

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 495

(Senator Garagiola)

Judicial Proceedings

Economic Matters

Corporations - Directors and Stockholders - Meetings, Notices, and Consents

This bill provides that: (1) subject to the bylaws of the corporation, meetings of a corporation's board of directors or its stockholders may be held by remote communication; and (2) communications about meetings, including consent to an action without a meeting, may be made by electronic transmission.

The bill is effective June 1, 2003.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: For actions of a corporate board or one of its committees that may be done without a meeting upon consent, the bill authorizes consent to be: (1) given in writing or by electronic transmission; and (2) filed in paper or electronic form. The bill authorizes a corporation's board of directors, unless the bylaws provide otherwise, to: (1) hold a meeting by means of remote communication; and (2) provide notice of a board meeting by electronic transmission.

The bill authorizes a stockholders meeting to be held by remote communication if all persons can hear each other at the same time. The bill authorizes the place of a stockholders meeting to be determined in a corporate charter. The board of directors, if the board is authorized to determine the place of a stockholders meeting, may determine that meetings be held by remote communication rather than in a physical location. If a stockholder requests, the board of directors must provide for a place for the stockholders meeting. If authorized by the board and subject to reasonable guidelines and procedures adopted by the board, stockholders and proxy holders who are not physically present at a stockholders meeting may: (1) participate in the meeting; and (2) be considered present at and vote in the meeting.

For special meetings of stockholders, the bill grants the board sole power to fix the means of remote communication, if any, by which stockholders and proxy holders may be considered present and may vote.

The bill authorizes the use of electronic transmission for stockholder meeting notices and establishes standards for its use. Moreover, the bill authorizes stockholder consents to be given by electronic transmission.

The bill specifies that any notice given by a corporation to a stockholder is effective if given by a single electronic or written notice to all stockholders who share an address if: (1) the corporation gives written or electronic notice of its intent to give a single notice; and (2) the stockholder either consents or fails to object in writing within 60 days after the corporation gives notice. Such consent is revocable by written notice to the corporation.

Current Law: An action required or permitted at a meeting of a corporation's board of directors may be taken without a meeting if a unanimous written consent: (1) sets forth the action; (2) is signed by each member; and (3) is filed with the minutes of the board or committee. The board of directors of a corporation, unless the bylaws provide otherwise, must hold regular and special meetings in person at any location. Members may participate in meetings by a conference telephone or other similar communications equipment if all persons participating in the meeting can hear each other at the same time.

Notice of the meetings must be given as provided in the bylaws. Unless the bylaws provide otherwise, the notice must be in writing but need not state the meeting's purpose or the business to be transacted. Whenever required by law or by a corporation's charter or bylaws, notice of the time, place, or purpose of a meeting of the board or a board committee is waived if the person entitled to notice: (1) signs a waiver filed with the meeting records; or (2) is present at the meeting.

A corporation's board of directors has sole power to fix the record date for: (1) determining stockholders entitled to request a special stockholders meeting; and (2) determining stockholders entitled to notice of, and to vote in, the special meeting. The board also has sole power to fix the date, time, and place of the special meeting.

Unless restricted by a corporation's charter or bylaws, a corporation may allow stockholders to participate in a meeting by a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time.

Unless a corporation's charter provides otherwise, stockholders meetings must be held as provided in the corporation's bylaws or as set by the board under the bylaws.

Notice of a stockholders meeting must be given in writing. The notice must state the time and place of the meeting, and the meeting's purpose if: (1) the meeting is a special meeting; or (2) notice of the purpose is required under Maryland's corporate laws. Notice is given when it is: (1) personally delivered; (2) left at a stockholder's residence or usual place of business; (3) mailed to the stockholder; or (4) transmitted to the stockholder by electronic mail to any electronic mail address or by any other electronic means.

Whenever notice of a meeting's time, place, or purpose is required by law or by a corporation's charter or bylaws, notice is waived if the person entitled to the notice either: (1) signs a waiver filed with stockholders meeting records; or (2) is present at the meeting in person or by proxy.

An action required or permitted at a meeting of a corporation's stockholders may be taken without a meeting if a unanimous written consent: (1) sets forth the action; (2) is signed by each stockholder entitled to vote on the matter; and (3) is filed with the records of stockholders meetings.

Unless a corporate charter requires otherwise, the holders of any class of stock other than common stock, entitled to vote generally in the election of directors, may take action or consent to an action taken by the written consent of the stockholders entitled to cast at least the required minimum number of votes.

Additional Information

Prior Introductions: Similar bills were introduced in the 2001 and 2002 sessions. In 2002, HB 390 passed third reading in the House; both HB 390 and SB 122 received

unfavorable reports from the Senate Judicial Proceedings Committee. In 2001, HB 683 passed third reading in the House and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 683 was the subject of a briefing before the Judicial Proceedings Committee during the 2001 interim.

Cross File: HB 549 (Delegate Feldman, *et al.*) – Economic Matters.

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

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