguished at the time the articles supplementary become effective, except to the extent that the person with the right or liability has acted detrimentally in reliance on the right or liability solely because the stock was issued.

The bill provides for this same dynamic – *i.e.*, prematurely issued stock or shares cease to be voidable upon an effective date and rights or liabilities extinguish, save for detrimental reliance – with respect to articles of amendment filed by a corporation, articles supplementary filed by a REIT, or an amendment to a REIT's declaration of trust.

Other Technical and Clarifying Changes

Reverse Stock Splits: The bill eliminates a provision in current law that explicitly authorizes a corporation registered as an open-end investment company under the Investment Company Act of 1940 (*i.e.*, most commonly, a mutual fund) to effect certain reverse stock splits with the approval of a majority of the board of directors and without stockholder action. Chapters 292 and 293 of 2020 generally authorized open-end investment companies to amend their charters with majority approval of the entire board of directors. Accordingly, the bill eliminates the specific authorization (which extends to REITs as well) with respect to reverse stock splits as superfluous.

Board Removal of Officers or Agents: The bill eliminates, as superfluous, a provision explicitly acknowledging that a board of directors may remove any officer or agent of the corporation if the board in its judgment finds that removal will serve the best interests of the corporation. This revision is made in light of the fact that the Maryland General Corporation Law already, and generally, requires directors to act with a reasonable belief that their actions are in the best interests of the corporation.

Additional Comments: The bill implements recommendations of the Maryland State Bar Association whose Committee on Corporation Law monitors the Maryland General Corporation Law.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 263 (Senators West and Waldstreicher) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Bar Association; Department of Legislative Services

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