

# SENATE BILL REPORT

## SB 6038

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As Reported by Senate Committee On:  
Law & Justice, January 30, 2018

**Title:** An act relating to limited cooperative associations.

**Brief Description:** Concerning limited cooperative associations.

**Sponsors:** Senators Pedersen and Padden; by request of Uniform Law Commission.

**Brief History:**

**Committee Activity:** Law & Justice: 1/11/18, 1/25/18, 1/30/18 [DPS].

### Brief Summary of First Substitute Bill

- Establishes a uniform business code governing limited cooperative associations.
- Sets forth the nature, membership, powers, liabilities, and processes of limited cooperative associations.
- Creates a short title of the Washington Limited Cooperative Association Act.
- Harmonizes provisions with Title 23B RCW.
- Authorizes a limited cooperative association to merge with other cooperative associations organized under different provisions of law.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6038 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

**Staff:** Tim Ford (786-7423)

**Background:** 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

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*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.*

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.

The Uniform Law Commission (ULC) was established in 1892, and it studies and reviews the laws of the states to determine which areas of law should be uniform. The ULC drafted a model Uniform Limited Cooperative Association Act that embodies the traditional elements of cooperative associations, is intended to be more flexible than most current cooperative laws allow, and can be organized to pursue any lawful purpose.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** A limited cooperative association is an unincorporated association jointly owned by persons for a mutual benefit for any lawful purpose, except for the business of generating, distributing, purchasing or selling electric energy.

Key highlights of the act include:

- Operating definitions for the act, and an outline of the nature and powers of limited cooperative associations (association).
- Information and records required to be retained by the association.
- The effect of organic rules concerning relations among members and the association.
- Establishes that a person may have a dual capacity with a patron member interest and an investor member interest. A member's interest is a personal property interest and includes governance, financial, and business rights. The act addresses the transferability of the members interest, security rights in member interests, and set offs.
- Allows a member to lend money and to transact business with the association in the same manner as a non-member.
- Authorizes the conversion of a qualifying entity into an association.
- Establishes a statutory formation process for associations, including the required articles of organization, bylaws, directors, and delivery of records with the Secretary of State.
- Establishes qualifications, rights, powers, and liabilities of members. The act addresses the required annual and special meetings of members and the procedures for notice, voting, and actions.
- Authorizes marketing contracts between the association and third parties for the sale of products, commodities or goods by the association. The sale transfers title to the association upon delivery. Marketing contracts have an initial duration of ten years but may be automatically renewed for five-year periods.
- Establishes a board of directors, their qualifications, election, term, authority, and powers. Meeting and notice procedures are also set forth along with various rights and standards of conduct.
- Member contributions may be property, services, or any other benefit to the association unless the organic rules provide otherwise. The board of directors shall determine the value of a member's contributions.

- Provides for the allocation of profits and losses among members, and among non-members that conduct business with the association. The act authorizes distribution methods in any form and sets forth the limitation of distributions and liability.
- Establishes an exemption for state securities laws for patron members that is substantially similar for cooperatives under existing state law.
- Addresses member dissociation, association dissolution, mergers, interest exchange, and conversion.
- Confirms the right of a member to maintain a legal action to enforce their rights or for a derivative action to enforce an association's right.
- Creates a short title of the Washington Limited Cooperative Association Act.
- Harmonizes provisions with Title 23B RCW.
- Establishes that unless organic rules provide otherwise, each investor member has one vote.
- Adds a definition for consumer cooperative, and adds a process for providing notice to members of consumer cooperatives.
- Removes provisions relating to security interest, set-off, and charging orders.
- Removes provisions governing marketing contracts, and contribution agreements.
- Authorizes a limited cooperative association to merge with other cooperative associations organized under different provisions of law.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Changes the short title to the Washington Limited Cooperative Association Act.
- Harmonizes provisions with Title 23B RCW.
- Unless organic rules provide otherwise, each investor member has one vote.
- Adds a definition for consumer cooperative, and adds a process for providing notice to members of consumer cooperatives.
- Removes provisions relating to security interest, set-off, and charging orders.
- Removes provisions governing marketing contracts, and contribution agreements.
- Authorizes a limited cooperative association to merge with other cooperative associations organized under different provisions of law.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: This is an alternative that provides flexibility and works well with our existing law.

OTHER: Many co-ops are Eastern Washington farms, dairy, wheat, and husbandry. The current co-op law can be confusing as it cross references business law. The consumer co-op law is difficult to find and there are different kinds of co-ops. This bill makes the law more

flexible to allow co-op members to work with the co-op. It allows investor members, but still protects patron members. The essence of a co-op is that the owners use the services of the coop. Those are the patrons and they need to be protected in the context of making decisions for the co-op. One member, one vote is a principle of co-ops that could be diluted by investor members. Investor members could also be patron members, but it is not required. The bill should be modified to ensure that investor members do not control the co-op. An investor member should only have one vote no matter what level of investment they bring.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor.

OTHER: Michael Droke, Dorsey & Whitney LLP; Garland McQueen, Central Co-op; Susanna Schultz, President and Marketing Director, Central Co-op.

**Persons Signed In To Testify But Not Testifying:** No one.