

SENATE BILL REPORT

SB 5014

As Reported by Senate Committee On:
Agriculture, Water & Rural Economic Development, February 19, 2015

Title: An act relating to best practices for water banks.

Brief Description: Concerning best practices for water banks.

Sponsors: Senators Honeyford and Ericksen.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/10/15, 2/19/15 [DP].

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Warnick, Chair; Dandel, Vice Chair; Hatfield, Ranking Minority Member; Hobbs and Honeyford.

Staff: Diane Smith (786-7410)

Background: The Department of Ecology (Department) considers water banking to be an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface water, 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 a public or private 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. The Washington Water Trust runs water banks in the Dungeness drainage, the Kittitas Basin, and in Walla Walla.

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 the holder's water rights

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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) must 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 result 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 must be consistent with all relevant state or local land use plans.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill sets best management practices for water banks. One would seek to avoid the opportunity for taking advantage of those who need the services of water banks. Suncadia follows these practices but others are not; an 18-month water lease is not an adequate supply. These standards are transparent and consistent with existing law.

CON: This bill needs sideboards. There is great concern over the cost of water.

OTHER: The Department's role may be awkward. It would be better done by a third party. There are better models than to lift it from utility regulatory statutes. It needs to be narrowed to transparency. Using a bulletin board feature, the Department could work this into its website and post the selling price of water. The Department already does what is required in sec. 6. Sec. 7 goes beyond what is appropriate; it seems better for counties or cities to tell a person about land use inconsistencies.

Persons Testifying: PRO: Senator Honeyford, prime sponsor; Joe Mentor, Mentor Law Group PLLC, New Suncadia LLC; Bruce Wishart, Sierra Club, Center for Environmental Law and Policy.

CON: Laura Merrill, WA State Assn. of Counties.

OTHER: Tom Loranger, Dept. of Ecology; Glen Smith, WA State Ground Water Assn.; Bill Clarke, Kittitas County, WA Realtors; Kathleen Collins, WA Water Policy Alliance.