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By: **Delegate Barve**

Introduced and read first time: January 28, 1999

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Powers of Corporations**  
3 **and Boards of Directors - Extraordinary Actions**

4 FOR the purpose of altering the power of a corporation to make certain gifts or  
5 contributions by repealing certain restrictions on the power and allowing gifts or  
6 contributions to be made in cash, other property, or stock or other securities of  
7 the corporation; allowing a corporation to issue stock or other securities of the  
8 corporation without consideration of any kind under certain circumstances;  
9 allowing certain amendments to be made to the charter of a corporation or to the  
10 declaration of trust of a real estate investment trust without stockholder or  
11 shareholder approval; allowing a Maryland corporation to consolidate with and  
12 merge into a corporation or business trust organized under the laws of a foreign  
13 country; clarifying the circumstances under which certain mergers need be  
14 approved only by a majority of the entire board of directors; allowing a Maryland  
15 real estate investment trust to merge into a business trust organized under the  
16 laws of a foreign country; altering the circumstances under which a merger of a  
17 90 percent or more owned subsidiary corporation with or into its parent  
18 corporation may be effected without stockholder approval; allowing a  
19 declaration of trust of a real estate investment trust to include a provision  
20 requiring for any action a greater proportion of votes than provided by statute;  
21 allowing proposed amendments to the declaration of trust of a real estate  
22 investment trust to be approved by written consent of the shareholders; altering  
23 certain definitions; making conforming and stylistic changes; and generally  
24 relating to corporations and real estate investment trusts.

25 BY repealing and reenacting, with amendments,  
26 Article - Corporations and Associations  
27 Section 2-103(13), 2-105(a) and (c), 2-203, 2-306, 2-604, 2-605, 2-607(a),  
28 3-101(b) and (e), 3-105(a)(5), 3-106, 3-202(b) and (c), 3-203(a), 8-202(c),  
29 8-501, and 8-501.1(a)(3)  
30 Annotated Code of Maryland  
31 (1993 Replacement Volume and 1998 Supplement)

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

1 **Article - Corporations and Associations**

2 2-103.

3 Unless otherwise provided by law or its charter, a Maryland corporation has the  
4 general powers, whether or not they are set forth in its charter, to:

5 (13) [If authorized by its board of directors, make] MAKE [reasonable]  
6 gifts or contributions [out of profits] IN CASH, OTHER PROPERTY, OR STOCK OR  
7 OTHER SECURITIES OF THE CORPORATION to or for the use of:

8 (i) The United States, this State, another state of the United  
9 States, a territory, possession, or district of the United States, or any institution,  
10 agency, or political subdivision of any of them; and

11 (ii) Any governmental or other organization, whether inside or  
12 outside the United States, for religious, charitable, scientific, civic, public welfare,  
13 literary, or educational purposes;

14 2-105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 2. Any securities of the corporation convertible into  
14 additional issues of stock; or

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

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

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

21 (ii) An investment company under the Investment Company Act of  
22 1940 or regulations adopted under the Investment Company Act of 1940; AND

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

28 (c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE  
29 board of directors of a corporation that is registered or intends to register as an  
30 open-end company under the Investment Company Act of 1940, after the registration  
31 as an open-end company takes effect, may increase or decrease the aggregate number  
32 of shares of stock or the number of shares of stock of any class that the corporation  
33 has authority to issue, unless a provision has been included in the charter of the  
34 corporation after July 1, 1987 prohibiting an action by the board of directors to  
35 increase or decrease the aggregate number of shares of stock or the number of shares  
36 of stock of any class that the corporation has authority to issue.

1 2-203.

2 (a) Before the issuance of stock or convertible securities, the board of directors  
3 shall adopt a resolution which:

4 (1) Authorizes the issuance;

5 (2) Sets the minimum price or value of consideration for the stock or  
6 convertible securities or a formula for its determination; and

7 (3) Fairly describes any consideration other than money and states:

8 (i) Its actual value as determined by the board of directors; or

9 (ii) That the board of directors has determined that the actual  
10 value is or will be not less than a certain sum.

11 (b) In the absence of actual fraud in the transaction, the value of consideration  
12 stated in the charter or determined by the board of directors in its resolution is  
13 conclusive for all purposes.

14 (c) For purposes of this section, the consideration for stock issued as a stock  
15 dividend is the resulting capitalization of surplus.

16 (d) This section does not apply to the issuance of stock or convertible securities  
17 as part of:

18 (1) A reclassification of stock effected by amendment of the charter; or

19 (2) A consolidation, merger, or share exchange.

20 (e) If its issuance is authorized in accordance with this subtitle, stock with par  
21 value and securities convertible into stock with par value may be issued as full paid  
22 and nonassessable even if the price or value of the consideration received is less than  
23 the par value of the stock issued or the stock into which the securities are convertible.

24 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR § 2-204  
25 OR § 2-206 OF THIS SUBTITLE, A CORPORATION MAY ISSUE STOCK OR OTHER  
26 SECURITIES OF THE CORPORATION PURSUANT TO § 2-103(13) OF THIS TITLE  
27 WITHOUT CONSIDERATION OF ANY KIND.

28 2-306.

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

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

1 (2) The board of directors shall:

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

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

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

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

13 2-604.

14 (A) THIS SECTION DOES NOT APPLY TO A CHARTER AMENDMENT BY THE  
15 BOARD OF DIRECTORS IN ACCORDANCE WITH § 2-105(A)(12) AND (C) OF THIS TITLE.

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

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

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

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

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

27 (i) Each stockholder entitled to vote on the proposed amendment;  
28 and

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

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

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

1 2-605.

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

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

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

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

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

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

21 2-607.

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

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

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

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

29 (ii) The amendment is limited to a change expressly [permitted by  
30 § 2-605 of this subtitle] AUTHORIZED BY §§ 2-105(A)(12) AND (C) AND 2-605 OF THIS  
31 TITLE to be made without action by the stockholders [and, if approved under §  
32 2-605(a)(4) of this subtitle, that the corporation is registered as an open-end  
33 company under the Investment Company Act of 1940].

1 3-101.

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

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

8 3-105.

9 (a) A consolidation, merger, share exchange, or transfer of assets shall be  
10 approved in the manner provided by this section, except that:

11 (5) A merger need be approved by a Maryland successor corporation only  
12 by a majority of its entire board of directors if:

13 (i) The merger does not reclassify or change THE TERMS OF ANY  
14 CLASS OR SERIES OF its [outstanding] stock THAT IS OUTSTANDING IMMEDIATELY  
15 BEFORE THE MERGER BECOMES EFFECTIVE or otherwise amend its charter and the  
16 number of its shares of stock to be issued or delivered in the merger is not more than  
17 20 percent of the number of its shares of the [same] class or series OF STOCK THAT IS  
18 outstanding immediately before the merger becomes effective; or

19 (ii) There is no stock outstanding or subscribed for and entitled to  
20 be voted on the merger; and

21 3-106.

22 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a  
23 90 percent or more owned subsidiary corporation WITH OR into its parent corporation  
24 may be effected as provided in this section[,] if:

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

29 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED  
30 IN THE MERGER IN EXCHANGE FOR STOCK OF THE OTHER CORPORATION  
31 PARTICIPATING IN THE MERGER ARE IDENTICAL TO THE CONTRACT RIGHTS OF THE  
32 STOCK FOR WHICH THE STOCK OF THE SUCCESSOR WAS EXCHANGED.

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

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

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

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

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

18 3-202.

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

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

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

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

28 (3) In any transaction governed by § 3-602 of this title or exempted by §  
29 3-603(b) of this title, fair value shall be value determined in accordance with the  
30 requirements of § 3-603(b) of this title.

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

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



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 CORPORATION, on the date  
3 notice is given or waived under § 3-106; or

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

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

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

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

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

16 3-203.

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

19 (1) Shall file with the corporation a written objection to the proposed  
20 transaction:

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

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

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

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

30 8-202.

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

1 8-501.

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

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

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

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

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

14 (i) Each shareholder entitled to vote on the proposed amendment;  
15 and

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

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

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

24 (e) A declaration of trust may permit:

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

30 (2) A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES, WITHOUT ACTION  
31 BY THE SHAREHOLDERS, TO AMEND THE DECLARATION OF TRUST IN ANY RESPECT  
32 IN WHICH THE CHARTER OF A CORPORATION MAY BE AMENDED IN ACCORDANCE  
33 WITH § 2-605 OF THIS ARTICLE.

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

1 8-501.1.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 1999.