



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 751 (Substitute S-1 as reported)  
Sponsor: Senator Jason E. Allen  
Committee: Commerce and Labor

*(as enrolled)*

Date Completed: 10-11-05

### **RATIONALE**

Public Act 137 of 1929 provides for the formation of corporations by summer resort owners. The Act allows a summer resort corporation to assess annual dues and special assessments against its members, by a majority vote, for the purpose of carrying out the powers authorized to corporations in the Act. There has been some confusion over the years as to whether the majority vote requirement involves a majority of all members or a majority of all votes cast. In 1970, then-Attorney General Frank Kelley issued an informal letter opinion ruling that a "majority", for purposes of the Act, refers to a majority of all votes cast. In 2004, however, Attorney General Mike Cox issued Opinion No. 7164, which ruled that the Act requires an affirmative vote of a majority of a summer resort corporation's members for the assessment of annual dues. The opinion also held that a summer resort corporation bylaw that authorizes the assessment of annual dues by a vote of less than a majority of the members is inconsistent with the Act and unenforceable. Some people believe that Public Act 137 should specify that a majority vote of all members would be required to assess dues, but allow a summer corporation's bylaws to provide for approval by a majority of the votes cast.

### **CONTENT**

**The bill would amend Public Act 137 of 1929 to revise the member approval requirements for the board of a summer resort corporation to set and collect annual dues and special assessments from its members.**

The bill specifies that, unless the members of a summer resort corporation, by a vote of a majority of all the members, specifically

provided by resolution for approval by a majority of the votes cast by the members voting, the vote of a majority of all of the members of the corporation would be required to approve an action of the board relating to dues and assessments.

The Act allows a summer resort corporation to assess annual dues and special assessments against its members, by a vote of a majority of the members, for the purpose of carrying into effect any of the powers authorized by the Act. The Act also allows the corporation to prescribe the time and manner of payment and manner of collection of dues and assessments; provide that delinquent dues and assessments become a lien upon the delinquent member's land; and provide the manner and method of enforcing a lien.

Under the bill, a summer resort corporation's board of trustees could require that the members of the corporation pay annual dues or special assessments for any purpose authorized under the Act. Approval of the members would be required. With the approval of the members, the board would have to prescribe the time and manner of payment and manner of collection of the annual dues or special assessment. Also, with the approval of the members, the board could provide that delinquent annual dues or assessments would become a lien upon the delinquent member's land and could provide the manner and method of enforcing a lien.

The bill states, "It is the intent of the legislature to reconcile conflicting opinions of the attorney general in the interpretation of this act, and to ratify...attorney general opinion no. 7164 of 2004, concerning the

appropriate vote of the members required to approve an action of the board...".

MCL 455.219

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

A 2004 opinion of the Attorney General has resulted in confusion about the process necessary for a summer resort corporation to establish its annual dues and special assessments imposed against its members. Apparently, some summer resort corporations have required the payment of dues and assessments based on the approval of a majority of the members casting a vote, pursuant to a September 22, 1970, informal letter opinion of then-Attorney General Frank Kelley, and some corporations have even provided for such a vote in their bylaws. In the 1970 letter, Kelley cited a general rule of corporation law that, in the absence of statutory language to the contrary, "majority" refers to a majority of votes cast. Since nothing in Public Act 137 refers to some other method of determining a majority, Kelley concluded that the general rule applied, so dues and assessments could be set by a majority of votes cast.

In Opinion No. 7164, issued on October 7, 2004, however, Attorney General Mike Cox held that the words of the statute "are clear and unambiguous and must be enforced as written". He concluded that a vote of the majority for purposes of setting a summer resort corporation's dues and assessments "means a vote of a majority of the corporation's members". As to whether a summer resort corporation's bylaws may provide otherwise, Cox cited Section 231 of the Business Corporation Act, which allows a corporation's bylaws to contain any provision for the regulation and management of the corporation's affairs that is *not inconsistent with law* or the corporation's articles of incorporation. Consequently, Cox concluded "that a summer resort corporation's bylaw authorizing the assessment of annual dues against its members by a vote of fewer than a majority of its members is inconsistent

with" Public Act 137 and therefore unenforceable.

The conflicting Attorney General opinions have left summer resort corporations in a quandary. Many have used the majority-of-votes-cast as the standard for approving dues and assessments over the last 35 years but now, apparently, must use the majority-of-all-members as the standard. It may be difficult to obtain a majority vote of all members, because many owners might not be present at the time of a meeting at which a vote to pass an assessment will be taken. By amending Public Act 137 to specify that a majority vote of all members would be necessary, *unless* the bylaws, approved by a majority of all members, allowed dues and assessments to be imposed by a majority of votes cast, the bill would codify the substance of the Cox opinion but allow summer resort corporations to continue to approve dues and assessments by a majority of those voting if their membership approved that standard in the bylaws.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.