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For Immediate Release
May 25, 2005

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State Has New Criminal Tool To Protect Environment

State Grand Jury Bill Becomes Law With Governor's Signature

Columbia, S.C. - Legislation granting the state grand jury authority to investigate white-collar environmental crimes became law today, taking effect with the signature of Governor Mark Sanford.

Attorney General Henry McMaster pushed for the new law citing the state's inability to investigate and prosecute complex white-collar environmental crimes. Only the state grand jury can subpoena records and compel testimony; key resources in any white-collar criminal investigation.

McMaster made the proposal his number one legislative priority.

Sponsored by Senator Jake Knotts and Representative Jim Merrill, the legislation was initially opposed by statehouse business interests. That opposition eventually turned into support after several months of meetings and dialogue resulted in modified language all parties could agree upon.

"I believe that the power to investigate and prosecute is a strong deterrent to lawless conduct and it is my hope that our state will only rarely have to use this investigative power to protect our health, safety and natural heritage," said McMaster. "Thanks to the leadership of Senator Knotts and Representative Merrill, if such a criminal environmental catastrophe occurs, our state will now be able to take prompt and serious action."

"Today a strong message has been sent that this state will not tolerate those who would knowingly and deliberately break the law, seek an improper competitive advantage, intentionally despoil our land and diminish our natural heritage for future generations," said McMaster.

- The new law requires that the perpetrator must commit a "knowing, willful and criminal" violation of the law, which results in over \$2 million in anticipated damages to be certified by an independent engineer hired by the Department of Health and Environmental Control.
- It prevents prosecution of innocent employees or employers due to the willful criminal actions or accusations of disgruntled employee(s).



- It prevents duplicate prosecution by the state if a federal conviction or acquittal has occurred for similar environmental crimes.
- Requires DHEC to be substantially and integrally involved in the investigation and requires the Commissioner of DHEC to consult with and, after investigation, provide a formal written recommendation to both the Attorney General and the Chief of SLED. The Commissioner's written recommendation must be provided to the Chief Administrative Judge along with the petition requesting state grand jury empanelment.

In making his case to the legislature McMaster pointed out that:

- State prosecutors are helpless to investigate and prosecute white-collar environmental crimes. These crimes are complex and are usually committed without an eyewitnesses or willing confession. Standard police methods of investigation are fruitless.
- A county grand jury is useless for the investigation of white-collar environmental crimes. It has no subpoena power, no investigative power and cannot compel or record testimony.
- This forces the state to rely on federal authorities to investigate and prosecute white-collar environmental crimes. After 9-11, federal authorities have shifted their focus to homeland security and counter-terrorism.
- If the state has declared particular conduct harmful enough to be a crime (as it has done in our environmental statutes), our state should have the tools necessary to investigate and prosecute that conduct.

Overseen and operated by the Attorney General, the state grand jury is currently authorized to investigate and prosecute (1) drug offenses, (2) obscenity, (3) public corruption, (4) election fraud, (5) computer crimes, (6) terrorism, (7) securities fraud and now (8) environmental crimes.

The state grand jury operates like a federal grand jury. It has unique statutory safeguards; it operates in secret to protect the innocent. It can compel testimony and subpoena records, documents and evidence.

Before our state grand jury can be used, the Attorney General and SLED chief must sign a petition stating the usage of the state grand jury is "necessary (and that) normal investigative or prosecutorial procedures are not adequate." The judge must agree and issue an order allowing the investigation.

The law may be viewed at: http://www.scstatehouse.net/sess116_2005-2006/bills/22.htm

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