

HOUSE BILL REPORT

HB 2660

As Reported By House Committee On:
Judiciary

Title: An act relating to corporations.

Brief Description: Concerning corporations that may make assessments based on real property value.

Sponsors: Representatives Anderson and Reams; by request of Secretary of State.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1994, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Pat Shelledy (786-7149).

Background: Nonprofit corporations are corporations that do not distribute any income to their members, directors, or officers. Although nonprofit corporations' powers are somewhat limited compared to for profit corporations, nonprofit corporations have many powers. Apparently one of those powers, if granted by the articles of incorporation, is to make and collect assessments based on the value of all or part of the real property owned by the members of the corporation. This power is usually used by homeowners' associations and corporations.

The Superior Courts have power to liquidate the assets and affairs of a corporation for a variety of reasons, such as when the directors are deadlocked in the management of the corporation and the corporation is suffering irreparable injury, or the acts of the directors are illegal.

Corporations may authorize the use of "cumulative voting," which allows a shareholder to cast as many votes as the product of the number of shares held multiplied by the

number of directors to be elected or removed. Under the current corporation statute, an ambiguity exists regarding elections to remove an entire board of directors when cumulative voting is used. The current law may imply that, even though in such an election a majority of votes are cast for removal of the entire board, if one or more member receives enough votes to be elected, then the entire board is not removed.

Summary of Substitute Bill: A nonprofit corporation that has the authority to make assessments on members whose ownership of property is a condition of membership in the corporation or when the assessments are based on the value of the real property owned by the corporation's members must not make the assessments unless the members approve the assessments by a majority vote at an annual or special meeting. Notice of the intent to adopt an assessment must be delivered to the members entitled to vote not less than 10 days nor more than 50 days before the meeting. Notice can be given in person or by mail.

The bylaws of nonprofit corporations that have authority to make assessments must include provisions for voting on the assessments and providing notice of the meetings at which the members will vote on assessments.

Superior Courts have power to liquidate the assets and affairs of a nonprofit corporation if the corporation has made assessments without express authority in its articles of incorporation, or without proper notice or approval, or in violation of its bylaws.

Only in the case of an election to remove less than the entire board will a director's removal be prevented because he or she received sufficient votes against his or her removal to have been elected.

Substitute Bill Compared to Original Bill: The provisions of the underlying bill are added to another chapter of law that governs other nonprofit corporations. A provision is added removing the ambiguity about the impact of cumulative voting when the entire board of directors may be removed.

Fiscal Note: Requested January 31, 1994.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Many homeowners' associations adopt assessments without notice to their members, without authority to do so under their bylaws, and without affording their members an opportunity to vote. These assessments may

pose a substantial burden for some people, especially the elderly on fixed incomes. If they cannot pay, the association places a lien on their property. Under current corporation law, an ambiguity exists regarding the impact of cumulative voting on removal of the entire board of directors.

Testimony Against: None.

Witnesses: Ralph Munro, Secretary of State (pro); and John Steel, Washington State Bar Association (pro re amendment).