

1 HB590  
2 148819-1  
3 By Representative Williams (D)  
4 RFD: Public Safety and Homeland Security  
5 First Read: 10-APR-13

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8 SYNOPSIS: This bill would authorize an administrative  
9 official of a governmental entity involved in the  
10 administration of a public health, safety, and  
11 general welfare law to seek and obtain from a  
12 judicial officer an administrative warrant in order  
13 to enter upon premises and conduct an inspection  
14 authorized by the law.

15 This bill would provide procedures for the  
16 issuance and execution of the warrant and the use  
17 of evidence discovered during an inspection  
18 conducted under the authority of the warrant.

19 This bill would provide that any person who  
20 willfully obstructs or aids in the obstruction of  
21 an inspection authorized by a warrant issued  
22 pursuant to this act is guilty of a Class C  
23 misdemeanor.

24 Amendment 621 of the Constitution of Alabama  
25 of 1901, now appearing as Section 111.05 of the  
26 Official Recompilation of the Constitution of  
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a  
2 new or increased expenditure of local funds from  
3 becoming effective with regard to a local  
4 governmental entity without enactment by a 2/3 vote  
5 unless: it comes within one of a number of  
6 specified exceptions; it is approved by the  
7 affected entity; or the Legislature appropriates  
8 funds, or provides a local source of revenue, to  
9 the entity for the purpose.

10 The purpose or effect of this bill would be  
11 to require a new or increased expenditure of local  
12 funds within the meaning of the amendment. However,  
13 the bill does not require approval of a local  
14 governmental entity or enactment by a 2/3 vote to  
15 become effective because it comes within one of the  
16 specified exceptions contained in the amendment.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 Relating to public health, safety, and general  
23 welfare laws; to authorize an administrative official of a  
24 governmental entity involved in the administration of a public  
25 health, safety, or general welfare law to seek and obtain from  
26 a judicial officer an administrative warrant in order to enter  
27 upon premises and conduct an inspection authorized by a public

1 welfare law; to provide procedures for the issuance and  
2 execution of the warrant and the use of evidence discovered  
3 during an inspection conducted under the authority of the  
4 warrant; to provide that any person who willfully obstructs or  
5 aids in the obstruction of an inspection authorized by a  
6 warrant issued pursuant to this act is guilty of a Class C  
7 misdemeanor; and in connection therewith would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds within the meaning of Amendment 621  
10 of the Constitution of Alabama of 1901, now appearing as  
11 Section 111.05 of the Official Recompilation of the  
12 Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. For purposes of this act, the following  
15 words, terms, and phrases shall have the following meanings:

16 (1) ADMINISTRATIVE OFFICIAL. An officer or employee  
17 of a governmental entity, including, but not limited to, a  
18 state, county, or municipal code enforcement official, who is  
19 authorized to administer a public welfare law.

20 (2) ADMINISTRATIVE WARRANT. An order in writing in  
21 the name of the state signed by a judicial officer, and  
22 directed to an administrative official commanding him or her  
23 to conduct an inspection that is required or authorized by a  
24 public welfare law.

25 (3) GOVERNMENTAL ENTITY. The State of Alabama, or  
26 any agency, department, or political subdivision of the state

1 that is authorized by a public welfare law to conduct an  
2 inspection.

3 (4) INSPECTION. A search conducted by or on behalf  
4 of a governmental entity and authorized or required by a  
5 public welfare law, including, but not limited to, testing or  
6 collecting of samples.

7 (5) JUDICIAL OFFICER. A magistrate who is authorized  
8 to practice law in the State of Alabama or authorized by law  
9 to issue search warrants within the magistrate's territorial  
10 jurisdiction, a municipal judge, if the inspection is to be  
11 conducted within the corporate limits or police jurisdiction  
12 of the municipality, a district judge within the county, or a  
13 circuit judge within the judge's circuit.

14 (6) OBJECT OF THE INSPECTION. The particular  
15 premises upon which entry is sought, the nature of the  
16 inspection to be conducted while on the premises, and the  
17 purpose of the inspection.

18 (7) PERSON IN CONTROL OF THE PREMISES. An owner,  
19 possessor, or occupant over 18 years of age.

20 (8) PREMISES. The land, building, place, dwelling,  
21 or structure upon which entry is to be made in the execution  
22 of a warrant and upon or within which there is or may be a  
23 reasonable expectation of privacy, including, but not limited  
24 to, the curtilage.

25 (9) PUBLIC WELFARE LAW. A law, ordinance, code,  
26 rule, or regulation of a governmental entity enacted for the  
27 public health, safety, or general welfare, which authorizes or

1 requires the inspection of real or personal property to  
2 determine compliance with the law, ordinance, code, rule, or  
3 regulation. Public welfare laws, include, but are not limited  
4 to, those relating to building, fire, gas, electrical,  
5 plumbing, animal control, minimum housing, property  
6 maintenance, food, air quality, water quality, waterways, use  
7 of water, land use, environmental, health, pollution, safety,  
8 and zoning standards.

9 (10) UNOCCUPIED PREMISES. A building, dwelling, or  
10 structure that is not occupied or otherwise utilized by any  
11 person with a legal right to hold possession or exercise  
12 dominion or control over the premises such that a reasonable  
13 person would believe that the premises have not been or cannot  
14 be lawfully occupied or utilized for an extended period of  
15 time, including, but not limited to, premises that are vacant,  
16 abandoned, or condemned as unfit for occupancy.

17 Section 2. (a) Whenever it shall be constitutionally  
18 or otherwise required by law, or whenever the administrative  
19 official in his or her discretion deems it advisable, an  
20 administrative official may seek the issuance of an  
21 administrative warrant from a judicial officer for the purpose  
22 of conducting an inspection that the administrative official  
23 is authorized to conduct. The judicial officer is authorized  
24 to issue an administrative warrant authorizing the  
25 administrative official to conduct an inspection upon  
26 satisfying the probable cause standard applicable to

1 administrative search warrants, unless some other provision of  
2 state or federal law makes another standard applicable.

3 (b) Cause to issue an administrative warrant shall  
4 be deemed to exist under any of the following circumstances:

5 (1) Reasonable legislative or administrative  
6 standards for conducting a routine or area inspection are  
7 satisfied with respect to the particular premises or thing  
8 located therein.

9 (2) There is reason to believe that a condition of  
10 nonconformity exists with respect to the particular premises  
11 or thing located therein.

12 (3) The inspection is being conducted pursuant to an  
13 administrative plan containing specific neutral criteria.

14 (4) Any other showing consistent with constitutional  
15 standards for probable cause in administrative inspections.

16 (c) Nothing in this act shall be construed to  
17 require issuance of an administrative warrant where a warrant  
18 is not constitutionally required or to exclude any other  
19 lawful means of inspection, whether without a warrant or  
20 pursuant to a search warrant issued under any other provision  
21 of the Code of Alabama 1975.

22 Section 3. (a) An administrative warrant shall be  
23 supported by an affidavit signed by the affiant under oath or  
24 affirmation, stating the authority to conduct the inspection  
25 and describing the object of the inspection with reasonable  
26 particularity. If testing or sampling is requested, the  
27 affidavit shall describe the time and manner of the testing or

1 sampling. The affidavit shall contain either a statement that  
2 consent to conduct the inspection has been sought and refused  
3 or the facts or circumstances reasonably justifying the  
4 failure to seek or obtain the consent.

5 (b) Before issuing an administrative warrant, the  
6 judicial officer may examine the affiant, and any other  
7 witness, under oath or affirmation to satisfy himself or  
8 herself of the existence of grounds for granting such  
9 application.

10 (c) If the judicial officer is satisfied that cause  
11 for the inspection exists and the object of the inspection is  
12 consistent with the public welfare law authorizing such  
13 inspection, he or she shall issue the warrant. The warrant  
14 shall directly or indirectly, by attaching the affidavit to  
15 the warrant and incorporating it therein by reference, or  
16 both, set forth the following:

17 (1) The authority to conduct the inspection.

18 (2) The object of the inspection described with  
19 reasonable particularity.

20 (3) Any limitations of the inspection, including any  
21 limitation required by this act.

22 (4) Any specific authorizations relating to the  
23 execution of the warrant, including the authority to conduct  
24 immediate execution without prior notice, conduct the  
25 inspection at times other than the prescribed times, execute  
26 the warrant in the absence of a person in control of the  
27 premises, and execute the warrant by forcible entry.



1 (d) The applicant shall pay the fees for an  
2 administrative warrant, if any, before obtaining the warrant.

3 Section 4. (a) An administrative warrant is  
4 effective for the time period specified in the warrant;  
5 provided, however, for no more than 14 days, except that the  
6 judicial officer who signed and issued the original warrant  
7 may extend or renew the time period if he or she is satisfied  
8 that the extension or renewal is in the public interest. The  
9 administrative warrant shall be executed and returned to the  
10 judicial officer who issued the warrant within the time period  
11 specified in the warrant or within any extended or renewed  
12 time period granted by the judicial officer, or the warrant  
13 shall be void.

14 (b) If prior consent has been sought and refused,  
15 notice that a warrant has been issued shall be given at least  
16 24 hours before the warrant is executed by personal delivery  
17 of the notice to a person in control of the premises or by  
18 posting the notice to the exterior of the premises, unless the  
19 judicial officer finds that immediate execution is reasonably  
20 necessary under the circumstances shown, including, but not  
21 limited to, the prevention of the loss of life or property or  
22 the effectuation of the purpose of the public welfare law  
23 being enforced.

24 Section 5. (a) An inspection authorized under this  
25 act shall not be conducted on any Saturday, Sunday, or legal  
26 holiday of the state, or any day before 8:00 a.m. or after  
27 6:00 p.m., unless specifically authorized by the judicial

1 officer upon a showing that the authority is reasonably  
2 necessary to enforce the public welfare law.

3 (b) Subject to subsection (c), an administrative  
4 warrant shall be executed in the presence of a person in  
5 control of the premises who shall be personally served with a  
6 copy of the warrant, unless the issuing judicial officer  
7 specifically authorizes execution of the warrant in the  
8 absence of a person in control of the premises upon a showing  
9 of any of the following:

10 (1) Reasonable efforts to locate a person in control  
11 of the premises have been made and failed.

12 (2) The authority is reasonably necessary to  
13 effectuate the purpose of the public welfare law being  
14 enforced.

15 (3) The premises are unoccupied premises, provided  
16 that, in the case of subdivision (1) or (2), service of the  
17 warrant shall be made by affixing a copy of it to the  
18 premises.

19 (c) Once the execution of the warrant has been  
20 commenced it may continue from day to day until completed,  
21 with or without the presence of a person in control of the  
22 premises, provided that it shall be completed within the  
23 effective time period of the warrant, the time limitations  
24 pursuant to subsection (a) shall be observed, and the  
25 administrative official shall leave with a person in control  
26 of the premises or affix to the premises a notice of when next  
27 the inspection will continue.

1 (d) The execution of a warrant shall not be made by  
2 means of forcible entry, except that the judicial officer may  
3 expressly authorize a forcible entry where the facts establish  
4 that reasonable attempts to execute a previous warrant have  
5 been unsuccessful or where the facts are sufficient to create  
6 a reasonable suspicion of a violation of a public welfare law,  
7 which would be an immediate threat to public health or safety.

8 (e) If an administrative official collects samples  
9 pursuant to an administrative warrant, he or she shall give a  
10 receipt for the samples collected to the person from whom or  
11 from whose premises the samples were collected, or leave the  
12 receipt at the place from which the samples were collected. A  
13 written inventory of any samples collected shall accompany the  
14 return. The judicial officer shall attach a copy of the  
15 return, inventory, and all other papers in connection  
16 therewith to the warrant.

17 (f) Notwithstanding any law to the contrary, an  
18 administrative official executing an administrative warrant  
19 may be accompanied by other authorized personnel who are  
20 reasonably necessary to aid the administrative official in  
21 carrying out the inspection or in securing peace and safety,  
22 including other administrative officials, law enforcement  
23 officers, and those persons otherwise authorized to assist  
24 with the inspection.

25 (g) No facts discovered or evidence obtained in an  
26 inspection conducted under authority of a warrant issued under  
27 this act shall be used as evidence in any civil, criminal, or

1 administrative action, nor considered in imposing any civil,  
2 criminal, or administrative sanction against any person, nor  
3 as a basis for further seeking to obtain a warrant, if the  
4 warrant is invalid or if what is discovered or obtained is  
5 outside of the scope of the inspection. This exclusion  
6 provision shall not apply if the warrant issued is not  
7 constitutionally required under the circumstances.

8 Section 6. Any person who willfully obstructs or  
9 aids in the obstruction of an inspection authorized by a  
10 warrant issued pursuant to this act is guilty of a Class C  
11 misdemeanor.

12 Section 7. Although this bill would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds, the bill is excluded from further  
15 requirements and application under Amendment 621, now  
16 appearing as Section 111.05 of the Official Recompilation of  
17 the Constitution of Alabama of 1901, as amended, because the  
18 bill defines a new crime or amends the definition of an  
19 existing crime.

20 Section 8. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.