

SENATE BILL REPORT

SB 6292

As of January 24, 2020

Title: An act relating to water rights sales.

Brief Description: Concerning water rights sales.

Sponsors: Senators Salomon, Nguyen, Wilson, C., Van De Wege, Rolfes, Lovelett, Carlyle, Hasegawa and Randall.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/21/20.

Brief Summary of Bill

- Prohibits the Department of Ecology (Ecology) from using water banking to allow a person who has not previously made beneficial use of the water to transfer a water right or a portion of a water right into a water bank unless the water bank is created to mitigate water resource impacts, create a source of supply for third parties, or enhance streamflows.
- Requires a person who purchases a water right separate from the real property to file a copy of the purchase and sale agreement with Ecology.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: The state may acquire a trust water right by donation, purchase, or lease. Trust water rights are placed in the state's Trust Water Rights Program and managed by Ecology. Two trust water rights systems, one for the Yakima River basin and the other for the rest of the state, are established in state law.

The Trust Water Rights Program enables the voluntary transfer of water and water rights to the state, either temporarily or permanently. While a water right is held in trust, it is considered an exercised water right and is protected from relinquishment. Additionally, water held in trust retains its original priority date.

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 process to establish a water bank begins with a consultation between Ecology's Water Resources Program and a would-be banker. If Ecology agrees the banker's proposal is within the public's interest, a water banking agreement may be negotiated. This agreement describes how Ecology will take ownership of a water right and hold it in the Trust Water Rights Program in exchange for processing applications for mitigated new uses.

Ecology is authorized to use water banking to mitigate for new water uses, hold water for beneficial uses consistent with terms established by the transferor, meet future water supply needs, and provide a source of water to third parties, on a temporary or permanent basis, for any allowed beneficial use.

Summary of Bill: Ecology must not use water banking to allow a person who has not previously made beneficial use of the water to transfer a water right or a portion of a water right into a water bank unless the water bank is created for the purposes of:

- mitigating water resource impacts;
- creating a source of supply for third parties; or
- enhancing streamflows.

The water bank must be within the watershed that is the source of the water right.

A person who purchases a water right acquired separate from the purchase of real property must file a copy of the purchase and sale agreement with Ecology within 90 days of execution of the agreement.

Appropriation: None.

Fiscal Note: Requested on January 17, 2020.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The intention of the bill is to prevent non-users, third party brokers, from using a state-created, public interest-oriented water bank for their own private pecuniary purposes.

CON: The language opens up some questions and could include a municipality with inchoate water or an environmental organization who has purchased a water right to create a water bank for resource needs. Many water banks have started with someone purchasing another water right, sometimes with the plan to use it for mitigation. There is concern about barring particular individuals or organizations from transferring a water right into a water bank just because they have not used the water right. In order to reduce speculation in water, there needs to be a way for Ecology to process water right transfers so it is not worth it to engage in speculation.

OTHER: There is value in discussing how best to protect communities with limited water resources available. The bill would have negative impacts to the Office of the Columbia River and would restrict Ecology's ability to implement the legislative mandate provided for

the Office. Speculation is sometimes done for mitigation in the future. If there is a public interest test to protect Washington's interests from out of state interests, there may be a role for counties or local public utility districts to play to protect the resource. This bill is designed to address the practice of systemic removal of a valuable resource from a community or a potential market manipulation that could be destructive to the economy and the community. It is unclear how watershed would be defined. There could be other ways to address the issue, including mitigation for the out of watershed transfers rather than outright prohibitions. There is potential for inchoate water to be used in water banks, which is problematic. Water speculation is a threat to agricultural water, municipal water, and instream flows. There could be times that transferring out of a watershed is beneficial to instream flows, which would not be allowed under this bill.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor.

CON: Kathleen Collins, Washington Water Policy Alliance; Jan Himebaugh, Building Industry Association of Washington.

OTHER: Bruce Wishart, Center for Environmental Law and Policy, Sierra Club; Bill Clarke, Kittitas County; David Christensen, Washington Department of Ecology; Paul Jewell, Washington State Association of Counties.

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