SENATE BILL REPORT

ESHB 2660

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 25, 1994

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

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Anderson and Reams; by request of Secretary of State)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.
Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Niemi, Quigley, Roach, Schow and Spanel.

Staff: Jon Carlson (786-7459)

Hearing Dates: February 25, 1994

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:

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. The members may vote in person or by proxy. 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 <u>less than the entire board</u> will a director's removal be prevented because he or she received sufficient votes against his or her removal to have been elected.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

Many letters have been received by the Secretary of State regarding homeowners associations that have levied fees on their members without the knowledge or consent of the members. This bill ensures that each member has a voting right on all fees levied. Under current corporation law, an ambiguity exists regarding the impact of cumulative voting on removal of the entire board of directors.

TESTIMONY AGAINST: None

TESTIFIED: Linda MacKintosh, Secretary of State's Office