

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 400

(Senators West and Waldstreicher)

Judicial Proceedings

Economic Matters

**Corporations and Associations – Definitions, Emergencies, and Outstanding
Stock – Revisions**

This bill generally (1) authorizes a corporation to adopt emergency bylaws and establishes related provisions applicable to an “emergency” (as defined in the bill); (2) clarifies statutory provisions related to a corporation’s acquisition of its own stock; and (3) alters specified definitions.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Emergency Provisions – Authorization and Board of Directors

The bill authorizes, unless the charter provides otherwise, the bylaws of a corporation to contain provisions to be effective only during an emergency. As applicable to the following provisions, “emergency” means a situation in which a quorum of the board of directors cannot readily be assembled because of some catastrophic event. The emergency provisions may be adopted only in advance of an emergency.

The emergency provisions may make all provisions necessary for managing the corporation during an emergency, including (1) procedures for calling a meeting of the board of directors; (2) quorum requirements for a meeting; and (3) designation of additional or substitute directors. All provisions of the bylaws not inconsistent with the emergency provisions remain effective during an emergency. The emergency provisions may state that the standard of conduct otherwise required under statute must apply to the conduct of a director acting pursuant to the emergency provisions.

Unless the bylaws contain emergency provisions specifying otherwise, notice of a meeting of the board of directors may be given (1) only to those directors whom it is practicable to reach in the circumstances; (2) in any practicable manner given in the circumstances; and (3) with shorter notice as is reasonable in the circumstances.

Any corporate act taken in good faith, as specified, binds the corporation and may not be used to impose liability on a director, an officer, an employee, or an agent of the corporation.

Emergency Provisions – Meeting of Stockholders

The definition of “emergency” applicable to the following provisions is a situation in which it is impracticable to convene a meeting of stockholders in accordance with the Maryland General Corporation Law or the bylaws or as specified in a notice for the meeting previously given, because of some catastrophic event.

During an emergency, unless the bylaws contain emergency provisions providing otherwise, the board of directors may (1) postpone a meeting of stockholders for which notice has been given or (2) authorize stockholders to participate in a meeting by any means of remote communication authorized, as specified. The corporation must give notice to stockholders of any action taken, including any new date, time, or place of a meeting, as specified. Any corporate act taken in good faith during an emergency binds the corporation and may not be used to impose liability on a director, an officer, an employee, or an agent of the corporation.

Applicability to Real Estate Investment Trusts

The bill applies the aforementioned provisions regarding emergencies to real estate investment trusts.

Acquisition of Corporation’s Stock

The bill establishes that unless the charter specifies otherwise, stock must cease to be outstanding on the date of redemption or repurchase if a corporation has:

- given a notice of redemption of stock or repurchase of stock pursuant to a right of redemption specified in the charter or a duly adopted repurchase plan binding on the stockholder; and
- paid or set aside sufficient funds for the benefit of the holder of the stock called for redemption or repurchase.

However, the provisions do not affect the right of a stockholder to receive payment of the redemption or repurchase price.

Definitions

The bill alters the definition of “principal office” to mean the place in Maryland filed or recorded with the State Department of Assessments and Taxation (SDAT) as the principal office of a *Maryland* corporation, *limited liability company*, *limited liability partnership*, or limited partnership (or the main office of the entity, if there is no designated principal office).

The bill also alters the definition of a “resident agent” to include a *limited partnership* whose name, address, and designation as a resident agent are filed or recorded with SDAT, as specified.

Current Law: The Corporations and Associations Article generally sets forth numerous requirements applicable to a corporation’s formation, organization, and operations.

For example, generally, unless the bylaws of the corporation provide otherwise, a regular or special meeting of the board of directors may be held at any place in or out of the State or by means of remote communication. Notice of each meeting of the board of directors must be given as provided in the bylaws.

Furthermore, each corporation must hold an annual meeting of its stockholders to elect directors and transact any other business within its powers. Generally, the meeting must be held at the time or in the manner provided in the bylaws. No less than 90 days before each stockholders’ meeting (and no more than 90 days before), the secretary of the corporation must give, or cause to be given, notice in writing or by electronic transmission of the meeting to (1) each stockholder entitled to vote at the meeting and (2) each other stockholder entitled to notice of the meeting.

Subject to the provisions of its charter and specified restrictions on making distributions, if authorized by its board of directors, a corporation may acquire the corporation’s own shares, which constitute authorized but unissued shares. Shares of a corporation’s own stock acquired by the corporation are subject to specified provisions in determining the total number of outstanding shares that may be purchased.

Small Business Effect: By authorizing the board of directors to adopt emergency bylaws and related provisions, the bill may benefit a corporation's management and operation during a catastrophic event.

Additional Comments: The bill implements recommendations of the Maryland State Bar Association, whose Committee on Corporation Law regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 749 (Delegate Amprey) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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