

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5828

Chapter 268, Laws of 2024

68th Legislature
2024 Regular Session

WATER RIGHTS ADJUDICATION—APPOINTMENT OF COMMISSIONERS AND REFEREES

EFFECTIVE DATE: June 6, 2024

Passed by the Senate March 4, 2024
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House February 27, 2024
Yeas 95 Nays 0

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved March 26, 2024 9:36 AM

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5828** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 27, 2024

JAY INSLEE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5828

AS AMENDED BY THE HOUSE

Passed Legislature - 2024 Regular Session

State of Washington 68th Legislature 2024 Regular Session

By Senate Law & Justice (originally sponsored by Senators Shewmake, Lovelett, Dhingra, Lovick, and Nobles; by request of Administrative Office of the Courts)

READ FIRST TIME 01/19/24.

1 AN ACT Relating to water rights adjudication commissioners and
2 referees; amending RCW 90.03.160; and adding new sections to chapter
3 90.03 RCW.

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

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

7 (1) In each county, the superior court may appoint one or more
8 attorneys to act as water commissioners to assist the superior court
9 in disposing of its business.

10 (2) The appointments provided for in this section shall be made
11 by a majority vote of the judges of the superior court of the county
12 and may be in addition to all other appointments of commissioners and
13 other judicial attaches otherwise authorized by law. Water
14 commissioners shall serve at the pleasure of the judges appointing
15 them.

16 (3) In appointing a water commissioner, the court shall consider
17 a potential commissioner's experience with water law and water use.

18 (4) The appointments may be full-time or part-time positions. A
19 person appointed as a water commissioner may also be appointed to any
20 other commissioner position authorized by law.

1 (5) (a) A person appointed as a water commissioner must receive
2 training as soon as reasonably practicable from the administrative
3 office of the courts on the following topics:

4 (i) Water law, including state, federal, tribal, and
5 international statutory and case law;

6 (ii) Indian law, including statutory and case law, agreements,
7 executive orders, and treaties;

8 (iii) An overview of subjects in water science, such as physical
9 and groundwater hydrology, hydrogeology, and irrigation management;
10 and

11 (iv) Cultural awareness, including state and tribal history
12 related to treaty and nontreaty tribes and governmental relationships
13 with federally recognized tribes.

14 (b) The administrative office of the courts may contract with one
15 or more academic institutions in Washington, as appropriate, to
16 develop and deliver the training described in (a) of this subsection.

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

19 The judges of the superior court of the county by majority vote
20 may authorize water commissioners, appointed pursuant to section 1 of
21 this act, to perform any and all of the following in a water rights
22 adjudication:

23 (1) Appoint guardians ad litem for claimants under RCW 90.03.150
24 as necessary;

25 (2) Hold evidentiary hearings to determine the facts underlying
26 individual and multiple water right claims;

27 (3) Hold hearings on all contested claims, objections, and
28 stipulated agreements;

29 (4) Issue decisions on factual and legal issues;

30 (5) Enter default judgments, settlement agreements, and
31 conditional final orders;

32 (6) Cause the orders and findings of the adjudication to be
33 entered in the same manner as orders and findings are entered in
34 cases in the superior court; and

35 (7) Provide such supervision of the water rights adjudication in
36 connection with the exercise of its jurisdiction as may be ordered by
37 the presiding judge and assigned water adjudication judge.

38 All acts and proceedings of a water commissioner are subject to
39 revision by the superior court as provided in RCW 2.24.050.

1 **Sec. 3.** RCW 90.03.160 and 2009 c 332 s 10 are each amended to
2 read as follows:

3 (1) Upon filing of the department's motion or motions under RCW
4 90.03.640(3), any party with a claim filed under RCW 90.03.140 for
5 the appropriation of water or waters of the subject adjudication may
6 file and serve a response to the department's motion or motions
7 within the time set by the court for such a response. Objections must
8 include specific information in regard to the particular disposition
9 against which the objection is being made. Objections must also state
10 the underlying basis of the objection being made, including general
11 information about the forms of evidence that support the objection.
12 Any party may file testimony with the court and serve it on other
13 parties. If a party intends to cross-examine a claimant or witness
14 based on another party's prefiled testimony, the party intending to
15 cross-examine shall file a notice of intent to cross-examine no later
16 than fifteen days in advance of the hearing. If no notice of intent
17 to cross-examine based on the prefiled testimony is given, then the
18 claimant or witness is not required to appear at the hearing. Any
19 party may present evidence in support of or in response to an
20 objection.

21 (2) The superior court may appoint a referee or other judicial
22 officer to assist the court. The court may order all or any issues in
23 a water adjudication, whether of fact or law, or both, referred to a
24 referee by order of reference. RCW 4.48.010, 4.48.020, 4.48.050, and
25 4.48.110 do not apply to referees appointed pursuant to this chapter.
26 Challenges to the appointment of a referee must be made pursuant to
27 RCW 90.03.620. Consent of parties is not required for a court-
28 appointed referee to hear water rights adjudication matters.

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

Passed by the Senate March 4, 2024.
Passed by the House February 27, 2024.
Approved by the Governor March 26, 2024.

Filed in Office of Secretary of State March 27, 2024.

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