

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 696

(Senator Gladden)

Judicial Proceedings

Economic Matters

**Maryland General Corporation Law - Altering and Updating Corporate
Procedures and Miscellaneous Provisions**

This bill alters various provisions governing corporate procedures.

The bill takes effect June 1, 2008.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary and Current Law:

Subscription for Stock

The Bill: The bill repeals the 10-day notice requirement about the amount, time, and place of payment.

Current Law: Unless the subscription agreement provides otherwise, a subscription for stock is required to be paid in full or in installments at the time set by the board of directors. The corporation must give at least 10 days written notice of the amount, time,

and place of payment to each subscriber at the subscriber's address as it appears on the corporation's records. Any call made by the board for payment on subscriptions must be uniform for all stock of the same class.

Preemptive Rights

The Bill: The bill applies the current restriction on preemptive rights to a corporation incorporated on or after October 1, 1995. For a corporation incorporated before October 1, 1995, a stockholder has preemptive rights to the extent that they existed before October 1, 1995, unless and until expressly changed or terminated by a corporate charter amendment.

Current Law: Unless the charter expressly grants preemptive rights to the stockholder, a stockholder does not have any preemptive right to subscribe to any additional issued of stock or any security convertible into an additional issued of stock. This provision does not apply to any preemptive rights in existence before October 1, 1995. A preemptive right may be waived, and a waiver is irrevocable.

Shares Issued Without Stock Certificates

The Bill: For shares issued without certificates, on request by a stockholder, the corporation must send the stockholder, without charge, a statement containing specified information about the stock.

Current Law: Unless the charter or bylaws provide otherwise, a corporation's board of directors may authorize the issue of stock without certificates. At the time of issue or transfer of shares without certificates, the corporation must send the stockholder a written statement containing specified information about the corporation and the stock, including preferences, voting rights, and restrictions.

Resignation of a Director

The Bill: A director's resignation given in writing or by electronic transmission may provide that • the resignation will be effective at a later time or on the occurrence of an event; • the resignation is irrevocable on the occurrence of the event; and • the resignation is irrevocable if it is effective on the failure of the director to receive a specified vote for reelection.

Current Law: The resignation of a corporate director is not specifically regulated by statute.

Committees of the Board of Directors

The Bill: A corporation's board of directors may delegate to a committee any of the board's powers except the power to recommend to the stockholders any action that requires stockholder approval, other than the election of directors.

A stock offering's "maximum aggregate offering price" is added to the provision authorizing a committee of the board of directors to authorize or fix the terms of stock.

Current Law: A corporation's board of directors may appoint from its members an executive committee and any other committees. The board may delegate any of its powers except the power to:

- with limited exceptions, authorize dividends on stock;
- with limited exceptions, issue stock;
- recommend to the stockholders any action that requires stockholder approval;
- amend the bylaws; or
- approve any merger or share exchange that does not require stockholder approval.

If the board has given general authorization for issuing stock providing for or establishing a method or procedure for determining the maximum number of shares of stock to be issued, a committee of the board may authorize or fix the terms of the stock subject to specified terms.

Indemnification of Directors and Officers

The Bill: The bill includes a "limited liability company" among the entities for which a person might serve as a director, officer, partner, trustee, employer, or agent.

Current Law: Generally, a corporation may indemnify any director made a party to any proceeding by reason of service as a director. A director means any person who is or was a director of a corporation and any person who, while a corporate director, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

Annual Meeting

The Bill: Generally, the annual meeting must be held at the time or in the manner provided in the bylaws.

Current Law: Generally, the annual meeting must be held at the time provided in the bylaws or, if the bylaws specify a period of up to 31 days during which the meeting may be held, at a time within that period as set by the board of directors.

Informal Action by Stockholders

The Bill: If authorized by the corporate charter, common stockholders entitled to vote generally in the election of directors may take action or consent to any action by delivering a consent of at least the minimum number of votes that would be necessary to authorize or take the action at a stockholders meeting if the corporation gives notice of the action no later than 10 days after the action's effective date to each holder of the class of common stock and to each stockholder who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

Current Law: If authorized by the corporate charter, common stockholders entitled to vote generally in the election of directors may take action or consent to any action by delivering a consent of at least the minimum number of votes that would be necessary to authorize or take the action at a stockholders meeting if the corporation gives notice of the action to each holder of the class of common stock no later than 10 days after the action's effective date.

Quorum and Voting

The Bill: The bill establishes new requirements for a corporation • with a class of equity securities registered under the Securities Exchange Act of 1934 and at least three directors who are not corporate officers or employees; or • registered as an open-end investment company under the Investment Company Act of 1940 (commonly called a mutual fund).

Unless the charter or bylaws provide otherwise, at a meeting of stockholders, the presence (in person or by proxy) of a majority of all votes entitled to be cast at the meeting constitutes a quorum. A quorum provision in the bylaws may not be less than one-third of the votes entitled to be cast at the meeting.

Current Law: Generally, at a meeting of stockholders, the presence (in person or by proxy) of stockholders entitled to cast a majority of all the votes entitled to be cast at the

meeting constitutes a quorum. Also, a majority of all the votes cast at a meeting at which a quorum is present is sufficient to approve any matter that properly comes before the meeting.

Generally, unless the corporate charter provides otherwise, if two or more classes of stock are entitled to vote separately on any matter for which approval requires two-thirds of all the votes entitled to be cast, the matter must be approved by two-thirds of all the votes of each class.

Contents of Articles of Consolidation, Merger, or Share Exchange

The Bill: Articles of consolidation, merger, or share exchange may provide the number of names of those directors or trustees of the successor, or persons acting in similar positions, who will hold those positions as of the effective date of the action, if the persons serving in those positions will be changed. The articles may also provide the titles and names of one or more officers of the successor, or persons acting in similar positions, who will hold those positions as of the effective time of the action, if the persons serving in the positions will be changed in the action.

Current Law: Articles of consolidation, merger, share exchange, or transfer must contain the terms and conditions of the transaction and the manner of carrying it into effect, including specified information for each action.

Background: The State Department of Assessments and Taxation advises that there are over 160,000 active domestic corporations, including both stock and non-stock corporations. Of these, approximately 95,000 were formed on or after October 1, 1995, with the rest formed before that date. The number of active domestic stock corporations is approximately 124,000. Of these, approximately 75,000 were formed on or after October 1, 1995.

Additional Information

Prior Introductions: A similar bill, HB 1234 of 2007, passed the House but the Senate Judicial Proceedings Committee did not take any action on the bill.

Cross File: HB 743 (Delegate Feldman) – Economic Matters.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2008
mll/hlb

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