
ENGROSSED SUBSTITUTE SENATE BILL 5828

State of Washington

68th Legislature

2024 Regular Session

By Senate Law & Justice (originally sponsored by Senators Shewmake, Lovelett, Dhingra, Lovick, and Nobles; by request of Administrative Office of the Courts)

READ FIRST TIME 01/19/24.

1 AN ACT Relating to water rights adjudication commissioners and
2 referees; amending RCW 90.03.160; and adding new sections to chapter
3 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03
6 RCW to read as follows:

7 (1) In each county, the superior court may appoint one or more
8 attorneys to act as water commissioners to assist the superior court
9 in disposing of its business.

10 (2) The appointments provided for in this section shall be made
11 by a majority vote of the judges of the superior court of the county
12 and may be in addition to all other appointments of commissioners and
13 other judicial attaches otherwise authorized by law. Water
14 commissioners shall serve at the pleasure of the judges appointing
15 them.

16 (3) In appointing a water commissioner, the court shall consider
17 a potential commissioner's experience with water law and water use.

18 (4) The appointments may be full-time or part-time positions. A
19 person appointed as a water commissioner may also be appointed to any
20 other commissioner position authorized by law.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03
2 RCW to read as follows:

3 The judges of the superior court of the county by majority vote
4 may authorize water commissioners, appointed pursuant to section 1 of
5 this act, to perform any and all of the following in a water rights
6 adjudication:

7 (1) Appoint guardians ad litem for claimants under RCW 90.03.150
8 as necessary;

9 (2) Hold evidentiary hearings to determine the facts underlying
10 individual and multiple water right claims;

11 (3) Hold hearings on all contested claims, objections, and
12 stipulated agreements;

13 (4) Issue decisions on factual and legal issues;

14 (5) Enter default judgments, settlement agreements, and
15 conditional final orders;

16 (6) Cause the orders and findings of the adjudication to be
17 entered in the same manner as orders and findings are entered in
18 cases in the superior court; and

19 (7) Provide such supervision of the water rights adjudication in
20 connection with the exercise of its jurisdiction as may be ordered by
21 the presiding judge and assigned water adjudication judge.

22 All acts and proceedings of a water commissioner are subject to
23 revision by the superior court as provided in RCW 2.24.050.

24 **Sec. 3.** RCW 90.03.160 and 2009 c 332 s 10 are each amended to
25 read as follows:

26 (1) Upon filing of the department's motion or motions under RCW
27 90.03.640(3), any party with a claim filed under RCW 90.03.140 for
28 the appropriation of water or waters of the subject adjudication may
29 file and serve a response to the department's motion or motions
30 within the time set by the court for such a response. Objections must
31 include specific information in regard to the particular disposition
32 against which the objection is being made. Objections must also state
33 the underlying basis of the objection being made, including general
34 information about the forms of evidence that support the objection.
35 Any party may file testimony with the court and serve it on other
36 parties. If a party intends to cross-examine a claimant or witness
37 based on another party's prefiled testimony, the party intending to
38 cross-examine shall file a notice of intent to cross-examine no later
39 than fifteen days in advance of the hearing. If no notice of intent

1 to cross-examine based on the prefiled testimony is given, then the
2 claimant or witness is not required to appear at the hearing. Any
3 party may present evidence in support of or in response to an
4 objection.

5 (2) The superior court may appoint a referee or other judicial
6 officer to assist the court. The court may order all or any issues in
7 a water adjudication, whether of fact or law, or both, referred to a
8 referee by order of reference. RCW 4.48.010, 4.48.020, 4.48.050, and
9 4.48.110 do not apply to referees appointed pursuant to this chapter.
10 Challenges to the appointment of a referee must be made pursuant to
11 RCW 90.03.620. Consent of parties is not required for a court-
12 appointed referee to hear water rights adjudication matters.

13 (3) The superior court may adopt special rules of procedure for
14 an adjudication of water rights under this chapter, including
15 simplified procedures for claimants of small uses of water. The rules
16 of procedure for a superior court apply to an adjudication of water
17 rights under this chapter unless superseded by special rules of the
18 court under this subsection. The superior court is encouraged to
19 consider entering, after notice and hearing and as the court
20 determines appropriate, pretrial orders from an adjudication
21 commenced on October 12, 1977.

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