

# SENATE BILL REPORT

## SHB 1112

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As Reported By Senate Committee On:  
Agriculture & Environment, February 26, 1998

**Title:** An act relating to general adjudication proceedings for water rights.

**Brief Description:** Adjudicating water rights.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Koster, Delvin, Mulliken, Johnson, B. Thomas and Honeyford).

**Brief History:**

**Committee Activity:** Agriculture & Environment: 3/25/97, 4/3/97 [DP-WM, DNP];  
2/24/98 [DPA-WM].

**Ways & Means:** 4/7/97 [DP].

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### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Fraser, McAuliffe, Newhouse and Rasmussen.

**Staff:** Paul Mabrey (786-7412)

**Background:** The Surface Water Code of 1917 authorized superior court actions to determine in a single proceeding all rights to the use of water from a body of surface water. That authority was extended to include groundwater rights when the groundwater code was adopted in 1945. The procedure, which is referred to as a general adjudication of water rights, starts with a petition filed in superior court. It concludes with a court decree determining the rights of the parties and identifying the priority, purpose, quantity, time of use, point of diversion, and place of use for each.

After the petition is filed, the Department of Ecology provides the court with the names of all known claimants to rights in the body of water. Upon completion of a statutory procedure for service of summons on each known claimant, current law requires the court, in most cases, to refer the proceeding to the Department of Ecology to act as the court's referee. The department designates an individual to conduct hearings, take testimony, and make findings which are reported back to the court. Any exceptions to the report which might be filed by an interested party are then addressed, either by additional testimony taken by the court or by referral back to the referee, and a decree is entered determining the rights of the parties.

**Summary of Amended Bill:** The court is directed to refer a newly initiated general adjudication proceeding to a referee who is appointed by the court rather than to the Department of Ecology. It may not appoint an employee, or individual who had been an

employee in the three years prior to the commencement of the proceeding, of either the Department of Ecology or a party to the proceeding. Guidelines are provided for the referee to conduct and perform the fact-finding role. A referee in a general adjudication proceeding of water rights that is pending in superior court as of the effective date of the act is specifically excluded from this provision.

Referee expenses incurred by the court may be paid from appropriations made expressly for this purpose to the office of the Administrator for the Courts. However, the Department of Ecology shall not initiate a general adjudication of water rights unless the office of the Administrator for the Courts determines that there are sufficient funds available to support the expenses of a referee.

**Amended Bill Compared to Substitute Bill:** The amended bill provides guidelines for the referee to conduct hearings and perform the fact-finding role.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Department of Ecology has not been responsive to adjudication requests. Funding concerns are workable using planning and innovation.

**Testimony Against:** The sufficient funds limitation is bad policy. Some cases require quick response and cannot wait for legislative appropriation. An alternative would be for the DOE to appoint the referee on the advice and consent of the court. Judges oppose the bill because of the funding issue. Funding becomes the determining factor as to whether an issue is heard in court. This limits access to the courts and is bad policy. There may be a separation of powers issue.

**Testified:** Kathleen Collins, WNPA (pro); Judge Gordon Godfrey, Superior Court Judges Association (con); Ken Slattery, Department of Ecology (con).