

CHAPTER 146

[Substitute House Bill No. 1147]

STATE-WIDE SPECIAL INQUIRY JUDGE ACT—APPROPRIATION

AN ACT Relating to investigation and prosecution of crimes; amending section 5, chapter 202, Laws of 1973 1st ex. sess. as amended by section 115, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 43.43.858; amending section 6, chapter 202, Laws of 1973 1st ex. sess. and RCW 43.43.860; adding a new chapter to Title 10 RCW; adding a new section to chapter 43.43 RCW; prescribing penalties; and making an appropriation.

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

NEW SECTION. Section 1. This chapter shall be known and may be cited as the State-wide Special Inquiry Judge Act.

NEW SECTION. Sec. 2. It is the intent of the legislature in enacting this chapter to strengthen and enhance the ability of the state to detect and eliminate organized criminal activity.

NEW SECTION. Sec. 3. (1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a state-wide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a state-wide special inquiry judge, in accordance with the petition, for a term of six calendar months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the state-wide special inquiry judge for three months. The term of the state-wide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276), as now existing or hereafter amended, except as provided by rules of the supreme court of Washington in the case of the petition.

NEW SECTION. Sec. 4. The scope of the investigation and of the special inquiry judge proceeding shall be limited to the general crimes and wrongs specified in the petition filed under section 3 of this act. The special prosecutor or special inquiry judge, however, may request authority to investigate other crimes by submitting a list of such crimes to the organized crime advisory board which may grant authorization to proceed by a three-fourths vote of the membership.

NEW SECTION. Sec. 5. A state-wide special inquiry judge shall have the following powers and duties:

(1) To hear and receive evidence of crime and corruption.

(2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(3) Whenever necessary, to appoint an interpreter, and to swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(4) When a person held in official custody is a witness before a state-wide special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The state-wide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(5) To cause to be called as a witness any person believed by him to possess relevant information or knowledge. If the state-wide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the state-wide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the state-wide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a state-wide special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the state-wide special inquiry judge. The state-wide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a state-wide special inquiry judge except when required by a court to disclose the testimony given before such state-wide special inquiry judge in a subsequent criminal proceeding.

NEW SECTION. Sec. 6. Any witness who shall disclose the fact that he or she has been called as a witness before a state-wide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor.

NEW SECTION. Sec. 7. The supreme court shall develop and adopt rules to govern the procedures of a state-wide special inquiry judge proceeding including rules assuring the confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees.

NEW SECTION. Sec. 8. If the supreme court appoints a state-wide special inquiry judge under section 3 of this act, the organized crime advisory board shall submit to the governor the name of an individual who, with the consent of the governor, shall serve as special prosecutor for the state-wide special inquiry judge proceeding. Any individual whose name is submitted under this section to the governor shall be licensed to practice law in the state of Washington and shall have at least five years' professional experience as one or more of the following: (1) Prosecuting attorney; (2) deputy prosecuting attorney; (3) United States attorney; or (4) assistant United States attorney. No such person shall have resided during the five years immediately preceding the appointment in a county in which the state-wide special inquiry judge will likely be required to investigate crimes. A special prosecutor appointed under this section shall be removed only upon a majority recommendation of the organized crime advisory board and the consent of the governor.

NEW SECTION. Sec. 9. Within ten days of his or her appointment, a special prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this

section if the term of a state-wide special inquiry judge is extended pursuant to section 3 of this act.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter 42.17 RCW.

NEW SECTION. Sec. 10. Whenever a state-wide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by sections 3 and 8 of this act for the appointment of state-wide special inquiry judges and special prosecutors.

NEW SECTION. Sec. 11. The special prosecutor or his designee shall:

- (1) Attend all proceedings of the state-wide special inquiry judge;
- (2) Have the authority to issue subpoenas for witnesses state-wide;
- (3) Examine witnesses, present evidence, draft reports as directed by the state-wide special inquiry judge, and draft and file informations under section 12 of this act.

NEW SECTION. Sec. 12. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the state-wide special inquiry judge investigation and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the state-wide special inquiry judge program as provided in section 9 of this act.

NEW SECTION. Sec. 13. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena.

Sec. 14. Section 5, chapter 202, Laws of 1973 1st ex. sess. as amended by section 115, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 43-.43.858 are each amended to read as follows:

There is hereby created the organized crime (~~(intelligence)~~) advisory board (~~(of the legislature)~~) of the state of Washington. The board shall consist of (~~(eight)~~) thirteen voting and two nonvoting members.

The lieutenant governor shall appoint four members of the senate judiciary committee to the board (~~(. Two members shall be from the senate ways and means committee. Two members shall be from the senate judiciary committee. The appointments shall include one member of each major political party represented on each committee)~~), no more than two of whom shall be from the same political party.

The governor shall appoint five members to the board. Two members shall be county prosecuting attorneys and shall be appointed from a list of four county prosecutors agreed upon and submitted to the governor by the elected county prosecutors. One member shall be a municipal police chief, and one member shall be a county sheriff, both of whom shall be appointed from a list of three police chiefs and three sheriffs agreed upon and submitted to the governor by the association of sheriffs and police chiefs (RCW 36.28A.010). One member shall be a retired judge of a court of record.

The United States attorneys for the western and eastern districts of Washington shall be requested to serve on the board as nonvoting members and shall not be eligible to serve as chairperson.

The speaker of the house shall appoint four members of the house judiciary committee to the board (~~(. Two members shall be from the house ways and means committee. Two members shall be from the house judiciary committee. The appointments shall include one member of each major political party represented on each committee)~~), no more than two of whom shall be from the same political party.

The members of the board shall be qualified on the basis of knowledge and experience in matters relating to crime prevention and security or with such other abilities as may be expected to contribute to the effective performance of the board's duties. The members of the board shall meet with the chief of the Washington state patrol at least (~~(twice)~~) four times a year to perform the duties enumerated in RCW 43.43.862 and to discuss any other matters related to organized crime. Additional meetings of the board may be convened at the call of the chairperson or by a majority of the members. The board shall elect its own chairperson from among its members. Legislative members shall receive reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 44.04.120 as now existing or hereafter amended, and the other members in accordance with RCW 43.03.050 and 43.03.060, as now existing or hereafter amended.

Sec. 15. Section 6, chapter 202, Laws of 1973 1st ex. sess. and RCW 43.43.860 are each amended to read as follows:

The term of each legislative member shall be two years and shall be conditioned upon such member retaining membership on the committee on which he was serving at the time of appointment and retaining membership

in the same political party of which he was a member at the time of appointment.

The term of each nonlegislative member shall be two years and shall be conditioned upon such member retaining the official position from which he was appointed.

NEW SECTION. Sec. 16. There is added to chapter 43.43 RCW a new section to read as follows:

There shall be a fund known as the organized crime prosecution revolving fund which shall consist of such moneys as may be appropriated by law. The state treasurer shall be custodian of the revolving fund. Disbursements from the revolving fund shall be subject to budget approval given by the organized crime advisory board pursuant to section 9 of this act, and may be made either on authorization of the governor or the governor's designee, or upon request of a majority of the members of the organized crime advisory board. In order to maintain an effective expenditure and revenue control, the organized crime prosecution revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from the fund.

NEW SECTION. Sec. 17. Sections 1 through 13 of this act shall constitute a new chapter in Title 10 RCW.

NEW SECTION. Sec. 18. There is appropriated for the 1979-81 biennium to the organized crime prosecution revolving fund from the general fund, the sum of two hundred fifty thousand dollars to carry out the purposes of this 1980 act.

NEW SECTION. Sec. 19. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 13, 1980.

Passed the Senate March 13, 1980.

Approved by the Governor April 1, 1980.

Filed in Office of Secretary of State April 1, 1980.

CHAPTER 147

[Substitute House Bill No. 1397]

PUBLIC TRANSPORTATION MOTOR VEHICLE AND SPECIAL FUEL USE— SALES AND USE TAX EXEMPTION

AN ACT Relating to excise tax exemptions for fuels; amending section 23, chapter 37, Laws of 1980 and RCW 82.08....; and amending section 56, chapter 37, Laws of 1980 and RCW 82.12....

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