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age or over to a justice of the peace, justice court judge or to a judge of the superior court.

Sec. 7. Section 28A.27.110, chapter 223, Laws of 1969 ex. sess. and RCW 28A.27.110 are each amended to read as follows:

The county prosecuting attorney or the attorney for the school district shall act as attorney for the complainant in all court proceedings relating to the compulsory attendance of children as required by RCW 28A.27.010 through 28A.27.130.

Passed the House May 14, 1979.

Passed the Senate May 4, 1979.

Approved by the Governor May 24, 1979.

Filed in Office of Secretary of State May 24, 1979.

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CHAPTER 202

[Engrossed Substitute Senate Bill No. 2095]

SUPERIOR COURT JUDGES

AN ACT Relating to superior court judges; amending section 3, chapter 125, Laws of 1951 as last amended by section 1, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.061; amending section 4, chapter 125, Laws of 1951 as last amended by section 2, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.062; amending section 6, chapter 125, Laws of 1951 as last amended by section 3, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.064; amending section 7, chapter 125, Laws of 1951 as last amended by section 4, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.065; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 3, chapter 125, Laws of 1951 as last amended by section 1, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.061 are each amended to read as follows:

There shall be in the county of King thirty-four judges of the superior court; in the county of Spokane ((~~nine~~)) ten judges of the superior court; in the county of Pierce ((~~eleven~~)) thirteen judges of the superior court: PROVIDED, That the additional offices herein created for the county of Pierce shall be effective January 1, ((+1978)) 1981.

Sec. 2. Section 4, chapter 125, Laws of 1951 as last amended by section 2, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.062 are each amended to read as follows:

There shall be in the ((~~county~~)) counties of Chelan ((~~one~~)) and Douglas jointly, two judges of the superior court; in the county of Clark ((~~four~~)) five judges of the superior court; in the county of Grays Harbor two judges of the superior court; in the county of Kitsap ((~~four~~)) five judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court: PROVIDED, That the additional office herein created for the county of Kitsap shall be effective January 1, 1981.

Sec. 3. Section 6, chapter 125, Laws of 1951 as last amended by section 3, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.064 are each amended to read as follows:

There shall be in the counties of Benton and Franklin jointly, four judges of the superior court; in the counties of Clallam and Jefferson jointly, two judges of the superior court; in the county of Snohomish ~~((seven))~~ eight judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, ~~((two))~~ three judges of the superior court; PROVIDED, That the additional office herein created for the county of Cowlitz shall be effective January 1, 1981; in the counties of Klickitat and Skamania jointly, one judge of the superior court.

Sec. 4. Section 7, chapter 125, Laws of 1951 as last amended by section 4, chapter 311, Laws of 1977 ex. sess. and RCW 2.08.065 are each amended to read as follows:

There shall be in the ~~((counties of Douglas and))~~ county of Grant ~~((jointly))~~, two judges of the superior court; in the counties of Ferry and Okanogan jointly, one judge of the superior court; in the counties of Mason and Thurston jointly, ~~((four))~~ five judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Pend Oreille and Stevens jointly, one judge of the superior court; and in the counties of San Juan and Island jointly, two judges of the superior court.

NEW SECTION. Sec. 5. The superior court judge serving in position two, as designated by the county auditors of Grant and Douglas counties for the 1976 general election, in the counties of Grant and Douglas prior to the effective date of this 1979 act, shall thereafter serve jointly in the counties of Douglas and Chelan, along with the judge previously serving only in Chelan county. The additional superior court judge position created by this 1979 act shall be for Grant county alone, which shall retain the judge in position one previously serving jointly in the counties of Grant and Douglas.

***\*NEW SECTION. Sec. 6. (1) The secretary of state and appropriate county election officials shall accept declarations of candidacy for the offices created by sections 1 through 4 of this act during the filing period specified by RCW 29.18.030 prior to the general election to be held on the second Tuesday of November, 1979, except for the offices created for the counties of Kitsap, Cowlitz, and Pierce, which declarations shall be accepted by the appropriate election officers during the same period prior to the general election to be held on the second Tuesday of November, 1980.***

***(2) The offices created by sections 1 through 4 of this act shall become effective January 1, 1980, except for the offices created for the counties of Kitsap, Cowlitz, and Pierce which shall become effective January 1, 1981.***

*Such offices shall be filled by persons elected and qualified at the general election immediately preceding such effective dates.*

\*Sec. 6 was vetoed, see message at end of chapter.

Passed the Senate May 12, 1979.

Passed the House April 30, 1979.

Approved by the Governor May 24, 1979, with the exception of Section 6, which is vetoed.

Filed in Office of Secretary of State May 24, 1979.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to Section 6, Substitute Senate Bill No. 2095 entitled:

"AN ACT Relating to superior court judges."

Substitute Senate Bill No. 2095 creates a number of additional superior court judgeships throughout the state. Section 6 of the bill was added as a House amendment to the original Senate bill and provides an elective procedure for the selection of judges in several of the newly created positions. I cannot support the provision of Section 6 for several reasons but principally for the reason that such procedure destroys the Governor's historic constitutional and statutory right to appoint judges to the newly created positions. Those appointed must then stand for election as provided by the election laws.

The provisions of Article 4, Section 5 of the constitution provide the framework within which newly created judgeships must be filled. The applicable provision provides:

If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election...

This constitutional principle was tested just two years ago in the supreme court case of *Fain v. Chapman*, 89 Wn.2d 48 and I recommend that decision to the readers of this message.

RCW 2.08.069 Judges—Filling vacancies resulting from creation of additional judgeships. Unless otherwise provided, upon the taking effect of any act providing for additional judges of the superior court and thereby creating a vacancy, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

As far as I am able to determine, the elective procedure as set forth in Substitute Senate Bill No. 2095 on newly created judgeships is the first departure from the long-established constitutional and statutory right of the executive to fill those judgeships by appointment. If the Legislature is truly serious about relieving all Governors of this long-established right, then I suggest a change in the constitution would be required.

For these reasons, I have determined to veto Section 6 of Substitute Senate Bill No. 2095."

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## CHAPTER 203

[Engrossed Substitute Senate Bill No. 2388]

### FOOD FISH AND SHELLFISH—PRIVILEGE FEES