Q: Has water banking been done before?
A: Yes. Water banking is not a new concept and is used in several western states. The water banking stakeholder group studied the banking programs in other states and various basins around Utah to develop draft legislation.

Q: Why legislation to pursue a water banking pilot program?
A: The legislation is intended to advance the Governor’s 2017 Recommended Water Strategy, which recommended water banking as a way of providing more flexible water management by facilitating the voluntary and temporary transfer of water for a variety of uses, including but not limited to agriculture uses, municipal uses and environmental needs. (https://www.envisionutah.org/projects/utah-water-strategy/)

Q: How could water banking help agricultural practices in Utah?
A: Consistent with the Governor’s Strategy, one of the goals of the legislation is to provide an alternative to “buy-and-dry” transfers and court actions in which water rights are permanently taken out of agriculture to satisfy urban or environmental needs. Instead, the legislation is intended to lessen the need for “buy-and-dry” transfers and court actions by authorizing voluntary, temporary, and local water markets. Within these markets, right holders could voluntarily lease the banked water rights to others for a specific period of time in exchange for compensation.

Q: Isn’t water banking already being done in Utah?
A: Yes, though not termed “water banking.” There are already a few informal efforts around Utah that are similar to water banking. The legislation would not affect those efforts. It would, however, create a 10-year pilot program that would establish a statutory framework. The framework would give water right holders the option of creating and operating their own water banks. The banks would be subject to public notice and comment, oversight from the Board of Water Resources and coordination with the State Engineer.

Q: How would a water right holder be protected from abandonment and forfeiture when putting water into a bank?
A: Water right holders would retain ownership of their water rights. The rights would revert to their prior “heretofore” use when withdrawn from the bank without the need for a change application. Water rights deposited within a bank would also not be subject to abandonment and forfeiture for the period of time the State Engineer authorizes them to be used within a bank.
Q: How would the banks be locally driven?
A: No banks would be managed at the state level. The decision to create, or participate in, a water bank would be entirely voluntary and would be made at the local level. The banks would be locally managed. Only a record holder of a perfected water right may request approval for a statutory water bank and designate the service area of a water bank.

Q: What types of banks could be formed?
A: The legislation authorizes right holders to create two types of banks:
1. "Statutory banks," which would operate as open marketplaces where water rights could be leased and used within a defined service area; and
2. "Contract banks" based on option contracts or other voluntary leasing arrangements involving a public water supplier. Notably, many public water suppliers in Utah are already using “contract banks” and the legislations seeks to provide more clarity and transparency for this practice.

Q: Would the change application process change?
A: No. Water right holders seeking to move a water right into a bank would go through the same change application process that applies to all water rights. This means the State Engineer would review all applications that seek to place a water right into a bank to ensure that they do not impair other rights. It also means that the existing limitations on out-of-basin transfers would apply.

After the State Engineer approves a right for use within a bank, the right could be used for a specified period of time within the bank’s service area for other uses without the need for another change application. This, of course, would be subject to any limitations imposed by the State Engineer.

Q: How will we know if water banking is working?
A: As a pilot program, every bank would submit an annual report to the Board of Water Resources. At the end of the pilot program, the Board would report on the effectiveness of the water banking program to the Legislature. The Legislature would then determine whether to continue the program, modify it, or allow it to terminate.

Because this program is intended to be a pilot program, the draft legislation is intended to keep it as simple as possible to limit the potential for unintended consequences and to make it easier to study the effectiveness of the program.