

**ESHB 1571** - S AMD TO EWE COMM AMD (S-2662.2/09) **361**  
By Senator Rockefeller

PULLED 04/14/2009

1 On page 4, beginning on line 13 of the amendment, after "(6)"  
2 strike all material through "chapter." on line 16

3 On page 17, after line 7 of the amendment, insert the following:

4 "Sec. 19. RCW 4.12.040 and 1989 c 15 s 1 are each amended to read  
5 as follows:

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

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

1 by a jury of the county in which the offense is alleged to have been  
2 committed.

3 (3) This section does not apply to water right adjudications filed  
4 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water  
5 right adjudications is governed by section 3 of this act.

6 **Sec. 20.** RCW 4.12.050 and 1941 c 148 s 1 are each amended to read  
7 as follows:

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

33 (2) This section does not apply to water right adjudications filed  
34 under chapter 90.03 or 90.44 RCW. Disqualification of judges in water  
35 right adjudications is governed by section 3 of this act."

1           Renumber the remaining sections consecutively and correct any  
2 internal references accordingly.

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3           On page 17, line 21 of the title amendment, after "90.44.220,"  
4 strike "and 43.21B.110" and insert "43.21B.110, 4.12.040, and 4.12.050"

EFFECT:       Eliminates an "incorporation by reference" issue that  
currently exists in the striking amendment.

**--- END ---**