

# FINAL BILL REPORT

## ESHB 1571

---

C 332 L 09  
Synopsis as Enacted

**Brief Description:** Regarding the adjudication of water rights.

**Sponsors:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Blake and Chandler; by request of Department of Ecology).

**House Committee on Agriculture & Natural Resources**  
**Senate Committee on Environment, Water & Energy**

### **Background:**

The state's Surface Water Code establishes a general adjudication procedure. An adjudication can determine rights to surface water, ground water, or both. Holders of water rights or watershed planning units may petition the Department of Ecology (DOE) to start an adjudication. The DOE may also start an adjudication at its own discretion. Such a proceeding is conducted in the superior court with the DOE as the plaintiff. Each person filing a statement of claim in the proceeding must pay a filing fee to the court. The DOE, or a designee of the DOE, takes testimony and files a report with the court of its findings regarding the water rights of all of the entities claiming water rights in the proceeding. The expenses incurred by the state in such a proceeding or upon an appeal are borne by the state.

### **Summary:**

#### Commencement of Adjudication.

After a petition by a water right holder or planning unit, the DOE must file a statement with the court. Prior to filing an adjudication, the DOE must consult with the Administrative Office of the Courts to determine whether there are sufficient judicial resources available to conduct an adjudication in a timely manner. The DOE must report to the Legislature on the estimated budget needs for the superior court and the DOE to conduct the adjudication.

The court is encouraged to conduct the water rights adjudication with innovative practices and technologies, such as filing documents electronically, using teleconferencing for appearances, and pre-filing testimony.

#### Summons.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Service of the summons may either be by personal service or certified mail. If a potential claimant cannot be found within Washington or fails to sign a receipt for the certified mail summons, summons may be made in a publication of general circulation in the county where the subject water is found. Summons must be served at least 60 days before the required return date of the summons and the return date must be between 100 and 130 days after the order.

The summons will require the claimants to appear and file a claim to the subject water involved. If the claimant fails to file a claim, the court may issue a default judgment. A party in default may file a late claim under the same circumstances the party could respond or defend under court rules on default judgments.

#### Preliminary Investigation.

Upon receiving the adjudication claims and filing the claimants' evidence, the DOE must conduct a preliminary investigation to examine the uses of the subject waters. After the preliminary investigation, the DOE must file with the court the findings of the investigation, and: (1) enter a motion for a partial decree in favor of all the stated claims; (2) enter a motion seeking determination of contested claims; or (3) both.

#### Referee.

The superior court may appoint a referee or other judicial officer to assist the court.

#### Settlement.

Out-of-court settlements are encouraged.

#### Final Decree.

Upon the court's determination of all issues, the court must issue a final decree and provide notice of the decree to all parties.

#### Disqualification of a Judge.

A judge may be partially or fully disqualified from hearing an adjudication. Partial disqualification means disqualification from hearing specified claims. Full disqualification means disqualification from hearing any aspect of the adjudication. A judge is partially disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality is limited to specified claims. A judge is fully disqualified when the judge's impartiality might reasonably be questioned, and the apparent or actual partiality extends beyond limited claims so that the judge should not hear any part of the adjudication.

#### Appeals.

Any party to an appeal may move the court to certify portions of the appeal to the Pollution Control Hearings Board, but the appellant must file a motion for certification no later than 90 days after the appeal is filed.

#### Fees.

At the time of filing an adjudication claim, the claimant must pay the clerk of the superior court a fee of \$25. Within 90 days after the final decree, each party must pay the DOE \$50 for preparing and issuing a water right certificate.

**Votes on Final Passage:**

House	84	12	
Senate	30	17	(Senate amended)
House	69	29	(House concurred)

**Effective:** July 26, 2009