

SENATE BILL REPORT

HB 1139

As Reported By Senate Committee On:
Judiciary, March 29, 1999

Title: An act relating to judicial removal of a director of a nonprofit corporation from office.

Brief Description: Removing a director of a nonprofit corporation from office.

Sponsors: Representatives Sheahan, Constantine and Kenney.

Brief History: Passed House 2/12/99, 94-0.

Committee Activity: Judiciary: 3/26/99, 3/29/99 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Thibaudeau.

Staff: Penny Nerup (786-7484)

Background: A nonprofit corporation is one that does not have stock and one that cannot distribute any part of the nonprofit's income to its members, directors, or officers. Nonprofit corporations can sue and be sued, make contracts, elect or appoint officers, and, generally, do whatever necessary to lawfully conduct its business.

The nonprofit's board of directors manages the affairs of the corporation. A director has the duty to perform his or her functions in good faith and in a manner that is in the best interests of the nonprofit. A director is also required to use the care that a reasonable person in that position would use.

The nonprofit's by-laws or articles of incorporation usually establish how many directors the nonprofit has as well as the manner in which a director is elected or appointed. Some by-laws or articles may contain procedures for removing directors. Current law also allows those members of the nonprofit with voting rights to remove the director providing two-thirds of the votes are cast for removal.

The Business Law Section of the Washington State Bar Association suggests that language be added to the statute governing nonprofit corporations that would provide a court with the power to judicially remove from office a director of a nonprofit corporation under certain circumstances.

Summary of Bill: A director of a nonprofit corporation can be removed from office in a proceeding commenced in the superior court by the corporation if the court finds that the director engaged in dishonest conduct regarding the corporation and if removal is in the best

interest of the nonprofit corporation. The court may also bar a removed director from reelection for a specific period of time.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill came about when a member of the Bar read a Washington Supreme Court case that held that a nonprofit corporation could not remove a director because the Legislature had not provided for that happenstance by statute. Because many nonprofits have neither members nor by-laws detailing removal, this bill would resolve those "no other way" cases.

Testimony Against: None.

Testified: Dale Carlisle, Esq., Washington State Bar Association (pro).