

# HOUSE BILL REPORT

## HB 1187

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to best practices for water banks.

**Brief Description:** Concerning best practices for water banks.

**Sponsors:** Representatives Chandler, Blake, Buys, Stanford, Hayes and Parker.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/3/15, 2/17/15 [DP].

**Brief Summary of Bill**

- Requires water bank sponsors to report amounts charged for mitigation credits to the Department of Ecology and not charge amounts different from the rates reported or otherwise provide preferential treatment for potential buyers.
- Requires all water bank transfers to correspond to an adequate, reliable, and uninterrupted water supply, be consistent with state and local land use ordinances, and not cause detriment or injury to other water right holders, priority fish or wildlife species, or critical habitat for a species listed on the Endangered Species Act.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 12 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Dunshee, Kretz, Orcutt, Pettigrew, Schmick, Stanford and Van De Wege.

**Staff:** Jason Callahan (786-7117).

**Background:**

According to the Department of Ecology (Department), water banking is an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface, groundwater, and water storage. The phrase "water banking" is widely used to refer

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to a variety of water management practices. Water banking is typically facilitated by an institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as credits to willing buyers.

In 2003 legislation was passed to allow water banking in the Yakima Basin using the State Trust Water Rights Program (Program). During the 2009 legislative session, the law was amended to clarify that this tool is available to use for banking statewide.

The Program allows either a permanent donation of a water right or a temporary donation that allows the water right holder to maintain his or her water rights for future uses without the water right relinquishing. Water enrolled in the Program is held by the Department and put to beneficial uses. Water enrolled in the Program is held in trust and retains its original priority date.

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### **Summary of Bill:**

Every person or entity who has directly or indirectly transferred a water right, or a portion of a water right, into the Program for the purposes of water banking (water bank sponsor) is required to file with the Department a schedule that shows the amount charged, including costs and fees, for each mitigation credit in a water bank. Once filed, the water bank sponsor may only change the schedule after providing the Department with 30-days' notice of the change.

Once a schedule of rates is filed with the Department, the water bank sponsor may not make mitigation credits available from the bank in a manner that is not regularly and uniformly offered to all potential purchasers in similar circumstances and may not grant any undue or unreasonable preference to any potential buyer of mitigation credits. With some exceptions, the water bank sponsor may not charge a rate that is different than the rate shown on the schedule for the provision of a mitigation credit. This includes a prohibition on any refunds or other remittals of payment back to the purchaser that results in a reduced price or free mitigation credit.

A water bank sponsor can offer a reduced or free mitigation credit in limited circumstances. Reduced or free credits may only be offered to the state or its political subdivisions for publically owned projects, the water bank sponsor itself, low-income customers, hospitals, charitable and eleemosynary institutions, and fire protection or other public health and safety institutions.

Every water bank sponsor must demonstrate to the Department that each mitigation credit transferred by the water bank sponsor corresponds to an adequate, reliable, and uninterrupted water supply that is suitable for the intended purposes of the mitigation credit. In turn, the Department must assure that any uses of a mitigation credit does not cause detriment or injury to other water right holders, priority fish or wildlife species, or critical habitat for a species listed on the Endangered Species Act. All transfers of mitigation credits are required to be consistent with all relevant state or local land use plans.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Water banking is an important tool for moving water; however, the industry is newly emerging and developing different structures and approaches in different parts of the state. Water is a public resource and should continue to be managed as such. As water banking continues to grow, so does the risk that water could be commoditized, become the subject of speculation, and only available to those with the means. The more scarce water becomes, the more important the role of the water banks will become.

Water banks should have some level of transparency and commonality across the state without compromising the ability of specific banks to address local concerns. This can be done to assure that all water bank users are being treated the same and to stem the erosion of public confidence in water banks as an effective mitigation tool. The current disparity in information between water bank credit buyers and sellers is leading to that erosion in confidence. Disclosing basic information would allow water bank consumers and sellers to self-regulate. Other industries that deal with public resources are all regulated by the government and water banks should follow those models. However, the Department may not be independent enough to serve as the overseer.

(In support with concerns) Water banks are evolving faster than most people anticipated. The process was pioneered by private interests, but we are now seeing public and non-profit water banks in the market. The disclosure of information and transparency is a similar standard to other regulated entities, but there should not be a full-blown regulatory program for water banks. The Department already keeps a fair amount of information about water banks on its website and should be able to build on that content. Water banks are not a silver bullet solution for all basins. Regulations on water banks should be limited to where they are the most critical, such as the Yakima Basin.

There needs to be some specific discussion around whether water bank sponsors should have to wait a full 30 days before changing rates. The prohibition on the refusal of service should be limited to specific watersheds since water bank sponsors cannot reasonably supply water to different watersheds in the state.

(With concerns) It is important to avoid the gold rush speculation mentality when it comes to water and water banks. The outcome of that mentality is water becoming unavailable to certain classes of individuals.

(Opposed) None.

**Persons Testifying:** (In support) Representative Chandler, prime sponsor; Joe Mentor, New Suncadia; Dave Christensen, Washington Department of Ecology; and Bruce Wishart, Sierra Club and Center for Environmental Law and Policy.

(In support with concerns) Kathleen Collins, Washington Water Policy Alliance; and Bill Clarke, Kittitas County and Washington Realtors.

(With concerns) Glen Smith, Washington State Groundwater Association.

**Persons Signed In To Testify But Not Testifying:** None.