

# SENATE BILL REPORT

## HB 1062

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As of March 20, 2015

**Title:** An act relating to updating the department of financial institutions' regulatory enforcement powers regarding credit unions and organizations providing services to credit unions.

**Brief Description:** Updating the department of financial institutions' regulatory enforcement powers regarding credit unions and organizations providing services to credit unions.

**Sponsors:** Representatives Stanford, Kirby, Gregerson, Vick and Ryu; by request of Department of Financial Institutions.

**Brief History:** Passed House: 2/11/15, 85-13.

**Committee Activity:** Financial Institutions & Insurance: 3/18/15.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Susan Jones (786-7404)

**Background:** Credit unions doing business in Washington may be chartered by the state or federal government. The National Credit Union Administration (NCUA) regulates federally chartered credit unions. The Department of Financial Institutions (Department) regulates state-chartered credit unions.

#### Credit Union Governance and Practices.

- *Board of Directors and Supervisory Committee.* A state-chartered credit union is governed by a board of directors and a supervisory committee, which monitors the financial condition of the credit union and the decisions of the board.
- *Special Membership Meetings.* A special membership meeting may be called by a majority of the board, a majority vote of the supervisory committee, or upon written application of at least 10 percent or 2000 members of a credit union, whichever is less. Notice of a special membership meeting for removal of a director must state the director's name. Various other provisions call for meetings to be held 30, 60, or 90 days after notice.
- *Merger – Creditor's Claims.* When two credit unions merge, one credit union's corporate entity ceases to exist (merging credit union) while the other survives (continuing credit union). The continuing credit union must cause a notice of merger to be published once weekly for three consecutive weeks in a county general

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circulation newspaper. Creditors' claims against a merging credit union not known by the continuing credit union may be barred if no claim is made within 30 days of the last date of publication of the merger notice.

- *State-Chartered versus Federally Chartered Credit Unions.* A state-chartered credit union has all the powers and authorities that a federally chartered credit union had on July 22, 2001. A state-chartered credit union may merge or convert into a federally chartered credit union by a two-thirds majority vote at a membership meeting.
- *Investment Authority.* A credit union may invest in a variety of investments, including key person insurance policies and up to 5 percent of the capital in debt or equity issued by an organization owned by the Washington Credit Union League.
- *Out-of-State or Foreign Credit Unions.* Out-of-state or foreign credit unions may not operate a branch in Washington without the director's approval.
- *Low-Income Credit Union – Based on Individual Earnings.* A state-chartered credit union may apply to the director for the designation as a low-income credit union if at least 50 percent of a substantial and well-defined segment of its members or potential members earn no more than 80 percent of the state or national median income, whichever is higher, and it meets other criteria. Low-income credit union powers are expanded to include issuing secondary capital accounts and accepting shares and deposits from nonmembers.
- *Credit Union Service Organizations.* Credit unions may own or contract with entities performing services for them, called credit union service organizations.

Enforcement. The Department may use various enforcement tools and actions, including removing or suspending officers, directors, or supervisory committee members; issuing temporary cease and desist orders; assessing fines; inspecting records and business practices; and liquidating a credit union or taking it into receivership. Within ten days after the receiver takes possession of a credit union's assets, the credit union may serve notice upon the receiver to appear in court to show cause why the credit union should not be restored to the possession of its assets. The court must dismiss the complaint if it finds that the receiver was appointed for cause. If the court finds that no cause existed, the court must require that the receiver restore the credit union to possession of its assets.

**Summary of Bill:** Credit Union Governance and Practices.

- *Special Membership Meeting.* A special membership meeting may be called by unanimous vote of the supervisory committee for removal of a board member. Notice of a special membership meeting for removal of a supervisory committee member must state the supervisory committee member's name. All special membership meetings must be held within 90 days of the request or a suspension. The supervisory committee's ability to suspend members of other committees until a membership meeting is eliminated.
- *Merger – Creditor's Claims.* The law is clarified that creditors' claims against a merging credit union not known by the continuing credit union are barred if no claim is made within 30 days of the last date of publication of the merger notice.
- *State-Chartered versus Federally Chartered Credit Unions.* A state-chartered credit union has the powers and authorities that a federally chartered credit union has on the effective date of this act. A state-chartered credit union may merge or convert into a federally chartered credit union by a simple majority vote, unless otherwise provided in its bylaws.

- *Investment.* In addition to other investment options, a credit union may invest capital in debt or equity issued by an organization owned by the Northwest Credit Union Association or its successor association and in products relating to employee benefits.
- *Use of Credit Union Term.* No person or entity may hold itself out as a credit union or use the term in communications unless it is actually a state-chartered or federally chartered credit union, or an out-of state or foreign credit union.
- *Low-Income Credit Union – Expanded to Household Income.* For the designation of low-income credit union, a low-income member means a member whose family income is not more than 80 percent of the median family income for the metropolitan statistical area or national metropolitan area where the member lives, whichever is greater, or a member or potential member who earns not more than 80 percent of the total median earnings for individuals for the metropolitan statistical area or national metropolitan area where the member lives, whichever is greater.

#### Enforcement.

- *Scope of Authority.* The Department has the power to take action against any person holding itself out as a credit union and may collect costs and attorneys' fees. The Department may examine the electronic data processing provider to a credit union service organization. The Department has authority to issue a temporary cease and desist order against a credit union or credit union service organization if a violation or practice is likely to cause an unsafe or unsound condition at the credit union or organization, or a substantial public injury.
- *Suspension and Removal of Persons Participating in Credit Unions or Financial Institutions.* The Department may serve a notice of charges to suspend a person from participating in a credit union. The notice remains in effect until it is stayed, dismissed, or an administrative proceeding decides the matter. The Department may serve a notice of intent to remove certain persons from participation in any depository or similar financial institution. The notice must contain the facts constituting grounds for removal and setting a hearing date not earlier than ten days after service and not later than 30 days after service. Failure to appear is deemed consent to an order of removal. An order of removal becomes effective ten days after service on the credit union and the person in question.
- *Restricting Withdrawals.* Upon a written finding, the Department may temporarily suspend or restrict withdrawal of deposits.
- *Involuntary Liquidation and Receivership.* A credit union seeking to enjoin the Department's order of involuntary liquidation or appointment of a receiver must serve notice on the Department within ten days after the order. The credit union has the burden to show why it should not be liquidated or brought into receivership. Failure to serve the notice in a timely fashion bars the credit union from judicial review of the Department's order.

Various other technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony:** PRO: The bill modernizes the credit union charter. Credit unions have a choice of state and federal charters. We want the state charter to be the best choice of the two options which will allow for innovation and a level playing field. The federal parity date has not been updated for 14 years and this needs to be updated to be competitive. This was done in 2012 for the banking federal parity provisions. This updates the supervision and enforcement tools. Credit unions are growing bigger and more complex in the state of Washington and we need similar regulatory tools consistent with the state banking act. It clarifies certain areas including the special membership meetings which have been in question before. There has been extensive stakeholder meetings and work. The bill updates the definition of low-income which allows credit unions to use household income allowing for additional products and services. Mergers are important, and that the bill allows members from the outgoing credit unions to serve on the boards of the remaining credit union. The Department of Financial Institutions (DFI) has not had the tools to inform consumers regarding fictitious credit unions and to take action such as cease and desist. We have one of best charters and this bill will keep the charter vibrant and competitive. A healthy operating environment and a vibrant charter is not just the powers given to credit unions but the powers given to the regulator.

**Persons Testifying:** PRO: Representative Stanford, prime sponsor; Mark Minickiello, NW Credit Union Assn.; Linda Jekel, DFI.

**Persons Signed in to Testify But Not Testifying:** No one.