

SENATE BILL 169

Unofficial Copy
C1

1999 Regular Session
(9lr0192)

ENROLLED BILL
-- Judicial Proceedings/Economic Matters --

Introduced by **The President (Administration)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Unsolicited Takeovers**

3 FOR the purpose of ~~authorizing a corporation to include certain provisions in its~~
4 ~~articles of incorporation; authorizing a real estate investment trust to include~~
5 ~~certain provisions in its declaration of trust~~ clarifying that a corporation may
6 include certain provisions in its charter and bylaws; clarifying that a real estate
7 investment trust may include certain provisions in its declaration of trust or
8 bylaws; providing that the duties of directors of a corporation and the duties of
9 the trustees of a real estate investment trust do not require them to take certain
10 actions; providing that the duties of the directors of certain corporations and the
11 trustees of certain real estate investment trusts do not require them to elect or
12 refrain from electing to be subject to certain provisions of certain laws;
13 providing that the certain provisions of this Act do not apply unless certain
14 corporations or real estate investment trusts elect to be subject to them;
15 providing that the directors of certain corporations and the trustees of certain
16 real estate investment trusts have certain powers; providing that certain
17 directors and trustees may be removed only under certain circumstances;

1 providing that certain special meetings of stockholders of corporations or
 2 shareholders of real estate investment trusts may be called only under specified
 3 circumstances; providing for the effective date of this Act; providing that certain
 4 provisions of charters, declarations of trust, and bylaws are not invalid;
 5 providing that certain actions and determinations of boards of directors of
 6 certain corporations and boards of trustees of certain real estate investment
 7 trusts are not invalid; defining certain terms; and generally relating to
 8 corporations and real estate investment trusts.

9 BY adding to

10 Article - Corporations and Associations
 11 Section 1-101(t-1), 2-104(c), 2-201(c), 2-405.1(d) through (g), inclusive; 3-801
 12 through 3-805, inclusive, to be under the new subtitle "Subtitle 8.
 13 Corporations and Real Estate Investment Trusts - Unsolicited Takeovers";
 14 8-206; and 8-601.1 to be under the amended subtitle "Subtitle 6.
 15 Liabilities, Service of Process, and Miscellaneous Provisions"
 16 Annotated Code of Maryland
 17 (1993 Replacement Volume and 1998 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article - Corporations and Associations
 20 Section 2-104(b), 2-402, 2-404(b)(2), 2-406, 2-502, 2-504, 8-202(b), and 8-205
 21 Annotated Code of Maryland
 22 (1993 Replacement Volume and 1998 Supplement)

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

25 **Article - Corporations and Associations**

26 1-101.

27 (T-1) "STOCKHOLDER RIGHTS PLAN" MEANS AN AGREEMENT OR OTHER
 28 INSTRUMENT UNDER WHICH A CORPORATION ISSUES RIGHTS TO ITS
 29 STOCKHOLDERS THAT:

30 (1) ~~MAY BE EXERCISED TO PURCHASE STOCK OR OTHER SECURITIES IF~~
 31 ~~A PERSON ATTEMPTS TO:~~

32 ~~(I) ACQUIRE A SPECIFIED PERCENTAGE OF THE OUTSTANDING~~
 33 ~~STOCK OR OTHER SECURITIES OF THE CORPORATION; OR~~

34 ~~(II) OTHERWISE ACQUIRE CONTROL, AS DEFINED IN § 3-801 OF~~
 35 THIS ARTICLE, OF THE CORPORATION UNDER SPECIFIED CIRCUMSTANCES TO
 36 PURCHASE STOCK OR OTHER SECURITIES OF A CORPORATION OR ANY OTHER
 37 PERSON; AND

1 (2) MAY BECOME VOID IF OWNED BY AN ACQUIRING PERSON, AS
2 ~~DEFINED IN § 3-801 OF THIS ARTICLE A DESIGNATED PERSON OR CLASSES OF~~
3 PERSONS UNDER SPECIFIED CIRCUMSTANCES.

4 2-104.

5 (b) The articles of incorporation may include:

6 (1) Any provision not inconsistent with law which defines, limits, or
7 regulates the powers of the corporation, its directors and stockholders, any class of its
8 stockholders, or the holders of any bonds, notes, or other securities which it may
9 issue;

10 (2) Any restriction not inconsistent with law on the transferability of
11 stock of any class;

12 (3) Any provision authorized by this article to be included in the bylaws;

13 (4) Any provision which requires for any purpose the concurrence of a
14 greater proportion of the votes of all classes or of any class of stock than the
15 proportion required by this article for that purpose;

16 (5) A provision which requires for any purpose a lesser proportion of the
17 votes of all classes or of any class of stock than the proportion required by this article
18 for that purpose, but this proportion may not be less than a majority of all the votes
19 entitled to be cast on the matter;

20 (6) A provision which divides its directors into classes and specifies the
21 term of office of each class;

22 (7) A provision for minority representation through cumulative voting in
23 the election of directors and the terms on which cumulative voting rights may be
24 exercised; [and]

25 (8) A provision which varies in accordance with § 2-405.2 of this title the
26 standards for liability of the directors and officers of a corporation for money
27 damages; AND

28 (9) A PROVISION THAT ALLOWS THE BOARD OF DIRECTORS, IN
29 CONSIDERING A POTENTIAL ACQUISITION OF CONTROL OF A ~~THE~~ CORPORATION, TO
30 CONSIDER THE EFFECT OF THE POTENTIAL ACQUISITION OF CONTROL ON:

31 (I) STOCKHOLDERS, EMPLOYEES, SUPPLIERS, CUSTOMERS, AND
32 CREDITORS OF THE CORPORATION; AND

33 (II) COMMUNITIES IN WHICH OFFICES OR OTHER
34 ESTABLISHMENTS OF THE CORPORATION ARE LOCATED.

35 (C) THE INCLUSION OR OMISSION OF A PROVISION IN THE CHARTER THAT
36 ALLOWS THE BOARD OF DIRECTORS TO CONSIDER THE EFFECT OF A POTENTIAL

1 ACQUISITION OF CONTROL ON PERSONS SPECIFIED IN SUBSECTION (B)(9) OF THIS
2 SECTION DOES NOT CREATE AN INFERENCE CONCERNING FACTORS THAT MAY BE
3 CONSIDERED BY THE BOARD OF DIRECTORS REGARDING A POTENTIAL ACQUISITION
4 OF CONTROL.

5 2-201.

6 (C) (1) THE BOARD OF DIRECTORS OF A CORPORATION MAY, IN ITS SOLE
7 DISCRETION:

8 (I) SET THE TERMS AND CONDITIONS OF RIGHTS, OPTIONS, OR
9 WARRANTS UNDER A STOCKHOLDER RIGHTS PLAN; AND

10 (II) ISSUE RIGHTS, OPTIONS, OR WARRANTS UNDER A
11 STOCKHOLDER RIGHTS PLAN TO DESIGNATED PERSONS OR CLASSES OF PERSONS.

12 (2) THE RIGHTS, OPTIONS, OR WARRANTS UNDER PARAGRAPH (1) OF
13 THIS SUBSECTION MAY, IN THE SOLE DISCRETION OF THE BOARD OF DIRECTORS,
14 INCLUDE ANY LIMITATION, RESTRICTION, OR CONDITION THAT:

15 (I) PRECLUDES, LIMITS, INVALIDATES, OR VOIDS THE EXERCISE,
16 TRANSFER, OR RECEIPT OF THE RIGHTS, OPTIONS, OR WARRANTS BY DESIGNATED
17 PERSONS OR CLASSES OF PERSONS IN SPECIFIED CIRCUMSTANCES; OR

18 (II) LIMITS FOR A PERIOD NOT TO EXCEED 180 DAYS THE POWER OF
19 A FUTURE DIRECTOR TO ~~REDEEM, MODIFY, OR TERMINATE~~ VOTE FOR THE
20 REDEMPTION, MODIFICATION, OR TERMINATION OF THE RIGHTS, OPTIONS, OR
21 WARRANTS.

22 2-402.

23 (a) Each corporation shall have at least three directors at all times, provided
24 that:

25 (1) If there is no stock outstanding the number of directors may be less
26 than three but not less than one; and

27 (2) If there is stock outstanding and so long as there are less than three
28 stockholders, the number of directors may be less than three but not less than the
29 number of stockholders.

30 (b) Subject to the provisions of subsection (a) of this section AND EXCEPT FOR
31 A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-804(B) OF THIS ARTICLE,
32 a Maryland corporation shall have the number of directors provided in its charter
33 until changed by the bylaws.

34 (c) Subject to the provisions of subsection (a) of this section AND EXCEPT FOR
35 A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-804(B) OF THIS ARTICLE,
36 the bylaws may:

1 (1) Alter the number of directors set by the charter; and

2 (2) Authorize a majority of the entire board of directors to alter within
3 specified limits the number of directors set by the charter or the bylaws, but the
4 action may not affect the tenure of office of any director.

5 2-404.

6 (b) (2) [If] EXCEPT FOR A CORPORATION THAT HAS ELECTED TO BE
7 SUBJECT TO § 3-803 OF THIS ARTICLE, IF the directors are divided into classes, the
8 term of office may be provided in the bylaws, except that:

9 (i) The term of office of a director may not be longer than five years
10 or, except in the case of an initial or substitute director, shorter than the period
11 between annual meetings; and

12 (ii) The term of office of at least one class shall expire each year.

13 2-405.1.

14 (D) THE DUTY OF THE DIRECTORS OF A CORPORATION DOES NOT REQUIRE
15 THEM TO:

16 (1) ACCEPT, RECOMMEND, OR RESPOND ON BEHALF OF THE
17 CORPORATION TO ANY PROPOSAL BY AN ACQUIRING PERSON AS DEFINED IN § 3-801
18 OF THIS ARTICLE;

19 (2) AUTHORIZE THE CORPORATION TO REDEEM ANY RIGHTS UNDER ~~OR~~
20 MODIFY, OR RENDER INAPPLICABLE, A STOCKHOLDER RIGHTS PLAN;

21 (3) ELECT ON BEHALF OF THE CORPORATION TO BE SUBJECT TO OR
22 REFRAIN FROM ELECTING ON BEHALF OF THE CORPORATION TO BE SUBJECT TO
23 ANY OR ALL OF THE PROVISIONS OF TITLE 3, SUBTITLE 8 OF THIS ARTICLE;

24 (4) MAKE A DETERMINATION UNDER THE PROVISIONS OF TITLE 3,
25 SUBTITLE 6 OR SUBTITLE 7 OF THIS ARTICLE; OR

26 (5) ACT OR FAIL TO ACT SOLELY BECAUSE OF:

27 (I) THE EFFECT THE ACT OR FAILURE TO ACT MAY HAVE ON AN
28 ACQUISITION OR POTENTIAL ACQUISITION OF CONTROL OF THE CORPORATION; OR

29 (II) THE AMOUNT OR TYPE OF ANY CONSIDERATION THAT MAY BE
30 OFFERED OR PAID TO STOCKHOLDERS IN AN ACQUISITION.

31 (E) AN ACT OF ~~THE DIRECTORS~~ A DIRECTOR OF A CORPORATION IS PRESUMED
32 TO SATISFY THE STANDARDS OF SUBSECTION (A) OF THIS SECTION.

33 (F) AN ACT OF A DIRECTOR RELATING TO OR AFFECTING AN ACQUISITION OR
34 A POTENTIAL ACQUISITION OF CONTROL OF A CORPORATION MAY NOT BE SUBJECT

1 TO A HIGHER DUTY OR GREATER SCRUTINY THAN IS APPLIED TO ANY OTHER ACT OF
2 A DIRECTOR.

3 (G) NOTHING IN THIS SECTION CREATES A DUTY OF ANY DIRECTOR OF A
4 CORPORATION ENFORCEABLE OTHERWISE THAN BY THE CORPORATION OR IN THE
5 RIGHT OF THE CORPORATION.

6 2-406.

7 (a) [Except as provided in subsection (b) of this section and unless the charter
8 of the corporation provides otherwise, the] THE stockholders of a corporation may
9 remove any director, with or without cause, by the affirmative vote of a majority of all
10 the votes entitled to be cast for the election of directors, EXCEPT:

11 (1) AS PROVIDED IN SUBSECTION (B) OF THIS SECTION;

12 (2) AS OTHERWISE PROVIDED IN THE CHARTER OF THE CORPORATION;
13 OR

14 (3) FOR A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO §
15 3-804(A) OF THIS ARTICLE.

16 (b) Unless the charter of the corporation provides otherwise:

17 (1) If the stockholders of any class or series are entitled separately to
18 elect one or more directors, a director elected by a class or series may not be removed
19 without cause except by the affirmative vote of a majority of all the votes of that class
20 or series;

21 (2) If a corporation has cumulative voting for the election of directors and
22 less than the entire board is to be removed, a director may not be removed without
23 cause if the votes cast against his removal would be sufficient to elect him if then
24 cumulatively voted at an election of the entire board of directors, or, if there is more
25 than one class of directors, at an election of the class of directors of which he is a
26 member; and

27 (3) If the directors have been divided into classes, a director may not be
28 removed without cause.

29 2-502.

30 (a) A special meeting of the stockholders of a corporation may be called by:

31 (1) The president;

32 (2) The board of directors; or

33 (3) Any other person specified in the charter or the bylaws.

34 (b) (1) Except as provided in subsections (c) and (d) of this section, AND
35 EXCEPT FOR A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-805 OF THIS

1 ARTICLE, the secretary of a corporation shall call a special meeting of the stockholders
2 on the written request of stockholders entitled to cast at least 25 percent of all the
3 votes entitled to be cast at the meeting.

4 (2) A request for a special meeting shall state the purpose of the meeting
5 and the matters proposed to be acted on at it.

6 (3) The secretary shall:

7 (i) Inform the stockholders who make the request of the reasonably
8 estimated cost of preparing and mailing a notice of the meeting; and

9 (ii) On payment of these costs to the corporation, notify each
10 stockholder entitled to notice of the meeting.

11 (c) Unless requested by stockholders entitled to cast a majority of all the votes
12 entitled to be cast at the meeting, a special meeting need not be called to consider any
13 matter which is substantially the same as a matter voted on at any special meeting of
14 the stockholders held during the preceding 12 months.

15 (d) (1) Subject to paragraph (2) of this subsection, a corporation may include
16 in its charter or bylaws a provision that requires the written request of stockholders
17 entitled to cast a greater or lesser percentage of all votes entitled to be cast at the
18 meeting than that required by subsection (b)(1) of this section in order to call a special
19 meeting of the stockholders.

20 (2) The percentage provided for in the charter or bylaws may not be
21 greater than a majority of all the votes entitled to be cast at the meeting.

22 (E) THE BOARD OF DIRECTORS HAS THE SOLE POWER TO FIX:

23 (1) THE RECORD DATE FOR DETERMINING STOCKHOLDERS ENTITLED
24 TO REQUEST A SPECIAL MEETING OF THE STOCKHOLDERS AND THE RECORD DATE
25 FOR DETERMINING STOCKHOLDERS ENTITLED TO NOTICE OF AND TO VOTE AT THE
26 SPECIAL MEETING; AND ~~TO SET~~

27 (2) THE DATE, TIME, AND PLACE OF THE SPECIAL MEETING.

28 2-504.

29 (a) Not less than ten nor more than 90 days before each stockholders' meeting,
30 the secretary of the corporation shall give written notice of the meeting to:

31 (1) Each stockholder entitled to vote at the meeting; and

32 (2) Each other stockholder entitled to notice of the meeting.

33 (b) The notice shall state:

34 (1) The time and place of the meeting; and

1 (2) The purpose of the meeting, if:
2 (i) The meeting is a special meeting; or
3 (ii) Notice of the purpose is required by any other provision of this
4 article.

5 (c) For purposes of this section, notice is given to a stockholder when it is:

6 (1) Personally delivered to him;
7 (2) Left at his residence or usual place of business; or
8 (3) Mailed to him at his address as it appears on the records of the
9 corporation.

10 (d) Whenever this article or the charter or bylaws of a corporation require
11 notice of the time, place, or purpose of a meeting of the stockholders, each person who
12 is entitled to the notice waives notice if he:

13 (1) Before or after the meeting signs a waiver of the notice which is filed
14 with the records of stockholders meetings; or

15 (2) Is present at the meeting in person or by proxy.

16 (E) THE CHARTER OR BYLAWS MAY REQUIRE ANY STOCKHOLDER PROPOSING
17 A NOMINEE FOR ELECTION AS A DIRECTOR OR ANY OTHER MATTER FOR
18 CONSIDERATION AT A MEETING OF THE STOCKHOLDERS TO PROVIDE ADVANCE
19 NOTICE OF THE NOMINATION OR PROPOSAL TO THE CORPORATION OF NOT MORE
20 THAN:

21 (1) 90 DAYS BEFORE THE DATE OF THE MEETING; OR

22 (2) IN THE CASE OF AN ANNUAL MEETING, 90 DAYS BEFORE THE FIRST
23 ANNIVERSARY OF:

24 (I) THE MAILING DATE OF THE NOTICE OF THE PRECEDING YEAR'S
25 ANNUAL MEETING; OR

26 (II) THE PRECEDING YEAR'S ANNUAL MEETING; OR

27 (3) ANOTHER TIME SPECIFIED IN THE CHARTER OR BYLAWS.

28 SUBTITLE 8. CORPORATIONS AND REAL ESTATE INVESTMENT TRUSTS -
29 UNSOLICITED TAKEOVERS.

30 3-801.

31 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
32 INDICATED.

1 (B) "ACQUIRING PERSON" MEANS A PERSON WHO IS SEEKING TO ACQUIRE
2 CONTROL OF A CORPORATION.

3 (C) "ACT" INCLUDES AN OMISSION OR FAILURE TO ACT.

4 (D) "AFFILIATE" MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH
5 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER
6 COMMON CONTROL WITH, A SPECIFIED PERSON.

7 (E) "ASSOCIATE", WHEN USED TO INDICATE A RELATIONSHIP WITH ANY
8 PERSON, MEANS:

9 (1) ANY CORPORATION OR ORGANIZATION (OTHER THAN THE
10 CORPORATION OR A SUBSIDIARY OF THE CORPORATION) OF WHICH SUCH PERSON IS
11 AN OFFICER, DIRECTOR, OR PARTNER OR IS, DIRECTLY OR INDIRECTLY, THE
12 BENEFICIAL OWNER OF 10 PERCENT OR MORE OF ANY CLASS OF EQUITY
13 SECURITIES;

14 (2) ANY TRUST OR OTHER ESTATE IN WHICH SUCH PERSON HAS A
15 SUBSTANTIAL BENEFICIAL INTEREST OR AS TO WHICH SUCH PERSON SERVES AS
16 TRUSTEE OR IN A SIMILAR FIDUCIARY CAPACITY; AND

17 (3) ANY RELATIVE OR SPOUSE OF SUCH PERSON, OR ANY RELATIVE OF
18 SUCH SPOUSE, WHO HAS THE SAME ~~HOME~~ PRINCIPAL RESIDENCE AS SUCH PERSON
19 OR WHO IS A DIRECTOR OR OFFICER OF THE CORPORATION OR ANY OF ITS
20 AFFILIATES.

21 (F) "BENEFICIAL OWNER", WHEN USED WITH RESPECT TO ANY STOCK, MEANS
22 A PERSON:

23 (1) THAT, INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
24 ASSOCIATES, BENEFICIALLY OWNS STOCK, DIRECTLY OR INDIRECTLY; OR

25 (2) THAT, INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
26 ASSOCIATES, HAS:

27 (I) THE RIGHT TO ACQUIRE STOCK (WHETHER SUCH RIGHT IS
28 EXERCISABLE IMMEDIATELY OR ONLY AFTER THE PASSAGE OF TIME), PURSUANT TO
29 ANY AGREEMENT, ARRANGEMENT, OR UNDERSTANDING OR UPON THE EXERCISE OF
30 CONVERSION RIGHTS, EXCHANGE RIGHTS, WARRANTS OR OPTIONS, OR OTHERWISE;
31 OR

32 (II) THE RIGHT TO VOTE STOCK PURSUANT TO ANY AGREEMENT,
33 ARRANGEMENT, OR UNDERSTANDING; OR

34 (3) THAT HAS ANY AGREEMENT, ARRANGEMENT, OR UNDERSTANDING
35 FOR THE PURPOSE OF ACQUIRING, HOLDING, VOTING, OR DISPOSING OF STOCK WITH
36 ANY OTHER PERSON THAT BENEFICIALLY OWNS, OR WHOSE AFFILIATES OR
37 ASSOCIATES BENEFICIALLY OWN, DIRECTLY OR INDIRECTLY, SUCH SHARES OF
38 STOCK.

1 (G) ~~(1)~~ "CHARTER" HAS THE MEANING STATED IN § 1-101(E) OF THIS
2 ARTICLE.

3 ~~(2)~~ "CHARTER" INCLUDES THE DECLARATION OF TRUST OF A REAL
4 ESTATE INVESTMENT TRUST.

5 (H) "CONTROL", INCLUDING THE TERMS "CONTROLLING", "CONTROLLED BY",
6 AND "UNDER COMMON CONTROL WITH", MEANS THE POSSESSION, DIRECTLY OR
7 INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
8 MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP
9 OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE, AND THE BENEFICIAL
10 OWNERSHIP OF 10 PERCENT OR MORE OF THE VOTES ENTITLED TO BE CAST BY A
11 CORPORATION'S STOCK CREATES A PRESUMPTION OF CONTROL.

12 (I) "CORPORATION" INCLUDES A REAL ESTATE INVESTMENT TRUST AS
13 DEFINED IN TITLE 8 OF THIS ARTICLE.

14 (J) "DIRECTOR" INCLUDES A TRUSTEE OF A REAL ESTATE INVESTMENT
15 TRUST.

16 (K) "EQUITY SECURITY" MEANS:

17 (1) ANY STOCK OR SIMILAR SECURITY, CERTIFICATE OF INTEREST, OR
18 PARTICIPATION IN ANY PROFIT SHARING AGREEMENT, VOTING TRUST CERTIFICATE,
19 OR CERTIFICATE OF DEPOSIT FOR AN EQUITY SECURITY;

20 (2) ANY SECURITY CONVERTIBLE, WITH OR WITHOUT CONSIDERATION,
21 INTO AN EQUITY SECURITY, OR ANY WARRANT OR OTHER SECURITY CARRYING ANY
22 RIGHT TO SUBSCRIBE TO OR PURCHASE AN EQUITY SECURITY; OR

23 (3) ANY PUT, CALL, STRADDLE, OR OTHER OPTION OR PRIVILEGE OF
24 BUYING AN EQUITY SECURITY FROM OR SELLING AN EQUITY SECURITY TO ANOTHER
25 WITHOUT BEING BOUND TO DO SO.

26 (L) "REAL ESTATE INVESTMENT TRUST" HAS THE MEANING STATED IN TITLE
27 8 OF THIS ARTICLE.

28 (M) "STOCKHOLDER" INCLUDES A SHAREHOLDER OF A REAL ESTATE
29 INVESTMENT TRUST.

30 (N) "SUBSIDIARY" MEANS ANY CORPORATION OF WHICH STOCK HAVING A
31 MAJORITY OF THE VOTES ENTITLED TO BE CAST IS OWNED, DIRECTLY OR
32 INDIRECTLY, BY THE CORPORATION.

33 3-802.

34 (A) NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE EXCEPT
35 SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO EACH CORPORATION
36 THAT:

1 (1) HAS A CLASS OF EQUITY SECURITIES REGISTERED UNDER THE
2 FEDERAL SECURITIES EXCHANGE ACT OF 1934; AND

3 (2) ELECTS TO BE SUBJECT TO ANY OR ALL PROVISIONS, IN WHOLE OR
4 IN PART, OF THIS SUBTITLE BY PROVISION IN:

5 (I) ITS CHARTER OR BYLAWS; OR

6 (II) A RESOLUTION OF ITS BOARD OF DIRECTORS; ~~OR~~

7 ~~(III) ARTICLES SUPPLEMENTARY FILED WITH THE DEPARTMENT.~~

8 (B) (1) THIS SUBTITLE ~~MAY APPLY~~ APPLIES ONLY TO A CORPORATION THAT
9 HAS AT LEAST THREE DIRECTORS ~~EACH OF WHOM AT THE TIME OF ANY ACT WHO, AT~~
10 THE TIME OF ANY ELECTION TO BECOME SUBJECT TO THE PROVISIONS OF THIS
11 SUBTITLE:

12 (I) ~~IS NOT AN OFFICER OR EMPLOYEE~~ ARE NOT OFFICERS OR
13 EMPLOYEES OF THE CORPORATION;

14 (II) ~~IS NOT AN ACQUIRING PERSON~~ ARE NOT ACQUIRING PERSONS;

15 (III) ~~IS NOT A DIRECTOR, OFFICER, AFFILIATE, OR ASSOCIATE~~ ARE
16 NOT DIRECTORS, OFFICERS, AFFILIATES, OR ASSOCIATES OF AN ACQUIRING PERSON;
17 AND

18 (IV) ~~WAS WERE~~ NOT NOMINATED OR DESIGNATED AS A DIRECTOR
19 DIRECTORS BY AN ACQUIRING PERSON.

20 (2) A DIRECTOR DOES NOT FAIL TO SATISFY PARAGRAPH (1) OF THIS
21 SUBSECTION BECAUSE THE DIRECTOR:

22 (I) OWNS SECURITIES ISSUED BY THE CORPORATION;

23 (II) IS ENTITLED TO COMPENSATION, RETIREMENT, SEVERANCE,
24 OR OTHER BENEFITS AS A DIRECTOR OF THE CORPORATION; OR

25 (III) MIGHT CONTINUE TO SERVE AS A DIRECTOR OF THE
26 CORPORATION OR BECOME A DIRECTOR OF AN ACQUIRING PERSON.

27 (3) THIS SUBTITLE DOES NOT APPLY TO A CORPORATION TO THE
28 EXTENT THAT THE CORPORATION ELECTS NOT TO BE SUBJECT TO ANY PROVISION
29 OF THIS SUBTITLE TO WHICH IT HAS PREVIOUSLY ELECTED TO BE SUBJECT, IF THE
30 CORPORATION ELECTS NOT TO BE SUBJECT TO THE PROVISION IN THE SAME
31 MANNER IN WHICH IT ELECTED TO BECOME SUBJECT TO THE PROVISION,
32 INCLUDING THE SATISFACTION OF SUBSECTION (D)(1) OF THIS SECTION, IF
33 APPLICABLE.

34 ~~(C) NOTHING IN THIS SUBTITLE MAY BE DEEMED TO PRESCRIBE, MODIFY, OR~~
35 ~~CREATE ANY INFERENCE CONCERNING THE DUTIES OF DIRECTORS TO THE EXTENT~~
36 ~~THAT THIS SUBTITLE IS IN WHOLE OR IN PART INAPPLICABLE, BECAUSE:~~

1 (1) ~~THE CORPORATION FAILS TO ELECT TO BE GOVERNED BY ALL OR~~
2 ~~PART OF THIS SUBTITLE; OR~~

3 (2) ~~THIS SUBTITLE DOES NOT OTHERWISE APPLY.~~

4 (C) THE CHARTER OF A CORPORATION MAY CONTAIN A PROVISION OR THE
5 BOARD OF DIRECTORS MAY ADOPT A RESOLUTION THAT PROHIBITS THE
6 CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS
7 SUBTITLE.

8 (D) (1) A CORPORATION SHALL FILE ARTICLES SUPPLEMENTARY WITH THE
9 DEPARTMENT IF:

10 (I) THE CORPORATION ELECTS TO BE SUBJECT TO ANY OR ALL
11 PROVISIONS OF THIS SUBTITLE BY RESOLUTION OF THE BOARD OF DIRECTORS OR
12 BYLAW AMENDMENT; OR

13 (II) THE BOARD OF DIRECTORS ADOPTS A RESOLUTION IN
14 ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION THAT PROHIBITS THE
15 CORPORATION FROM ELECTING TO BE SUBJECT TO ANY OR ALL PROVISIONS OF THIS
16 SUBTITLE.

17 (2) THE ARTICLES SUPPLEMENTARY SHALL DESCRIBE ANY PROVISION
18 OF THIS SUBTITLE TO WHICH THE CORPORATION:

19 (I) HAS ELECTED TO BECOME SUBJECT; OR

20 (II) MAY NOT ELECT TO BECOME SUBJECT IN ACCORDANCE WITH
21 THE RESOLUTION OF THE BOARD.

22 (3) STOCKHOLDER APPROVAL IS NOT REQUIRED FOR THE FILING OF
23 ARTICLES SUPPLEMENTARY IN ACCORDANCE WITH PARAGRAPH (1) OF THIS
24 SUBSECTION.

25 3-803.

26 (A) (1) BEFORE THE FIRST ANNUAL MEETING OF STOCKHOLDERS AFTER A
27 CORPORATION ~~BECOMES~~ ELECTS TO BE SUBJECT TO THIS SUBTITLE, THE BOARD OF
28 DIRECTORS SHALL DESIGNATE BY RESOLUTION, FROM AMONG ITS MEMBERS,
29 DIRECTORS TO SERVE AS CLASS I DIRECTORS, CLASS II DIRECTORS, AND CLASS III
30 DIRECTORS.

31 (2) TO THE EXTENT POSSIBLE, THE CLASSES SHALL HAVE THE SAME
32 NUMBER OF DIRECTORS.

33 (B) THE TERM OF OFFICE OF THE CLASS I DIRECTORS SHALL CONTINUE
34 UNTIL THE FIRST ANNUAL MEETING OF STOCKHOLDERS AFTER THE DATE ON
35 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
36 SUCCESSORS ARE ELECTED AND QUALIFY.

1 (C) THE TERM OF OFFICE OF THE CLASS II DIRECTORS SHALL CONTINUE
2 UNTIL THE SECOND ANNUAL MEETING OF STOCKHOLDERS AFTER THE DATE ON
3 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
4 SUCCESSORS ARE ELECTED AND QUALIFY.

5 (D) THE TERM OF OFFICE OF THE CLASS III DIRECTORS SHALL CONTINUE
6 UNTIL THE THIRD ANNUAL MEETING OF STOCKHOLDERS FOLLOWING THE DATE ON
7 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
8 SUCCESSORS ARE ELECTED AND QUALIFY.

9 (E) AT EACH ANNUAL MEETING OF THE STOCKHOLDERS OF A CORPORATION,
10 THE SUCCESSORS TO THE CLASS OF DIRECTORS WHOSE TERM EXPIRES AT THAT
11 MEETING SHALL BE ELECTED TO HOLD OFFICE FOR A TERM CONTINUING UNTIL:

12 (1) THE ANNUAL MEETING OF STOCKHOLDERS HELD IN THE THIRD
13 YEAR FOLLOWING THE YEAR OF THEIR ELECTION; AND

14 (2) THEIR SUCCESSORS ARE ELECTED AND QUALIFY.

15 (F) THIS SUBTITLE DOES NOT LIMIT THE POWER OF A CORPORATION BY
16 PROVISION IN ITS CHARTER TO:

17 (1) CONFER ON THE HOLDERS OF ANY CLASS OR SERIES OF
18 PREFERENCE OR PREFERRED STOCK THE RIGHT TO ELECT ONE OR MORE
19 DIRECTORS; AND

20 (2) DESIGNATE THE TERMS AND VOTING POWERS OF THE DIRECTORS,
21 WHICH MAY VARY AMONG THE DIRECTORS.

22 3-804.

23 (A) NOTWITHSTANDING ANY OTHER LESSER PROPORTION OF VOTES
24 REQUIRED BY A PROVISION IN THE CHARTER OR THE BYLAWS, BUT SUBJECT TO §
25 ~~2-406(B)~~ 2-406(B)(3) OF THIS ARTICLE THE STOCKHOLDERS OF A CORPORATION MAY
26 REMOVE ANY DIRECTOR BY THE AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF
27 ALL THE VOTES ENTITLED TO BE CAST BY THE STOCKHOLDERS GENERALLY IN THE
28 ELECTION OF DIRECTORS.

29 (B) SUBJECT TO § ~~2-402~~ 2-402(A) OF THIS ARTICLE BUT NOTWITHSTANDING
30 ANY PROVISION IN THE CHARTER OR BYLAWS, THE NUMBER OF DIRECTORS OF A
31 CORPORATION SHALL BE FIXED ONLY BY VOTE OF THE BOARD OF DIRECTORS.

32 (C) (1) NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR BYLAWS,
33 THIS SUBSECTION APPLIES TO A VACANCY THAT RESULTS FROM:

34 (I) AN INCREASE IN THE SIZE OF THE BOARD OF DIRECTORS; OR

35 (II) THE DEATH, RESIGNATION, OR REMOVAL OF A DIRECTOR.

1 (2) EACH VACANCY ON THE BOARD OF DIRECTORS OF A CORPORATION
2 MAY BE FILLED ONLY BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE
3 REMAINING DIRECTORS IN OFFICE, EVEN IF THE REMAINING DIRECTORS DO NOT
4 CONSTITUTE A QUORUM.

5 (3) ANY DIRECTOR ELECTED TO FILL A VACANCY SHALL HOLD OFFICE:

6 (I) FOR THE REMAINDER OF THE FULL TERM OF THE CLASS OF
7 DIRECTORS IN WHICH THE VACANCY OCCURRED; AND

8 (II) UNTIL A SUCCESSOR IS ELECTED AND QUALIFIES.

9 3-805.

10 NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR BYLAWS, THE
11 SECRETARY OF A CORPORATION MAY CALL A SPECIAL MEETING OF STOCKHOLDERS
12 ONLY:

13 (1) ON THE WRITTEN REQUEST OF THE STOCKHOLDERS ENTITLED TO
14 CAST AT LEAST A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST AT THE
15 MEETING; AND

16 (2) IN ACCORDANCE WITH THE PROCEDURES SET FORTH UNDER § ~~2-502~~
17 2-502(B)(2) AND (3) AND (E) OF THIS ARTICLE.

18 8-202.

19 (b) (1) The declaration of trust shall:

20 [(1)] (I) Indicate clearly that the trust is a real estate investment trust;

21 [(2)] (II) State the name of the trust;

22 [(3)] (III) State the total number of shares which the real estate
23 investment trust has authority to issue;

24 [(4)] (IV) Provide for an annual meeting of shareholders after the
25 delivery of the annual report, at a convenient location and on proper notice;

26 [(5)] (V) Provide for the election of trustees at least every third year at
27 an annual meeting of shareholders;

28 [(6)] (VI) State the number of trustees and the names of those persons
29 who will serve as trustees until the first meeting of shareholders and until their
30 successors are elected and qualify or such later time as may be specified in the
31 declaration of trust;

32 [(7)] (VII) State the name and address of a resident agent of the real
33 estate investment trust in the State; and

1 [(8)] (VIII) If the shares are divided into classes as permitted by § 8-203
 2 of this subtitle, provide a description of each class, including any preferences,
 3 conversion and other rights, voting powers, restrictions, limitations as to dividends or
 4 distributions, qualifications, and terms and conditions of redemption.

5 (2) A DECLARATION OF TRUST MAY INCLUDE A PROVISION THAT
 6 ALLOWS THE TRUSTEES, IN CONSIDERING A POTENTIAL ACQUISITION OF CONTROL
 7 OF A THE REAL ESTATE INVESTMENT TRUST, TO CONSIDER THE EFFECT OF THE
 8 POTENTIAL ACQUISITION OF CONTROL ON:

9 (I) SHAREHOLDERS, EMPLOYEES, SUPPLIERS, CUSTOMERS, AND
 10 CREDITORS OF THE TRUST; AND

11 (II) COMMUNITIES IN WHICH OFFICES OR OTHER
 12 ESTABLISHMENTS OF THE TRUST ARE LOCATED.

13 (3) THE INCLUSION OR OMISSION OF A PROVISION IN A DECLARATION
 14 OF TRUST THAT ALLOWS THE BOARD OF TRUSTEES TO CONSIDER THE EFFECT OF A
 15 POTENTIAL ACQUISITION OF CONTROL ON PERSONS SPECIFIED IN PARAGRAPH (2) OF
 16 THIS SUBSECTION DOES NOT CREATE AN INFERENCE CONCERNING FACTORS THAT
 17 MAY BE CONSIDERED BY THE BOARD OF TRUSTEES REGARDING A POTENTIAL
 18 ACQUISITION OF CONTROL.

19 8-205.

20 Unless the declaration of trust provides otherwise OR THE REAL ESTATE
 21 INVESTMENT TRUST ELECTS TO BE SUBJECT TO § 3-804(A) OF THIS ARTICLE, the
 22 shareholders of a real estate investment trust may remove any trustee, with or
 23 without cause, by the affirmative vote of a majority of all the votes entitled to be cast
 24 for the election of trustees.

25 8-206.

26 THE DECLARATION OF TRUST OR BYLAWS OF A REAL ESTATE INVESTMENT
 27 TRUST MAY PROVIDE FOR ONE OR MORE COMMITTEES OF THE BOARD OF TRUSTEES
 28 COMPOSED OF ONE OR MORE TRUSTEES AND FOR THE DELEGATION TO THOSE
 29 COMMITTEES OF ANY OF THE POWERS OF THE BOARD OF TRUSTEES.

30 Subtitle 6. Liabilities [and], Service of Process, AND MISCELLANEOUS PROVISIONS.

31 8-601.1.

32 SECTIONS 2-201(C), ~~2-405.1~~ 2-405.1(D) THROUGH (G), 2-502(E), AND 2-504(E) OF
 33 THIS ARTICLE SHALL APPLY TO REAL ESTATE INVESTMENT TRUSTS.

34 SECTION 2. AND BE IF IT FURTHER ENACTED, That the changes made to §
 35 2-104(b) of the Corporations and Associations Article by this Act may not be
 36 construed or interpreted to invalidate a provision contained in the charter of a
 37 corporation before the effective date of this Act that allows the board of directors of
 38 the corporation, in considering a potential acquisition of control of the corporation, to

1 consider the effect of the potential acquisition of control on stockholders, employees,
2 customers, suppliers, and creditors of the corporation, and communities in which
3 offices or other establishments of the corporation are located.

4 SECTION 3. AND BE IT FURTHER ENACTED, That the changes made to §
5 8-202(b) of the Corporations and Associations Article by this Act may not be
6 construed or interpreted to invalidate a provision contained in the declaration of trust
7 of a real estate investment trust before the effective date of this Act that allows the
8 board of trustees of the real estate investment trust, in considering a potential
9 acquisition of control of the real estate investment trust, to consider the effect of the
10 potential acquisition of control on shareholders, employees, customers, suppliers, and
11 creditors of the real estate investment trust, and communities in which offices or
12 other establishments of the real estate investment trust are located.

13 SECTION 4. AND BE IT FURTHER ENACTED, That the changes made to §
14 2-504 of the Corporations and Associations Article by this Act may not be construed
15 or interpreted to invalidate a provision contained in the charter or bylaws of a
16 corporation before the effective date of this Act that allows a corporation to require a
17 stockholder to provide advance notice of a nomination or proposal to the corporation
18 before a meeting of the stockholders.

19 SECTION 5. AND BE IT FURTHER ENACTED, That the addition of §§
20 2-201(c), 2-405.1(d) through (g), and 2-502(e) to the ~~Corporation~~ Corporations and
21 Associations Article by this Act may not be construed or interpreted to invalidate an
22 action or determination of the board of directors of a corporation before the effective
23 date of this Act.

24 SECTION 6. AND BE IT FURTHER ENACTED, That the addition of §§ 8-206
25 and 8-601.1 to the Corporations and Associations Article by this Act may not be
26 construed or interpreted to invalidate:

27 (1) A provision that was contained in the declaration of trust or bylaws of
28 a real estate investment trust before the effective date of this Act and that allows the
29 real estate investment trust to require a shareholder to provide advance notice of a
30 nomination or proposal to the real estate investment trust before a meeting of the
31 shareholders or allows for one or more committees of the board of trustees composed
32 of one or more trustees and for the delegation to those committees of any powers of
33 the board of trustees; or

34 (2) An action or determination of the board of trustees or a committee of
35 the board of trustees of a real estate investment trust before the effective date of this
36 Act.

37 SECTION ~~2~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take
38 effect June 1, 1999.

