

1 HB54
2 115295-1
3 By Representative Holmes
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 12/08/2009

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8 SYNOPSIS: Currently, the State Ethics Commission does
9 not possess subpoena power.

10 This bill would grant subpoena power to the
11 commission.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

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17 To amend Sections 36-25-3 and 41-22-12, Code of
18 Alabama 1975, relating to the State Ethics Commission, to
19 grant subpoena power to the commission.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 36-25-3 and 41-22-12, Code of
22 Alabama 1975, is amended to read as follows:

23 "§36-25-3.

24 "(a) There is hereby created a State Ethics
25 Commission composed of five members, each of whom shall be a
26 fair, equitable citizen of this state and of high moral
27 character and ability. The following persons shall not be

1 eligible to be appointed as members: (1) a public official;
2 (2) a candidate; (3) a registered lobbyist and his or her
3 principal; or (4) a former employee of the commission. For
4 purposes of this section, a public official shall not be
5 deemed to include a part-time municipal judge and a registered
6 lobbyist shall not be deemed to include a person whose
7 lobbying activities are limited to providing public testimony
8 to a legislative body or regulatory body or committee thereof.
9 No member of the commission shall be eligible for
10 reappointment to succeed himself or herself. The members of
11 the commission shall be appointed by the following officers:
12 the Governor, the Lieutenant Governor, or in the absence of a
13 Lieutenant Governor, the Presiding Officer of the Senate, and
14 the Speaker of the House of Representatives and shall assume
15 their duties upon confirmation by the Senate. The members of
16 the first commission shall be appointed for terms of office
17 expiring one, two, three, four, and five years, respectively,
18 from September 1, 1975. Successors to the members of the first
19 commission shall serve for a term of five years beginning
20 service on September 1 of the year appointed and serving until
21 their successors are appointed and confirmed. If at any time
22 there should be a vacancy on the commission, a successor
23 member to serve for the unexpired term applicable to such
24 vacancy shall be appointed by the Governor. The commission
25 shall elect one member to serve as chair of the commission and
26 one member to serve as vice chair. The vice chair shall act as

1 chair in the absence or disability of the chair or in the
2 event of a vacancy in that office.

3 "Beginning with the first vacancy on the Ethics
4 Commission after October 1, 1995, if there is not a Black
5 member serving on the commission, that vacancy shall be filled
6 by a Black appointee. Any vacancy thereafter occurring on the
7 commission, shall also be filled by a Black appointee if there
8 is no Black member serving on the commission at that time.

9 "(b) A vacancy in the commission shall not impair
10 the right of the remaining members to exercise all the powers
11 of the commission, and three members thereof shall constitute
12 a quorum.

13 "(c) The commission shall at the close of each
14 fiscal year, or as soon thereafter as practicable, report to
15 the Legislature and the Governor concerning the actions it has
16 taken, the name, salary, and duties of the director, the names
17 and duties of all individuals in its employ, the money it has
18 disbursed, other relevant matters within its jurisdiction, and
19 such recommendations for legislation as the commission deems
20 appropriate.

21 "(d) Members of the commission shall, while serving
22 on the business of the commission, be entitled to receive
23 compensation at the rate of fifty dollars (\$50) per day, and
24 each member shall be paid his or her travel expenses incurred
25 in the performance of his or her duties as a member of the
26 commission as other state employees and officials are paid
27 when approved by the chair. If for any reason a member of the

1 commission wishes not to claim and accept the compensation or
2 travel expenses, the member shall inform the director, in
3 writing, of the refusal. The member may at any time during his
4 or her term begin accepting compensation or travel expenses;
5 however, the member's refusal for any covered period shall act
6 as an irrevocable waiver for that period.

7 "(e) All members, officers, agents, attorneys, and
8 employees of the commission shall be subject to this chapter.
9 The director, members of the commission, and all employees of
10 the commission shall not engage in direct partisan political
11 activity, including the making of campaign contributions, on
12 the state, county, and local levels. The prohibition shall in
13 no way act to limit or restrict such persons' ability to vote
14 in any election.

15 "(f) The commission shall appoint a full-time
16 director. The director shall serve at the pleasure of the
17 commission and shall appoint such other employees as needed.
18 All such employees, except the director, shall be employed
19 subject to the provisions of the state Merit System law, and
20 their compensation shall be prescribed pursuant to such law.
21 The employment of attorneys shall be subject to subsection
22 (h). The compensation of the director shall be fixed by the
23 commission, payable as the salaries of other state employees.
24 The director shall be responsible for the administrative
25 operations of the commission and shall administer this chapter
26 in accordance with the commission's policies. No regulation
27 shall be implemented by the director until adopted by the

1 commission in accordance with Sections 41-22-1 to 41-22-27,
2 inclusive, the Alabama Administrative Procedure Act.

3 "(g) The director may appoint part-time stenographic
4 reporters or certified court reporters, as needed, to take and
5 transcribe the testimony in any formal or informal hearing or
6 investigation before the commission or before any person
7 authorized by the commission. The reporters shall not be
8 full-time employees of the commission and shall not be subject
9 to the Merit System law and may not participate in the State
10 Retirement System.

11 "(h) The director may, with the approval of the
12 Attorney General, appoint a competent attorney as legal
13 counsel for the commission. The legal counsel shall be of good
14 moral and ethical character, licensed to practice law in this
15 state, and a member in good standing of the Alabama Bar
16 Association. The legal counsel shall be commissioned as an
17 assistant or deputy attorney general and shall, in addition to
18 the powers and duties herein conferred, have the authority and
19 duties of an assistant or deputy attorney general, except,
20 that his or her entire time shall be devoted to the
21 commission. The attorney shall act as an attorney for the
22 commission in actions or proceedings brought by or against the
23 commission pursuant to any provisions of law under the
24 commission's jurisdiction, or in which the commission joins or
25 intervenes as to a matter within the commission's
26 jurisdiction, or as a friend of the court or otherwise,
27 ~~provided however, nothing in this chapter shall be deemed as a~~

1 ~~direct grant of subpoena power to the commission. The~~
2 commission shall have subpoena power. Subpoenas shall be
3 issued only in cases where complaints have been filed that
4 have proceeded beyond the preliminary inquiry stage. In the
5 course of an investigation, the commission may subpoena
6 witnesses and compel their attendance, and may also require
7 the production of books, papers, documents, and other
8 evidence. If any person fails to comply with any subpoena
9 lawfully issued, or if any witness refuses to produce evidence
10 or to testify as to any matter relevant to the investigation,
11 it shall be the duty of any court of competent jurisdiction or
12 the judge thereof, upon the application of the director to
13 compel obedience by attachment proceedings for contempt, as in
14 the case of disobedience of the requirements of a subpoena
15 issued for such court or a refusal to testify therein. A
16 subpoena shall be issued only upon the express written
17 authorization of the director.

18 "(i) The director shall designate in writing the
19 chief investigator, should there be one, and a maximum of six
20 full-time investigators who shall be and are hereby
21 constituted law enforcement officers of the State of Alabama
22 with full and unlimited police power and jurisdiction to
23 enforce the laws of this state pertaining to the operation and
24 administration of the commission and this chapter.
25 Investigators shall meet the requirements of the Alabama Peace
26 Officers' Standards and Training Act, Sections 36-21-40 to
27 36-21-51, inclusive, and shall in all ways and for all

1 purposes be considered law enforcement officers entitled to
2 all benefits provided in Section 36-15-6(f); provided however
3 such investigators shall only exercise their power of arrest
4 as granted under this chapter pursuant to an order issued by a
5 court of competent jurisdiction.

6 "§41-22-12.

7 "(a) In a contested case, all parties shall be
8 afforded an opportunity for hearing after reasonable notice in
9 writing delivered either by personal service as in civil
10 actions or by certified mail, return receipt requested.
11 However, an agency may provide by rule for the delivery of
12 such notice by other means, including, where permitted by
13 existing statute, delivery by first class mail, postage
14 prepaid, to be effective upon the deposit of the notice in the
15 mail. Delivery of the notice referred to in this subsection
16 shall constitute commencement of the contested case
17 proceeding.

18 "(b) The notice shall include:

19 "(1) A statement of the time, place, and nature of
20 the hearing;

21 "(2) A statement of the legal authority and
22 jurisdiction under which the hearing is to be held;

23 "(3) A reference to the particular sections of the
24 statutes and rules involved; and

25 "(4) A short and plain statement of the matters
26 asserted. If the agency or other party is unable to state the
27 matters in detail at the time the notice is served, the

1 initial notice may be limited to a statement of the issues
2 involved. Thereafter, upon application, a more definite and
3 detailed statement shall be furnished.

4 "(c) In a contested case, on motion of a party, the
5 presiding officer conducting the hearing may issue subpoenas,
6 discovery orders related to relevant matters, and protective
7 orders in accordance with the rules of civil procedure. The
8 agency may set a reasonable fee by rule for the issuance of a
9 subpoena to be paid by the moving party. Process issued
10 pursuant to this subsection shall be enforced by a court in
11 the same manner as process issued by the court. ~~This~~
12 ~~subsection shall not apply to proceedings before the State~~
13 ~~Ethics Commission.~~

14 "(d) If a party fails to appear in a contested case
15 proceeding after proper service of notice, the presiding
16 officer may, if no adjournment is granted, proceed with the
17 hearing and make a decision in the absence of the party.

18 "(e) Opportunity shall be afforded all parties to
19 respond and present evidence and argument on all material
20 issues involved and to be represented by counsel at their own
21 expense. Provided, where the statutory determinative process
22 is a multi-level or multi-step procedure, the opportunity to
23 present evidence need be afforded the parties at only one
24 level or step in the determination process, unless otherwise
25 provided by statute establishing such determination process.

26 "(f) Unless precluded by statute, informal
27 dispositions may be made of any contested case by stipulation,

1 agreed settlement, consent order, or default or by another
2 method agreed upon by the parties in writing.

3 "(g) The record in a contested case shall include:

4 "(1) All pleadings, motions, and intermediate
5 rulings;

6 "(2) All evidence received or considered and all
7 other submissions; provided, in the event that evidence in any
8 proceeding may contain proprietary and confidential
9 information, steps shall be taken to prevent public disclosure
10 of that information;

11 "(3) A statement of all matters officially noticed;

12 "(4) All questions and offers of proof, objections,
13 and rulings thereon;

14 "(5) All proposed findings and exceptions;

15 "(6) Any decision, opinion, or report by the hearing
16 officer at the hearing; and

17 "(7) All staff memoranda or data submitted to the
18 hearing officer or members of the agency in connection with
19 their consideration of the case unless such memoranda or data
20 is protected as confidential or privileged; provided, if such
21 memoranda or data contains information of a proprietary and
22 confidential nature, it shall be protected by the agency from
23 public disclosure.

24 "(h) Oral proceedings shall be open to the public,
25 unless private hearings are otherwise authorized by law. Oral
26 proceedings shall be recorded either by mechanized means or by
27 qualified shorthand reporters. Oral proceedings or any part

1 thereof shall be transcribed at the request of any party with
2 the expense of the transcription charged to the requesting
3 party. The recording or stenographic notes of oral proceedings
4 or the transcription thereof shall be filed with and
5 maintained by the agency for at least five years from the date
6 of decision and shall be made available for inspection by the
7 public, except in those cases where private hearings are
8 authorized by law, or where the proceedings shall be ordered
9 sealed by order of court, or are required to be sealed by
10 statute.

11 "(i) Findings of fact shall be based solely on the
12 evidence in the record and on matters officially noticed in
13 the record."

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.