

1 HB55  
2 114511-1  
3 By Representatives Ward, Galliher and Hill  
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.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT

16  
17 To amend Section 36-25-3, Code of Alabama 1975,  
18 relating to the State Ethics Commission, to grant subpoena  
19 power to the commission.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 36-25-3, Code of Alabama 1975, is  
22 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.

5 "(i) The director shall designate in writing the  
6 chief investigator, should there be one, and a maximum of six  
7 full-time investigators who shall be and are hereby  
8 constituted law enforcement officers of the State of Alabama  
9 with full and unlimited police power and jurisdiction to  
10 enforce the laws of this state pertaining to the operation and  
11 administration of the commission and this chapter.

12 Investigators shall meet the requirements of the Alabama Peace  
13 Officers' Standards and Training Act, Sections 36-21-40 to  
14 36-21-51, inclusive, and shall in all ways and for all  
15 purposes be considered law enforcement officers entitled to  
16 all benefits provided in Section 36-15-6(f); provided however  
17 such investigators shall only exercise their power of arrest  
18 as granted under this chapter pursuant to an order issued by a  
19 court of competent jurisdiction."

20 Section 2. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.