

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 469

(Senators West and Waldstreicher)

Judicial Proceedings

Economic Matters

Corporations and Associations - Corporations and Real Estate Investment Trusts
- Miscellaneous

This bill alters numerous provisions relating to (1) various types of corporation filings with the State Department of Assessments and Taxation (SDAT) and their effective dates; (2) the additional right of inspection of specified stockholders; (3) the process for determining whether indemnification of directors is proper; (4) various approvals by specified Maryland corporations that are registered as open-end companies; (5) modernizing and clarifying the contents of charters or bylaws of nonstock corporations; and (6) the authority of real estate investment trusts (REITs). The bill also makes other technical and clarifying changes.

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.

Analysis

Bill Summary/Current Law: The bill harmonizes the use of several terms and clarifies provisions relating to shareholders, shares, classes, and series of stock.

Corporation Filings with the State Department of Assessments and Taxation

Articles of Incorporation: Under current law, when SDAT accepts articles of incorporation for record, the proposed corporation becomes a body corporate under the name and subject to the purposes, conditions, and provisions stated in the articles. The bill allows for a later effective date than when SDAT accepts the articles for record; specifically, the articles of incorporation may instead take effect at the time established under the articles, which may be no later than 30 days after SDAT accepts them for record. Accordingly, the bill authorizes the articles of incorporation to include a provision that contains a future effective date (as long as it is no later than 30 days after the articles are accepted by SDAT for record).

Articles of Conversion: Unlike articles of incorporation, current law allows articles of conversion to contain a future effective date for them so long as that date is no later than 30 days after they are accepted for record by SDAT. The bill repeals, as unnecessary, related provisions (specifically, in a conversion of a Maryland corporation to another entity (and vice versa), the articles of conversion must set forth the future effective time, which has to be a time certain, of the articles of conversion, if those articles are not to be effective when accepted for record).

Contents of Articles of Merger: The bill establishes that, in regards to articles of merger with a Maryland corporation being filed, the articles of merger must include any amendment (to the charter, certificate of limited partnership, articles of organization, or declaration of trust) as well as the restatement of same if the restatement is to be effected as part of the merger. Accordingly, filings with SDAT that include such a restatement must be accepted.

Corporations – Additional Right of Inspection of Stockholders

Under current law, general inspection rights are afforded to all stockholders, and additional inspection rights are afforded to larger stockholders (*i.e.*, one or more persons who together are and for at least six months have been stockholders of record or holders of voting trust certificates of at least 5% of the outstanding stock). The bill establishes that only holders of *common stock* have an additional right of inspection, unless the charter of a corporation provides otherwise. This change applies only to holders of shares or any class or series of stock, other than common stock, that is classified or reclassified by articles of supplementary, or created by articles of incorporation or an amendment to the charter, and accepted for record by SDAT on or after October 1, 2020.

Process for Determining Whether Indemnification of Directors Is Proper

The bill allows a board of directors to delegate a determination as to whether the corporation should indemnify a director (who was sued by reason of service in that role) to a committee of the board. Currently, such a delegation is permitted only if a quorum of those directors who are not parties to the proceeding cannot be obtained.

Maryland Corporations Registered as Open-end Investment Companies

The bill modifies provisions related to approval of specified charter amendments by, mergers by, or dissolutions of Maryland corporations registered as open-end investment companies (better known as mutual funds) under the Investment Company Act of 1940. The bill requires approval by a majority of the entire board of directors *and* in the manner and by the vote required under that Act. Under current Maryland law, charter amendments and dissolutions generally must be approved by the stockholders of the corporation by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter, whereas mergers generally need to be approved only by a majority of the Maryland successor corporation's entire board of directors.

Nonstock Corporations – Provisions in Charter or Bylaws

The bill authorizes the charter or bylaws of a nonstock corporation to regulate (1) the management of the business and affairs of the corporation and (2) the exercise or allocation of voting power between or among the directors and members. In addition, the bill authorizes such a charter or bylaws to allow for electronic voting (in addition to voting by mail, as authorized under current law) on a stated proposal or for the election of directors or any officers who are elected by members.

Real Estate Investment Trusts

Additional Authority: The bill establishes express authority for a REIT to conduct a reverse stock split; such authority is only expressly granted to corporations under current law.

Articles of Conversions: Current law allows articles of conversion to contain a future effective date for them so long as that date is no later than 30 days after they are accepted for record by SDAT. The bill repeals, as unnecessary, related provisions (specifically, in a conversion of a REIT to another entity (and vice versa), the articles of conversion must set forth the future effective time, which has to be a time certain, of the articles of conversion, if those articles are not to be effective when accepted for record).

Background: The bill implements recommendations of the Maryland State Bar Association, whose Committee on Corporation Law monitors the Maryland General Corporation Law.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 668 (Delegate Dumais) - Economic Matters.

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

Fiscal Note History: First Reader - February 13, 2020
rh/ljm Third Reader - March 14, 2020
Revised - Amendment(s) - March 14, 2020

Analysis by: Hillary J. Cleckler

Direct Inquiries to:
(410) 946-5510
(301) 970-5510