SENATE BILL REPORT
EHB 2830

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 23, 2010

Title: An act relating to credit union regulatory enforcement powers.

Brief Description: Addressing credit union regulatory enforcement powers.

Sponsors: Representatives Simpson, Bailey, Kirby, Kelley, Rodne and Nelson; by request of Department of Financial Institutions.

Brief History: Passed House: 2/15/10, 98-0.
Committee Activity: Financial Institutions, Housing & Insurance: 2/17/10, 2/23/10 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.
Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: Credit unions are nonprofit corporations that promote thrift among their members and create a source of credit for their members at fair and reasonable rates of interest. Seven or more natural persons who reside in Washington may apply to the Director of the Department of Financial Institutions (director) for permission to organize as a credit union. Upon the director's endorsement that the proposed articles of incorporation and bylaws are consistent with legal requirements and the directors's determination that the proposed credit union is feasible, the formation of the credit union may proceed.

Directors, board officers, and senior operating officers owe a fiduciary duty to the credit union.

The director has the authority to examine and investigate the affairs of a credit union service organization in which the credit union has an interest.

Alternative share insurance is private insurance that is allowed by the director to serve the same purpose as federal share insurance provided by the national credit union administration.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Certain records held by DFI are confidential and privileged such as examination reports and proprietary information.

The director may remove a credit union director, supervisory committee member, officer, or employee from his or her employment with the credit union when the director believes the person has committed a material violation of law or an unsafe or unsound practice and the credit union has suffered substantial financial loss, or the share holders and depositors could be seriously prejudiced due to the person's action and the action involves personal dishonesty, recklessness, or incompetence.

The director has the authority to issue temporary cease and desist orders. The credit union may seek an injunction in superior court of the county of the principal place of business of the credit union to set the temporary cease and desist order aside. The director may also apply to the superior court of the county of the principal place of business of the credit union to enforce the order.

The director may appoint a conservator for a credit union upon due notice and hearing. The director may appoint himself or herself as the conservator.

Certain unlawful acts are enforced as misdemeanors under the Criminal Code.

Summary of Bill: A material violation of law is clarified to include the credit union's violation of supervisory agreements, as well as any other agreement with the director. A material violation of law is also clarified to result from the breach of a fiduciary duty by board members, members of a supervisory committee, or by officers of the credit union.

The term, significantly undercapitalized, is defined as a net worth to total assets ratio of less than 4 percent. The existing term, unsafe or unsound condition, is then expanded to include a condition of significant undercapitalization.

The filing fee paid to the Secretary of State for filing the articles of incorporation is paid by DFI.

Supervisory committee members are added to those with a fiduciary duty to the credit union. The nature and extent of the fiduciary duty is described. Directors are not liable for any action taken as a director when that action is taken in compliance with the fiduciary duty as described.

The director's authority to collect fines due from a credit union is clarified.

The director has authority to examine and investigate into the affairs of any tier subsidiary of a credit union service organization. This authority also extends to corporations that provide alternative share insurance.

The circumstances permitting the director's removal of a credit union director, supervisory committee member, officer, or employee from their employment with the credit union are reworded. The removal is clarified to apply only to those credit unions doing business in this state and is subject to a hearing under the Administrative Procedure Act. Provisions are made for a quorum and the exercise of all powers and functions of the board should a member or all members of the board of directors be removed.

With a temporary cease and desist order or an order to show cause why the credit union should not be restored to possession of its assets, in the case of a receivership against a foreign or out-of-state credit union, the principal place of business is Thurston County.

In the following cases the director or the director's designee may hold the required administrative hearing: the director's removal of a credit union official; the director's issuance of a cease and desist order; and the director's appointment of a conservator. No funds of the department may be required to be spent on behalf of any party or entity.

Knowingly making or disseminating a false report about the financial condition of any credit union is a prohibited act punishable as a misdemeanor.

The director has civil fine authority for certain violations of the credit union act or rules. In his or her discretion, the director may assess a fine of up to $10,000 per violation.

The director may suspend a person from further participation in the credit union for various reasons. Appeal of the administrative proceedings for foreign or out-of-state credit unions is in Thurston County.

The department's conduct of a receivership or conservatorship includes the ability to terminate or adopt any executory contract within six months of learning of the contract's existence. Any provisions in the contract for damages or cancellation fees for reason of termination of the contract are not binding on the conservator, receiver, or credit union. Neither the conservator, receiver, or credit union is liable for damages.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This bill modernizes the way we regulate credit unions. Due to the recent economic troubles, it has become clear that DFI needs additional authority to help while the credit unions are still help-able and so that the closure may proceed in an orderly fashion when there is no longer hope. There is no fiscal impact of this bill. It clarifies enforcement authority. Extensive DFI outreach resulted in at least 17 CEOs' participation in teleconferences held September through November last year. The Washington Credit Union League was also helpful and participated. Merger of failing credit unions may not continue to be possible and the receivership toolbox needs updating since it was last amended in 2001. The provision making a knowingly false statement a misdemeanor is found in six other states and our insurance code. The objective is to prevent runs on credit unions based on false information as has recently happened to large banks.

CON: The Credit Union League has abdicated the rights of its members by cooperating with this bill. It effects healthy credit unions, too. Governance rights of credit union members are not being honored. The financial condition of a credit union is highly subjective. Chapter 7.60 RCW was totally rewritten in 2004 and does apply to credit unions' receiverships. This bill is inconsistent with that. The stakeholders of the credit union are the members, not the corporate leadership. The duty of the credit union should be to its members. People should have the right to express themselves even if they are misinformed. It is severely expensive to defend yourself, and this specter has a chilling effect on me. This tramples the rights of reporters and bloggers, too.

Persons Testifying: PRO: Linda Jekel, DFI; Mark Minickiello, Washington Credit Union League; Al Ralston, BECU.

CON: Douglas Shafer, Shafer Law Firm; Cathryn Chudy, People for Democratic Financial Institutions, citizen; Howard Leighty, Robert Tice, citizens.