

SENATE BILL REPORT

ESB 5014

As Passed Senate, March 6, 2015

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

Brief Description: Concerning best practices for water banks.

Sponsors: Senators Honeyford and Ericksen.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/10/15, 2/19/15 [DP].

Passed Senate: 3/06/15, 49-0.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Warnick, Chair; Dangel, Vice Chair; Hatfield, Ranking Minority Member; Hobbs and Honeyford.

Staff: Diane Smith (786-7410)

Background: The Department of Ecology (Department) considers water banking to be 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 refer to a variety of water management practices. Water banking is typically facilitated by a public or private 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. During the 2009 Legislative session, the law was amended to clarify that this tool is available to use for banking statewide. The Washington Water Trust runs water banks in the Dungeness drainage, the Kittitas Basin, and in Walla Walla.

The State Trust Water Rights Program allows either a permanent donation of a water right or a temporary donation that allows the water right holder to maintain the holder's water rights

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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 State Trust Water Rights Program is held in trust and retains its original priority date.

Summary of Engrossed Bill: For water bank sponsors operating in the Yakima basin, all existing affected water bank sponsors must submit an initial schedule of charges to the Department within 90 days of the bill's effective date. A water bank sponsor may establish a sliding scale of charges for mitigation credits and establish a water bank for specific and limited purposes.

A water bank sponsor may not charge different rates to similarly situated individuals.

A water bank may not use leased water for mitigation after January 1, 2020. Those receiving mitigation with leased water prior to January 1, 2020, are held harmless. A Yakima basin water bank providing mitigation using leased water as of the effective date of the act must transition the mitigation to an adequate and reliable source by January 1, 2020. The sponsor must use adequate and reliable sources of water for mitigation if those sources are available between the effective date of the act and January 1, 2020.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill sets best management practices for water banks. One would seek to avoid the opportunity for taking advantage of those who need the services of water banks. Suncadia follows these practices but others are not; an 18-month water lease is not an adequate supply. These standards are transparent and consistent with existing law.

CON: This bill needs sideboards. There is great concern over the cost of water.

OTHER: The Department's role may be awkward. It would be better done by a third party. There are better models than to lift it from utility regulatory statutes. It needs to be narrowed to transparency. Using a bulletin board feature, the Department could work this into its website and post the selling price of water. The Department already does what is required in sec. 6. Sec. 7 goes beyond what is appropriate; it seems better for counties or cities to tell a person about land use inconsistencies.

Persons Testifying: PRO: Senator Honeyford, prime sponsor; Joe Mentor, Mentor Law Group PLLC, New Suncadia LLC; Bruce Wishart, Sierra Club, Center for Environmental Law and Policy.

CON: Laura Merrill, WA State Assn. of Counties.

OTHER: Tom Loranger, Dept. of Ecology; Glen Smith, WA State Ground Water Assn.; Bill Clarke, Kittitas County, WA Realtors; Kathleen Collins, WA Water Policy Alliance.