

Department of Legislative Services  
Maryland General Assembly  
2000 Session

FISCAL NOTE

House Bill 851 (Delegate Barve)

Economic Matters

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Corporations and Real Estate Investment Trusts - Miscellaneous Provisions

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The bill makes numerous changes to the governance provisions applicable to Maryland Corporations and Real Estate Investment Trusts (REITs).

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Fiscal Summary

**State Effect:** None. The bill would not substantively change State activities or operations.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** The bill contains the following provisions:

*Boards and Trustees*

- for corporations and REITs: provisions of the bylaws may be dependent upon any action, agreement, document, or event undertaken by an officer or agent of the corporation;
- for corporations and REITs: any agreement approved by the board of directors or trustees may establish standing committees, define the composition of these committees, and detail the qualification for membership on these committees;
- for corporations and REITs: any board member or trustee who must be elected by a specific class of shareholders may be removed only by a

- majority vote of that class of shareholders;
- for corporations: a corporation may not indemnify or advance expenses to a director unless it is for a proceeding brought to enforce indemnification, or the corporate bylaws or charter expressly permit indemnification;
- for corporations: each corporation shall have at least one director; and
- for corporations: the corporate charter may allow different classes of shareholders to be entitled to different voting rules.

### *Legal Procedures*

- for corporations: the chief executive and chief operating officers may be signatories on supplemental and amendment documents that must be filed with the Department of Assessments and Taxation;
- for corporations: the purpose statement may be replaced with “the corporation may engage in any lawful business or other activity.”

### *Shareholder Issues*

- for corporations and REITs: an entity may issue stock to up to 100 persons for free in order to qualify as a REIT under the Internal Revenue Code;
- for corporations: if a parent and subsidiary corporation that are merging are both Maryland incorporated firms and the parent is not the sole owner of the subsidiary, then the parent must notify each minority shareholder of record no more than ten days before the merger notice is filed. The minority shareholders may waive this requirement.
- for corporations: stock owners of an acquired firm in a merger may not demand “fair value” for their shares if:
  1. the stock will be traded on a national or NASDAQ affiliated exchange;
  2. the corporate charter prohibits a shareholder from protesting;
  - or
  3. the shareholder was not the shareholder of date when the transaction was completed.

### **Current Law:**

### *Boards and Trustees*

- for corporations and REITs: the meaning of the bylaws are self-contained and are not dependent on any outside activities undertaken by a corporate agent;
- for corporations and REITs: corporate committees have to be specified in the bylaws;
- for corporations and REITs: there are no laws regarding the rights of the different classes of shareholders in relation to board members;
- for corporations: a corporation may indemnify or advance expenses to a director;
- for corporations: each corporation shall have at least three directors;
- for corporations: there are no requirements regarding classes of shareholders and voting rules.

### *Legal Procedures*

- for corporations: the approved signatories on supplemental and amendment documents are representatives of the board, the president, vice presidents, and the corporate secretary;
- for corporations: there must be a purpose statement.

### *Shareholder Issues*

- for corporations and REITs: there are no requirements regarding the issuing of free stock;
- for corporations: as long as the parent corporation that is merging with a subsidiary is not the sole owner of the subsidiary, the parent must notify each minority shareholder of record no more than ten days before the merger notice is filed. The minority shareholders may waive this requirement;
- for corporations: stock owners of an acquired firm in a merger are not prohibited from demanding “fair value” for their shares even if:
  1. the stock will be traded on certain NASDAQ affiliated stock exchanges;
  2. the corporate charter prohibits a shareholder from protesting;or
  3. the share holder was not the shareholder of date when the transaction was completed.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2000  
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