

# SENATE BILL REPORT

## SB 6338

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As of January 18, 2016

**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:** Senators Padden, Billig and Baumgartner.

**Brief History:**

**Committee Activity:** Law & Justice: 1/14/16.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Mergers and other significant corporate actions typically require shareholders to authorize the proposed action by voting their approval. When a corporation goes through a fundamental change, such as a sale or merger, a shareholder who votes against the proposed action, but on the losing side, is entitled to dissent from the action. Dissenters may have the right to be compensated by the corporation for the fair value of the shareholder's shares.

A cooperative association is a unique type of corporation whose members are the joint owners of the cooperative. The members participate in the cooperative's business for the mutual benefit of all the members. Cooperative associations are governed by chapter 23.86 RCW. Cooperative members generally pay a membership fee and acquire an equity interest in the cooperative. Each member has equal ownership and participation in the control of the cooperative. Under current law, association members have the right to dissent from three types of cooperative association actions: merger or consolidation; conversion of the cooperative to an ordinary business corporation; and the sale or exchange of all, or substantially all, of the cooperative's property and assets outside the usual course of business. The current law governing cooperative associations provides that dissenting cooperative members enjoy the same rights that apply to business corporations under Title 23B RCW unless chapter 23.86 RCW provides otherwise.

**Summary of Bill:** Dissenters no longer have rights to recover all or part of their investment through payment of fair value in a merger under certain circumstances. When the

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cooperative association is a party to a merger, and all the cooperative association's members have the right to continue their status as members in the surviving corporation on substantially similar terms, members of the cooperative association have no right to dissent and no right to recover fair value of the member's equity interest.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Rural electric co-ops are experiencing increased costs such that merger with other co-ops may be beneficial due to better economies of scale and promotion of energy independence policies. In previous merger discussions among rural electric co-ops, payments to dissenting members have been an impediment to merger because of the risk to the co-op's capital. In some situations, a dissenting member may use the merger to cash out, but then continues to participate in the co-op, which doesn't seem reasonable. The bill would make dissenters' rights in co-op mergers more like dissenters' rights in mutual association mergers. Those testifying did not oppose making the language specific to rural electric co-ops rather than to all co-op associations.

**Persons Testifying:** PRO: John Francisco, Inland Power and Light; Kent Lopez, WA Rural Electric Co-op Assoc.