

1 HB526
2 137849-1
3 By Representative Mitchell
4 RFD: Internal Affairs
5 First Read: 14-MAR-12

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8 SYNOPSIS: Existing law does not provide for a
9 comprehensive method for legislative committees to
10 subpoena witnesses and documents.

11 This bill would provide standing committees
12 of the House of Representatives and standing
13 committees of the Senate with the authority to
14 subpoena witnesses to testify before the committees
15 and to subpoena documents as needed to conduct the
16 business of the respective committee.

17 This bill would further provide for
18 enforcement by the circuit court regarding persons
19 failing to properly respond to a legislative
20 subpoena.

21 This bill would provide for payment of
22 certain expenses of witnesses.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to standing legislative committees; to
2 provide the authority to subpoena witnesses and documents; and
3 to provide for enforcement and witness compensation.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. For purposes of this act "committee"
6 means any standing committee of the House of Representatives
7 or of the Senate.

8 Section 2. (a) A committee may issue subpoenas,
9 including subpoenas duces tecum, for the following purposes:

10 (1) To enforce the attendance of witnesses for
11 purposes of testifying concerning pending legislation or other
12 subject matters as may be assigned to the committee by rule or
13 resolution.

14 (2) To enforce the production of records, documents,
15 papers, or other items of evidence necessary to conduct the
16 business of the committee.

17 (b) Any subpoenas issued by a committee may be
18 delivered to the Secretary of the Senate or the Clerk of the
19 House of Representatives, as appropriate, who shall promptly
20 serve or have served the subpoena upon the party named in the
21 subpoena.

22 (c) The Secretary of the Senate and the Clerk of the
23 House of Representatives may appoint any person over the age
24 of 18 years to serve subpoenas on behalf of the secretary or
25 clerk.

26 (d) A subpoena provided for by this act shall be
27 signed by the chair of the committee issuing the subpoena.

1 (e) A subpoena provided for by this act shall be in
2 the usual form of subpoenas issued by courts of record in the
3 state that require the attendance of witnesses or the
4 production of evidence. A subpoena is sufficient if it:

5 (1) States the particular committee before which the
6 proceeding will be conducted.

7 (2) Is addressed to the witness.

8 (3) Requires the attendance of the witness at a time
9 and place certain.

10 Section 3. (a) Any person who, having been served
11 with a subpoena provided for by this act, fails to appear, or
12 who, having appeared, willfully refuses to answer any question
13 propounded by any member of the committee or who willfully
14 refuses to produce any papers, documents, records, or other
15 items of evidence, requested and deemed to be material by the
16 committee, shall be in violation of this act.

17 (b) If a witness summoned by subpoena under this act
18 fails to appear or, having appeared, fails to answer or
19 produce documents as ordered, the chair of the committee shall
20 certify those facts to the Circuit Court of the 15th Judicial
21 Circuit. The circuit court, upon a finding that the person has
22 violated this act, shall impose injunctive action to enforce
23 the requirements of this act and may punish the violator for
24 contempt as provided by law.

25 Section 4. (a) All witnesses subpoenaed to appear
26 under this act, before giving their testimony, shall take an

1 oath or make an affirmation as provided by law for witnesses
2 appearing in a court of law to give testimony.

3 (b) The chair of the committee may administer oaths
4 or affirmations to witnesses appearing before his or her
5 committee. Violation of such oath or affirmation is subject to
6 the perjury laws of this state and to a determination by the
7 circuit court of contempt.

8 Section 5. (a) If a witness refuses to testify on
9 the basis of his or her privilege against self-incrimination
10 and the person presiding over the committee meeting
11 communicates to the witness that the witness is required to
12 testify, the witness may not refuse to testify. However, the
13 witness may not be held criminally liable or held to answer
14 criminally based upon any fact or act directly related to that
15 which he or she is required to testify. No statement made by
16 the witness or paper produced by the witness during such
17 required testimony shall be considered competent evidence in
18 any criminal proceeding against the witness except in the
19 prosecution for perjury or a finding of contempt.

20 (b) A witness may be sworn to testify under penalty
21 of perjury without the immunity provided for in subsection (a)
22 if all of the following conditions are met.

23 (1) The following statement is read or otherwise
24 communicated to the witness:

25 "Alabama law provides that a person subpoenaed to
26 testify before a committee of the Alabama Legislature cannot
27 be held criminally liable or be held to answer criminally

1 based upon any fact or act directly related to that which he
2 or she is required to testify about other than for perjury
3 committed in testifying or a finding of contempt. However,
4 this committee will not require your testimony. The committee
5 does not wish to be placed in a position where it can be
6 claimed that you received immunity from any possible criminal
7 prosecution because of your testimony before this committee.
8 Because you are not being given immunity from criminal
9 prosecution, you have a constitutional right to refuse to
10 testify before this committee. If you desire to waive your
11 right not to testify and testify voluntarily, you will be
12 given the opportunity to testify subject to all of the
13 following conditions:

14 a. "If you do not wish to answer a question, you
15 will so state.

16 b. "In the absence of such a statement, your answer
17 to each question will be entirely voluntary.

18 c. "If you choose to testify, you will be sworn
19 under oath and will be subject to criminal prosecution for
20 perjury committed in testifying.

21 d. "If you choose to testify voluntarily, you are
22 reminded that any self-incriminating statements you make can
23 be used against you in criminal proceedings."

24 (2) After the statement quoted above is communicated
25 to the witness, the witness shall answer the following
26 questions in the affirmative:

1 a. "Do you understand these statements regarding
2 your rights before this committee?"

3 b. "Do you wish to testify voluntarily under the
4 conditions presented?"

5 (c) The consent to testify and subsequent testimony
6 pursuant to subsection (b) constitute a knowing waiver of the
7 privilege of the witness against self-incrimination.

8 Section 6. Any person subpoenaed to appear as a
9 witness before a committee shall be entitled to compensation,
10 including travel pay, as provided by law for witnesses
11 subpoenaed to appear in civil cases in courts of record of
12 this state. Upon requisitions signed by the chair of the
13 committee, these payments shall be paid out of any funds
14 appropriated to the use of the Legislature by means of
15 warrants drawn by the State Comptroller on the State Treasury.

16 Section 7. (a) Nothing in this act shall be
17 construed as inconsistent with any existing authority of the
18 Legislature to exercise, in all proper cases, all other powers
19 as expressly declared in the Constitution of Alabama of 1901.

20 (b) This act shall be read in para materia with
21 other laws and practice which provide for the issuance of
22 subpoenas by committees of the Legislature.

23 Section 8. All laws or parts of laws which conflict
24 with this act are repealed.

25 Section 9. This act shall become effective
26 immediately upon its passage and approval by the Governor, or
27 upon its otherwise becoming a law.

