

# HOUSE BILL REPORT

## EHB 1187

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### As Amended by the Senate

**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].

**Floor Activity:**

Passed House: 3/10/15, 76-21.

Senate Amended.

Passed Senate: 4/15/15, 29-20.

#### Brief Summary of Engrossed Bill

- Requires all water bank sponsors operating in the Yakima River Basin to report a schedule of charges to the Department of Ecology.
- Prohibits a water bank sponsors operating in the Yakima River Basin from providing mitigation credits to similarly situated water uses or water users on different prices or terms.
- Requires all mitigation credits issued in the Yakima River Basin to be recorded for each mitigation credit with the county auditor in the same manner as is provided for water right certificates.
- Requires the Department of Ecology to ensure that any new water uses for which mitigation is required does not cause detriment or injury to existing water rights, including instream flows.
- Requires all water bank sponsors operating in the Yakima River Basin demonstrate the availability of an adequate, uninterrupted, and reliable water supply to mitigate for the intended purposes of the mitigation credits.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

*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.*

**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 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.

**Summary of Engrossed Bill:**

New requirements are established for a water bank sponsor operating in the Yakima River Basin. These requirements apply to any person, corporation, or other entity that holds a legal or beneficial interest in a trust water right from which mitigation credits will be offered for sale for domestic purposes in the Yakima River Basin. This includes state agencies, local governments, and nonprofit organizations.

A water bank sponsor operating in the Yakima River Basin may establish a water bank for any lawful purpose. The sponsor also retains all authority to establish the charges for mitigation credits from the water bank, including the authority to create a sliding scale of charges. However, all water bank sponsors operating in the Yakima River Basin must file with the Department a schedule showing the amount of all charges for mitigation credits. Existing water banks must submit an initial schedule within 90 days of the bill taking effect. Any changes to the prices shown on any schedule may only occur 30 days after giving the Department notice of the change.

Water bank sponsors have the authority to establish limited-purpose water banks that exist to provide mitigation credits for certain water uses or users but not others. However, a water bank sponsor may provide mitigation credits to similarly situated uses or users on different prices or terms.

The Department is required to display the schedule of charges provided by water bank sponsors operating in the Yakima River Basin on its internet website. The Department is also required to ensure that any new water uses for which mitigation is required does not cause detriment or injury to existing water rights, including instream flows, and must require that all water bank sponsors operating in the Yakima River Basin demonstrate the availability of an adequate, uninterrupted, and reliable water supply to mitigate for the intended purposes of the mitigation credits. All mitigation credits issued in the Yakima River Basin must be recorded for each mitigation credit with the county auditor in the same manner as is provided for water right certificates.

**EFFECT OF SENATE AMENDMENT(S):**

Removes the requirement that a water bank sponsor has to show an uninterrupted water supply, removes the specific statement that instream flows are among the senior water rights that must be protected by a water bank mitigation credit, requires a report on mitigation options for domestic water in the Yakima basin, prohibits a water bank sponsor from providing mitigation credits based on a water right with a priority date of after May 10, 1905 or on leased water when another source is available unless the lease is part of an arrangement with the United States or part of an agreement with the Department of Ecology and a county located in the Yakima basin that was executed before May 16, 2014.

**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.