

HOUSE BILL REPORT

SSB 6179

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to water banking.

Brief Description: Concerning water banking.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senator Honeyford).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/18/16, 2/26/16 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Expands the information that the Department of Ecology must maintain on their agency website to include a schedule or table for each water bank in the state that provides information relating to the mitigation of water being offered by each water bank.
- Prohibits the Department of Ecology from using a water bank to provide for the mitigation of water resource impacts with an inadequate water supply.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Blake, Chair; Walkinshaw, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Lytton, 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 water, groundwater, and water storage. The phrase "water banking" is widely used to

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.

refer 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.

Water banking, when managed by the Department through the Program, is authorized to be used for specific purposes. These purposes include mitigating for water impacts, future water supply needs, documenting transfers of water rights in and out of the Program, and to make water available on a permanent or temporary basis for third parties to put to beneficial use. There are also potential purposes that the Department is expressly forbidden from accomplishing through water banking. These include anything causing detriment to an existing water right, providing temporary water for any user requiring an adequate and reliable source of potable water, and administering a federal project water right.

The Department is required to maintain information on its agency website regarding water banking. This information must include information on water banks and related programs in various areas of the state.

Summary of Amended Bill:

A new express prohibition on how the Department may use water banking is provided. The additional prohibition is on the use of a water bank to provide for the mitigation of water resource impacts with an inadequate and unreliable water supply.

The information that the Department must maintain on their agency website is expanded to include a schedule or table for each water bank in the state. The table must show the amount charged by each bank for mitigation, including any fees, and the priority date of the water offered for mitigation. The Department must also display information relating to the amount of water being made available for mitigation from a water bank, the nature of the ownership interest in the water, any applicable geographic areas in the state where the water can be used for mitigation, and the processes utilized by the water bank sponsor to obtain approval to use the associated water rights for mitigation. The information must also include whether or not the associated water right must be recorded on a property's title.

Any person operating a water bank in the state is required to provide information, upon request, to the Department as necessary to fulfill the Department's reporting requirements. The Department must update the information on their agency website on a quarterly basis based on the information provided by water bank operators.

Amended Bill Compared to Substitute Bill:

The striking amendment adds the concept of reliability to the descriptors of a water supply necessary to support water resource mitigation, specifies that any fees must be part of the mitigation credit price disclosure provided by a water bank operator, requires the Department to publish on its website information regarding areas of the state where each water bank has been approved to issue mitigation credits and the process used to secure the approval, and requires each water bank sponsor to disclose the nature of the ownership interest of conveyed water rights and whether that interest will be recorded on a title.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The situation in many basins in the state is that water mitigation credits are necessary before someone can develop or sell their property. For a buyer of credits, more information available about the credit that is being sold allows the buyer to make a better decision. The state has promoted water banking, and more disclosure regarding how water banks operate will lead to more transparency and reliability and, as a result, more public confidence in the system.

The purpose of water banking is for a senior water rights holder to be able to break up a right and sell it to a new user. For this to work, the buyer needs to know if the mitigation credit is backed by real, reliable water. A buyer also needs to know the priority date of the water that backs up the mitigation credit and the other information that informs him or her as to whether and when that water can become subject to curtailment. That information affects the price of the credit, and allows a buyer to make an informed decision about which credit to buy beyond just the price.

(Opposed) None.

(Other) Water banks will play an ever larger role in future state water management. It is important to ensure that water banks are operating consistent with water law and that there are clear standards across the various water banks. However, it is important that water banks are using water that is both adequate and reliable. Adequacy describes the volume of water available, and reliability is the ability of that volume to be available in the future. Both are important, because when a water bank mitigation credit is used to support a new domestic use, it is unlikely that the domestic use will ever be curtailed. Likewise, mitigation credits should not be based on leased water unless there is a binding replacement plan for the water once the lease expires.

Persons Testifying: (In support) Jim Halstrom; Paul Eisenberg, Suncadia; and Dave Christensen, Department of Ecology.

(Other) Bruce Wishart, Sierra Club and Center for Environmental Law and Policy.

Persons Signed In To Testify But Not Testifying: None.