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SENATE BILL 5026

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State of Washington

55th Legislature

1997 Regular Session

By Senator Swecker

Read first time 01/13/97. Referred to Committee on Agriculture & Environment.

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

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

5 **Sec. 1.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read  
6 as follows:

7 (1) Upon the completion of the service of summons as hereinbefore  
8 provided, the superior court in which said proceeding is pending shall  
9 make an order referring said proceeding to ~~((the department))~~ a referee  
10 appointed by the court to take testimony ~~((by its duly authorized~~  
11 ~~designee, as referee,))~~ and the ~~((designee))~~ referee shall report to  
12 and file with the superior court of the county in which such cause is  
13 pending a transcript of such testimony for adjudication thereon by such  
14 court. The superior court may, in any complex case with more than one  
15 thousand named defendants, including the United States, retain for  
16 hearing and further processing such portions of the proceeding as  
17 pertain to a discrete class or classes of defendants or claims of water  
18 rights if the court determines that: ~~((+1))~~ (a) Resolution of claims  
19 of such classes appear to involve significant issues of law, either

1 procedural or substantive; and ~~((2))~~ (b) such a retention will both  
2 expedite the conclusion of the case and reduce the overall expenditures  
3 of the plaintiff, defendants, and the court.

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

9 (3) The provisions of subsection (2) of this section do not apply  
10 to an employee or former employee of the department of ecology who is  
11 acting, on the effective date of this subsection, as a referee in a  
12 general adjudication proceeding for water rights pending in the  
13 superior court. This subsection applies only to the proceeding that is  
14 pending in superior court on the effective date of this subsection.

15 **Sec. 2.** RCW 90.03.170 and 1987 c 109 s 77 are each amended to read  
16 as follows:

17 Thereupon the ~~((department))~~ referee shall fix a time and place for  
18 such hearing and serve written notice thereof upon all persons who have  
19 appeared in said proceeding, their agents or attorneys. Notice of such  
20 hearing shall be served at least ten days before the time fixed  
21 therefor. Such hearings may be adjourned from time to time and place  
22 to place. The duly authorized ~~((designee))~~ referee shall have  
23 authority to subpoena witnesses and administer oaths in the same manner  
24 and with the same powers as referees in civil actions. The fees and  
25 mileage of witnesses shall be advanced by the party at whose instance  
26 they are called as in civil actions. A final decree adjudicating  
27 rights or priorities, entered in any case decided prior to June 6,  
28 1917, shall be conclusive among the parties thereto and the extent of  
29 use so determined shall be prima facie evidence of rights to the amount  
30 of water and priorities so fixed as against any person not a party to  
31 said decree.

32 **Sec. 3.** RCW 90.03.190 and 1987 c 109 s 78 are each amended to read  
33 as follows:

34 Upon the completion of the taking of testimony it shall be the duty  
35 of the ~~((department's designee))~~ referee to prepare and file with the  
36 clerk of the superior court where such proceeding is pending, a  
37 transcript of the testimony taken at such hearing, in triplicate,

1 together with all papers and exhibits offered and received in evidence  
2 and not already a part of the record. ((He)) The referee shall also  
3 make and file in said court a full and complete report as in other  
4 cases of reference in the superior court. Two of said transcripts  
5 shall be for the use of the parties as the court may direct. The court  
6 shall set a time for the hearing and the ((designee)) referee shall  
7 thereupon prepare a notice designating a time for the hearing of said  
8 report and serve a copy thereof, together with a copy of ((his)) the  
9 referee's report, on all persons, their agents or attorneys who have  
10 appeared in such proceeding. Such service shall be made not less than  
11 twenty days before the time for said hearing, either personally or by  
12 registered mail, and an affidavit of such service filed with the clerk.

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

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

34 **Sec. 5.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to read  
35 as follows:

36 During the pendency of such adjudication proceedings prior to  
37 judgment or upon review by an appellate court, the stream or other

1 water involved shall be regulated or partially regulated according to  
2 the schedule of rights specified in the ((department's)) referee's  
3 report upon an order of the court authorizing such regulation:  
4 PROVIDED, Any interested party may file a bond and obtain an order  
5 staying the regulation of said stream as to him or her, in which case  
6 the court shall make such order regarding the regulation of the stream  
7 or other water as ((he)) the court may deem just. The bond shall be  
8 filed within five days following the service of notice of appeal in an  
9 amount to be fixed by the court and with sureties satisfactory to the  
10 court, conditioned to perform the judgment of the court.

11 **Sec. 6.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read  
12 as follows:

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

16 Expenses incurred by the court for the use of a referee appointed  
17 under RCW 90.03.160 may be paid from appropriations made expressly for  
18 this purpose to the office of the administrator for the courts, to the  
19 extent of such appropriations.

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