

# HOUSE BILL REPORT

## SSB 6338

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to the rights of dissenting members of cooperative associations in certain mergers.

**Brief Description:** Addressing the rights of dissenting members of cooperative associations in certain mergers.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Padden, Billig and Baumgartner).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/24/16, 2/26/16 [DPA].

#### **Brief Summary of Substitute Bill (As Amended by Committee)**

- Provides that a member of a rural electric association is not entitled to dissent from a merger to which the association is a party if all members of the association have the right to continue their membership status in the surviving association on substantially similar terms.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Kuderer, Muri, Orwall and Stokesbary.

**Staff:** Edie Adams (786-7180).

#### **Background:**

Washington law allows any number of people to join together for the creation of a cooperative association. A cooperative association may be formed to advance any lawful

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business, including any agriculture, dairy, mercantile, mining, manufacturing, or mechanical business. Cooperative associations are formed by the filing of articles of incorporation with the Office of the Secretary of State. They consist of the members of the cooperative association and are governed by a board of directors and officers.

A member of a cooperative association has the right to dissent from any of the following actions taken by the cooperative association: entering into a plan of merger or consolidation agreement; converting into an ordinary business corporation; or providing for the sale or exchange of all or substantially all of its property and assets outside the ordinary course of business.

With limited exceptions, a dissenting member in a cooperative association has the same dissenter's rights as the rights of a dissenting shareholder in a business corporation that engages in a similar action. Generally, a dissenting shareholder of a business corporation is entitled to payment of the fair value of his or her shares. The payment, plus accrued interest, must be made within 30 days of the action, or the date the shareholder demands payment, whichever is later.

One exception allows a cooperative association, if authorized in the articles of incorporation, to pay a dissenting member less than the fair value of the member's equity interest as long as the payment is not less than the amount the member paid for his or her equity interest. Another exception applicable to agricultural associations allows for a different time period for payment of the value of the member's equity interest, and provides that accrued interest need not be paid unless required under the articles of incorporation.

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**Summary of Amended Bill:**

A member of a rural electric association is not entitled to dissent from a merger to which the association is a party, nor obtain payment of the fair value of the member's shares in the association, if all members of the association have the right to continue their membership status in the surviving association on substantially similar terms.

**Amended Bill Compared to Substitute Bill:**

The amendatory language that limits the right of a member of a rural electric association to dissent from certain mergers is moved to the section of law that creates the right of a member to dissent from a merger of the association.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a very important issue to rural electric cooperatives. Small cooperatives can benefit from friendly mergers to leverage economies of scale while protecting cooperative rights and local governance. The current law allowing dissenters' rights in a merger results in members being able to dissent and remove equity out of the cooperative and then continue on as members. This bill establishes the same format that applies for mutual corporations. There is a situation in eastern Washington where a rural electric association wanted to merge with another association, but they felt like the merger was inhibited by the current statute. The bill has been narrowly limited to rural electric cooperatives.

(Opposed) None.

**Persons Testifying:** Senator Padden, prime sponsor; John Francisco, Inland Power and Light; and Kent Lopez, Washington Rural Electric Cooperative Association.

**Persons Signed In To Testify But Not Testifying:** None.