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SENATE BILL 6533

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State of Washington

63rd Legislature

2014 Regular Session

By Senators Honeyford and Hatfield

Read first time 02/03/14. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to best practice for water banks; reenacting and  
2 amending RCW 90.42.020; adding new sections to chapter 90.42 RCW;  
3 creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and  
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9 (1) "Department" means the department of ecology.

10 (2) "Local government" means a city, town, public utility district,  
11 irrigation district, public port, county, sewer district, or water  
12 district.

13 (3) "Net water savings" means the amount of water that is  
14 determined to be conserved and usable within a specified stream reach  
15 or reaches for other purposes without impairment or detriment to water  
16 rights existing at the time that a water conservation project is  
17 undertaken, reducing the ability to deliver water, or reducing the  
18 supply of water that otherwise would have been available to other  
19 existing water uses.

1 (4) "Pilot planning areas" means the geographic areas designated  
2 under RCW 90.54.045(2).

3 (5) "Trust water right" means any water right acquired by the state  
4 under this chapter for management in the state's trust water rights  
5 program.

6 (6) "Water bank sponsor" means any person, corporation, or other  
7 entity, including a state agency or local government, that has,  
8 directly or indirectly, transferred a water right or any portion  
9 thereof to the state trust water program for water banking purposes.

10 (7) "Water conservation project" means any project or program that  
11 achieves physical or operational improvements that provide for  
12 increased water use efficiency in existing systems of diversion,  
13 conveyance, application, or use of water under water rights existing on  
14 July 28, 1991.

15 NEW SECTION. Sec. 2. A new section is added to chapter 90.42 RCW  
16 to read as follows:

17 Every water bank sponsor approved by the department under this  
18 section shall file with the department a schedule showing the amount  
19 charged, including all costs and fees for a mitigation credit. No  
20 change may be made in the amount charged or other costs and fees paid  
21 unless the sponsor provides notice to the department at least thirty  
22 days before the change goes into effect. The notice must plainly state  
23 the changes to be made in the schedule then on file with the department  
24 and the effective date of the changes.

25 NEW SECTION. Sec. 3. A new section is added to chapter 90.42 RCW  
26 to read as follows:

27 (1) Except as provided otherwise in this subsection, no water bank  
28 sponsor may charge, demand, collect, or receive from another person or  
29 entity a greater, less, or different compensation for any service  
30 rendered or to be rendered than the rates and charges applicable to the  
31 service as specified in its schedule filed and in effect at the time,  
32 nor may any water bank sponsor directly or indirectly refund or remit  
33 in any manner or by any device any portion of the rates or charges so  
34 specified, or furnish a mitigation credit at free or reduced rates  
35 except as provided in subsection (3) of this section.

1 (2) Except as provided in subsection (3) of this section, no water  
2 bank sponsor may extend to any person or entity any form of contract or  
3 agreement or any rule or regulation or any privilege or facility except  
4 those as are regularly and uniformly extended to all persons and  
5 entities under like circumstances.

6 (3)(a) Nothing in this section prohibits a water bank sponsor from  
7 offering a mitigation credit at a free or reduced rate for:

8 (i) The use of the state or a political subdivision thereof for any  
9 project in which the state or political subdivision is the owner or  
10 sponsor;

11 (ii) Its own use or the use of any of its officers, employees, or  
12 agents;

13 (iii) The use of a hospital, charitable and eleemosynary  
14 institution, or fire protection or other public health or safety  
15 facility; or

16 (iv) Low-income senior customers and low-income customers.

17 (b) Nothing in this section prohibits a water bank sponsor from  
18 establishing a sliding scale of charges, whereby a greater charge is  
19 made per unit for mitigation for a lesser than a greater quantity of  
20 water use, or any service rendered or to be rendered.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42 RCW  
22 to read as follows:

23 No water bank sponsor may make or grant any undue or unreasonable  
24 preference or advantage to any person, corporation, or locality, or to  
25 any particular description of service in any respect whatsoever, or  
26 refuse service or subject any particular person, corporation, or  
27 locality or any particular description of service to any undue or  
28 unreasonable prejudice or disadvantage in any respect whatsoever.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42 RCW  
30 to read as follows:

31 No water bank sponsor may, directly or indirectly, or by any  
32 special rate, rebate, drawback, or other device or method, charge,  
33 demand, collect, or receive from any person or corporation a greater or  
34 less compensation for the purchase or assignment of a groundwater  
35 mitigation credit, or for any service rendered or to be rendered, or in  
36 connection therewith, except as authorized in this chapter, than it

1 charges, demands, collects, or receives from any other person or  
2 corporation for doing a like or contemporaneous service with respect  
3 thereto under the same or substantially similar circumstances or  
4 conditions.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42 RCW  
6 to read as follows:

7 The department shall require each water bank sponsor to demonstrate  
8 for each mitigation credit transferred by the sponsor the availability  
9 of an adequate, reliable, and uninterrupted water supply suitable to  
10 mitigate for the intended purposes for which mitigation is required.  
11 The department shall ensure that each new water use for which  
12 mitigation is required will not cause detriment or injury to existing  
13 water rights, including instream flows that otherwise could be  
14 adversely affected by the new water use, or cause harm to priority  
15 species of fish and wildlife or critical habitat for species listed  
16 under the endangered species act.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.42 RCW  
18 to read as follows:

19 No water bank sponsor may transfer a mitigation credit to any  
20 person or entity for any proposed use of water that is inconsistent  
21 with an approved state or local government land use plan or ordinance.

22 NEW SECTION. **Sec. 8.** This act may be known and cited as the water  
23 banking best practices act.

24 NEW SECTION. **Sec. 9.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of the  
30 state government and its existing public institutions, and takes effect  
31 immediately.

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