

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 58

(Senators West and Waldstreicher)

Judicial Proceedings

Economic Matters

Corporations and Associations - Revisions

This bill alters numerous miscellaneous provisions of the Corporations and Associations Article, including those relating to: (1) the issuance of stock or convertible securities as part of a conversion; (2) stock certificates, scrip, and limited liability company (LLC) certificates issued in bearer form; (3) remote participation at stockholders' meetings; (4) conversions of a close corporation; (5) directors of a nonstock corporation; (6) dissolution of a real estate investment trust (REIT); and (7) the Maryland Control Share Acquisition Act and statutory trusts. The bill also makes other technical and clarifying changes.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

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

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Issuance of Stock or Convertible Securities as Part of a Conversion

Under current law, a board of directors must generally adopt a resolution meeting specified requirements before issuing stock or convertible securities. However, these provisions do not apply to the issuance of stock or convertible securities as part of a consolidation, merger, or share exchange (including when a wholly owned subsidiary of the corporation

is a party). The bill adds a conversion to the type of transactions where the provisions do not apply.

Stock Certificates, Scrip, and Limited Liability Certificates Issued in Bearer Form

Under current law, a corporation is not prohibited from issuing a stock certificate or a certificate representing scrip in bearer form. An LLC's operating agreement may establish the right to have and a procedure for having a member's membership interest evidenced by a certificate issued by the LLC in bearer form.

The bill prohibits issuing a stock certificate, a certificate representing scrip, or an LLC membership certificate in bearer form. "Bearer form" means that the stock, scrip, or LLC membership certificate is not registered "on the books" of the corporation or LLC, and it is payable to the person who possesses (or "bears") the certificate as proof of rightful ownership. Under the bill, for scrip issued without a certificate, on request by a scripholder, the corporation must deliver to the scripholder (without charge), a statement in writing or by electronic transmission of the information required to be on a stock certificate, as specified.

Remote Participation at Stockholders' Meetings

Under current law and if specified requirements are met, stockholders and proxy holders who are not physically present at a stockholders' meeting may, by remote communication, be considered present in person and may vote at the stockholders' meeting whether the meeting is held at a designated place or *solely* by remote communication. The bill clarifies that such a meeting may also be held *partially* by remote communication.

Conversions of a Close Corporation

Under current law, a consolidation, merger, share exchange, or transfer of assets of a close corporation must be made in accordance with the provisions of Title 3 of the Corporations and Associations Article; however, approval of a proposed consolidation or merger, a transfer of assets, or an acquisition of stock in a share exchange requires the affirmative vote of every stockholder of the corporation. The bill specifies that these provisions also apply to a conversion of a close corporation.

Directors of a Nonstock Corporation

Under current law, the charter or bylaws of a nonstock corporation may, among other provisions, prescribe the tenure and conditions of service of its directors, as specified. The bill establishes that the charter or bylaws of a nonstock corporation may also provide that an individual may serve as a director by reason of serving in a specified office or position

within or outside the corporation and prescribe that the individual must serve as a director during the individual's service in the specified office or position.

Dissolution of a Real Estate Investment Trust

Under current law, a REIT may terminate its existence by voluntary dissolution and the State Department of Assessments and Taxation (SDAT) must be notified of the effective date of the dissolution. Under current law, a REIT may also curtail or cease its trust activities by partially or completely distributing its assets; the bill repeals this provision.

The bill further requires that in order to terminate its existence, a REIT must file a notice of termination with SDAT that includes (1) the name of the REIT; (2) a statement that the termination of the REIT by voluntary dissolution was approved in the manner and by the vote required by law and by the declaration of trust of the REIT, as well as a statement detailing the manner of approval; (3) all other provisions the board of the REIT considers necessary to dissolve and terminate the REIT; and (4) a statement that the REIT is dissolved and terminated.

The bill further specifies who must execute the notice of termination, and that the REIT is generally dissolved and terminated on the later of (1) the time that SDAT accepts the notice of termination for record or (2) the time established by the notice of termination, not to exceed 30 days after the notice is accepted for record by SDAT. However, the REIT continues to exist for the purpose of (1) paying, satisfying, and discharging any existing debts or obligations; (2) collecting and distributing assets; and (3) taking all other actions required to liquidate and wind up its business and affairs.

The Maryland Control Share Acquisition Act and Statutory Trusts

The bill specifies that the Maryland Control Share Acquisition Act (Title 3, Subtitle 7 of the Corporations and Associations Article) applies to a statutory trust formed on or after October 1, 2023, that is a closed-end investment company as defined in the Investment Company Act of 1940. The bill also specifies that the governing instrument of a statutory trust formed before October 1, 2023, that is a closed-end investment company as defined in the Investment Company Act of 1940, may provide that the Maryland Control Share Acquisition Act applies to the statutory trust.

Additional Comments: The bill implements recommendations of the Maryland State Bar Association, whose Committee on Corporation Law regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 209 (Delegate Watson) - Economic Matters.

Information Source(s): Office of the Attorney General (Securities Division); State Department of Assessments and Taxation; Department of Legislative Services

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