

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 378  
Economic Matters

(Delegate Feldman)

Judicial Proceedings

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Corporations - Corporate Documents, Distributions, Fractional Shares, and  
Redemption of Stock

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This bill alters provisions governing corporate procedures related to the keeping of corporate bylaws, the elimination of fractional shares, an open-end investment company's redemption of shares, a corporation's annual statement of affairs, and a stockholder's right of inspection. The bill further authorizes a corporation to make a distribution from the corporation's net earnings under certain circumstances.

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Fiscal Summary

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

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary/Current Law/Background:**

*Contents and Keeping of Bylaws*

The bill repeals the requirement that the original or a certified copy of the bylaws and any amendments must be kept at the corporation's principal office.

### ***Fractional Shares***

The bill allows a corporation to eliminate a fractional interest in shares of stock by rounding up to a full share, rather than rounding off – whether up or down – to a full share as under current law. The bill does not alter the ability of a corporation to eliminate fractional shares if the corporation pays cash for the fair market value of the fractional share pursuant to § 2-214(a)(4) of the Corporations and Associations Article.

### ***Open-end Investment Companies – Redemption of Shares***

The bill increases from \$500 to \$1,000 the net asset value (NAV) of shares that may be redeemed by a corporation registered as an open-end company under the Investment Company Act of 1940, subject to statutory restrictions on distributions and unless prohibited by the corporate charter.

Likewise, if the aggregate NAV of the shares to be redeemed should increase to an amount greater than \$1,000 (rather than \$500 under current law) between the date of the notice of redemption and the actual date of redemption, then the notice of redemption is of no further force and effect.

Open-end investment companies may eliminate small investment accounts that are often beneath a minimum threshold investment and are uneconomical. The bill permits an open-end investment company to mandatorily redeem shares in accounts of less than \$1,000.

### ***Corporate Distributions***

Currently, a Maryland corporation may make a distribution only if, after the distribution, (1) the corporation would be able to pay its debts as they come due (the “solvency test”) and (2) the corporation’s assets would exceed its liabilities – including any stockholder preferential rights (the “balance sheet test”).

The bill alters the restrictions on corporate distributions by allowing a corporation to make a distribution from its net earnings even if the corporation’s assets do not exceed its liabilities. Specifically, the bill allows a corporation to make a distribution from its net earnings for the current or preceding fiscal year or from the sum of its net earnings for the preceding eight fiscal quarters. As with any distribution, the corporation must be able to continue to pay its debts as they come due.

### ***Annual Statement of Affairs***

The bill specifies additional requirements related to a corporation's annual statement of affairs. Unless a corporation is not required to hold an annual meeting, the statement of affairs must be submitted at the annual stockholders meeting and, within 20 days of the meeting, placed on file at the corporation's principal office or any other office or agency specified in the bylaws of the corporation, in written form, or any other form that may be converted in a reasonable time into written form.

If a corporation is not required to hold an annual meeting, the statement of affairs must be placed at the corporation's principal office, or any other office or agency specified in the bylaws, within 120 days after the end of the fiscal year. The statement of affairs must be in written form or any other form that may be readily converted in a reasonable time into written form.

### ***Stockholder's Right of Inspection***

The bill specifies that any stockholder, holder of a voting trust certificate in a corporation, or his agent, on written request, may inspect and copy the corporation's bylaws, minutes of the proceedings of stockholders, annual statements of affairs, and voting trust agreements deposited with the corporation at the corporation's principal office. Within seven days after a request for documents is presented to an officer or resident agent of the corporation, the corporation must make the documents available at its principal office.

The bill makes Maryland law with respect to a stockholder's right of inspection more consistent with § 220 of the Delaware General Corporation Law and § 16.01 of the Model Business Corporation Act, each of which permits a corporation five business days to respond to a stockholder's request.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 626 (Senators Forehand and Garagiola) - Judicial Proceedings.

**Information Source(s):** Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2009  
mcp/ljm Revised - Enrolled Bill - May 19, 2009

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