

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 137

(Senators Waldstreicher and West)

Judicial Proceedings

Economic Matters

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**Corporations - Maryland General Corporation Law - Miscellaneous Provisions**

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This bill alters requirements relating to (1) corporate board vacancies; (2) informal action by stockholders of a corporation; (3) quorums to vote on corporate matters; (4) notice requirements for specified merger agreements; (5) the effective date of a consolidation or merger if the successor is a foreign entity; and (6) the powers of Real Estate Investment Trusts (REITs). The bill also makes a series of technical and clarifying changes.

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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:** Potential minimal.

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**Analysis**

**Bill Summary/Current Law:**

*Definition of “Entire Board of Directors”*

The bill defines “entire board of directors” as the number of individuals who are directors of the corporation.

### *Removal and Resignation of Directors*

Under current law, if *less than the entire board* is to be removed, a director may not be removed without cause. Specifically, a director may not be removed without cause if the votes cast against the director's removal are sufficient to elect the director, if then cumulatively voted at an election of the entire board of directors, or, if there is more than one class of directors, at an election of the class of directors of which the director is a member.

The bill makes a clarifying change to remove the language referring to the *entire board* and instead specifies *fewer than all directors*, intended to remove any potential confusion related to the new definition for the "entire board of directors."

### *Board Vacancies*

Under current law, a director elected by a board of directors to fill a vacancy serves until the next annual meeting of the stockholders and until the successor is elected and qualifies.

The bill specifies that this requirement does not apply if the corporation has elected to be subject to provisions relating to vacancies in unsolicited takeovers, in which the vacancy results from an increase in the size of the board of directors or the death, resignation, or removal of a director. In such cases, a vacancy may be filled only by the affirmative vote of a majority of the remaining directors, even if the remaining members do not constitute a quorum. A director elected to fill a vacancy holds the office for the remainder of the full term of the class of directors in which the vacancy occurred and until a successor is elected and qualifies.

### *Indemnification of Directors*

Under current law indemnification determinations must be made by the board of directors by a majority vote of a quorum consisting of directors not, at the time, parties to the proceeding, or, if a quorum cannot be met, then by a majority vote of a committee of the board consisting solely of one or more directors not, at the time, parties to such proceeding and who were duly designated to act in the matter by a majority vote of the *full board* in which the designated directors who are parties may participate.

The bill makes a clarifying change to this section to replace the term "*full board*" with the newly defined "*entire board of directors*."

### *Stockholder Informal Action*

Under current law, the holders of any *class* of stock, *other than common stock* entitled to vote generally in the election of directors, may take action or consent to any action by delivering a consent in writing or by electronic transmission of the stockholders entitled to cast 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 stock* up to 10 days after the effective time of the action.

Additionally, under current law, the *holders of common stock* entitled to vote generally in the election of directors may take action or consent to any action by delivering a consent in writing or by electronic transmission of the stockholders entitled to cast at least the minimum number of votes that are necessary to authorize or take the action *at a stockholders meeting* if the corporation gives notice of the action up to 10 days after the effective date of the action 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.

The bill clarifies that (1) the references to common stock also refer to *series* of common stock; (2) the references to class of stock refer to *shares* of the class; and (3) the references to stockholders meetings refer to meetings at which *all stockholders entitled to vote* on the action were present and voted.

### *Quorum Requirements*

Under current law, if two or more classes of stock are entitled to vote separately on a matter that requires approval by 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.

The bill specifies that in such cases, the matter must be approved by two-thirds of all the votes of each class *or series entitled to vote on the matter*.

### *Merger Agreements – Notice*

Under the bill, for merger agreements of a subsidiary corporation in which the charter of the parent corporation was not amended, and for merger agreements preceded by a tender or exchange offer by an acquiring entity, specified notice of the transaction must be given at least 20 days (rather than at least 30 days) before the articles are filed with the State Department of Assessments and Taxation (SDAT).

### *Effective Date of a Consolidation or Merger If the Successor is a Foreign Entity*

Under current law, if the successor in a consolidation or merger is a foreign corporation or foreign business trust, the consolidation or merger is effective as of the time specified by the law of the place where the successor is organized or the time SDAT accepts the articles of consolidation or merger for record, whichever is later.

The bill incorporates foreign limited partnerships, foreign limited liability companies, and foreign partnerships into these requirements.

### *Powers of Real Estate Investment Trusts*

The bill specifies that a REIT has the power to make contracts *and guarantees*, as well as incur liabilities and borrow money.

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## **Additional Information**

**Prior Introductions:** SB 865 of 2018, a similar bill, passed the Senate as amended, but received an unfavorable report from the House Economic Matters Committee. Its cross file, HB 1095, received an unfavorable report from the House Economic Matters Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 29, 2019  
an/kdm Third Reader - February 8, 2019

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