

SENATE BILL REPORT

SSB 6179

As Amended by House, March 4, 2016

Title: An act relating to water banking.

Brief Description: Concerning water banking.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senator Honeyford).

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 1/14/16, 1/19/16 [DPS].

Passed Senate: 2/09/16, 47-0.

Passed House: 3/04/16, 94-3.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6179 be substituted therefor, and the substitute bill do pass.

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

Staff: Diane Smith (786-7410)

Background: 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 mitigation credits to willing buyers.

The Department of Ecology (Department) considers water banking to be an institutional mechanism that facilitates the legal transfer and market exchange of various types of surface water, groundwater, and water storage.

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 administers water banks in the Dungeness drainage, the Kittitas Basin, and Walla Walla.

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 the holder's water rights for future use without the relinquishment of the water right. Water enrolled in the program is held by the Department and put to beneficial use. Water enrolled in the State Trust Water Rights Program is held in trust and retains its original priority date.

Under the state building code, adequate water supply for the intended use of the proposed building is required in order to receive a building permit. Counties and cities may condition a building permit on the applicant's connecting to an existing public water system that is ready, willing, and able to provide safe and reliable potable water.

The Department is prohibited from using water banking for four stated purposes, one of which prohibits the issuance of temporary water rights from a water bank when the new potable use requires an adequate and reliable water supply.

The Department must maintain information about water banking on its website.

Summary of Substitute Bill: For the purpose of providing mitigation of water resource impacts, the Department must use an adequate water supply.

The Department must include on its website a schedule showing the amount charged by each water bank for mitigation; the priority date; and the amount of water made available for mitigation. The Department must update the schedule quarterly. Water banks must provide the necessary information to the Department upon request. The Department may display this information in the form of a table.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Water banking should not be used for speculation or profit in this state. This bill assures that real, wet water is identified as such when it is available from water banks. The bill also ensures that the public has a transparent mechanism for comparing this water's availability from various water banks. Local permitting authorities must require potable water appropriate to the building proposed, in compliance with the Building Code. The same standard should be used here so as not to create confusion and to protect the permitting authorities and the water banks. Commercial level buying and selling of water rights should be distinguished from the consumer's needs for transactional transparency. The double negative used in the bill is confusing and could be rewritten to say the same thing in a more accessible way. The price should be disclosed in addition to the quantity offered, the water right's priority date and, whether the amount offered is for indoor or outdoor use.

OTHER: Two associations have not yet completed the vetting process on this bill. There are recent court cases to consider in the movement of water.

Persons Testifying on Original Bill: PRO: Senator Honeyford, Prime Sponsor; Jim Halstrom; Bill Clarke, Kittitas County; Washington REALTORS; David Christensen, Department of Ecology; bruce wishart, CELP / Sierra Club; Paul Eisenberg, Suncadia.

OTHER: Laura Berg, WA State Assoc of Counties; Evan Sheffels, Wa Farm Bureau.

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

House Amendment(s): The table maintained by DOE must also include :

- any fees charged, in the amount charged for mitigation;
- if applicable, any geographic areas where DOE may issue permits or other approvals to use the water rights associated with the water bank as mitigation;
- the process the water bank used to obtain approval from DOE, or any other governmental agency, to use the water rights as mitigation for new water uses; and
- the nature of the ownership interest of the water right available to be conveyed to the landowner and whether the ownership interest will be recorded on the title.

Clarifies that it is the operators of the water banks who have the obligation to supply the information for the table maintained on DOE's web site.

The section prohibiting DOE from using water banking to mitigate for water resource impacts unless an adequate water supply is available, is removed.