

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 589
Economic Matters

(Delegate Frick)

Corporations and Real Estate Investment Trusts - Corporate Bylaws and
Elections of Directors and Trustees

This bill specifies that, unless the charter or bylaws of a corporation or real estate investment trust (REIT) specify otherwise, a plurality of all votes cast in favor of a nominee at a meeting at which a quorum is present is sufficient to elect a director or trustee, respectively.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes that, in an election for corporate directors or REIT trustees in which the number of nominees is equal to the number of positions to be filled (1) a corporation stockholder or a REIT shareholder may cast votes for or against a nominee or may abstain; (2) each REIT share may be voted for as many individuals as there are trustees to be elected and for whose election the share is entitled to be voted; (3) a corporation stockholder or REIT shareholder who abstains from voting for or against a nominee may not use that vote to vote for or against another nominee; and (4) a nominee who is elected but received more votes against election than for election, may serve in the position for 90 days after the voting results or until the date on which the board of directors or trustees selects another qualified individual to fill the office, whichever is earlier. An

individual is not qualified for election to a director or trustee position if the board of directors or trustees determines that the individual is not qualified before the notice of a meeting has been given to the corporation stockholders or REIT shareholders.

The bill additionally repeals the authorization for the charter or bylaws of a corporation to vest the power to adopt, alter, and repeal the corporate bylaws in the board of directors.

Current Law:

Adoption of Corporate Bylaws

Under Title 2 of the Corporations and Associations Article, after the organization meeting of the board of directors, the power to adopt, alter, and repeal the bylaws of the corporation is vested in the stockholders, except to the extent that the charter or bylaws vest it in the board of directors.

Election and Tenure of Corporation Directors

A corporation's board of directors consists of the individuals named as directors in the charter, until successors are elected and qualify. At each annual stockholder meeting, the stockholders must elect directors to hold office until the earlier of (1) the next annual stockholder meeting; (2) the time specified in the terms of any class or series of stock pursuant to which such directors are elected; or (3) the time a director ceases to have the requisite qualifications if the charter or bylaws so required.

Except under specified circumstances, if the directors are divided into classes, the term of office may be as specified in the bylaws. However, the term of office of a director may not be longer than five years or shorter than the period between annual meetings. Additionally, the term of office of at least one class must expire each year. Each share of stock may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted.

Unless the charter or bylaws specify otherwise, a plurality of all the votes cast at a meeting at which a quorum is present is sufficient to elect a director.

Real Estate Investment Trust – Declaration of Trust

A REIT must file its declaration of trust with the State Department of Assessments and Taxation. The declaration of trust must have specified information, including (1) the name of the trust; (2) the number of shares that the trust may issue; (3) the provision for an annual shareholder meeting; (4) the provision for the election of trustees at least every third year at an annual shareholder meeting; (5) the number and names of trustees who will serve

until the first shareholder meeting and until successors are elected, or such later time as specified in the declaration of trust; and (6) if shares are divided into classes, a description of each class, including voting powers.

Although any action generally requires the concurrence of a greater proportion of the votes than a majority of the votes entitled to be cast, a declaration of trust may specify that an action may be taken or authorized on the concurrence of a greater or smaller proportion, but no less than a majority of the number of votes entitled to be cast on the matter.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 21, 2017
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