

1 HB179
2 156299-2
3 By Representative Ball
4 RFD: Public Safety and Homeland Security
5 First Read: 14-JAN-14

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8 SYNOPSIS: This bill would authorize the Attorney
9 General or a district attorney to request a court
10 to issue an order requiring a material witness to
11 testify when he or she refuses to give testimony on
12 the basis of the privilege against
13 self-incrimination. The court would be required to
14 order the witness to testify and grant the witness
15 immunity from prosecution of the offenses that are
16 the subject of the trial, any related or lesser
17 included offenses, as well as any other criminal
18 offense that may be directly or indirectly derived
19 from the testimony or information provided, with
20 certain exceptions, such as perjury.

21 This bill would provide that failure to
22 comply with an order to testify is punishable as
23 contempt.

24 This bill would also allow a district
25 attorney or the Attorney General to grant certain
26 immunity to a person who has been called to testify
27 before a grand jury and would provide that a person

1 who fails to testify after a grant of immunity
2 would be held in contempt.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

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

1 To add Sections 12-21-228 and 12-21-229 to
2 Subdivision 1 of Division 2 of Article 2 of Chapter 21 of
3 Title 12, Code of Alabama 1975, relating to witnesses in
4 criminal proceedings, to authorize the Attorney General or a
5 district attorney to request a court to issue an order
6 requiring a material witness to testify when he or she refuses
7 to give testimony on the basis of privilege against
8 self-incrimination; to provide that a witness compelled to
9 testify will be afforded immunity from certain criminal
10 offenses; to provide exceptions; to provide that failure to
11 comply with an order to testify is punishable as contempt; to
12 allow a district attorney or the Attorney General to grant
13 certain immunity to a person who has been called to testify
14 before a grand jury; to provide penalties for the failure to
15 testify before a grand jury after a conferral of immunity; and
16 in connection therewith would have as its purpose or effect
17 the requirement of a new or increased expenditure of local
18 funds within the meaning of Amendment 621 of the Constitution
19 of Alabama of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of Alabama of 1901,
21 as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall be known and may be cited
24 as the Alabama Witness Safe Harbor Act.

25 Section 2. Sections 12-21-228 and 12-21-229 are
26 added to Subdivision 1 of Division 2 of Article 2 of Chapter
27 21 of Title 12, Code of Alabama 1975, to read as follows:

1 §12-21-228.

2 (a) If a material witness, on the basis of his or
3 her privilege against self-incrimination, refuses to testify
4 in any trial or hearing in a court of this state, the Attorney
5 General or district attorney in the circuit in which the
6 proceeding is held may request in writing an order requiring
7 the material witness to give testimony which he or she refuses
8 to give.

9 (b) Upon receipt of a written request under
10 subsection (a), the trial judge shall order the witness to
11 testify and grant the witness immunity from prosecution of the
12 offenses that are the subject of the trial, any related or
13 lesser included offense thereof, or any other criminal offense
14 that may be directly or indirectly derived from the testimony
15 or information provided.

16 (c) If the court grants immunity under subsection
17 (b), the witness may not refuse to comply with the order on
18 the basis of his or her privilege against self-incrimination.
19 No testimony or other information compelled under the order
20 may be used against the witness in any criminal case, except
21 in a prosecution for perjury, giving a false statement, or
22 otherwise failing to comply with the order.

23 (d) A violation of an order under this section shall
24 be punishable as contempt.

25 §12-21-228.

26 (a) A district attorney or the Attorney General, at
27 any time, and in writing, may grant to a person who has been

1 or may be called to testify before a grand jury of this state,
2 transactional immunity or use and derivative use immunity.

3 (b) A person granted transactional immunity under
4 subsection (a) may not be prosecuted for any crime that has
5 been committed for which immunity is granted or for any other
6 transaction arising out of the same incident.

7 (c) A person granted use and derivative use immunity
8 under subsection (a) may be prosecuted for any crime, but the
9 state may not use any testimony against the person provided
10 under a grant of the immunity or any evidence derived from the
11 testimony. Any defendant may file with the court a motion to
12 suppress in writing to prevent the state from using evidence
13 on the grounds that the evidence was derived from and obtained
14 against the defendant as a result of testimony or statements
15 made under the grant of immunity. The motion shall state facts
16 supporting the allegations. Upon a hearing on the motion, the
17 state shall have the burden to prove by clear and convincing
18 evidence that the evidence was obtained independently and from
19 a collateral source.

20 (d) A person granted immunity under subsection (a)
21 may not refuse to testify on the basis of his or her privilege
22 against self-incrimination. No person shall be compelled to
23 testify in any proceeding where the person is a defendant.

24 (e) A person who refuses to testify at a grand jury
25 proceeding after the grant of immunity under subsection (a)
26 shall be held in contempt by the presiding circuit judge of
27 the circuit in which the grand jury is empaneled.

1 Section 3. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 4. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.