

HOUSE BILL REPORT

HB 2701

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to general adjudication proceedings for water rights.

Brief Description: Adjudicating water rights.

Sponsors: Representatives Mastin, Chandler, Honeyford and Johnson.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/29/96, 2/1/96 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Murray; Ogden; Regala; Robertson; Rust and Schoesler.

Staff: Kenneth Hirst (786-7105).

Background: The Surface Water Code of 1917 established a procedure under which all the rights to use water from a body of water or a portion of a body of water may be adjudicated in superior court in one proceeding. The proceeding is referred to as a general adjudication proceeding for water rights. At the conclusion of the proceeding, the court issues a decree containing its determination regarding the rights of the parties and identifying the priority, purpose, quantity, time of use, point of diversion, and place of use for each of the water rights. With the adoption of the Groundwater Code in 1945, the proceeding was extended to apply to groundwaters as well.

Under current law, the Department of Ecology acts as the court's referee for such a proceeding. At the beginning of the proceeding, the court refers the proceeding to a referee designated by the department. The referee conducts hearings, takes testimony, and files with the court a report of the referee's determinations specifying the rights of the parties. Persons who disagree with the referee's determinations may file exceptions with the court, in which case the court can receive new evidence

directly, or remand the proceeding back to the referee. If there are no exceptions filed, the court enters its decree determining the rights of the parties as specified in the referee's evidence and report.

Summary of Substitute Bill: No person appointed by the court as a referee in a general adjudication proceeding for water rights may be an employee of the Department of Ecology or an employee of any other party to the proceeding. Nor may the person have been such an employee within three years prior to the beginning of the proceeding. However, this restriction does not apply to a current referee in the state's only ongoing general adjudication proceeding.

Expenses incurred by the court for the use of the referee may be paid from appropriations made expressly for this purpose to the Office of the Administrator for the Courts.

Substitute Bill Compared to Original Bill: The substitute bill exempts the current referee from the restrictions on employment provided by the original bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (1) The department is the plaintiff in a general adjudication; it should not also be the referee. (2) The bill will ensure that the referee does not have other departmental duties that reduce the time devoted to the proceeding and will provide impartiality.

Testimony Against: (1) The original bill would require a change in referees in the Yakima adjudication; the proceeding might take a step backward in those sub-basins for which hearings have been held and testimony taken, but the report of the referee has not yet been written. The bill should exempt the current referee in the Yakima case. (2) The department should be given a deadline by which it must act on petitions for adjudications that have been filed with it. (3) Providing monies for adjudications on smaller streams should be considered by the Legislature.

Testified: Kathleen Collins, Washington Water Policy Alliance; Kent Lebsack, Washington Cattlemen's Association; and Dick Ducharme, Yakima Growers and Shippers (in favor). Ken Slattery, Department of Ecology; and K. O. Rosenberg (commented on the bill).