

SENATE BILL 137

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9lr0946

By: **Senators Waldstreicher and West**

Introduced and read first time: January 21, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 4, 2019

CHAPTER _____

1 AN ACT concerning

2 **Corporations – Maryland General Corporation Law – Miscellaneous Provisions**

3 FOR the purpose of clarifying voting procedures in certain cumulative voting elections;
4 clarifying the term of a certain director of a corporation elected to fill a vacancy;
5 altering the authority of certain holders of stock to take, and the circumstances in
6 which the holders of stock may take, certain action or consent to a certain action by
7 delivering a consent in writing or by electronic transmission; altering a certain
8 voting process of stockholders of different classes; clarifying the status of certain
9 shares of stock issued prior to the effective date of articles of amendment increasing
10 the authorized stock of the corporation; clarifying the time by which a parent
11 corporation is required to provide a certain notice in a certain merger; altering a
12 certain notice requirement for a certain parent corporation in a certain merger;
13 providing that a certain merger is effected under certain circumstances, rather than
14 authorizing the merger to be effected under certain circumstances; altering a certain
15 notice requirement for a certain acquiring entity in a certain merger; specifying the
16 effective time of a certain merger or consolidation involving a foreign limited
17 partnership, a foreign limited liability company, or a foreign partnership; altering
18 the powers of a real estate investment trust; defining a certain term; making a
19 conforming change; and generally relating to the Maryland General Corporation
20 Law and real estate investment trusts.

21 BY renumbering

22 Article – Corporations and Associations

23 Section 1–101(n) through (dd), respectively

24 to be Section 1–101(o) through (ee), respectively

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2014 Replacement Volume and 2018 Supplement)

3 BY adding to
4 Article – Corporations and Associations
5 Section 1–101(n)
6 Annotated Code of Maryland
7 (2014 Replacement Volume and 2018 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Corporations and Associations
10 Section 2–406(b), 2–407(c), 2–418(e)(2), 2–505(b), 2–506(b), 3–106(d)(1),
11 3–106.1(c)(1) and (e)(1), 3–113(b)(1), and 8–301(4)
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Corporations and Associations
16 Section 3–804(c)
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2018 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That Section(s) 1–101(n) through (dd), respectively, of Article – Corporations and
21 Associations of the Annotated Code of Maryland be renumbered to be Section(s) 1–101(o)
22 through (ee), respectively.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
24 as follows:

25 **Article – Corporations and Associations**

26 1–101.

27 **(N) “ENTIRE BOARD OF DIRECTORS” MEANS THE NUMBER OF INDIVIDUALS**
28 **WHO ARE DIRECTORS OF THE CORPORATION.**

29 2–406.

30 (b) Unless the charter of the corporation provides otherwise:

31 (1) If the stockholders of any class or series are entitled separately to elect
32 one or more directors, a director elected by a class or series may not be removed without
33 cause except by the affirmative vote of a majority of all the votes of that class or series;

34 (2) If a corporation has cumulative voting for the election of directors and
35 [less] FEWER than [the entire board is] ALL DIRECTORS ARE to be removed, a director

1 may not be removed without cause if the votes cast against the director's removal would be
2 sufficient to elect the director if then cumulatively voted at an election of the entire board
3 of directors, or, if there is more than one class of directors, at an election of the class of
4 directors of which the director is a member; and

5 (3) If the directors have been divided into classes, a director may not be
6 removed without cause.

7 2-407.

8 (c) (1) **[A] UNLESS THE CORPORATION HAS ELECTED TO BE SUBJECT TO**
9 **§ 3-804(C)(3) OF THIS ARTICLE**, A director elected by the board of directors to fill a
10 vacancy serves until the next annual meeting of stockholders and until his successor is
11 elected and qualifies.

12 (2) A director elected by the stockholders to fill a vacancy which results
13 from the removal of a director serves for the balance of the term of the removed director.

14 2-418.

15 (e) (2) Such determination shall be made:

16 (i) By the board of directors by a majority vote of a quorum
17 consisting of directors not, at the time, parties to the proceeding, or, if such a quorum cannot
18 be obtained, then by a majority vote of a committee of the board consisting solely of one or
19 more directors not, at the time, parties to such proceeding and who were duly designated
20 to act in the matter by a majority vote of the **[full] ENTIRE board OF DIRECTORS** in which
21 the designated directors who are parties may participate;

22 (ii) By special legal counsel selected by the board of directors or a
23 committee of the board by vote as set forth in subparagraph (i) of this paragraph, or, if the
24 requisite quorum of the full board cannot be obtained therefor and the committee cannot
25 be established, by a majority vote of the full board in which directors who are parties may
26 participate; or

27 (iii) By the stockholders.

28 2-505.

29 (b) (1) Unless the charter requires otherwise, the holders of any class **OR**
30 **SERIES** of stock, other than **SHARES OF** common stock entitled to vote generally in the
31 election of directors, may take action or consent to any action by delivering a consent in
32 writing or by electronic transmission of the stockholders entitled to cast not less than the
33 minimum number of votes that would be necessary to authorize or take the action at a
34 stockholders meeting **AT WHICH ALL STOCKHOLDERS ENTITLED TO VOTE ON THE**
35 **ACTION WERE PRESENT AND VOTED** if the corporation gives notice of the action to each

1 holder of the class **OR SERIES** of stock not later than 10 days after the effective time of the
2 action.

3 (2) If authorized by the charter of a corporation, the holders of **SHARES OF**
4 common stock entitled to vote generally in the election of directors may take action or
5 consent to any action by delivering a consent in writing or by electronic transmission of the
6 stockholders entitled to cast not less than the minimum number of votes that would be
7 necessary to authorize or take the action at a stockholders meeting **AT WHICH ALL**
8 **STOCKHOLDERS ENTITLED TO VOTE ON THE ACTION WERE PRESENT AND VOTED** if
9 the corporation gives notice of the action not later than 10 days after the effective date of
10 the action to each holder of **SHARES OF** the class **OR SERIES** of common stock and to each
11 stockholder who, if the action had been taken at a meeting, would have been entitled to
12 notice of the meeting.

13 2–506.

14 (b) Subject to other provisions of this article, unless the charter of a corporation
15 provides otherwise, if two or more classes **OR SERIES** of stock are entitled to vote separately
16 on any matter for which this article requires approval by two-thirds of all the votes entitled
17 to be cast, the matter shall be approved by two-thirds of all the votes of each class **OR**
18 **SERIES ENTITLED TO VOTE ON THE MATTER.**

19 3–106.

20 (d) (1) Unless waived by all stockholders who, except for the application of this
21 section, would be entitled to vote on the merger, at least **[30] 20 BUSINESS** days before the
22 articles are filed with the Department[,], a parent corporation which owns less than all of
23 the outstanding stock of the subsidiary as of immediately before the effective time of the
24 merger must have given notice of the transaction to each of the subsidiary's stockholders
25 of record who, except for the application of this section, would be entitled to vote on the
26 merger on the date of giving of the notice or on a record date fixed for that purpose which
27 is not more than 10 days before the date of giving notice.

28 3–106.1.

29 (c) (1) Notwithstanding § 3–105 of this subtitle, unless the charter of a
30 corporation or declaration of trust of a real estate investment trust provides otherwise, a
31 merger of a subject corporation with or into an acquiring entity **[may be] IS** effected under
32 this section if:

33 (i) The shares of the subject corporation are registered under the
34 Securities Exchange Act of 1934 immediately prior to the execution of the agreement to
35 merge by the subject corporation;

36 (ii) The agreement to merge expressly allows or requires the merger
37 to be effected under this section and provides that the merger shall be effected following

1 the consummation of the offer described in item (iii) of this paragraph;

2 (iii) Subject to paragraph (2) of this subsection, an acquiring entity
3 consummates a tender or exchange offer for any and all of the outstanding shares of the
4 subject corporation that would, except for the application of this section, entitle the holder
5 of the outstanding shares to vote on the merger on the terms provided in the agreement to
6 merge;

7 (iv) Following the consummation of the offer, the stock irrevocably
8 accepted for purchase or exchange in accordance with the offer and received by the
9 depository before the expiration of the offer, together with the stock otherwise owned by
10 the acquiring entity, a person that owns, directly or indirectly, all of the outstanding equity
11 interest in the acquiring entity, and a direct or indirect wholly owned subsidiary of the
12 acquiring entity or a person that owns, directly or indirectly, all of the outstanding equity
13 interest in the acquiring entity, equals at least that percentage of the shares, and of each
14 class or series of the shares, of the subject corporation that would, except for the application
15 of this section, be required to approve the merger under this article and the charter of the
16 subject corporation;

17 (v) The acquiring entity merges with or into the subject corporation;
18 and

19 (vi) Each outstanding share of each class or series of shares of the
20 subject corporation that is the subject of and not irrevocably accepted for purchase or
21 exchange in the offer is converted in the merger into, or into the right to receive, the same
22 amount and kind of cash, property, rights, or securities paid for shares of the class or series
23 of shares of the subject corporation irrevocably accepted for purchase or exchange in the
24 offer.

25 (e) (1) Unless waived by all stockholders who, except for the application of this
26 section, would be entitled to vote on the merger, at least [30] **20 BUSINESS** days before the
27 articles are filed with the Department, an acquiring entity that owns less than all of the
28 outstanding shares of the subject corporation as of immediately before the effective time of
29 the merger must have given notice of the transaction to each of the subject corporation's
30 stockholders of record who, except for the application of this section, would be entitled to
31 vote on the merger on the date that notice is given or on a record date fixed for that purpose
32 that is not more than 10 days before the date that notice is given.

33 3–113.

34 (b) (1) If the successor in a consolidation or merger is a foreign corporation
35 [or], a foreign business trust, **A FOREIGN LIMITED PARTNERSHIP, A FOREIGN LIMITED**
36 **LIABILITY COMPANY, OR A FOREIGN PARTNERSHIP**, the consolidation or merger is
37 effective as of the later of:

38 (i) The time specified by the law of the place where the successor is
39 organized; or

1 (ii) The time the Department accepts the articles of consolidation or
2 merger for record.

3 3-804.

4 (c) (1) Notwithstanding any provision in the charter or bylaws, this subsection
5 applies to a vacancy that results from:

6 (i) An increase in the size of the board of directors; or

7 (ii) The death, resignation, or removal of a director.

8 (2) Each vacancy on the board of directors of a corporation may be filled
9 only by the affirmative vote of a majority of the remaining directors in office, even if the
10 remaining directors do not constitute a quorum.

11 (3) Any director elected to fill a vacancy shall hold office:

12 (i) For the remainder of the full term of the class of directors in
13 which the vacancy occurred; and

14 (ii) Until a successor is elected and qualifies.

15 8-301.

16 A real estate investment trust has the power to:

17 (4) Make contracts **AND GUARANTEES**, incur liabilities, and borrow
18 money;

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.