

# SENATE BILL 137

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By: **Senators Waldstreicher and West**

Introduced and read first time: January 21, 2019

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

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  
25 Annotated Code of Maryland  
26 (2014 Replacement Volume and 2018 Supplement)

27 BY adding to

28 Article – Corporations and Associations  
29 Section 1–101(n)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 BY repealing and reenacting, with amendments,  
4 Article – Corporations and Associations  
5 Section 2–406(b), 2–407(c), 2–418(e)(2), 2–505(b), 2–506(b), 3–106(d)(1),  
6 3–106.1(c)(1) and (e)(1), 3–113(b)(1), and 8–301(4)  
7 Annotated Code of Maryland  
8 (2014 Replacement Volume and 2018 Supplement)

9 BY repealing and reenacting, without amendments,  
10 Article – Corporations and Associations  
11 Section 3–804(c)  
12 Annotated Code of Maryland  
13 (2014 Replacement Volume and 2018 Supplement)

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

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

20 **Article – Corporations and Associations**

21 1–101.

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

24 2–406.

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

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

29 (2) If a corporation has cumulative voting for the election of directors and  
30 [less] **FEWER** than [the entire board is] **ALL DIRECTORS ARE** to be removed, a director  
31 may not be removed without cause if the votes cast against the director’s removal would be  
32 sufficient to elect the director if then cumulatively voted at an election of the entire board  
33 of directors, or, if there is more than one class of directors, at an election of the class of  
34 directors of which the director is a member; and

35 (3) If the directors have been divided into classes, a director may not be

1 removed without cause.

2 2-407.

3 (c) (1) **[A] UNLESS THE CORPORATION HAS ELECTED TO BE SUBJECT TO**  
4 **§ 3-804(C)(3) OF THIS ARTICLE**, A director elected by the board of directors to fill a  
5 vacancy serves until the next annual meeting of stockholders and until his successor is  
6 elected and qualifies.

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

9 2-418.

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

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

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

22 (iii) By the stockholders.

23 2-505.

24 (b) (1) Unless the charter requires otherwise, the holders of any class **OR**  
25 **SERIES** of stock, other than **SHARES OF** common stock entitled to vote generally in the  
26 election of directors, may take action or consent to any action by delivering a consent in  
27 writing or by electronic transmission of the stockholders entitled to cast not less than the  
28 minimum number of votes that would be necessary to authorize or take the action at a  
29 stockholders meeting **AT WHICH ALL STOCKHOLDERS ENTITLED TO VOTE ON THE**  
30 **ACTION WERE PRESENT AND VOTED** if the corporation gives notice of the action to each  
31 holder of the class **OR SERIES** of stock not later than 10 days after the effective time of the  
32 action.

33 (2) If authorized by the charter of a corporation, the holders of **SHARES OF**  
34 common stock entitled to vote generally in the election of directors may take action or  
35 consent to any action by delivering a consent in writing or by electronic transmission of the

1 stockholders entitled to cast not less than the minimum number of votes that would be  
2 necessary to authorize or take the action at a stockholders meeting **AT WHICH ALL**  
3 **STOCKHOLDERS ENTITLED TO VOTE ON THE ACTION WERE PRESENT AND VOTED** if  
4 the corporation gives notice of the action not later than 10 days after the effective date of  
5 the action to each holder of **SHARES OF** the class **OR SERIES** of common stock and to each  
6 stockholder who, if the action had been taken at a meeting, would have been entitled to  
7 notice of the meeting.

8 2–506.

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

14 3–106.

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

23 3–106.1.

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

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

31 (ii) The agreement to merge expressly allows or requires the merger  
32 to be effected under this section and provides that the merger shall be effected following  
33 the consummation of the offer described in item (iii) of this paragraph;

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

1 merge;

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

12 (v) The acquiring entity merges with or into the subject corporation;  
13 and

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

20 (e) (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, an acquiring entity that owns less than all of the  
23 outstanding shares of the subject corporation as of immediately before the effective time of  
24 the merger must have given notice of the transaction to each of the subject corporation's  
25 stockholders of record who, except for the application of this section, would be entitled to  
26 vote on the merger on the date that notice is given or on a record date fixed for that purpose  
27 that is not more than 10 days before the date that notice is given.

28 3-113.

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

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

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

37 3-804.

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

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

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

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

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

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

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

12 8-301.

13 A real estate investment trust has the power to:

14 (4) Make contracts **AND GUARANTEES**, incur liabilities, and borrow  
15 money;

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