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**SENATE BILL 5828**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Shewmake and Lovelett; by request of Administrative Office of the Courts

Prefiled 12/11/23.

1 AN ACT Relating to water rights adjudication commissioners and  
2 referees; amending RCW 4.48.020 and 90.03.160; and adding new  
3 sections to chapter 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       **Sec. 3.**    RCW 4.48.020 and 1984 c 258 s 513 are each amended to  
23   read as follows:

24       Where the parties do not consent, the court may, upon the  
25   application of either party, except for the appointment of a water  
26   rights adjudication referee under RCW 90.03.160, direct a reference  
27   in all cases formerly cognizable in chancery in which reference might  
28   be made:

29       (1) When the trial of an issue of fact shall require the  
30   examination of a long account on either side, in which case the  
31   referees may be directed to hear and decide the whole issue, or to  
32   report upon any specific question of fact involved therein; or,

33       (2) When the taking of an account shall be necessary for the  
34   information of the court, before judgment upon an issue of law, or  
35   for carrying a judgment or order into effect; or,

36       (3) When a question of fact other than upon the pleadings shall  
37   arise, upon motion or otherwise, in any stage of the action; or,

38       (4) When it is necessary for the information of the court in a  
39   special proceeding.

1           **Sec. 4.** RCW 90.03.160 and 2009 c 332 s 10 are each amended to  
2 read as follows:

3           (1) Upon filing of the department's motion or motions under RCW  
4 90.03.640(3), any party with a claim filed under RCW 90.03.140 for  
5 the appropriation of water or waters of the subject adjudication may  
6 file and serve a response to the department's motion or motions  
7 within the time set by the court for such a response. Objections must  
8 include specific information in regard to the particular disposition  
9 against which the objection is being made. Objections must also state  
10 the underlying basis of the objection being made, including general  
11 information about the forms of evidence that support the objection.  
12 Any party may file testimony with the court and serve it on other  
13 parties. If a party intends to cross-examine a claimant or witness  
14 based on another party's prefiled testimony, the party intending to  
15 cross-examine shall file a notice of intent to cross-examine no later  
16 than fifteen days in advance of the hearing. If no notice of intent  
17 to cross-examine based on the prefiled testimony is given, then the  
18 claimant or witness is not required to appear at the hearing. Any  
19 party may present evidence in support of or in response to an  
20 objection.

21           (2) The superior court may appoint a referee or other judicial  
22 officer to assist the court. Consent of parties is not required for a  
23 court-appointed referee to hear water rights adjudication matters.

24           (3) The superior court may adopt special rules of procedure for  
25 an adjudication of water rights under this chapter, including  
26 simplified procedures for claimants of small uses of water. The rules  
27 of procedure for a superior court apply to an adjudication of water  
28 rights under this chapter unless superseded by special rules of the  
29 court under this subsection. The superior court is encouraged to  
30 consider entering, after notice and hearing and as the court  
31 determines appropriate, pretrial orders from an adjudication  
32 commenced on October 12, 1977.

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