Bill Analysis

Aida S. Montano *Legislative Service Commission*

H.B. 278

124th General Assembly
(As Introduced)

Rep. Manning

BILL SUMMARY

- Authorizes the directors of a corporation generally to adopt specific amendments in the articles of incorporation that change the name of or the location in Ohio of the principal office of the corporation or that either increase the authorized number of shares of a class as a result of a dividend or distribution or change each issued and unissued authorized share of an outstanding class into a greater number of shares of that class and concurrently decrease the par value of issued and unissued shares of a particular class.

- Requires a corporation to send written notice and a copy or summary of any directors' amendment or amended articles to each shareholder of record as of the date of approval of the amendment or amended articles.

CONTENT AND OPERATION

Amendment of articles by directors

Continuing law

The General Corporation Law specifies the cases in which the directors of a corporation may adopt an amendment to the articles of incorporation. The directors' authority to amend the articles generally covers: (1) the determination of the express terms of any class of shares before issuance of shares of that class, or of one or more series within a class before issuance of shares of that series, (2) the authorization of sufficient unissued shares to satisfy conversion or option rights, (3) the reduction of the authorized number of shares of a class by the number redeemed, surrendered to, or acquired by the corporation upon conversion, exchange, purchase, or otherwise, or the elimination of all references in the articles to the shares when all of the authorized shares of a class have been so redeemed, surrendered to, or acquired by the corporation, (4) the elimination of all

references in the articles to the change of issued or unissued shares provided for in an amendment or amended articles that has become effective, and (5) after a merger or consolidation in which the surviving or new corporation is a domestic corporation, the elimination from the articles of any statement or provision pertaining exclusively to the merger or consolidation, or that was required to be set forth in the merger or consolidation agreement and would not be required in original articles or amendments to articles filed at the time the statement or provision was adopted. (R.C. 1701.70(B)(1) to (5).)

Operation of the bill

The bill expands the authority of the directors to adopt an amendment to the articles in the following cases (R.C. 1701.70(B)(6) to (10)):

(1) Unless otherwise provided in the articles, the directors may adopt an amendment changing the name of the corporation.

(2) The directors may adopt an amendment changing the place in Ohio where the principal office of the corporation is to be located.

(3) When the directors have declared a dividend or distribution on any class of outstanding shares of the corporation to be paid in shares of the same class, the directors may adopt an amendment to proportionately increase the authorized number of shares of the class, provided that (a) the corporation has only one class of shares outstanding or the dividend or distribution is not substantially prejudicial to the holders of any other class of the corporation's shares and (b) that amendment be adopted concurrently with the amendment described below in paragraph (5) when the dividend or distribution is declared on outstanding shares with par value.

(4) The directors may adopt an amendment to change each issued and unissued authorized share of an outstanding class into a greater number of shares of that class and to proportionately increase the authorized number of shares of that class, provided that (a) the corporation has only one class of shares outstanding or the change is not substantially prejudicial to the holders of any other class of the corporation's shares and (b) that amendment be adopted concurrently with the amendment described below in paragraph (5) when the change is made to outstanding shares with par value.

(5) Concurrently with the adoption of an amendment described above in paragraph (3) or (4), the directors may adopt an amendment decreasing the par value of issued and unissued shares of a particular class to the extent necessary to prevent an increase in the aggregate par value of the outstanding shares of the

class as a result of the dividend or distribution described in paragraph (3) or the change described in paragraph (4).

Paragraphs (1) to (5), above, do not apply to a corporation with 100 or fewer shareholders unless the corporation was created on or after the effective date of the section's amendment, or the articles of the corporation have been amended in compliance with R.C. 1701.71 (see "***Amendment of articles by shareholders***," below) or R.C. 1701.72 (see **COMMENT**) specifically to make those divisions applicable (R.C. 1701.70(D)).

Amendment of articles by shareholders

Regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class are entitled under existing law to vote as a class on the adoption of an amendment that increases or decreases the par value of the issued shares of the particular class. The bill provides an exception to this right when the directors amend the articles of incorporation pursuant to the bill.

Under the bill, regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class are entitled to vote as a class on the adoption of an amendment that increases or decreases the par value of the issued shares of the particular class, *except in the case of an amendment to the articles adopted by the directors pursuant to paragraph (5)*, above, (added by the bill). (R.C. 1701.71(B)(1).)

Notice of adopted amendment or amended articles

Continuing law

Upon the adoption of any amendment or amended articles, a certificate containing a copy of the resolution adopting the amendment or amended articles, a statement of the manner of its adoption, and, in the case of adoption of the resolution by the incorporators or directors, a statement of the basis for that adoption, must be filed with the Secretary of State, and thereupon the articles are amended accordingly, any change of shares provided for in the amendment or amended articles become effective, and the amended articles supersede the existing articles (R.C. 1701.73(A)).

Operation of the bill

Under the bill, when an amendment or amended articles are adopted by the directors pursuant to existing law or as authorized by the bill under R.C. 1701.70 (see "***Amendment of articles by directors***," above), the corporation must send written notice of the amendment or amended articles, and a copy or summary of

the amendment or amended articles, to each shareholder of the corporation of record as of the date on which the directors approved the amendment or amended articles. The notice must be sent to the shareholders within 20 days after the filing of the certificate required by continuing law as described in the preceding paragraph. (R.C. 1701.73(A).)

COMMENT

Under R.C. 1701.72, not in the bill, the incorporators, the directors, and the shareholders, in the cases where they are respectively authorized to adopt an amendment to the articles, may, in addition to or in lieu of adopting an amendment, adopt amended articles by the same action or vote as that required to adopt the amendment. The directors may adopt amended articles to consolidate the original articles and all previously adopted amendments to the articles that are in force at the time, or the shareholders at a meeting held for that purpose may adopt the amended articles by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal. (R.C. 1701.72(A) and (B).)

Generally, amended articles must set forth all provisions that are required in, and only those provisions that may properly be in, original articles or amendments to articles filed at the time of adopting the amended articles and must contain a statement that they supersede the existing articles; provided, however, that amended articles adopted by the directors or the shareholders need not contain any statement with respect to initial stated capital (R.C. 1701.72(C)).

HISTORY

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