

# SENATE BILL REPORT

## SB 5583

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As of March 4, 2009

**Title:** An act relating to improving the effectiveness of water bank authorization and exchange provisions.

**Brief Description:** Improving the effectiveness of water bank and exchange provisions.

**Sponsors:** Senators Marr, Honeyford, Rockefeller, Morton, Fraser, Sheldon and Shin; by request of Department of Ecology.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/03/09.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's Trust Water Rights Program and managed by the Department of Ecology (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.

Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems. Trust water rights acquired in areas with an approved watershed plan must be consistent with any plan provisions regarding acquisition.

Ecology may use the Trust Water Rights Program in the Yakima River basin for water banking purposes. Water banking may be used for mitigation, future water supply needs, or any statutory beneficial uses consistent with terms established by the transferor. The water bank must not cause detriment or injury to existing rights, issue temporary rights for new potable uses, administer federal project water rights, or allow carryover of stored water from one water year to another. Water banking may also be used to document transfers of water rights to and from the Trust Water Rights Program and to provide a source of water rights that Ecology can make available to third parties on a temporary or permanent basis for any allowed beneficial use.

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*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.*

**Summary of Bill:** The Trust Water Rights Program may be used by Ecology for water banking purposes statewide. Ecology may acquire both surface and groundwater rights for the Trust Water Rights Program.

Public agencies may enter into interlocal agreements with Ecology to form watershed management partnerships to establish and operate a local water bank. Ecology must invite any federally recognized Indian tribe with a reservation located within the area to be covered by the water bank to be a party to the interlocal agreement. Although a water bank's geographic area must be contiguous, a water bank may not operate within the reservation boundaries of a federally recognized Indian tribe without written consent from the tribe. The interlocal agreement process is not required for water banks or exchanges currently in operation.

A watershed management partnership operating a water bank may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, enter into contracts, hire employees and contractors, sue and be sued, and establish a revolving fund for the purpose of acquiring and disbursing water rights.

Water rights donated or leased under the trust water rights system are excused for sufficient cause from relinquishment. If nonuse occurred in the five years preceding the donation or lease, Ecology must calculate the amount of water to be acquired by looking at the extent to which the right was exercised during the most recent five-year period preceding the date where sufficient cause for nonuse was established. In addition, when calculating annual consumptive quantity of a water right that has been under the Trust Water Rights Program or a water bank, Ecology must look to the most recent five-year period of continuous beneficial use.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2009.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Water banking can be used to address critical water shortages. The statute is currently ambiguous about whether the trust water program can establish water banks in areas of the state other than the Yakima Basin. There is concern about how watershed management partnerships would work. This is very important legislation to assist watersheds to continue implementation of their plans. There are about 40 watersheds around the state that have taken on watershed planning and at least 15 of those are interested in water banking as a means of helping them meet future needs. It is very important that the law be clarified. Support of water banking has gone statewide, so the statute needs to be expanded to accommodate water banking statewide.

CON: There is concern that by using interlocal agreements that this will limit a water and sewer district's participation in water banking. There is concern that using interlocal agreement could cause some entities to be cut out of the process. Ecology should be left in

control of water held in trust. In terms of managing water, Ecology should be managing water banks.

OTHER: The use of interlocal agreements could cause involvement from too many interested parties or not enough involvement from interested parties. Ecology can manage the water banks through the trust water program.

**Persons Testifying:** PRO: Senator Marr, prime sponsor; Richard Reich, Muckleshoot Indian Tribe; Ken Slattery, Ecology; Bill Clarke, Washington PUD Association.

CON: Dawn Vyvyan, Yakama Nation; Scott Hazelgrove, Washington Association of Sewer & Water Districts.

OTHER: Kathleen Collins, Washington Water Policy Alliance.