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By: **Delegate Frank**

Introduced and read first time: January 30, 1998

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Extraordinary Actions**

3 FOR the purpose of allowing certain amendments to be made to the charter of a  
4 corporation or to the declaration of trust of a real estate investment trust  
5 without stockholder or shareholder approval; repealing certain provisions of law  
6 allowing certain amendments to be made to the charter of a corporation without  
7 stockholder approval; allowing a Maryland corporation to consolidate with and  
8 merge into a corporation or business trust organized under the laws of a foreign  
9 country; allowing a Maryland real estate investment trust to merge into a  
10 business trust organized under the laws of a foreign country; altering the  
11 circumstances under which a merger of a 90 percent or more owned subsidiary  
12 corporation with or into its parent corporation may be effected without  
13 stockholder approval; allowing a declaration of trust of a real estate investment  
14 trust to include a provision requiring for any action a greater proportion of votes  
15 than provided by statute; allowing proposed amendments to the declaration of  
16 trust of a real estate investment trust to be approved by written consent of the  
17 shareholders; altering certain definitions; making conforming and stylistic  
18 changes; and generally relating to mergers, consolidations, and amendments to  
19 the charters of corporations and the declarations of trust of real estate  
20 investment trusts.

21 BY repealing and reenacting, with amendments,  
22 Article - Corporations and Associations  
23 Section 2-105(a) and (c), 2-306, 2-604, 2-605, 2-607(a), 3-101(b) and (e),  
24 3-106, 3-202(b) and (c), 3-203(a), 8-202(c), 8-501, and 8-501.1(a)(3)  
25 Annotated Code of Maryland  
26 (1993 Replacement Volume and 1997 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
28 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Corporations and Associations**

2 2-105.

3 (a) A corporation may provide by its charter:

4 (1) For one or more classes of stock, the voting rights of each class, and  
5 any restriction on or denial of these rights;

6 (2) As to each class of stock, either the par value of the shares or that the  
7 shares are without par value;

8 (3) (i) That the corporation shall set apart dividends for or pay  
9 dividends to the holders of a specified class of stock before any dividends are set apart  
10 for or paid to the holders of another class of stock;

11 (ii) The rate, amount, and time of payment of the dividends; and

12 (iii) Whether the dividends are cumulative, cumulative to a limited  
13 extent, or noncumulative;

14 (4) That any specified class of stock is preferred over another class as to  
15 its distributive share of the assets on voluntary or involuntary liquidation of the  
16 corporation and the amount of the preference;

17 (5) That any specified class of stock may be redeemed at the option of the  
18 corporation or of the holders of the stock and the terms and conditions of redemption,  
19 including the time and price of redemption;

20 (6) That any specified class of stock is convertible into shares of stock of  
21 one or more other classes and the terms and conditions of conversion;

22 (7) That the holders of any specified securities issued or to be issued by  
23 the corporation have any voting or other rights which, by law, are or may be conferred  
24 on stockholders;

25 (8) For any other preferences, rights, restrictions, including restrictions  
26 on transferability, and qualifications not inconsistent with law;

27 (9) That the board of directors may classify or reclassify any unissued  
28 stock from time to time by setting or changing the preferences, conversion or other  
29 rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms  
30 or conditions of redemption of the stock;

31 (10) (i) For any grant to the holders of the stock of the corporation,  
32 including a specified class or series of stock, of the preemptive right to subscribe to:

33 1. Any or all additional issues of the stock; or

34 2. Any securities of the corporation convertible into  
35 additional issues of stock; or

1 (ii) For any definition or limitation of the preemptive rights of  
2 stockholders to acquire additional stock or securities in the corporation; [and]

3 (11) For restrictions on transferability for any purpose, including  
4 restrictions designed to permit a corporation to qualify as:

5 (i) A real estate investment trust under the Internal Revenue Code  
6 or regulations adopted under the Internal Revenue Code; or

7 (ii) An investment company under the Investment Company Act of  
8 1940 or regulations adopted under the Investment Company Act of 1940; AND

9 (12) THAT THE BOARD OF DIRECTORS, WITH THE APPROVAL OF A  
10 MAJORITY OF THE ENTIRE BOARD, AND WITHOUT ACTION BY THE STOCKHOLDERS,  
11 MAY AMEND THE CHARTER TO INCREASE OR DECREASE THE AGGREGATE NUMBER  
12 OF SHARES OF STOCK OF THE CORPORATION OR THE NUMBER OF SHARES OF STOCK  
13 OF ANY CLASS THAT THE CORPORATION HAS AUTHORITY TO ISSUE.

14 (c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE  
15 board of directors of a corporation that is registered or intends to register as an  
16 open-end company under the Investment Company Act of 1940, after the registration  
17 as an open-end company takes effect, may increase or decrease the aggregate number  
18 of shares of stock or the number of shares of stock of any class that the corporation  
19 has authority to issue, unless a provision has been included in the charter of the  
20 corporation after July 1, 1987 prohibiting an action by the board of directors to  
21 increase or decrease the aggregate number of shares of stock or the number of shares  
22 of stock of any class that the corporation has authority to issue.

23 2-306.

24 (a) Unless the charter provides otherwise, if stated capital is reduced by  
25 retiring stock held by the corporation, the board of directors may approve the  
26 reduction without stockholder action.

27 (b) (1) Except as provided in subsection (a) of this section OR IN § 2-605 OF  
28 THIS TITLE, a reduction of stated capital of a corporation, whether to be effected with  
29 or without a charter amendment, shall be approved in the manner provided in this  
30 subsection.

31 (2) The board of directors shall:

32 (i) Adopt a resolution which declares that the charter amendment,  
33 if any, and the proposed reduction is advisable; and

34 (ii) Direct that the proposed reduction and any charter amendment  
35 be submitted for consideration at either an annual or special meeting of the  
36 stockholders.

1 (3) A notice which states that a purpose of the meeting will be to act on  
2 the proposed reduction and any charter amendment shall be given in the manner  
3 required by Subtitle 5 of this title to each stockholder entitled to vote on the matter.

4 (4) The proposed reduction and any charter amendment shall be  
5 approved by the stockholders of the corporation by the affirmative vote of two thirds  
6 of all the votes entitled to be cast on the matter.

7 2-604.

8 (A) THIS SECTION DOES NOT APPLY TO A CHARTER AMENDMENT PERMITTED  
9 BY § 2-105(A)(12) OF THIS TITLE.

10 [(a)] (B) If there is any stock outstanding or subscribed for entitled to be voted  
11 on the charter amendment, it shall be approved as provided in this section.

12 [(b)] (C) The board of directors of a corporation proposing a charter  
13 amendment shall:

14 (1) Adopt a resolution which sets forth the proposed amendment and  
15 declares that it is advisable; and

16 (2) Direct that the proposed amendment be submitted for consideration  
17 at either an annual or a special meeting of the stockholders.

18 [(c)] (D) (1) Notice which states that a purpose of the meeting will be to act  
19 on the proposed amendment shall be given by the corporation in the manner required  
20 by Subtitle 5 of this title to:

21 (i) Each stockholder entitled to vote on the proposed amendment;  
22 and

23 (ii) Each stockholder not entitled to vote on the proposed  
24 amendment if the contract rights of his stock, as expressly set forth in the charter,  
25 would be altered by the amendment.

26 (2) The notice shall include a copy of the amendment or a summary of  
27 the changes it will effect.

28 [(d)] (E) The proposed amendment shall be approved by the stockholders of  
29 the corporation by the affirmative vote of two thirds of all the votes entitled to be cast  
30 on the matter.

31 2-605.

32 (a) Notwithstanding the provisions of § 2-604 of this subtitle, a majority of the  
33 entire board of directors, without action by the stockholders, may amend the charter  
34 of a corporation to:

1 (1) [Delete from the corporate name the word "The" or the name of a  
2 political subdivision or other geographical location of the State] CHANGE THE NAME  
3 OF THE CORPORATION; OR

4 (2) [Abbreviate the word "corporation", "incorporated", "company", or  
5 "limited" in the corporate name;] CHANGE THE NAME OR OTHER DESIGNATION OR  
6 THE PAR VALUE OF ANY CLASS OR SERIES OF STOCK OF THE CORPORATION AND THE  
7 AGGREGATE PAR VALUE OF THE STOCK OF THE CORPORATION.

8 [(3) Substitute in the corporate name for its respective abbreviation the  
9 word "corporation", "incorporated", "company", or "limited"; or

10 (4) If the corporation is registered as an open-end company under the  
11 Investment Company Act of 1940, change its corporate name or change the name or  
12 other designation of any class or series of its stock.]

13 (b) A change in THE name or OTHER designation of a class or series of stock  
14 under subsection [(a)(4)] (A)(2) of this section may not change the preferences,  
15 conversion or other rights, voting powers, restrictions, limitations as to dividends,  
16 qualifications, or terms or conditions of redemption of the class or series of stock.

17 2-607.

18 (a) Articles of amendment shall set forth the amendment and state:

19 (1) That the amendment was advised by the board of directors and  
20 approved by the stockholders; or

21 (2) That the amendment was approved by a majority of the entire board  
22 of directors and that:

23 (i) No stock entitled to be voted on the matter was outstanding or  
24 subscribed for at the time of approval; or

25 (ii) The amendment is limited to a change expressly permitted by §  
26 2-605 of this subtitle OR BY § 2-105(A)(12) OF THIS TITLE to be made without action by  
27 the stockholders [and, if approved under § 2-605(a)(4) of this subtitle, that the  
28 corporation is registered as an open-end company under the Investment Company  
29 Act of 1940].

30 3-101.

31 (b) "Foreign corporation" means a corporation organized under the laws of the  
32 United States, another state of the United States, or a territory, possession, or district  
33 of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

34 (e) "Foreign business trust" means a business trust organized under the laws  
35 of the United States, another state of the United States, or a territory, possession, or  
36 district of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

1 3-106.

2 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a  
3 90 percent or more owned subsidiary corporation WITH OR into its parent corporation  
4 may be effected as provided in this section[,] if:

5 (1) [the] THE charter of the [parent] SUCCESSOR is not amended in the  
6 merger OTHER THAN TO CHANGE ITS NAME, THE NAME OR OTHER DESIGNATION OR  
7 THE PAR VALUE OF ANY CLASS OR SERIES OF ITS STOCK, OR THE AGGREGATE PAR  
8 VALUE OF ITS STOCK; AND

9 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED  
10 IN THE MERGER IN EXCHANGE FOR STOCK OF THE PARENT CORPORATION ARE  
11 IDENTICAL TO THE CONTRACT RIGHTS OF THE STOCK FOR WHICH THE STOCK OF  
12 THE SUCCESSOR WAS EXCHANGED.

13 (b) For the purposes of this section, a subsidiary is considered to be 90 percent  
14 or more owned if the parent corporation owns shares entitled to cast 90 percent or  
15 more of all the votes entitled to be cast of each group or class of shares entitled to vote  
16 as a group or class on the merger.

17 (c) (1) The board of directors of each Maryland corporation proposing to  
18 become a party to the merger shall adopt a resolution which approves the proposed  
19 merger on substantially the terms and conditions set forth or referred to in the  
20 resolution. The approval shall be by a majority vote of the entire board of directors. A  
21 meeting of the stockholders is not necessary.

22 (2) If a foreign corporation is a party to the articles, the transaction shall  
23 be advised, authorized, and approved by the corporation in the manner and by the  
24 vote required by its charter and the laws of the place where it is organized.

25 (d) (1) Unless waived by all minority stockholders, at least 30 days before  
26 the articles are filed with the Department, a parent corporation which owns less than  
27 all of the outstanding stock of the subsidiary shall give notice of the transaction to  
28 each of the subsidiary's minority stockholders of record on the date of giving of the  
29 notice or on a record date fixed for that purpose which is not more than 10 days before  
30 the date of giving notice.

31 (2) A minority stockholder of the subsidiary has the right to demand and  
32 receive payment of the fair value of his stock as provided in Subtitle 2 of this title  
33 relating to objecting stockholders.

34 3-202.

35 (b) (1) Fair value is determined as of the close of business:

36 (i) With respect to a merger under § 3-106 of this title of a 90  
37 percent or more owned subsidiary WITH OR into its parent, on the day notice is given  
38 or waived under § 3-106; or

1 (ii) With respect to any other transaction, on the day the  
2 stockholders voted on the transaction objected to.

3 (2) Except as provided in paragraph (3) of this subsection, fair value may  
4 not include any appreciation or depreciation which directly or indirectly results from  
5 the transaction objected to or from its proposal.

6 (3) In any transaction governed by § 3-602 of this title or exempted by §  
7 3-603(b) of this title, fair value shall be value determined in accordance with the  
8 requirements of § 3-603(b) of this title.

9 (c) Unless the transaction is governed by § 3-602 of this title or is exempted  
10 by § 3-603(b) of this title, a stockholder may not demand the fair value of his stock  
11 and is bound by the terms of the transaction if:

12 (1) The stock is listed on a national securities exchange or is designated  
13 as a national market system security on an interdealer quotation system by the  
14 National Association of Securities Dealers, Inc.:

15 (i) With respect to a merger under § 3-106 of this title of a 90  
16 percent or more owned subsidiary WITH OR into its parent, on the date notice is given  
17 or waived under § 3-106; or

18 (ii) With respect to any other transaction, on the record date for  
19 determining stockholders entitled to vote on the transaction objected to;

20 (2) The stock is that of the successor in a merger, unless:

21 (i) The merger alters the contract rights of the stock as expressly  
22 set forth in the charter, and the charter does not reserve the right to do so; or

23 (ii) The stock is to be changed or converted in whole or in part in  
24 the merger into something other than either stock in the successor or cash, scrip, or  
25 other rights or interests arising out of provisions for the treatment of fractional  
26 shares of stock in the successor; or

27 (3) The stock is that of an open-end investment company registered with  
28 the Securities and Exchange Commission under the Investment Company Act of 1940  
29 and the value placed on the stock in the transaction is its net asset value.

30 3-203.

31 (a) A stockholder of a corporation who desires to receive payment of the fair  
32 value of his stock under this subtitle:

33 (1) Shall file with the corporation a written objection to the proposed  
34 transaction:

1 (i) With respect to a merger under § 3-106 of this title of a 90  
2 percent or more owned subsidiary WITH OR into its parent, within 30 days after notice  
3 is given or waived under § 3-106; or

4 (ii) With respect to any other transaction, at or before the  
5 stockholders' meeting at which the transaction will be considered;

6 (2) May not vote in favor of the transaction; and

7 (3) Within 20 days after the Department accepts the articles for record,  
8 shall make a written demand on the successor for payment for his stock, stating the  
9 number and class of shares for which he demands payment.

10 8-202.

11 (c) Notwithstanding any provision of this title which requires for any action  
12 the concurrence of a greater proportion of the votes than a majority of the votes  
13 entitled to be cast, a real estate investment trust may provide by its declaration of  
14 trust that the action may be taken or authorized on the concurrence of a GREATER OR  
15 smaller proportion, but not less than a majority of the number of votes entitled to be  
16 cast on the matter.

17 8-501.

18 (a) Except as provided in § 8-202(c) or § 8-203(a)(7) of this title, a declaration  
19 of trust may be amended only as provided in this section.

20 (b) The board of trustees of a real estate investment trust proposing an  
21 amendment to its declaration of trust shall:

22 (1) Adopt a resolution which sets forth the proposed amendment and  
23 declares that it is advisable; and

24 (2) Direct that the proposed amendment be submitted for consideration  
25 [at either an annual or a special meeting of] BY the shareholders.

26 (c) (1) [Notice] IF THE PROPOSED AMENDMENT IS TO BE CONSIDERED AT A  
27 MEETING OF THE SHAREHOLDERS, NOTICE which states that a purpose of the  
28 meeting will be to act upon the proposed amendment shall be given by the real estate  
29 investment trust in the manner required by its declaration of trust or bylaws to:

30 (i) Each shareholder entitled to vote on the proposed amendment;  
31 and

32 (ii) Each shareholder not entitled to vote on the proposed  
33 amendment if the contract rights of the shareholder's shares, as expressly set forth in  
34 the declaration of trust, would be altered by the amendment.

35 (2) The notice shall include a copy of the amendment or a summary of  
36 the changes it will affect.

1 (d) The proposed amendment shall be approved by the shareholders of the real  
2 estate investment trust by the affirmative vote OR WRITTEN CONSENT of two thirds  
3 of all the votes entitled to be cast on the matter.

4 (e) A declaration of trust may permit:

5 (1) [the] THE BOARD OF trustees [by a two-thirds vote], WITH THE  
6 APPROVAL OF TWO THIRDS OF ITS MEMBERS, AND WITHOUT ACTION BY THE  
7 SHAREHOLDERS, to amend [provisions of] the declaration of trust from time to time  
8 to qualify as a real estate investment trust under the Internal Revenue Code or under  
9 this title; AND

10 (2) A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES, WITHOUT ACTION  
11 BY THE SHAREHOLDERS, TO AMEND THE DECLARATION OF TRUST IN ANY RESPECT  
12 IN WHICH THE CHARTER OF A CORPORATION MAY BE AMENDED PURSUANT TO §  
13 2-605 OF THIS ARTICLE.

14 (f) Articles of amendment, setting forth the amendment and stating the  
15 manner in which it was approved, shall be signed and acknowledged by at least a  
16 majority of the trustees, or an officer duly authorized by at least a majority of the  
17 trustees, and filed with the Department.

18 8-501.1.

19 (a) (3) "Foreign business trust" means a business trust organized under the  
20 laws of the United States, another state of the United States, or a territory,  
21 possession, or district of the United States, OR UNDER THE LAWS OF A FOREIGN  
22 COUNTRY.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 1998.