
SUBSTITUTE HOUSE BILL 1112

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 02/13/97.

1 AN ACT Relating to general adjudication proceedings for water
2 rights; and amending RCW 90.03.110, 90.03.160, 90.03.170, 90.03.190,
3 90.03.200, 90.03.210, and 90.03.243.

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

5 **Sec. 1.** RCW 90.03.110 and 1987 c 109 s 72 are each amended to read
6 as follows:

7 (1) Upon the filing of a petition with the department by one or
8 more persons claiming the right to divert any waters within the state
9 or when, after investigation, in the judgment of the department, the
10 interest of the public will be subserved by a determination of the
11 rights thereto, it shall be the duty of the department to prepare a
12 statement of the facts, together with a plan or map of the locality
13 under investigation, and file such statement and plan or map in the
14 superior court of the county in which said water is situated, or, in
15 case such water flows or is situated in more than one county, in the
16 county which the department shall determine to be the most convenient
17 to the parties interested therein. Such statement shall contain
18 substantially the following matter, to wit:

1 ~~((1))~~ (a) The names of all known persons claiming the right to
2 divert said water, the right to the diversion of which is sought to be
3 determined, and

4 ~~((2))~~ (b) A brief statement of the facts in relation to such
5 water, and the necessity for a determination of the rights thereto.

6 (2) The department shall make a filing under subsection (1) of this
7 section initiating a general adjudication proceeding only if the
8 administrator for the courts determines there are sufficient funds
9 available to support the expenses of a referee or referees for the
10 proceeding from appropriations made expressly for such expenses as
11 described in RCW 90.03.243.

12 **Sec. 2.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
13 as follows:

14 (1) Upon the completion of the service of summons as
15 (~~hereinbefore~~) provided in RCW 90.03.130, the superior court in which
16 (~~said~~) the proceeding is pending shall make an order referring
17 (~~said~~) the proceeding to (~~the department~~) a referee appointed by
18 the court to take testimony (~~by its duly authorized designee, as~~
19 referee,) and the (~~designee~~) referee shall report to and file with
20 the superior court of the county in which such cause is pending a
21 transcript of such testimony for adjudication (~~thereon~~) by such
22 court. The superior court may, in any complex case with more than one
23 thousand named defendants, including the United States, retain for
24 hearing and further processing such portions of the proceeding as
25 pertain to a discrete class or classes of defendants or claims of water
26 rights if the court determines that: ~~((1))~~ (a) Resolution of claims
27 of such classes appear to involve significant issues of law, either
28 procedural or substantive; and ~~((2))~~ (b) such a retention will both
29 expedite the conclusion of the case and reduce the overall expenditures
30 of the plaintiff, defendants, and the court.

31 (2) Except as provided in subsection (3) of this section, no person
32 appointed as a referee under this section may be an employee of the
33 department of ecology or an employee of any other party to the
34 proceeding and such a person may not have been such an employee within
35 three years prior to the commencement of the proceeding.

36 (3) The provisions of subsection (2) of this section do not apply
37 to an employee or former employee of the department of ecology who is
38 acting, on the effective date of this subsection, as a referee in a

1 general adjudication proceeding for water rights pending in the
2 superior court. This subsection applies only to the proceeding that is
3 pending in superior court on the effective date of this subsection.

4 **Sec. 3.** RCW 90.03.170 and 1987 c 109 s 77 are each amended to read
5 as follows:

6 Thereupon the ((~~department~~)) referee shall fix a time and place for
7 such hearing and serve written notice thereof upon all persons who have
8 appeared in ((~~said~~)) the proceeding, their agents or attorneys. Notice
9 of such hearing shall be served at least ten days before the time fixed
10 therefor. Such hearings may be adjourned from time to time and place
11 to place. The duly authorized ((~~designee~~)) referee shall have
12 authority to subpoena witnesses and administer oaths in the same manner
13 and with the same powers as referees in civil actions. The fees and
14 mileage of witnesses shall be advanced by the party at whose instance
15 they are called as in civil actions. A final decree adjudicating
16 rights or priorities, entered in any case decided prior to June 6,
17 1917, shall be conclusive among the parties thereto and the extent of
18 use so determined shall be prima facie evidence of rights to the amount
19 of water and priorities so fixed as against any person not a party to
20 ((~~said~~)) the decree.

21 **Sec. 4.** RCW 90.03.190 and 1987 c 109 s 78 are each amended to read
22 as follows:

23 Upon the completion of the taking of testimony it shall be the duty
24 of the ((~~department's designee~~)) referee to prepare and file with the
25 clerk of the superior court where such proceeding is pending, a
26 transcript of the testimony taken at such hearing, in triplicate,
27 together with all papers and exhibits offered and received in evidence
28 and not already a part of the record. ((~~He~~)) The referee shall also
29 make and file in ((~~said~~)) the court a full and complete report as in
30 other cases of reference in the superior court. Two of ((~~said~~)) the
31 transcripts shall be for the use of the parties as the court may
32 direct. The court shall set a time for the hearing and the
33 ((~~designee~~)) referee shall thereupon prepare a notice designating a
34 time for the hearing of ((~~said~~)) the report and serve a copy thereof,
35 together with a copy of ((~~his~~)) the referee's report, on all persons,
36 their agents or attorneys who have appeared in such proceeding. Such
37 service shall be made not less than twenty days before the time for

1 ((said)) the hearing, either personally or by registered mail, and an
2 affidavit of such service filed with the clerk.

3 **Sec. 5.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to read
4 as follows:

5 Upon the filing of the evidence and the report of the
6 ((department)) referee, any interested party may, on or before five
7 days prior to the date of ((said)) the hearing, file exceptions to such
8 report in writing and such exception shall set forth the grounds
9 therefor and a copy thereof shall be served personally or by registered
10 mail upon all parties who have appeared in the proceeding. If no
11 exceptions ((be)) are filed, the court shall enter a decree determining
12 the rights of the parties according to the evidence and the report of
13 the ((department)) referee, whether such parties have appeared therein
14 or not. If exceptions are filed the action shall proceed as in case of
15 reference of a suit in equity and the court may in its discretion take
16 further evidence or, if necessary, remand the case for such further
17 evidence to be taken by the ((department's designee)) referee, and may
18 require further report by ((him)) the referee. Costs, not including
19 ((taxable)) reasonable attorneys' fees, may be allowed or not; if
20 allowed, may be apportioned among the parties in the discretion of the
21 court. Appellate review of the decree shall be in the same manner as
22 in other cases in equity, except that review must be sought within
23 sixty days from the entry thereof.

24 **Sec. 6.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to read
25 as follows:

26 During the pendency of such adjudication proceedings prior to
27 judgment or upon review by an appellate court, the stream or other
28 water involved shall be regulated or partially regulated according to
29 the schedule of rights specified in the ((department's)) referee's
30 report upon an order of the court authorizing such regulation:
31 PROVIDED, Any interested party may file a bond and obtain an order
32 staying the regulation of ((said)) the stream as to him or her, in
33 which case the court shall make such order regarding the regulation of
34 the stream or other water as ((he)) the court may deem just. The bond
35 shall be filed within five days following the service of notice of
36 appeal in an amount to be fixed by the court and with sureties

1 satisfactory to the court, conditioned to perform the judgment of the
2 court.

3 **Sec. 7.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read
4 as follows:

5 The expenses incurred by the state in a proceeding to determine
6 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon
7 appeal of such a determination shall be borne by the state.

8 Expenses incurred by the court for the use of a referee appointed
9 under RCW 90.03.160 may be paid from appropriations made expressly for
10 this purpose to the office of the administrator for the courts, to the
11 extent of such appropriations.

--- END ---