



State Grand Jury Authority for Environmental Crimes

S.22 & H.3189

Executive Summary

Attorney General Henry McMaster has proposed granting the state grand jury authority to investigate white-collar environmental crimes. Senator Jake Knotts and Representative Jim Merrill have introduced the legislation for the 2005-06 session. These two bills represent months of work and compromise between supporters and state business organizations.

The state grand jury is currently authorized to investigate and prosecute (1) multi-jurisdictional drug offenses, (2) obscenity, (3) public corruption, (4) election fraud, (5) computer crimes, (6) terrorism, and (7) securities fraud.

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.

This legislation would give the state grand jury an 8th area of jurisdiction for environmental crimes.

The Problem

- 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.

The Solution

- Grant the state grand jury jurisdiction to investigate and prosecute environmental crimes.

Safeguards in the New Bill

- Requires that the perpetrator must commit a “willful and criminal” violation of the law, thereby preventing prosecution for negligence, accidents or honest mistakes.
- Requires the Department of Health and Environmental Control to be substantially and integrally involved in the investigation.
- Requires the Attorney General to consult with and advise the joint state-federal Environmental Protection and Enforcement Coordinating Subcommittee and to cooperate with other state and federal authorities having jurisdiction over environmental enforcement.
- Prevents duplicate prosecution by the state if a federal conviction or acquittal has occurred for similar environmental crimes.
- 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.
- Prevents prosecution of innocent employees or employers due to the willful criminal actions or accusations of disgruntled employee(s).

Debunk the Misconceptions

- This legislation does not create any new environmental crimes or penalties.
- It does not create new environmental rules and regulations.
- It does not make honest mistakes or accidents a crime.
- Simple negligence, such as “filling out the wrong form” or “filling in the wrong ditch” is not a crime.
- This legislation does not increase the chance of capricious prosecution by the state.
- DHEC currently does not have and will not have any authority to prosecute environmental crimes.
- This legislation does not involve the state grand jury or the attorney general’s office in the regulatory or permitting process in any way.
- Any case investigated and indicted by our state grand jury still must be tried before a circuit judge in circuit court with a jury of twelve like every other criminal case.