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HOUSE BILL 1582

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State of Washington

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2013 Regular Session

By Representatives Ryu, Warnick, Santos, Kirby, and Moscoso

Read first time 01/31/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to credit unions' corporate governance,  
2 investments, and capital; and amending RCW 31.12.005, 31.12.195,  
3 31.12.225, 31.12.235, 31.12.285, 31.12.365, 31.12.402, 31.12.426,  
4 31.12.436, 31.12.438, 31.12.461, and 31.12.630.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 31.12.005 and 2010 c 87 s 1 are each amended to read  
7 as follows:

8 Unless the context clearly requires otherwise, as used in this  
9 chapter:

10 (1) "Board" means the board of directors of a credit union.

11 (2) "Board officer" means an officer of the board elected under RCW  
12 31.12.265(1).

13 (3) "Branch" of a credit union, out-of-state credit union, or  
14 foreign credit union means any facility that meets all of the following  
15 criteria:

16 (a) The facility is a staffed physical facility;

17 (b) The facility is owned or leased in whole or part by the credit  
18 union or its credit union service organization; and

1 (c) Deposits and withdrawals may be made, or shares purchased,  
2 through staff at the facility.

3 (4) "Capital" means a credit union's reserves, undivided earnings,  
4 and allowance for loan and lease losses, accounts or instruments issued  
5 pursuant to RCW 31.12.402(24), and other items that may be included  
6 under RCW 31.12.413 or by rule or order of the director.

7 (5) "Credit union" means a credit union organized and operating  
8 under this chapter.

9 (6) "Credit union service organization" means an organization that  
10 a credit union has invested in pursuant to RCW 31.12.436(~~(+8+)~~) (1)(h),  
11 or a credit union service organization invested in by an out-of-state,  
12 federal, or foreign credit union.

13 (7) "Department" means the department of financial institutions.

14 (8) "Director" means the director of financial institutions.

15 (9) "Federal credit union" means a credit union organized and  
16 operating under the laws of the United States.

17 (10) "Financial institution" means any commercial bank, trust  
18 company, savings bank, or savings and loan association, whether state  
19 or federally chartered, and any credit union, out-of-state credit  
20 union, or federal credit union.

21 (11) "Foreign credit union" means a credit union organized and  
22 operating under the laws of another country or other foreign  
23 jurisdiction.

24 (12) "Insolvency" means:

25 (a) If, under United States generally accepted accounting  
26 principles, the recorded value of the credit union's assets are less  
27 than its obligations to its share account holders, depositors,  
28 creditors, and others; or

29 (b) If it is likely that the credit union will be unable to pay its  
30 obligations or meet its share account holders' and depositors' demands  
31 in the normal course of business.

32 (13) "Loan" means any loan, overdraft line of credit, extension of  
33 credit, or lease, in whole or in part.

34 (14) "Material violation of law" means:

35 (a) If the credit union or person has violated a material provision  
36 of:

37 (i) Law;

38 (ii) Any cease and desist order issued by the director;

1 (iii) Any condition imposed in writing by the director in  
2 connection with the approval of any application or other request of the  
3 credit union; or

4 (iv) Any supervisory agreement, or any other written agreement  
5 entered into with the director;

6 (b) If the credit union or person has concealed any of the credit  
7 union's books, papers, records, or assets, or refused to submit the  
8 credit union's books, papers, records, or affairs for inspection to any  
9 examiner of the state or, as appropriate, to any examiner of the  
10 national credit union administration; or

11 (c) If a member of a credit union board of directors or supervisory  
12 committee, or an officer of a credit union, has breached his or her  
13 fiduciary duty to the credit union.

14 (15) "Membership share" means an initial share that a credit union  
15 may require a person to purchase in order to establish and maintain  
16 membership in a credit union.

17 (16) "Net worth" means a credit union's capital, less the allowance  
18 for loan and lease losses.

19 (17) "Operating officer" means an employee of a credit union  
20 designated as an officer pursuant to RCW 31.12.265(2).

21 (18) "Organization" means a corporation, partnership, association,  
22 limited liability company, trust, or other organization or entity.

23 (19) "Out-of-state credit union" means a credit union organized and  
24 operating under the laws of another state or United States territory or  
25 possession.

26 (20) "Person" means an organization or a natural person including,  
27 but not limited to, a sole proprietorship.

28 (21) "Principally" or "primarily" means more than one-half.

29 (22) "Senior operating officer" includes:

30 (a) An operating officer who is a vice president or above; and

31 (b) Any employee who has policy-making authority.

32 (23) "Significantly undercapitalized" means a net worth to total  
33 assets ratio of less than four percent.

34 (24) "Small credit union" means a credit union with up to ten  
35 million dollars in total assets.

36 (25) "Unsafe or unsound condition" means, but is not limited to:

37 (a) If the credit union is insolvent;

1 (b) If the credit union has incurred or is likely to incur losses  
2 that will deplete all or substantially all of its net worth;

3 (c) If the credit union is in imminent danger of losing its share  
4 and deposit insurance or guarantee; or

5 (d) If the credit union is significantly undercapitalized.

6 (26) "Unsafe or unsound practice" means any action, or lack of  
7 action, which is contrary to generally accepted standards of prudent  
8 operation, the likely consequences of which, if continued, would be  
9 abnormal risk of loss or danger to a credit union, its members, or an  
10 organization insuring or guaranteeing its shares and deposits.

11 **Sec. 2.** RCW 31.12.195 and 1997 c 397 s 13 are each amended to read  
12 as follows:

13 (1) A special membership meeting of a credit union may be called by  
14 a majority of the board, a majority vote of the supervisory committee,  
15 or upon written application of at least ten percent or two thousand of  
16 the members of a credit union, whichever is less.

17 (2) A request for a special membership meeting of a credit union  
18 shall be in writing and shall state specifically the purpose or  
19 purposes for which the meeting is called. At this meeting, only those  
20 agenda items detailed in the written request may be considered. If the  
21 special membership meeting is being called for the removal of one or  
22 more directors, the request shall state the name of the director or  
23 directors whose removal is sought.

24 (3) Upon receipt of a request for a special membership meeting, the  
25 secretary of the credit union shall designate the time and place at  
26 which the special membership meeting will be held. The designated  
27 place of the meeting must be a reasonable location within the county in  
28 which the principal place of business of the credit union is located,  
29 unless provided otherwise by the bylaws. The designated time of the  
30 membership meeting must be (~~no sooner than twenty, and~~) no later than  
31 (~~thirty~~) ninety days after the request is received by the secretary.

32 The secretary shall give notice of the meeting (~~within ten days of~~  
33 ~~receipt of the request~~) at least thirty days before the special  
34 membership meeting, or within such other reasonable time period as may  
35 be provided by the bylaws. The notice must include the purpose or  
36 purposes for which the meeting is called, (~~as provided in the bylaws.~~

1 If)) and, if the special membership meeting is being called for the  
2 removal of one or more directors, the notice must state the name of the  
3 director or directors whose removal is sought.

4 (4) Except as provided in this subsection, the chairperson of the  
5 board shall preside over special membership meetings. If the purpose  
6 of the special meeting includes the proposed removal of the  
7 chairperson, the next highest ranking board officer whose removal is  
8 not sought shall preside over the special meeting. If the removal of  
9 all board officers is sought, the chairperson of the supervisory  
10 committee shall preside over the special meeting.

11 (5) Special membership meetings shall be conducted according to the  
12 rules of procedure approved by the board.

13 **Sec. 3.** RCW 31.12.225 and 2001 c 83 s 6 are each amended to read  
14 as follows:

15 (1) The business and affairs of a credit union shall be managed by  
16 a board of not less than five and not greater than fifteen directors.

17 (2) The directors must be elected at the credit union's annual  
18 membership meeting. They shall hold their offices until their  
19 successors are qualified and elected or appointed.

20 (3) Directors shall be elected to terms of between one and three  
21 years, as provided in the bylaws. If the terms are longer than one  
22 year, the directors must be divided into classes, and an equal number  
23 of directors, as nearly as possible, must be elected each year.

24 (4) Any vacancy on the board must be filled by an interim director  
25 appointed by the board, unless the interim director would serve a term  
26 of fewer than ninety days. Interim directors appointed to fill  
27 vacancies created by expansion of the board will serve until the next  
28 annual meeting of members. Other interim directors will serve out the  
29 unexpired term of the former director, unless provided otherwise in the  
30 credit union's bylaws.

31 (5) The board will have at least six regular meetings (~~not less~~  
32 ~~frequently than once each month~~) each year, with at least one of these  
33 meetings held in each calendar quarter. The director may require the  
34 board to meet more frequently than six times per year if the director  
35 finds it necessary in order to address matters noted in any  
36 examination. The director may adopt rules to interpret this section.

1       **Sec. 4.** RCW 31.12.235 and 2001 c 83 s 7 are each amended to read  
2 as follows:

3       (1) A director must be a natural person and a member of the credit  
4 union. If a director ceases to be a member of the credit union, the  
5 director shall no longer serve as a director.

6       (2)(a) If a director is absent from (~~four~~) more than one-fourth  
7 of the regular board meetings in any twelve-month period in a term  
8 without being reasonably excused by the board, the director shall no  
9 longer serve as a director for the period remaining in the term.

10       (b) The board secretary shall promptly notify the director that he  
11 or she shall no longer serve as a director. Failure to provide notice  
12 does not affect the termination of the director's service under (a) of  
13 this subsection.

14       (3) A director must meet any qualification requirements set forth  
15 in the credit union's bylaws. If a director fails to meet these  
16 requirements, the director shall no longer serve as a director.

17       (4) The operating officers and employees of the credit union may  
18 serve as directors of the credit union, but only as permitted by the  
19 credit union's bylaws. In no event may the operating officers and  
20 employees of the credit union constitute a majority of the board.

21       **Sec. 5.** RCW 31.12.285 and 1997 c 397 s 21 are each amended to read  
22 as follows:

23       The board may (~~suspend~~), for cause, suspend a member of the board  
24 or a member of the supervisory committee until a special membership  
25 meeting, called for that purpose, is held under RCW 31.12.195. The  
26 membership meeting must be held within (~~thirty~~) sixty days after the  
27 suspension. The members attending the meeting shall vote whether to  
28 remove a suspended party. For purposes of this section, "cause"  
29 includes demonstrated financial irresponsibility, a breach of fiduciary  
30 duty to the credit union, or activities which, in the judgment of the  
31 board, threaten the safety and soundness of the credit union.

32       **Sec. 6.** RCW 31.12.365 and 2001 c 83 s 12 are each amended to read  
33 as follows:

34       (1) A credit union may pay to its directors and supervisory  
35 committee members (~~(of committees shall not receive)~~) reasonable  
36 compensation for their service as directors and supervisory committee

1 members. (~~However, this subsection does not prohibit~~) A credit union  
2 may also provide to its directors (~~or~~) and supervisory committee  
3 members (~~from receiving~~):

4 (a) Gifts of minimal value; (~~and~~)

5 (b) Insurance coverage or incidental services, available to  
6 employees generally(~~-~~

7 ~~(2) Directors and members of committees may receive~~); and

8 (c) Reimbursement for reasonable expenses incurred on behalf of  
9 themselves and their spouses in the performance of the directors' and  
10 supervisory committee members' duties.

11 (~~(3) Loans to directors and supervisory and credit committee~~  
12 ~~members may not be made under more favorable terms and conditions than~~  
13 ~~those made to members generally~~) (2) The director may adopt rules to  
14 interpret this section.

15 **Sec. 7.** RCW 31.12.402 and 2011 c 303 s 6 are each amended to read  
16 as follows:

17 A credit union may:

18 (1) Issue shares to and receive deposits from its members in  
19 accordance with RCW 31.12.416;

20 (2) Make loans to its members in accordance with RCW 31.12.426 and  
21 31.12.428;

22 (3) Pay dividends and interest to its members in accordance with  
23 RCW 31.12.418;

24 (4) Impose reasonable charges for the services it provides to its  
25 members;

26 (5) Impose financing charges and reasonable late charges in the  
27 event of default on loans, subject to applicable law, and recover  
28 reasonable costs and expenses, including, but not limited to,  
29 collection costs, and reasonable attorneys' fees incurred both before  
30 and after judgment, incurred in the collection of sums due, if provided  
31 for in the note or agreement signed by the borrower;

32 (6) Acquire, lease, hold, assign, pledge, sell, or otherwise  
33 dispose of interests in personal property and in real property in  
34 accordance with RCW 31.12.438;

35 (7) Deposit and invest funds in accordance with RCW 31.12.436;

36 (8) Borrow money, up to a maximum of fifty percent of its total  
37 shares, deposits, and net worth;

- 1 (9) Discount or sell any of its assets, or purchase any or all of  
2 the assets of another credit union, out-of-state credit union, or  
3 federal credit union. However, a credit union may not discount or sell  
4 all, or substantially all, of its assets without the approval of the  
5 director;
- 6 (10) Accept deposits of deferred compensation of its members;
- 7 (11) Act as fiscal agent for and receive payments on shares and  
8 deposits from the federal government or this state, and any agency or  
9 political subdivision thereof;
- 10 (12) Engage in activities and programs as requested by the federal  
11 government, this state, and any agency or political subdivision  
12 thereof, when the activities or programs are not inconsistent with this  
13 chapter;
- 14 (13) Hold membership in credit unions, out-of-state credit unions,  
15 or federal credit unions and in organizations controlled by or  
16 fostering the interests of credit unions, including, but not limited  
17 to, a central liquidity facility organized under state or federal law;
- 18 (14) Pay additional dividends and interest to members, or an  
19 interest rate refund to borrowers;
- 20 (15) Enter into lease agreements, lease contracts, and  
21 lease-purchase agreements with members;
- 22 (16) Act as insurance agent or broker for the sale to members of:
- 23 (a) Group life, accident, health, and credit life and disability  
24 insurance; and
- 25 (b) Other insurance that other types of Washington state-chartered  
26 financial institutions are permitted to sell, on the same terms and  
27 conditions that these institutions are permitted to sell such  
28 insurance;
- 29 (17) Impose a reasonable service charge for the administration and  
30 processing of accounts that remain dormant for a period of time  
31 specified by the credit union;
- 32 (18) Establish and operate on-premises or off-premises electronic  
33 facilities;
- 34 (19) Enter into formal or informal agreements with another credit  
35 union for the purpose of fostering the development of the other credit  
36 union;
- 37 (20) Work with community leaders to develop and prioritize efforts  
38 to improve the areas where their members reside by making investments



1 in the community through contributions to organizations that primarily  
2 serve either a charitable, social, welfare, or educational purpose, or  
3 are exempt from taxation pursuant to section 501(c)(3) of the internal  
4 revenue code;

5 (21) Limit the personal liability of its directors in accordance  
6 with provisions of its articles of incorporation that conform with RCW  
7 23B.08.320;

8 (22) Indemnify its directors, supervisory committee members,  
9 officers, employees, and others in accordance with provisions of its  
10 articles of incorporation or bylaws that conform with RCW 23B.08.500  
11 through 23B.08.600;

12 (23) Conduct a promotional contest of chance as authorized in RCW  
13 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and  
14 30.22.260 are complied with to the satisfaction of the director;  
15 ((and))

16 (24) Offer and issue accounts or instruments that are not shares or  
17 deposits, are not insured as described in RCW 31.12.408, and are  
18 included in the credit union's net worth pursuant to the federal credit  
19 union act, 12 U.S.C. Sec. 1790d. The director may adopt rules to  
20 implement this subsection; and

21 (25) Exercise such incidental powers as are necessary or convenient  
22 to enable it to conduct the business of a credit union.

23 **Sec. 8.** RCW 31.12.426 and 2001 c 83 s 17 are each amended to read  
24 as follows:

25 (1) A credit union may make secured and unsecured loans to its  
26 members under policies established by the board, subject to the loans  
27 to one borrower limits provided for in RCW 31.12.428. Each loan must  
28 be evidenced by records adequate to support enforcement or collection  
29 of the loan and any review of the loan by the director. Loans must be  
30 in compliance with rules adopted by the director.

31 (2) Loans to directors, supervisory committee members, and credit  
32 committee members may not be made under more favorable terms and  
33 conditions than those made to members generally.

34 (3) A credit union may obligate itself to purchase loans in  
35 accordance with RCW 31.12.436(1)(a), if the credit union's underwriting  
36 policies would have permitted it to originate the loans.

1       **Sec. 9.** RCW 31.12.436 and 2001 c 83 s 19 are each amended to read  
2 as follows:

3       (1) A credit union may invest its funds in any of the following, as  
4 long as ~~((they))~~ the investments are deemed prudent by the board:

5       ~~((+1))~~ (a) Loans held by credit unions, out-of-state credit  
6 unions, or federal credit unions; loans to members held by other  
7 lenders; and loans to nonmembers held by other lenders, with the  
8 approval of the director;

9       ~~((+2))~~ (b) Bonds, securities, or other investments that are fully  
10 guaranteed as to principal and interest by the United States  
11 government, and general obligations of this state and its political  
12 subdivisions;

13       ~~((+3))~~ (c) Obligations issued by corporations designated under 31  
14 U.S.C. Sec. 9101, or obligations, participations or other instruments  
15 issued and guaranteed by the federal national mortgage association,  
16 federal home loan mortgage corporation, government national mortgage  
17 association, or other government-sponsored enterprise;

18       ~~((+4))~~ (d) Participations or obligations which have been subjected  
19 by one or more government agencies to a trust or trusts for which an  
20 executive department, agency, or instrumentality of the United States  
21 has been named to act as trustee;

22       ~~((+5))~~ (e) Share or deposit accounts of other financial  
23 institutions, the accounts of which are federally insured or insured or  
24 guaranteed by another insurer or guarantor approved by the director.  
25 The shares and deposits made by a credit union under this subsection  
26 (1)(e) may exceed the insurance or guarantee limits established by the  
27 organization insuring or guaranteeing the institution into which the  
28 shares or deposits are made;

29       ~~((+6))~~ (f) Common trust or mutual funds whose investment  
30 portfolios consist of securities issued or guaranteed by the federal  
31 government or an agency of the government;

32       ~~((+7))~~ (g) Up to five percent of the capital of the credit union,  
33 in debt or equity issued by an organization owned by the Washington  
34 credit union league;

35       ~~((+8))~~ (h) Shares, stocks, loans, or other obligations of  
36 organizations whose primary purpose is to strengthen, advance, or  
37 provide services to the credit union industry or credit union members.  
38 A credit union may in the aggregate invest an amount not to exceed one

1 percent of its assets in organizations under this subsection (1)(h).  
2 In addition, a credit union may in the aggregate lend an amount not to  
3 exceed one percent of its assets to organizations under this subsection  
4 (1)(h). These limits do not apply to investments in, and loans to, an  
5 organization:

6 ~~((a))~~ (i) That is wholly owned by one or more credit unions or  
7 federal or out-of-state credit unions; and

8 ~~((b))~~ (ii) Whose activities are limited exclusively to those  
9 authorized by this chapter for a credit union;

10 ~~((9))~~ (i) Loans to credit unions, out-of-state credit unions, or  
11 federal credit unions. The aggregate of loans issued under this  
12 subsection (1)(i) is limited to twenty-five percent of the total shares  
13 and deposits of the lending credit union;

14 ~~((10))~~ (j) Key person insurance policies, the proceeds of which  
15 inure exclusively to the benefit of the credit union; ~~((or~~

16 ~~(11))~~ (k) A registered investment company or collective investment  
17 fund, as long as the prospectus of the company or fund restricts the  
18 investment portfolio to investments and investment transactions that  
19 are permissible for credit unions; or

20 (1) Other investments approved by the director upon written  
21 application.

22 (2) If a credit union has lawfully made an investment that later  
23 becomes impermissible because of a change in circumstances or law, and  
24 the director finds that this investment will have an adverse effect on  
25 the safety and soundness of the credit union, then the director may  
26 require that the credit union develop a reasonable plan for the  
27 divestiture of the investment.

28 **Sec. 10.** RCW 31.12.438 and 2001 c 83 s 20 are each amended to read  
29 as follows:

30 (1) A credit union may invest in real property or leasehold  
31 interests primarily for its own use or the use of a credit union  
32 service organization in conducting business, including, but not limited  
33 to, structures and fixtures attached to real property, subject to the  
34 following limitations:

35 (a) The credit union's net worth equals at least five percent of  
36 the total of its share and deposit accounts;

37 (b) The board approves the investment; and

1 (c) The aggregate of all such investments does not exceed seven and  
2 one-half percent of the total of its share and deposit accounts.

3 (2) If the real property or leasehold interest is acquired for  
4 future expansion, the credit union must (~~satisfy the use requirement~~  
5 ~~in subsection (1) of this section~~) partially occupy the premises  
6 within three years after the credit union makes the investment, if the  
7 premises are improved at the time of acquisition, or within six years  
8 after the credit union makes the investment, if the premises are  
9 unimproved at the time of acquisition.

10 (3) The director may, upon written application, waive any of the  
11 limitations listed in subsection (1) or (2) of this section, and the  
12 director may adopt rules to interpret this section.

13 **Sec. 11.** RCW 31.12.461 and 2001 c 83 s 21 are each amended to read  
14 as follows:

15 (1) For purposes of this section, the merging credit union is the  
16 credit union whose charter ceases to exist upon merger with the  
17 continuing credit union. The continuing credit union is the credit  
18 union whose charter continues upon merger with the merging credit  
19 union.

20 (2) A credit union may be merged with another credit union with the  
21 approval of the director and in accordance with requirements the  
22 director may prescribe. The merger must be approved by a (~~two-~~  
23 ~~thirds~~) majority vote of the board of each credit union and a  
24 two-thirds majority vote of those members of the merging credit union  
25 voting on the merger at a membership meeting. The requirement of  
26 approval by the members of the merging credit union may be waived by  
27 the director if the merging credit union is in imminent danger of  
28 insolvency.

29 (3) The property, rights, and interests of the merging credit union  
30 transfer to and vest in the continuing credit union without deed,  
31 endorsement, or instrument of transfer, although instruments of  
32 transfer may be used if their use is deemed appropriate. The debts and  
33 obligations of the merging credit union that are known or reasonably  
34 should be known are assumed by the continuing credit union. The  
35 continuing credit union shall cause to be published notice of merger  
36 once a week for three consecutive weeks in a newspaper of general  
37 circulation in the county in which the principal place of business of

1 the merging credit union is located. The notice of merger must also  
2 inform creditors of the merging credit union how to make a claim on the  
3 continuing credit union, and that if a claim is not made upon the  
4 continuing credit union within thirty days of the last date of  
5 publication, creditors' claims that are not known by the continuing  
6 credit union may be barred. Except for claims filed as requested by  
7 the notice, or debts or obligations that are known or reasonably should  
8 be known by the continuing credit union, the debts and obligations of  
9 the merging credit union are discharged. Upon merger, the charter of  
10 the merging credit union ceases to exist.

11 (4) Mergers are effective after the thirty-day notice period to  
12 creditors and all regulatory waiting periods have expired, and upon  
13 filing of the credit union's articles of merger by the secretary of  
14 state, or a later date stated in the articles, which in no event may be  
15 later than ninety days after the articles are filed.

16 **Sec. 12.** RCW 31.12.630 and 1997 c 397 s 58 are each amended to  
17 read as follows:

18 The director may request a special meeting of the board of a credit  
19 union if the director believes that a special meeting is necessary for  
20 the welfare of the credit union or the purposes of this chapter. The  
21 director's request for a special board meeting must be made in writing  
22 to the secretary of the board (~~and the request must be handled in the~~  
23 ~~same manner as a call for a special meeting under RCW 31.12.195)). On  
24 receipt of such a request, the secretary shall designate a time and  
25 place for the special board meeting, which shall be held within thirty  
26 days after receipt of the request. The director may require the  
27 attendance of all of the directors at the special board meeting, and an  
28 absence unexcused by the director constitutes a violation of this  
29 chapter.~~

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