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**SUBSTITUTE SENATE BILL 6311**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Hobbs, Honeyford, Hatfield, and Hargrove)

READ FIRST TIME 02/03/12.

1           AN ACT Relating to providing water resource mitigation alternatives  
2 for human domestic needs in rural areas; adding new sections to chapter  
3 90.54 RCW; and creating a new section.

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

5           NEW SECTION.   **Sec. 1.** The legislature finds that the 1971 water  
6 resources act provides that allocation of water among potential uses  
7 and users must be based generally on securing of the maximum net  
8 benefits for the people of the state. Maximum net benefits constitutes  
9 total benefits, less costs, including opportunities lost. The  
10 legislature finds that in allocating water under chapter 90.54 RCW that  
11 adequate supplies of water are to be preserved and protected to satisfy  
12 human domestic needs and that mitigation is not statutorily authorized  
13 when making these allocations.

14           The legislature finds that homeowners not served by a public water  
15 system may desire to access additional quantities of water to  
16 supplement existing water allocations for human domestic uses for a  
17 broad range of potential uses on their land. The department of ecology  
18 has advanced conceptual alternatives that may provide homeowners the

1 ability to secure additional water resources based on the water-budget  
2 neutral concept.

3 The purpose of this act is to authorize the department of ecology  
4 to collaboratively work with representatives of state agencies, local  
5 governments, local health departments, tribes, landowners, the home  
6 construction industry, homeowners, engineers, and other interested  
7 people to examine and develop workable mechanisms that are practical,  
8 economical, and safe for homeowners and the home construction industry  
9 to implement.

10 It is the intent of the legislature to help expedite the  
11 construction of homes, and the related jobs resulting from home  
12 construction, particularly in rural areas, by making water resources  
13 more readily available.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.54 RCW  
15 to read as follows:

16 (1) The department of ecology may work collaboratively to examine  
17 potential alternatives for increasing the amount of water otherwise  
18 allocated to rural homeowners and businesses under this chapter. Among  
19 the alternatives the department may explore are:

20 (a) Improvements to water systems serving a certain minimum number  
21 of homes, businesses, or both;

22 (b) The collection, retention, and use or release of rainwater;

23 (c) The use of deep wells to augment stream flows;

24 (d) Water-sharing agreements with nearby well owners;

25 (e) Constructing ponds or other water impoundments;

26 (f) Conserving water in the watershed and banking that conserved  
27 water for transfer to other users;

28 (g) Pumping water from other legally available water sources for  
29 release into the watershed to offset the increased withdrawal that is  
30 sought;

31 (h) Improving the efficiency of municipal irrigation or other water  
32 distribution systems in the watershed; and

33 (i) Other alternatives that may have merit as suggested by the  
34 department or interested parties.

35 (2) For alternatives that are determined to be viable, the  
36 department may: (a) Develop the criteria and mechanisms to provide  
37 clear and practical guidance to homeowners and builders; (b) anticipate

1 the variety of conditions in the state and provide an array of options  
2 suitable to meet the types of conditions that homeowners would likely  
3 encounter; and (c) develop true-to-life examples of how it would work  
4 in subbasins where limitations on water for essential human domestic  
5 uses are in effect. The examples must show how mitigation credits  
6 would be assigned, how the size of projects would be determined, the  
7 season or conditions under which mitigation credits would be useable,  
8 a cost estimate for each example, whether permits would be required,  
9 and whether additional agency staff would be needed.

10 (3) The department of health, the department of fish and wildlife,  
11 and the state building code council may be requested to assist the  
12 department in developing viable alternatives that clearly address the  
13 needs of homeowners and the home building industry to make these  
14 options practical, economical, and safe.

15 (4) For those alternatives that are determined to have a high  
16 degree of viability, the department may cooperatively work with  
17 involved groups to conduct demonstration projects for each alternative  
18 to test the practical usability, effectiveness, cost, and safety and  
19 determine whether there are unintended consequences.

20 (5) When the department, after consultation with the involved  
21 groups, determines what alternatives have been successfully  
22 demonstrated to be viable, the department may submit proposed  
23 legislation to provide the legal framework necessary to utilize these  
24 mitigation alternatives.

25 (6) The department may provide a report to the appropriate  
26 committees of the legislature by December 10, 2012, on the progress of  
27 this activity.

28 (7) The activities of the involved state agencies must be conducted  
29 from within the existing funds available to the agency.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.54 RCW  
31 to read as follows:

32 (1) In watersheds where the department has closed or partially  
33 closed a basin to further appropriation of groundwater, or in areas  
34 where closure or partial closure is anticipated, the county legislative  
35 authority may create a limited purpose local water bank. In  
36 considering whether a water bank would be a viable tool in the area,

1 the county legislative authority shall consider whether there are a  
2 sufficient number of existing water rights in the area to make a water  
3 bank successful.

4 (2) Water banks created under this section serve the purpose of  
5 providing mitigation credits for existing interruptible or new exempt  
6 groundwater withdrawals. The credit must be granted on a one-to-one  
7 ratio. The maximum amount of credit may not exceed five thousand  
8 gallons per day nor less than three hundred fifty gallons per day. A  
9 seasonal water right must be prorated on a basis of the total permitted  
10 withdrawal divided by three hundred sixty-five days to arrive at the  
11 total expressed gallons per day.

12 (3) A water right or a portion of a water right placed into a  
13 limited purpose local water bank must be demonstrated to be in  
14 hydraulic continuity with the groundwater to be withdrawn by the new  
15 user. Water rights placed into limited purpose local water banks are  
16 not subject to review for relinquishment or wastage. Water rights  
17 placed into a limited purpose local water bank may only be purchased on  
18 a permanent basis and only for purposes of mitigating exempt  
19 withdrawals consistent with subsection (2) of this section.

20 (4) Water credits purchased through a limited purpose local water  
21 bank must be affixed to a specific parcel of land to mitigate  
22 interruptible or new groundwater withdrawals consistent with this act.  
23 Water credits so purchased are assignable with conveyance of title of  
24 the new land parcel to which it is affixed, but may not be transferred  
25 to another parcel, except nothing in this section prevents a parcel to  
26 which a water credit is affixed to be subdivided and the water credit  
27 prorated amongst the newly created parcels, as long as no parcel may be  
28 assigned less than three hundred fifty gallons per day for domestic  
29 use.

30 (5) Water credits purchased from a bank must be purchased in the  
31 form of a certificate expressed in a maximum gallons per day  
32 withdrawal. The price of the certificate is determined by the water  
33 right holder and is a one-time purchase price. The purchase price must  
34 be expressed as a base price for three hundred fifty gallons per day,  
35 and an additional price expressed for each additional fifty gallons per  
36 day increment.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 90.54 RCW  
2 to read as follows:

3        (1) A limited purpose local water bank may be created by ordinance  
4 adopted by the county legislative authority.    An ordinance may be  
5 adopted only after providing a thirty day comment period and at least  
6 one public hearing located within the boundaries of the watershed, or  
7 if no suitable location exists, at the county seat.

8        (2) The county legislative authority may administer a limited  
9 purpose local water bank or may contract with a water conservancy  
10 board, watershed planning group, or conservation district to administer  
11 the local water bank.    The cost of administering the limited purpose  
12 local water bank may be supported by general fund moneys, real estate  
13 excise tax revenues, or from fees added to the price of water credits  
14 purchased from the bank, or a combination of these sources.    Fees  
15 affixed to the water credit price must be calculated to recover the  
16 actual costs in an amount not to exceed nine percent of the purchase  
17 price of the water credits.

18        (3) Water rights placed in a limited purpose local water bank must  
19 be purchased in an order at the discretion of the purchaser.    Water  
20 rights placed in the bank may not be mingled with other water rights or  
21 water credits purchased from any right within the bank, and must carry  
22 the priority date of the original water right.

23        (4) Nothing in this section or section 3 of this act may be  
24 construed to grant the local legislative authority or agency contracted  
25 to administer the limited purpose local water bank any authority to  
26 place conditions on the use of the water credits purchased beyond those  
27 found in existing law or this section.

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