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**ENGROSSED SUBSTITUTE SENATE BILL 5828**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2024 Regular Session

**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 (5) (a) A person appointed as a water commissioner must receive  
2 training as soon as reasonably practicable from the administrative  
3 office of the courts on the following topics:

4 (i) Water law, including state, federal, tribal, and  
5 international statutory and case law;

6 (ii) Indian law, including statutory and case law, agreements,  
7 executive orders, and treaties;

8 (iii) An overview of subjects in water science, such as physical  
9 and groundwater hydrology, hydrogeology, and irrigation management;  
10 and

11 (iv) Cultural awareness, including state and tribal history  
12 related to treaty and nontreaty tribes and governmental relationships  
13 with federally recognized tribes.

14 (b) The administrative office of the courts may contract with one  
15 or more academic institutions in Washington, as appropriate, to  
16 develop and deliver the training described in (a) of this subsection.

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

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

23 (1) Appoint guardians ad litem for claimants under RCW 90.03.150  
24 as necessary;

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

27 (3) Hold hearings on all contested claims, objections, and  
28 stipulated agreements;

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

30 (5) Enter default judgments, settlement agreements, and  
31 conditional final orders;

32 (6) Cause the orders and findings of the adjudication to be  
33 entered in the same manner as orders and findings are entered in  
34 cases in the superior court; and

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

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

1       **Sec. 3.** 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. The court may order all or any issues in  
23 a water adjudication, whether of fact or law, or both, referred to a  
24 referee by order of reference. RCW 4.48.010, 4.48.020, 4.48.050, and  
25 4.48.110 do not apply to referees appointed pursuant to this chapter.  
26 Challenges to the appointment of a referee must be made pursuant to  
27 RCW 90.03.620. Consent of parties is not required for a court-  
28 appointed referee to hear water rights adjudication matters.

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

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