

ESHB 1571 - S AMD TO EWE COMM AMD (S-2662.2/09)
By Senator Rockefeller

ADOPTED 04/14/2009

1 On page 4, beginning on line 13 of the amendment, after "(6)"
2 strike all material through "chapter." on line 16

3 On page 17, after line 7 of the amendment, insert the following:

4 "Sec. 19. RCW 4.12.040 and 1989 c 15 s 1 are each amended to read
5 as follows:

6 (1) No judge of a superior court of the state of Washington shall
7 sit to hear or try any action or proceeding when it shall be
8 established as hereinafter provided that said judge is prejudiced
9 against any party or attorney, or the interest of any party or attorney
10 appearing in such cause. In such case the presiding judge in judicial
11 districts where there is more than one judge shall forthwith transfer
12 the action to another department of the same court, or call in a judge
13 from some other court. In all judicial districts where there is only
14 one judge, a certified copy of the motion and affidavit filed in the
15 cause shall be transmitted by the clerk of the superior court to the
16 clerk of the superior court designated by the chief justice of the
17 supreme court. Upon receipt the clerk of said superior court shall
18 transmit the forwarded affidavit to the presiding judge who shall
19 direct a visiting judge to hear and try such action as soon as
20 convenient and practical.

21 (2) The presiding judge in judicial districts where there is more
22 than one judge, or the presiding judge of judicial districts where
23 there is only one judge, may send a case for trial to another court if
24 the convenience of witnesses or the ends of justice will not be
25 interfered with by such a course and the action is of such a character
26 that a change of venue may be ordered: PROVIDED, That in criminal
27 prosecutions the case shall not be sent for trial to any court outside
28 the county unless the accused shall waive his or her right to a trial

1 by a jury of the county in which the offense is alleged to have been
2 committed.

3 (3) This section does not apply to water right adjudications filed
4 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water
5 right adjudications is governed by section 3 of this act.

6 **Sec. 20.** RCW 4.12.050 and 1941 c 148 s 1 are each amended to read
7 as follows:

8 (1) Any party to or any attorney appearing in any action or
9 proceeding in a superior court, may establish such prejudice by motion,
10 supported by affidavit that the judge before whom the action is pending
11 is prejudiced against such party or attorney, so that such party or
12 attorney cannot, or believes that he or she cannot, have a fair and
13 impartial trial before such judge: PROVIDED, That such motion and
14 affidavit is filed and called to the attention of the judge before he
15 or she shall have made any ruling whatsoever in the case, either on the
16 motion of the party making the affidavit, or on the motion of any other
17 party to the action, of the hearing of which the party making the
18 affidavit has been given notice, and before the judge presiding has
19 made any order or ruling involving discretion, but the arrangement of
20 the calendar, the setting of an action, motion or proceeding down for
21 hearing or trial, the arraignment of the accused in a criminal action
22 or the fixing of bail, shall not be construed as a ruling or order
23 involving discretion within the meaning of this proviso; and in any
24 event, in counties where there is but one resident judge, such motion
25 and affidavit shall be filed not later than the day on which the case
26 is called to be set for trial: AND PROVIDED FURTHER, That
27 notwithstanding the filing of such motion and affidavit, if the parties
28 shall, by stipulation in writing agree, such judge may hear argument
29 and rule upon any preliminary motions, demurrers, or other matter
30 thereafter presented: AND PROVIDED FURTHER, That no party or attorney
31 shall be permitted to make more than one such application in any action
32 or proceeding under this section and RCW 4.12.040.

33 (2) This section does not apply to water right adjudications filed
34 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water
35 right adjudications is governed by section 3 of this act."

1 Renumber the remaining sections consecutively and correct any
2 internal references accordingly.

3 On page 17, after line 17 of the amendment, insert the following:

4 "NEW SECTION. **Sec. 21.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected."

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8 On page 17, line 21 of the title amendment, after "90.44.220,"
9 strike "and 43.21B.110" and insert "43.21B.110, 4.12.040, and 4.12.050"

EFFECT: Eliminates an "incorporation by reference" issue that
currently exists in the striking amendment.

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