
**Agriculture & Natural Resources
Committee**

HB 1187

Brief Description: Concerning best practices for water banks.

Sponsors: Representatives Chandler, Blake, Buys, Stanford, Hayes and Parker.

Brief Summary of Bill

- Requires water bank sponsors to report amounts charged for mitigation credits to the Department of Ecology and not charge amounts different from the rates reported or otherwise provide preferential treatment for potential buyers.
- Requires all water bank transfers to correspond to an adequate, reliable, and uninterrupted water supply, be consistent with state and local land use ordinances, and not cause detriment or injury to other water right holders, priority fish or wildlife species, or critical habitat for a species listed on the Endangered Species Act.

Hearing Date: 2/3/15

Staff: Jason Callahan (786-7117).

Background:

According to the Department of Ecology (Department), water banking is an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface, groundwater, and water storage. The phrase "water banking" is widely used to refer to a variety of water management practices. Water banking is typically facilitated by an institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as credits to willing buyers.

In 2003, legislation was passed to allow water banking in the Yakima Basin using the State Trust Water Rights Program. During the 2009 Legislative session, the law was amended to clarify that this tool is available to use for banking statewide.

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 State Trust Water Rights Program allows either a permanent donation of a water right or a temporary donation that allows the water right holder to maintain his or her water rights for future uses without the water right relinquishing. Water enrolled in the program is held by the Department and put to beneficial uses. Water enrolled in the State Trust Water Rights Program is held in trust and retains its original priority date.

Summary of Bill:

Every person or entity who has directly or indirectly transferred a water right, or a portion of a water right, into the State Trust Water Rights Program for the purposes of water banking (water bank sponsor) is required to file with the Department a schedule that shows the amount charged, including costs and fees, for each mitigation credit in a water bank. Once filed, the water bank sponsor may only change the schedule after providing the Department with 30-days' notice of the change.

Once a schedule of rates is filed with the Department, the water bank sponsor may not make mitigation credits available from the bank in a manner that is not regularly and uniformly offered to all potential purchasers in similar circumstances and may not grant any undue or unreasonable preference to any potential buyer of mitigation credits. With some exceptions, the water bank sponsor may not charge a rate that is different than the rate shown on the schedule for the provision of a mitigation credit. This includes a prohibition on any refunds or other remittals of payment back to the purchaser that results in a reduced price or free mitigation credit.

A water bank sponsor can offer a reduced or free mitigation credit in limited circumstances. Reduced or free credits may only be offered to the state or its political subdivisions for publically owned projects, the water bank sponsor itself, low-income customers, hospitals, charitable and eleemosynary institutions, and fire protection or other public health and safety institutions.

Every water bank sponsor must demonstrate to the Department that each mitigation credit transferred by the water bank sponsor corresponds to an adequate, reliable, and uninterrupted water supply that is suitable for the intended purposes of the mitigation credit. In turn, the Department must assure that any uses of a mitigation credit does not cause detriment or injury to other water right holders, priority fish or wildlife species, or critical habitat for a species listed on the Endangered Species Act. All transfers of mitigation credits are required to be consistent with all relevant state or local land use plans.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.