

HOUSE BILL REPORT

HB 1143

As Passed House:
February 24, 2021

Title: An act relating to authorizing the placement of water rights banked pursuant to RCW 90.92.070 into the trust water rights program.

Brief Description: Authorizing the placement of water rights banked pursuant to RCW 90.92.070 into the trust water rights program.

Sponsors: Representatives Rude, Klicker, Eslick and Dent.

Brief History:

Committee Activity:

Rural Development, Agriculture & Natural Resources: 1/19/21, 2/3/21 [DP].

Floor Activity:

Passed House: 2/24/21, 98-0.

Brief Summary of Bill

- Provides that a water right banked with the Walla Walla Pilot Local Water Management Program must, upon request of the water right holder, be accepted by the Department of Ecology as a temporary trust water right donation for a period of up to two years.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 15 members: Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon, Klicker, Kloba, Kretz, Lekanoff, McEntire, Morgan, Orcutt, Ramos, Schmick and Springer.

Staff: Robert Hatfield (786-7117).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Water Code.

Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. A person seeking a new water right must file an application with the Department of Ecology (Ecology), which must then consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare.

Trust Water Rights Program.

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. Water held in trust retains its original priority date.

Water Banks.

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 that the banker's proposal is in the public 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.

Walla Walla Pilot Local Water Management Program.

The Walla Walla Pilot Local Water Management Program was created through legislation passed in 2009. As part of the legislation, a local water management board was created, with representatives drawn from city and county government, federally recognized Indian tribes, conservation districts, and water rights holders.

The Walla Walla Water Management Board (Board) is authorized, among other duties, to establish a water bank in which surface water and groundwater right holders may deposit their water rights on a permanent or temporary basis. The Board may manage those water rights in order to mitigate for impairment to instream flows and other existing water rights.

Expiration of Walla Walla Pilot Local Water Management Program.

The Walla Walla Pilot Local Water Management Program was initially scheduled to expire in 2019. In 2019 legislation was enacted that moved the expiration date for the program to June 30, 2021.

Summary of Bill:

Upon a request made by a water right holder to the Department of Ecology (Ecology) on or before June 30, 2021, a water right banked as part of the Walla Walla Pilot Local Water Management Program must be accepted by Ecology as a temporary trust water right donation for a period of up to two years, in the same quantity that the water right was banked as part of the Walla Walla Pilot Local Water Management Program.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) For nearly 100 years, Washington's water has been over-appropriated. Having increased water banking options is important. The Walla Walla Pilot Local Water Management Program has worked well.

The Walla Walla Partnership (Partnership) has had some success, but it makes sense to let it sunset and take a different approach. The Partnership has a 30-year strategic plan they are working on, and there needs to be a plan to bridge the two years between the sunset of the current Partnership and the inception of the new program. This bill helps farmers who have put water back into the river to leave it there and help them transition to a new program.

This bill is very important for those who have banked their water. The bill provides an efficient mechanism for water rights that had been banked with the Partnership to continue to provide stream flow benefits, while also being protected from relinquishment. There is little concern about impairment because water rights banked under the program cannot be used for mitigation. Without the bill, water right holders would have to make beneficial use of their water in order to protect from relinquishment, which would then place additional demands on the Walla Walla basin.

(Opposed) None.

Persons Testifying: Representative Rude, prime sponsor; Glen Smith, Washington State Ground Water Association; Mark Wagoner, Gardena Farms Irrigation District; and Tom

Tebb, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.