

SENATE BILL REPORT

SB 5338

As of February 14, 2005

Title: An act relating to the establishment of a water court.

Brief Description: Creating a water court.

Sponsors: Senators Fraser and Honeyford.

Brief History:

Committee Activity: Water, Energy & Environment: 2/2/05.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Staff: Margaret King (786-7416)

Background: In 2002, the Washington State Legislature created a joint Task Force "to study judicial and administrative alternatives for resolving water disputes" and to issue a report to the Legislature. The members of the Task Force included representatives of the Legislature, the superior courts, the Court of Appeals, the Environmental Hearings Office, Department of Ecology, and Attorney General's Office. A report was issued in December, 2003.

According to the report, one of the task force's overriding recommendations is the creation of a specialized water rights court. The water court would be created as a branch of the superior court system and would match the current boundaries of the state's three Court of Appeals divisions. Water court jurisdiction over certain water disputes, as determined by statute, would lie exclusively with the water court instead of the superior courts. Water court judges would not have jurisdiction over other cases typically handled by superior court judges. To authorize these jurisdictional changes, the constitutional provisions establishing the general jurisdiction of the superior courts would need to be amended.

Summary of Bill: Subject to a proposed constitutional amendment, a water court is created with exclusive original jurisdiction over any future general water rights adjudications and appeals of instream flow rules. The water court is also granted appellate review jurisdiction over Pollution Control Hearings Board water rights management and enforcement decisions.

Provisions to determine the jurisdiction of water courts, the review of water court actions, the number of water court judges, and the manner of election, compensation, terms, removal, and retirement of water court judges, are established by statute. Superior court and Administrative Procedure Act statutes are amended to reflect the new judicial power of the water courts within the superior court system. Water court judges are directed to establish uniform rules to govern the water court.

The Governor must appoint one water court judge for each of the three water court divisions, based upon Supreme Court nominations. Upon recommendation of the water court judges and the central court administrator, the Governor may also appoint an at-large water court judge to

address workload burdens. Minimum qualifications for judges are established. At the end of the appointed judge's initial term, a competitive election must be held in the same manner as superior court judge elections.

This bill is null and void if a companion joint resolution fails to pass the Legislature, or if the resulting constitutional amendment referendum fails to receive majority approval of the electorate.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect if a companion joint resolution passes the Legislature, and the resulting constitutional amendment referendum receives majority approval of the electorate.

Testimony For: Water courts develop expertise in water issues resulting in more efficient process for appeals and adjudications. There is a need to resolve the 170,000 unadjudicated claims not counting federal reserved rights claims. Water Courts Task Force recommended that water courts be established and adequately funded by the state. Board of Judicial Administration supports recommendation with some proposed changes to bill to bring into line with current procedures for superior courts.

Testimony Against: None.

Concerns: Large adjudications is a good idea but there is no need for smaller adjudications and other applications. Any court system that reviews claims should also consider tribal interests. Whether it is a good idea or not depends on whether the state is going to undertake large adjudications. Concerns exist about judges being elected vs not being elected. Judges should have extensive experience in water law. For convenience and efficiency, the court needs to be in the watershed that is being adjudicated. Relinquishment should be addressed first.

Who Testified: PRO: Senator Fraser, prime sponsor; Ken Slattery, DOE; Judge Kathleen O'Conner, Board of Judicial Administration; Commissioner Sid Otten, Yakima County Superior Court. CONCERNS: Bob Mack, City of Tacoma; Dave Williams, Association of Washington Cities; Craig Engleking, Sierra Club; Kathleen Collins, Washington Water Policy Alliance; John Stumiller, Washington Farm Bureau; Jack Field, WA Cattlemen's Assn.; Britt Dudeck, Kevin Eslinger, Farm Bureau Water Committee Members.