S-0033.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5014**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Honeyford and Ericksen

AN ACT Relating to best practices for water banks; reenacting and amending RCW 90.42.020; adding new sections to chapter 90.42 RCW; creating a new section; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water bank sponsor" means any person, corporation, or other entity, including a state agency or local government, that has, directly or indirectly, transferred a water right or any portion thereof to the state trust water program for water banking purposes.

(7) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

Every water bank sponsor approved by the department under this section shall file with the department a schedule showing the amount charged, including all costs and fees for a mitigation credit. No change may be made in the amount charged or other costs and fees paid unless the sponsor provides notice to the department at least thirty days before the change goes into effect. The notice must plainly state the changes to be made in the schedule then on file with the department and the effective date of the changes.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

(1) Except as provided otherwise in this subsection, no water bank sponsor may charge, demand, collect, or receive from another person or entity a greater, less, or different compensation for any service rendered or to be rendered than the rates and charges applicable to the service as specified in its schedule filed and in effect at the time, nor may any water bank sponsor directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish a mitigation credit at free or reduced rates except as provided in subsection (3) of this section.

(2) Except as provided in subsection (3) of this section, no water bank sponsor may extend to any person or entity any form of contract or agreement or any rule or regulation or any privilege or facility except those as are regularly and uniformly extended to all persons and entities under like circumstances.

(3)(a) Nothing in this section prohibits a water bank sponsor from offering a mitigation credit at a free or reduced rate for:

(i) The use of the state or a political subdivision thereof for any project in which the state or political subdivision is the owner or sponsor;

(ii) Its own use or the use of any of its officers, employees, or agents;

(iii) The use of a hospital, charitable and eleemosynary institution, or fire protection or other public health or safety facility; or

(iv) Low-income senior customers and low-income customers.

(b) Nothing in this section prohibits a water bank sponsor from establishing a sliding scale of charges, whereby a greater charge is made per unit for mitigation for a lesser than a greater quantity of water use, or any service rendered or to be rendered.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

No water bank sponsor may make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or refuse service or subject any particular person, corporation, or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

No water bank sponsor may, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or less compensation for the purchase or assignment of a groundwater mitigation credit, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

The department shall require each water bank sponsor to demonstrate for each mitigation credit transferred by the sponsor the availability of an adequate, reliable, and uninterruptible water supply suitable to mitigate for the intended purposes for which mitigation is required. The department shall ensure that each new water use for which mitigation is required will not cause detriment or injury to existing water rights, including instream flows that otherwise could be adversely affected by the new water use, or cause harm to priority species of fish and wildlife or critical habitat for species listed under the endangered species act.

NEW SECTION. **Sec.**  A new section is added to chapter 90.42 RCW to read as follows:

No water bank sponsor may transfer a mitigation credit to any person or entity for any proposed use of water that is inconsistent with an approved state or local government land use plan or ordinance.

NEW SECTION. **Sec.**  This act may be known and cited as the water banking best practices act.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**