

SENATE BILL REPORT

SSB 6338

As Amended by House, March 3, 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: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Billig and Baumgartner).

Brief History:

Committee Activity: Law & Justice: 1/21/16 [DPS].

Passed Senate: 2/15/16, 48-0.

Passed House: 3/03/16, 97-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6338 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

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

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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 Substitute Bill: A member of a rural electric association who dissents from a merger has no right to recover all or part of their investment if all the cooperative association's members have the right to continue as members after the merger on substantially similar terms.

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 on Original Bill: 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 on Original Bill: PRO: John Francisco, Inland Power and Light; Kent Lopez, WA Rural Electric Co-op Assoc.

Persons Signed In To Testify But Not Testifying on Original Bill: No one.

House Amendment(s): The house amendment re-locates the exclusion of rural electric association members' dissenters' rights from RCW 23.86.145 to RCW 23.86.135 where the right to dissent is established for association members other than rural electric associations. The amendment also removes language from the exclusion that explains dissenters' rights since rural electric association members no longer have dissenters' rights.

A member of a rural electric association who dissents from a merger has no right to recover all or part of their investment if all the cooperative association's members have the right to continue as members after the merger on substantially similar terms.

Effect of changes made by LAW committee:

- New subsection (5) that limits dissenters' rights to recover their investment is limited to rural electric associations.

- The term "corporation" is corrected to "association".