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**SUBSTITUTE HOUSE BILL 1782**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representative Appelwick).

Read first time March 5, 1991.

1            AN ACT Relating to county court commissioners; amending RCW  
2 2.24.010, 4.12.040, 4.12.050, 26.12.050, 26.12.060, 71.05.135, and  
3 71.05.137; and providing a contingent effective date.

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

5            **Sec. 1.** RCW 2.24.010 and 1990 c 191 s 1 are each amended to read  
6 as follows:

7            There may be appointed in each county or judicial district, by the  
8 judges of the superior court having jurisdiction therein, one or more  
9 court commissioners for said county or judicial district. Each such  
10 commissioner shall be a citizen of the United States and shall hold the  
11 office during the pleasure of the judges making the appointment. The  
12 number of court commissioners in each county shall be determined by the  
13 legislative authority of that county.

1       **Sec. 2.** RCW 4.12.040 and 1989 c 15 s 1 are each amended to read as  
2 follows:

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

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

28       **Sec. 3.** RCW 4.12.050 and 1941 c 148 s 1 are each amended to read  
29 as follows:

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

27 **Sec. 4.** RCW 26.12.050 and 1989 c 199 s 1 are each amended to read  
28 as follows:

1 (1) Except as provided in subsection (2) of this section, in class  
2 "A" counties and counties of the first through ninth classes, the  
3 superior court may appoint the following persons to assist the family  
4 court in disposing of its business:

5 (a) One or more (~~(attorneys to act as family)~~) court commissioners  
6 as authorized pursuant to chapter 2.24 RCW, and

7 (b) Such investigators, stenographers and clerks as the court shall  
8 find necessary to carry on the work of the family court.

9 (2) (~~(The county legislative authority must approve the creation of  
10 family court commissioner positions.~~

11 ~~(3))~~) The appointment of commissioners shall be in accordance with  
12 chapter 2.24 RCW, and other appointments provided for in this section  
13 shall be made by majority vote of the judges of the superior court of  
14 the county and may be made in addition to all other appointments of  
15 commissioners and other judicial attaches otherwise authorized by law.  
16 (~~(Family court commissioners and)~~) Investigators shall serve at the  
17 pleasure of the judges appointing them and shall receive such  
18 compensation as the county legislative authority shall determine. The  
19 appointments may be full or part-time positions. ((A person appointed  
20 as a family court commissioner may also be appointed to any other  
21 commissioner position authorized by law.))

22 **Sec. 5.** RCW 26.12.060 and 1988 c 232 s 4 are each amended to read  
23 as follows:

24 The (~~(family)~~) court commissioners shall: (1) Receive all  
25 applications and complaints filed in the family court for the purpose  
26 of disposing of them pursuant to this chapter; (2) investigate the  
27 facts upon which to base warrants, subpoenas, orders or directions in  
28 actions or proceedings filed in or transferred to the family court  
29 pursuant to this chapter; (3) (~~(for the purpose of this chapter,~~)

1 exercise all the powers and perform all the duties of ((regular)) court  
2 commissioners; (4) hold conciliation conferences with parties to and  
3 hearings in proceedings under this chapter and make written reports of  
4 all proceedings had which shall become a part of the record of the  
5 family court; (5) provide such supervision in connection with the  
6 exercise of its jurisdiction as the judge of the family court may  
7 order; (6) cause the orders and findings of the family court to be  
8 entered in the same manner as orders and findings are entered in cases  
9 in the superior court; (7) cause such other reports to be made and  
10 records kept as will indicate the value and extent of such conciliation  
11 service; and (8) conduct hearings under chapter 13.34 RCW as provided  
12 in RCW 13.04.021.

13 **Sec. 6.** RCW 71.05.135 and 1989 c 174 s 1 are each amended to read  
14 as follows:

15 In class A counties and counties of the first through ninth  
16 classes, the superior court may appoint court commissioners in  
17 accordance with chapter 2.24 RCW and may appoint the following  
18 additional persons to assist the superior court in disposing of its  
19 business: PROVIDED, That such positions may not be created without  
20 prior consent of the county legislative authority:

21 ~~((1) One or more attorneys to act as mental health commissioners;~~  
22 ~~and~~

23 ~~(2))~~ Such investigators, stenographers, and clerks as the court  
24 shall find necessary to carry on the work of the ~~((mental health))~~  
25 court commissioners.

26 The additional appointments provided for in this section shall be  
27 made by a majority vote of the judges of the superior court of the  
28 county and may be in addition to all other appointments of  
29 commissioners and other judicial attaches otherwise authorized by law.

1 (~~(Mental health commissioners and~~) Investigators shall serve at the  
2 pleasure of the judges appointing them and shall receive such  
3 compensation as the county legislative authority shall determine. The  
4 appointments may be full or part-time positions. (~~(A person appointed~~  
5 ~~as a mental health commissioner may also be appointed to any other~~  
6 ~~commissioner position authorized by law.)~~)

7 **Sec. 7.** RCW 71.05.137 and 1989 c 174 s 2 are each amended to read  
8 as follows:

9 The judges of the superior court of the county by majority vote may  
10 authorize (~~(mental health)~~) court commissioners, appointed pursuant to  
11 chapter 2.24 RCW (~~(71.05.135)~~), to perform any or all of the following  
12 duties:

13 (1) Receive all applications, petitions, and proceedings filed in  
14 the superior court for the purpose of disposing of them pursuant to  
15 this chapter;

16 (2) Investigate the facts upon which to base warrants, subpoenas,  
17 orders to directions in actions, or proceedings filed pursuant to this  
18 chapter;

19 (3) For the purpose of this chapter, exercise all powers and  
20 perform all the duties of a court commissioner appointed pursuant to  
21 RCW 2.24.010;

22 (4) Hold hearings in proceedings under this chapter and make  
23 written reports of all proceedings under this chapter which shall  
24 become a part of the record of superior court;

25 (5) Provide such supervision in connection with the exercise of its  
26 jurisdiction as may be ordered by the presiding judge; and

27 (6) Cause the orders and findings to be entered in the same manner  
28 as orders and findings are entered in cases in the superior court.

1        NEW SECTION.    **Sec. 8.**        This act shall take effect if the  
2 proposed amendment to Article IV, section 23 of the state Constitution  
3 affecting the number of county court commissioners is validly submitted  
4 to and is approved and ratified by the voters at the next general  
5 election held.    If the proposed amendment is not so approved and  
6 ratified, this act is void in its entirety.