HB 1114

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1114 (Delegate Barve)
Economic Matters

Corporations and Real Estate Investment Trusts

This bill authorizes a corporation's board of directors to amend the corporate charter to effect a reverse stock split and imposes duties on boards that do so. The bill expands the circumstances under which stockholders may fill vacant board positions. The bill also imposes the same standard of care on a trustee of a real estate investment trust (REIT) and offers the same protection from liability for following that standard of care as is applicable to a director of a corporation.

The bill is effective June 1, 2002.

Fiscal Summary

State Effect: The bill will not materially affect governmental activities or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill authorizes a board of directors of a corporation with stock registered with securities under the Securities and Exchange Act of 1934 or registered as an open-ended investment company under the Investment Company Act of 1940 to amend its corporate charter to effect a reverse stock spit resulting in a ratio of no more than 10 to 1 in any 12-month period: (1) upon approval of a majority of the entire board; and (2) without stockholder approval. Within 20 days after the effective time of the reverse stock split, the corporation must give written notice of the reverse split to each holder of record as of the effective date.

The bill authorizes a corporation's board of directors to delegate to a board committee or to a corporate officer the power to fix the amount and other terms of a distribution if: (1) the board has given general authorization for a distribution; and (2) the board, in the general authorization, provides for or establishes a method or procedure for determining the maximum amount of the distribution.

The bill authorizes a corporation's stockholders, except as otherwise provided, to elect a successor to fill a vacancy on the board of directors. If a class or series of stockholders is entitled separately to elect directors, those stockholders may elect an individual to fill a vacancy resulting from: (1) the death or resignation of a director; or (2) an increase in the number of directors elected by the class or series. A director elected to replace a former director who has died or resigned serves the balance of the predecessor's term until a successor is elected and qualifies. A director elected to fill a vacancy caused by an increase in the number of directors serves until the end of the term for which the director is elected and until a successor is elected and qualifies.

For a corporation registered as an open-end company under the Investment Company Act of 1940, the bill authorizes a majority of the corporation's board to amend the corporation's charter without stockholder action. The bill requires that the corporation's articles of amendment state that the amendment is authorized without stockholder action. A corporate charter may specifically prohibit such an amendment.

The bill repeals the provision that allows a corporation's directors upon dissolution to sue and be sued in their own names as trustees for the corporation. The bill specifies that the standard of care is the same for corporate directors of a dissolved corporation as for any other corporation. The bill also renames a "director-trustee" of a voluntarily dissolved corporation prior to the appointment of a receiver by a court to be a "director" for the purpose of winding up the corporation.

The bill imposes the same standard of care on a REIT's trustee and offers the same protection from liability for following the required standard care as is applicable to a director of a corporation. The bill repeals the statutory liability for acts that constitute bad faith, willful misfeasance, gross negligence, or reckless disregard of the trustee's duties.

Current Law: Generally, a corporation's stockholders must approve a corporate charter amendment by two-thirds of the votes entitled to be cast on the matter.

A corporation's stockholders may elect a successor to fill a vacancy that results from the removal of a director. A director who is elected to serve the balance of a removed director's term serves the balance of that term. A corporation's board of directors may appoint an executive committee and other committees from its members. The board may delegate any of its powers to a committee except the power to: (1) authorize dividends; (2) issue stock, except as otherwise provided; (3) recommend any action to the stockholders that requires stockholder approval; (4) amend the corporation's bylaws; or (5) approve a merger or share exchange that does not require stockholder approval.

When a Maryland corporation is voluntarily dissolved, until a court appoints a receiver, the directors become trustees of the corporation's assets for purposes of liquidation. The director-trustee may: (1) carry out the corporation's contracts; (2) sell all or part of the corporation's assets; (3) sue or be sued in their own names as trustees or in the name of the corporation; and (4) do all other acts consistent with law and the corporation's charter to liquidate the corporation and wind up its affairs. The director-trustees govern by majority vote.

Generally, a director of a corporation who performs his or her duties with the required standard of care, commonly known as "the business judgment rule," has no liability by reason of being or having been a corporation's director.

Generally, a shareholder or trustee of a REIT is not personally liable for the REIT's obligations. This provision does not protect a trustee whose acts constitute bad faith, willful misfeasance, gross negligence, or reckless disregard of the trustee's duties. A REIT's declaration of trust may include any provision expanding or limiting the liability if its trustees or officers to the trust, and its shareholders for money damages. The declaration may not include a provision that limits the liability of its trustees or officers to the extent that: (1) it is proved that the person actually received an improper benefit; or (2) a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action or failure to act was: (a) the result of active and deliberate dishonesty; and (b) material to the cause of action adjudicated in the proceeding.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Assessments and Taxation; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510