

SHB 1571 - H AMD 387

By Representative Blake

ADOPTED 03/12/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.03.110 and 1987 c 109 s 72 are each amended to  
4 read as follows:

5 (1) Upon the filing of a petition with the department by a planning  
6 unit or by one or more persons claiming the right to ((divert)) any  
7 waters within the state or when, after investigation, in the judgment  
8 of the department, the ((interest of the public will be subserved by a  
9 determination of the rights thereto, it shall be the duty of the  
10 department to)) public interest will be served by a determination of  
11 the rights thereto, the department shall prepare a statement of the  
12 facts, together with a plan or map of the locality under investigation,  
13 and file such statement and plan or map in the superior court of the  
14 county in which said water is situated, or, in case such water flows or  
15 is situated in more than one county, in the county which the department  
16 shall determine to be the most convenient to the parties interested  
17 therein. Such a statement shall ~~((contain substantially the following~~  
18 ~~matter, to wit:~~

19 ~~(1) The names of all known persons claiming the right to divert~~  
20 ~~said water, the right to the diversion of which is sought to be~~  
21 ~~determined, and~~

22 ~~(2) A brief statement of the facts in relation to such water, and~~  
23 ~~the necessity for a determination of the rights thereto)):~~

24 (a) For an adjudication, either (i) identify each person or entity  
25 owning real property situated within the area to be adjudicated but  
26 outside the boundaries of a city, town, or special purpose district  
27 that provides water to property within its service area; (ii) identify  
28 all known persons claiming a right to the water sought to be  
29 determined; or (iii) identify both; and

1 (b) Include a brief statement of the facts in relation to such  
2 water, and the necessity for a determination of the rights thereto.

3 (2) Prior to filing an adjudication under this chapter, the  
4 department shall:

5 (a) For an adjudication, consult with the administrative office of  
6 the courts to determine whether sufficient judicial resources are  
7 available to commence and to prosecute the adjudication in a timely  
8 manner; and

9 (b) For an adjudication, report to the appropriate committees of  
10 the legislature on the estimated budget needs for the court and the  
11 department to conduct the adjudication.

12 **Sec. 2.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read  
13 as follows:

14 (1) Upon the filing of the statement and map as provided in RCW  
15 90.03.110 the judge of such superior court shall make an order  
16 directing summons to be issued, and fixing the return day thereof,  
17 which shall be not less than ((sixty)) one hundred nor more than  
18 ((ninety)) one hundred thirty days, after the making of such order:  
19 PROVIDED, That for good cause, the court, at the request of the  
20 department, may modify said time period.

21 (2) A summons issued under this section shall ((thereupon)) be  
22 issued out of said superior court, signed and attested by the clerk  
23 thereof, in the name of the state of Washington, as plaintiff, against  
24 all known persons ((claiming the right to divert the water involved and  
25 also all persons unknown claiming the right to divert the water  
26 involved, which said)) identified by the department under RCW  
27 90.03.110. The summons shall contain a brief statement of the objects  
28 and purpose of the proceedings and shall require the defendants to  
29 appear on the return day thereof, and make and file ((a statement of))  
30 an adjudication claim to, or interest in, the water involved and a  
31 statement that unless they appear at the time and place fixed and  
32 assert such right, judgment will be entered determining their rights  
33 according to the evidence: PROVIDED, HOWEVER, That any persons  
34 claiming the right to ((the use of)) water by virtue of a contract with  
35 a claimant to the right to divert the same, shall not be necessary  
36 parties to the proceeding.

1       (3) To the extent consistent with court rules and subject to the  
2 availability of funds provided either by direct appropriation or funded  
3 through the administrative office of the courts for this specific  
4 adjudicative proceeding, the court is encouraged to conduct the water  
5 rights adjudication employing innovative practices and technologies  
6 appropriate to large scale and complex cases, such as: (a) Electronic  
7 filing of documents, including notice and claims; (b) appearance via  
8 teleconferencing; (c) prefiling of testimony; and (d) other practices  
9 and technologies consistent with court rules and emerging technologies.

10       NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
11 to read as follows:

12       (1) A judge in a water right adjudication filed under this chapter  
13 may be partially or fully disqualified from hearing the adjudication.  
14 Partial disqualification means disqualification from hearing specified  
15 claims. Full disqualification means disqualification from hearing any  
16 aspect of the adjudication.

17       (a) A judge is partially disqualified when the judge's impartiality  
18 might reasonably be questioned and the apparent or actual partiality is  
19 limited to specified claims.

20       (b) A judge is fully disqualified when the judge's impartiality  
21 might reasonably be questioned and the apparent or actual partiality  
22 extends beyond limited claims such that the judge should not hear any  
23 part of the adjudication.

24       (2) A judge may recuse himself or herself under this section or a  
25 party may file a motion for disqualification. A motion for  
26 disqualification must state whether the remedy being sought is full or  
27 partial disqualification.

28       (3)(a) For parties who are named in the original pleadings, a  
29 motion for disqualification is timely if it is filed before the judge  
30 issues a discretionary order or ruling in the adjudication.

31       (b) For a party who is joined in the adjudication after the  
32 original pleadings have been filed, a motion for disqualification is  
33 timely if it is filed within the earliest of either (i) thirty days of  
34 being joined in the adjudication; or (ii) after the joinder of the  
35 party, before the judge issues a discretionary order or ruling relating  
36 to the joined party.

1 (c) When a motion for disqualification is untimely filed under this  
2 subsection (3), the motion will be granted only when necessary to  
3 correct a substantial injustice.

4 (d) For purposes of this section, "discretionary order or ruling"  
5 has the same meaning as "order or ruling involving discretion" in RCW  
6 4.12.050.

7 (4) A party filing a motion for disqualification under this section  
8 has the burden of proving by a preponderance of the evidence that the  
9 judge should be disqualified under the standards of subsection (1) of  
10 this section.

11 (5) The motion for disqualification may not be heard by the judge  
12 against whom the motion is filed. Subject to this limitation, the  
13 court may assign the disqualification motion to any superior court  
14 judge of the judicial district in which the adjudication was filed or  
15 to a visiting superior court judge under RCW 2.56.040.

16 (6) Except as stated in subsection (3)(d) of this section, RCW  
17 4.12.040 and 4.12.050, which otherwise govern the disqualification of  
18 superior court judges, do not apply to water right adjudications filed  
19 under this chapter. The standards set forth in RCW 2.28.030, which  
20 govern the disqualification of judicial officers generally, may be  
21 grounds for disqualification under this section.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW  
23 to read as follows:

24 Upon expiration of the filing period established under RCW  
25 90.03.120(2), the department shall file a motion for default against  
26 defendants who have been served but who have failed to file an  
27 adjudication claim under RCW 90.03.140. A party in default may file a  
28 late claim under the same circumstances the party could respond or  
29 defend under court rules on default judgments.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW  
31 to read as follows:

32 If an adjudication claim is for a use for which a statement of  
33 claim was required to be filed under chapter 90.14 RCW and no such  
34 claim was filed, the department may move that the adjudication claim be  
35 denied. The court shall grant the department's motion unless the  
36 claimant shows good cause why the motion should not be granted.

1       **Sec. 6.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to read  
2 as follows:

3       Service of said summons shall be made in the same manner and with  
4 the same force and effect as service of summons in civil actions  
5 commenced in the superior courts of the state: PROVIDED, That (~~for~~  
6 ~~good cause, the court, at the request of the department, as an~~  
7 ~~alternative to personal service, may authorize service of summons to~~  
8 ~~be~~) as an alternative to personal service, service may be made by  
9 certified mail, with return receipt signed and dated by defendant, a  
10 spouse of a defendant, or another person authorized to accept service.  
11 If the defendants, or either of them, cannot be found within the state  
12 of Washington, of which the return of the sheriff of the county in  
13 which the proceeding is pending or the failure to sign a receipt for  
14 certified mail shall be prima facie evidence, upon the filing of an  
15 affidavit by the department, or its attorney, in conformity with the  
16 statute relative to the service of summons by publication in civil  
17 actions, such service may be made by publication in a newspaper of  
18 general circulation in the county in which such proceeding is pending,  
19 and also publication of said summons in a newspaper of general  
20 circulation in each county in which any portion of the water is  
21 situated, once a week for six consecutive weeks (six publications).  
22 (~~In cases where personal service can be had, such summons shall be~~  
23 ~~served at least twenty days before the return day thereof.~~) The  
24 summons by publication shall state that (~~statements of~~) adjudication  
25 claims must be filed within (~~twenty~~) sixty days after the last  
26 publication or before the return date, whichever is later. In cases  
27 where personal service or service by certified mail is had, summons  
28 must be served at least sixty days before the return day thereof. For  
29 summons by certified mail, completion of service occurs upon the date  
30 of receipt by the defendant.

31       Personal service of summons may be made by department of ecology  
32 employees for actions pertaining to water rights.

33       **Sec. 7.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read  
34 as follows:

35       (1) On or before the (~~return day of such summons, each defendant~~  
36 ~~shall file in the office of the clerk of said court a statement, and~~

1 therewith a copy thereof for the department, containing substantially  
2 the following:

3 (1) ~~The name and post office address of defendant.~~

4 (2) ~~The full nature of the right, or use, on which the claim is~~  
5 ~~based.~~

6 (3) ~~The time of initiation of such right and commencement of such~~  
7 ~~use.~~

8 (4) ~~The date of beginning and completion of construction.~~

9 (5) ~~The dimensions and capacity of all ditches existing at the time~~  
10 ~~of making said statement.~~

11 (6) ~~The amount of land under irrigation and the maximum quantity of~~  
12 ~~water used thereon prior to the date of said statement and if for~~  
13 ~~power, or other purposes, the maximum quantity of water used prior to~~  
14 ~~date of said statement.~~

15 (7) ~~The legal description of the land upon which said water has~~  
16 ~~been, or may be, put to beneficial use, and the legal description of~~  
17 ~~the subdivision of land on which the point of diversion is located.~~

18 ~~Such statement))~~ date specified in the summons, each defendant  
19 shall file with the clerk of the superior court an adjudication claim  
20 on a form and in a manner provided by the department, and mail or  
21 electronically mail a copy to the department. The department shall  
22 provide information that will assist claimants of small uses of water  
23 in completing their adjudication claims. The adjudication claim must  
24 contain substantially the following, except that when the legal basis  
25 for the claimed right is a federally reserved right, the information  
26 must be filed only as applicable:

27 (a) The name, mailing address, and telephone contact number of each  
28 defendant on the claim, and e-mail address, if available;

29 (b) The purpose or purposes of use of the water and the annual and  
30 instantaneous quantities of water put to beneficial use;

31 (c) For each use, the date the first steps were taken under the law  
32 to put the water to beneficial use;

33 (d) The date of beginning and completion of the construction of  
34 wells, ditches, or other works to put the water to use;

35 (e) The maximum amount of land ever under irrigation and the  
36 maximum annual and instantaneous quantities of water ever used thereon  
37 prior to the date of the statement and if for power, or other purposes,

1 the maximum annual and instantaneous quantities of water ever used  
2 prior to the date of the adjudication claim;

3 (f) The dates between which water is used annually;

4 (g) If located outside the boundaries of a city, town, or special  
5 purpose district that provides water to property within its service  
6 area, the legal description and county tax parcel number of the land  
7 upon which the water as presently claimed has been, or may be, put to  
8 beneficial use;

9 (h) The legal description and county tax parcel number of the  
10 subdivision of land on which the point of diversion or withdrawal is  
11 located as well as land survey and geographic positioning coordinates  
12 of the same if available;

13 (i) Whether a right to surface or groundwater, or both, is claimed  
14 and the source of the surface water and the location and depth of all  
15 wells;

16 (j) The legal basis for the claimed right;

17 (k) Whether a statement of claim relating to the water right was  
18 filed under chapter 90.14 RCW or whether a declaration relating to the  
19 water right was filed under chapter 90.44 RCW and, if so, the claim or  
20 declaration number, and whether the right is documented by a permit or  
21 certificate and, if so, the permit number or certificate number. When  
22 the source is a well, the well log number must be provided, when  
23 available;

24 (1) The amount of land and the annual and instantaneous quantities  
25 of water used thereon, or used for power or other purposes, that the  
26 defendant claims as a present right.

27 (2) The adjudication claim shall be verified on oath by the  
28 defendant (~~, and in the discretion of the court may be amended~~)). The  
29 department shall furnish the form for the adjudication claim. A  
30 claimant may file an adjudication claim electronically if authorized  
31 under state and local court rules. The department may assist claimants  
32 in their effort by making the department's pertinent records and  
33 information accessible electronically or by other means and through  
34 conferring with claimants.

35 NEW SECTION. Sec. 8. A new section is added to chapter 90.03 RCW  
36 to read as follows:

37 Within the date set by the court for filing evidence, each claimant

1 shall file with the court evidence to support the claimant's  
2 adjudication claims. The court is encouraged to set a date for filing  
3 evidence that is reasonable and fair for the timely processing of the  
4 adjudication. The evidence may include, without limitation, permits or  
5 certificates of water right, statements of claim made under chapter  
6 90.14 RCW, deeds, documents related to issuance of a land patent,  
7 aerial photographs, decrees of previous water rights adjudications,  
8 crop records, records of livestock purchases and sales, records of  
9 power use, metering records, declarations containing testimonial  
10 evidence, records of diversion, withdrawal or storage and delivery by  
11 irrigation districts or ditch companies, and any other evidence to  
12 support that a water right was obtained and was not thereafter  
13 abandoned or relinquished. The evidence filed may include matters that  
14 are outside the original adjudication claim filed, and within the date  
15 set by the court for filing evidence, the claimant may amend the  
16 adjudication claim to conform to the evidence filed. Thereafter,  
17 except for good cause shown, a claimant may not file additional  
18 evidence to support the claim.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.03 RCW  
20 to read as follows:

21 (1) Upon the receipt of adjudication claims and the filing of  
22 claimants' evidence, the department shall conduct a preliminary  
23 investigation for the purpose of examining:

24 (a) The uses of the subject waters by and any physical works in  
25 connection with the persons to whom the adjudication applies; and

26 (b) The uses for which a statement of claim has been filed under  
27 chapter 90.14 RCW or for which the department has a permit or  
28 certificate of water right on record.

29 (2)(a) The examination may include, as the department deems  
30 appropriate:

31 (i) An estimation of the amount of water that is reasonably  
32 necessary to accomplish various beneficial uses within the area;

33 (ii) The measurement of stream flows;

34 (iii) The measurement of any diversion or withdrawal rates;

35 (iv) An estimation of storage capacity and the amount of water  
36 stored;

37 (v) The types and numbers of stock watered;

1 (vi) The number of residences served;  
2 (vii) The location and size of any irrigated land areas; and  
3 (viii) Any other information pertinent to the determination of  
4 water rights in an adjudication under this chapter.

5 (b) The department may also take other necessary steps and gather  
6 other data and information as may be essential to the proper  
7 understanding of the water uses and associated rights of the affected  
8 water users, including review of each claimant's adjudication claim and  
9 evidence the claimant filed to support the claim. The claimants and  
10 the department are encouraged to confer as may be beneficial to clarify  
11 the factual and legal basis for the claim. To the extent consistent  
12 with court rules, the court may deem it appropriate to encourage  
13 claimants and the department to work closely together to reach  
14 agreement on a claimed water right that may result in timely settlement  
15 of water rights, reduced costs for the parties, greater equity and  
16 general public service, and better information that may be used for  
17 overall water management.

18 (3) The department shall file with the court the department's  
19 report of findings as to each adjudication claim filed timely under RCW  
20 90.03.140. The department may divide its report of findings into two  
21 or more segments, covering particular drainages, uses, or other  
22 appropriate bases for dividing the report on adjudication claims.  
23 Based on the evidence filed by claimants and the department's report of  
24 findings, the department shall file with the superior court either or  
25 both of the following motions:

26 (a) A motion for a partial decree in favor of all stated claims  
27 under RCW 90.03.140 that the department finds to be substantiated with  
28 factual evidence; or

29 (b) A motion seeking determination of contested claims before the  
30 court.

31 **Sec. 10.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read  
32 as follows:

33 ~~(1) Upon ((the completion of the service of summons as hereinbefore~~  
34 ~~provided, the superior court in which said proceeding is pending shall~~  
35 ~~make an order referring said proceeding to the department to take~~  
36 ~~testimony by its duly authorized designee, as referee, and the designee~~  
37 ~~shall report to and file with the superior court of the county in which~~

1 ~~such cause is pending a transcript of such testimony for adjudication~~  
2 ~~thereon by such court. The superior court may, in any complex case~~  
3 ~~with more than one thousand named defendants, including the United~~  
4 ~~States, retain for hearing and further processing such portions of the~~  
5 ~~proceeding as pertain to a discrete class or classes of defendants or~~  
6 ~~claims of water rights if the court determines that: (1) Resolution of~~  
7 ~~claims of such classes appear to involve significant issues of law,~~  
8 ~~either procedural or substantive; and (2) such a retention will both~~  
9 ~~expedite the conclusion of the case and reduce the overall expenditures~~  
10 ~~of the plaintiff, defendants, and the court))~~ filing of the  
11 department's motion or motions under section 9(3) of this act, any  
12 party with a claim filed under RCW 90.03.140 for the appropriation of  
13 water or waters of the subject adjudication may file and serve a  
14 response to the department's motion or motions within the time set by  
15 the court for such a response. Objections must include specific  
16 information in regard to the particular disposition against which the  
17 objection is being made. Objections must also state the underlying  
18 basis of the objection being made, including general information about  
19 the forms of evidence that support the objection. Any party may file  
20 testimony with the court and serve it on other parties. If a party  
21 intends to cross-examine a claimant or witness based on another party's  
22 prefiled testimony, the party intending to cross-examine shall file a  
23 notice of intent to cross-examine no later than fifteen days in advance  
24 of the hearing. If no notice of intent to cross-examine based on the  
25 prefiled testimony is given, then the claimant or witness is not  
26 required to appear at the hearing. Any party may present evidence in  
27 support of or in response to an objection.

28 (2) The superior court may appoint a referee or other judicial  
29 officer to assist the court.

30 (3) The superior court may adopt special rules of procedure for an  
31 adjudication of water rights under this chapter, including simplified  
32 procedures for claimants of small uses of water. The rules of  
33 procedure for a superior court apply to an adjudication of water rights  
34 under this chapter unless superseded by special rules of the court  
35 under this subsection. The superior court is encouraged to consider  
36 entering, after notice and hearing and as the court determines  
37 appropriate, pretrial orders from an adjudication commenced on October  
38 12, 1977.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 90.03 RCW  
2 to read as follows:

3        (1) The legislature finds that early settlement of contested claims  
4 is needed for a fair and efficient adjudication of water rights.  
5 Therefore, the department and other parties should identify  
6 opportunities for settlement following the date set by the court for  
7 filing evidence for all parties. To the extent consistent with court  
8 rules, the court as it deems beneficial is encouraged to urge as many  
9 parties to the adjudication as possible to reach timely agreement on  
10 claimed water rights in a manner that limits costs to the public,  
11 claimants, counties, courts, and the department. Further, at  
12 appropriate times throughout the process the court as it deems  
13 beneficial is encouraged to direct parties to utilize alternative  
14 methods of dispute resolution, including informal meetings,  
15 negotiation, mediation, or other methods to reach agreement on disputed  
16 claims.

17        (2) Any time after the filing of all claims under RCW 90.03.140,  
18 the department or another party may move the superior court to allow  
19 parties to meet for settlement discussions for a set length of time,  
20 either before an appointed mediator or without a mediator. For good  
21 cause shown, the court may extend the length of time for settlement  
22 discussions. The costs of mediation must be equitably borne by the  
23 parties to the mediation.

24        (3) If the department and a claimant reach agreement on settlement,  
25 the department shall file a motion to approve the settlement pursuant  
26 to section 9(3)(a) of this act and shall disclose the terms of the  
27 settlement to other parties to the adjudication. The court shall  
28 conduct a hearing prior to approving a settlement and any party to the  
29 adjudication may object or offer modifications to the settlement.

30        **Sec. 12.**    RCW 90.03.180 and 1995 c 292 s 21 are each amended to  
31 read as follows:

32        At the time of filing the ((statement)) adjudication claim as  
33 provided in RCW 90.03.140, each defendant, except the United States or  
34 an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the  
35 superior court a fee as set under RCW ((36.18.020)) 36.18.016.

1           **Sec. 13.** RCW 90.03.210 and 2001 c 220 s 5 are each amended to read  
2 as follows:

3           (1) During the pendency of such adjudication proceedings prior to  
4 judgment or upon review by an appellate court, the stream or other  
5 water involved shall be regulated or partially regulated according to  
6 the schedule of rights specified in the department's report upon an  
7 order of the court authorizing such regulation: PROVIDED, Any  
8 interested party may file a bond and obtain an order staying the  
9 regulation of said stream as to him, in which case the court shall make  
10 such order regarding the regulation of the stream or other water as he  
11 may deem just. The bond shall be filed within five days following the  
12 service of notice of appeal in an amount to be fixed by the court and  
13 with sureties satisfactory to the court, conditioned to perform the  
14 judgment of the court.

15           (2) Any appeal of a decision of the department on an application to  
16 change or transfer a water right subject to (~~a general~~) an  
17 adjudication that is being litigated actively (~~and was commenced~~  
18 ~~before October 13, 1977,~~) shall be conducted as follows:

19           (a) The appeal shall be filed with the court conducting the  
20 adjudication and served under RCW 34.05.542(3). The content of the  
21 notice of appeal shall conform to RCW 34.05.546. Standing to appeal  
22 shall be based on the requirements of RCW 34.05.530 and is not limited  
23 to parties to the adjudication.

24           (b) If the appeal includes a challenge to the portion of the  
25 department's decision that pertains to tentative determinations of the  
26 validity and extent of the water right, review of those tentative  
27 determinations shall be conducted by the court consistent with the  
28 provisions of RCW 34.05.510 through 34.05.598, except that the review  
29 shall be de novo.

30           (c) If the appeal includes a challenge to any portion of the  
31 department's decision other than the tentative determinations of the  
32 validity and extent of the right, the court must certify to the  
33 pollution control hearings board for review and decision those portions  
34 of the department's decision. Review by the pollution control hearings  
35 board shall be conducted consistent with chapter 43.21B RCW and the  
36 board's implementing regulations, except that the requirements for  
37 filing, service, and content of the notice of appeal shall be governed  
38 by (a) of this subsection. Any party to an appeal may move the court

1 to certify portions of the appeal to the pollution control hearings  
2 board, but the appellant must file a motion for certification no later  
3 than ninety days after the appeal is filed under this section.

4 (d) Appeals shall be scheduled to afford all parties full  
5 opportunity to participate before the superior court and the pollution  
6 control hearings board.

7 (e) Any person wishing to appeal the decision of the board made  
8 under (c) of this subsection shall seek review of the decision in  
9 accordance with chapter 34.05 RCW, except that the petition for review  
10 must be filed with the superior court conducting the adjudication.

11 (3) Nothing in this section shall be construed to affect or modify  
12 any treaty or other federal rights of an Indian tribe, or the rights of  
13 any federal agency or other person or entity arising under federal law.  
14 Nothing in this section is intended or shall be construed as affecting  
15 or modifying any existing right of a federally recognized Indian tribe  
16 to protect from impairment its federally reserved water rights in  
17 federal court.

18 **Sec. 14.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to  
19 read as follows:

20 Upon the court's final determination of the rights to ~~((the~~  
21 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~  
22 shall issue to each person entitled to ~~((the diversion of))~~ a water  
23 right by such a determination, a certificate ~~((under his official~~  
24 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~  
25 ~~office))~~ mailing address of record with the court of such person; the  
26 priority and purpose of the right; the period during which said right  
27 may be exercised, the point of diversion or withdrawal, and the place  
28 of use; the land to which said water right is appurtenant ~~((and when~~  
29 ~~applicable))~~; the maximum ~~((quantity))~~ annual and instantaneous  
30 quantities of water allowed; and specific provisions or limitations or  
31 both under which the water right has been confirmed.

32 The department shall provide notice to the water right holder that  
33 the certificate has been prepared for issuance and that fees for the  
34 issuance of the certificate are due in accordance with RCW 90.03.470  
35 and any other applicable fee schedule. If the water right holder fails  
36 to submit the required fees within one year from the date the notice

1 was issued by the department, the department may move the court for  
2 sanctions for violation of the court's order in the final decree  
3 requiring payment.

4 **Sec. 15.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read  
5 as follows:

6 The expenses incurred by the state in a proceeding to determine  
7 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon  
8 appeal of such a determination shall be borne by the state. Subject to  
9 the availability of state funding provided either by direct  
10 appropriation or funded through the administrative office of the courts  
11 for this specific purpose, the county in which an adjudication or a  
12 suit to administer an adjudication is being held must be provided the  
13 extraordinary costs imposed on the superior court of that county due to  
14 the adjudication.

15 **Sec. 16.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to  
16 read as follows:

17 ~~((In its discretion or upon the application of any party claiming~~  
18 ~~right to the withdrawal and use of public groundwater, the department~~  
19 ~~may file a petition)) Upon the filing of a petition with the department  
20 by a planning unit or by one or more persons claiming a right to any  
21 waters within the state or when, after investigation, in the judgment  
22 of the department, the public interest will be served by a  
23 determination of the rights thereto, the department shall file a  
24 petition to conduct an adjudication with the superior court of the  
25 county for the determination of the rights of appropriators of any  
26 particular groundwater body and all the provisions of RCW 90.03.110  
27 through 90.03.240 ~~((as heretofore amended))~~ and sections 3 through 5,  
28 8, 9, and 11 of this act, shall govern and apply to the adjudication  
29 and determination of such groundwater body and to the ownership  
30 thereof. Hereafter, in any proceedings for the adjudication and  
31 determination of water rights--either rights to the use of surface  
32 water or to the use of groundwater, or both--pursuant to chapter 90.03  
33 RCW ~~((as heretofore amended))~~, all or part of the appropriators of  
34 groundwater or of surface water in the particular basin or area may be  
35 included as parties to such adjudication, as ~~((pertinent))~~ set forth in  
36 chapter 90.03 RCW.~~

1       **Sec. 17.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to  
2 read as follows:

3       (1) The hearings board shall only have jurisdiction to hear and  
4 decide appeals from the following decisions of the department, the  
5 director, local conservation districts, and the air pollution control  
6 boards or authorities as established pursuant to chapter 70.94 RCW, or  
7 local health departments:

8       (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
9 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
10 90.56.330.

11       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
12 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
13 90.14.130, 90.48.120, and 90.56.330.

14       (c) Except as provided in RCW 90.03.210(2), the issuance,  
15 modification, or termination of any permit, certificate, or license by  
16 the department or any air authority in the exercise of its  
17 jurisdiction, including the issuance or termination of a waste disposal  
18 permit, the denial of an application for a waste disposal permit, the  
19 modification of the conditions or the terms of a waste disposal permit,  
20 or a decision to approve or deny an application for a solid waste  
21 permit exemption under RCW 70.95.300.

22       (d) Decisions of local health departments regarding the grant or  
23 denial of solid waste permits pursuant to chapter 70.95 RCW.

24       (e) Decisions of local health departments regarding the issuance  
25 and enforcement of permits to use or dispose of biosolids under RCW  
26 70.95J.080.

27       (f) Decisions of the department regarding waste-derived fertilizer  
28 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
29 department regarding waste-derived soil amendments under RCW 70.95.205.

30       (g) Decisions of local conservation districts related to the denial  
31 of approval or denial of certification of a dairy nutrient management  
32 plan; conditions contained in a plan; application of any dairy nutrient  
33 management practices, standards, methods, and technologies to a  
34 particular dairy farm; and failure to adhere to the plan review and  
35 approval timelines in RCW 90.64.026.

36       (h) Any other decision by the department or an air authority which  
37 pursuant to law must be decided as an adjudicative proceeding under  
38 chapter 34.05 RCW.

1 (2) The following hearings shall not be conducted by the hearings  
2 board:

3 (a) Hearings required by law to be conducted by the shorelines  
4 hearings board pursuant to chapter 90.58 RCW.

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) (~~Proceedings conducted by the department, or the department's~~  
8 ~~designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.~~) Appeals  
9 of decisions by the department under RCW 90.03.110 and 90.44.220.

10 (d) Hearings conducted by the department to adopt, modify, or  
11 repeal rules.

12 (e) Appeals of decisions by the department as provided in chapter  
13 43.21L RCW.

14 (3) Review of rules and regulations adopted by the hearings board  
15 shall be subject to review in accordance with the provisions of the  
16 Administrative Procedure Act, chapter 34.05 RCW.

17 NEW SECTION. Sec. 18. This act applies only to adjudications  
18 initiated after the effective date of this section.

19 NEW SECTION. Sec. 19. The following acts or parts of acts are  
20 each repealed:

21 (1) RCW 90.03.170 (Determination of water rights--Hearing--Notice--  
22 Prior rights preserved) and 1987 c 109 s 77 & 1917 c 117 s 20; and

23 (2) RCW 90.03.190 (Determination of water rights--Transcript of  
24 testimony--Filing--Notice of hearing) and 1987 c 109 s 78 & 1917 c 117  
25 s 22."

26 Correct the title.

EFFECT: Striker compared to SHB 1571:

In the striker:

The return date of the summons must be between 100 and 130 days.

The department of ecology (DOE) must provide information that will  
assist claimants of small uses of water in completing their  
adjudication claims.

Makes grammatical changes.

Removes limited adjudication.

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

Removes that prohibition for the pollution control hearings board to hear appeals of decisions by the DOE to administer or enforce a final adjudication decree if a superior court has retained jurisdiction to administer or enforce the decree.

--- END ---