
SENATE BILL 5014

State of Washington

64th Legislature

2015 Regular Session

By Senator Honeyford

Prefiled 12/16/14.

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

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

5 **Sec. 1.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and
6 amended to read as follows:

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

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

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

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

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

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

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

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

13 NEW SECTION. Sec. 2. A new section is added to chapter 90.42
14 RCW to read as follows:

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

23 NEW SECTION. Sec. 3. A new section is added to chapter 90.42
24 RCW to read as follows:

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

35 (2) Except as provided in subsection (3) of this section, no
36 water bank sponsor may extend to any person or entity any form of
37 contract or agreement or any rule or regulation or any privilege or

1 facility except those as are regularly and uniformly extended to all
2 persons and entities under like circumstances.

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

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

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

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

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

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

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42
19 RCW to read as follows:

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

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42
27 RCW to read as follows:

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42
2 RCW to read as follows:

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

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.42
14 RCW to read as follows:

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

19 NEW SECTION. **Sec. 8.** This act may be known and cited as the
20 water banking best practices act.

21 NEW SECTION. **Sec. 9.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of
27 the state government and its existing public institutions, and takes
28 effect immediately.

--- END ---