

# SENATE BILL REPORT

## SB 5002

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As Reported by Senate Committee On:  
Law & Justice, January 24, 2019

**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: 1/17/19, 1/24/19 [DP].

**Brief Summary of Bill**

- Establishes a uniform business code governing limited cooperative associations.
- Sets forth the nature, membership, powers, liabilities, and processes of limited cooperative associations
- 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:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

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

**Background:** A cooperative association is a unique type of corporation whose members are the joint owners of the entity. The members participate in the cooperative's business for the mutual benefit of all involved. Cooperative associations are governed by chapter 23.86 RCW, and members generally pay a membership fee and acquire an equity interest in the organization. Each member holds equal ownership and participation in control of the cooperative.

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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.*

The Uniform Law Commission (ULC) was established in 1892, and it studies and reviews states' laws to determine which areas of law should be uniform. The ULC drafted a model Uniform Limited Cooperative Association Act which 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:** A limited cooperative association (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 associations;
- information and records required to be retained by the association;
- the effect of organic rules concerning relations among members and the association;
- establishes a dual capacity interest that includes 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; 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 and 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 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 nonmembers that conduct business with the association; 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 one vote for each investor member unless organic rules provide otherwise;
- 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; and
- 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:** PRO: This is an alternative that provides flexibility and works well with our existing law. A lot of cooperatives across the country lack the ability to raise financing for new buildings or expansion. This bill is the right balance and it does not replace existing entities organized under other laws. It allows investor members but keeps the patron member control as a traditional principle of cooperative associations. This is based on the Uniform Act but the changes harmonize the bill with other Washington laws. This does not cover the business of generating, distributing, purchasing, or selling electric energy.

CON: The inclusion of a voting investor member class makes it no longer a cooperative. Extraction of an investment is not member participation. You should not be able to call it a cooperative. Organic rules should not allow investor members to have their representation or vote proportional to the weight of their investment.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Michael Hutchings, citizen.

CON: Frederick Medlicott, citizen.

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