

1 HB182
2 116175-1
3 By Representative Gaston
4 RFD: Judiciary
5 First Read: 12-JAN-10

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

This bill would grant subpoena power to the commission.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 36-25-3, as amended by Act No. 2009-225, 2009 Regular Session (Acts 2009, p. 401), Code of Alabama 1975, relating to the State Ethics Commission, to grant subpoena power to the commission.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-25-3, as amended by Act No. 2009-225, 2009 Regular Session (Acts 2009, p. 401), Code of Alabama 1975, is amended to read as follows:

"§36-25-3.

"(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a

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

1 one member to serve as vice chair. The vice chair shall act as
2 chair in the absence or disability of the chair or in the
3 event of a vacancy in that office.

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

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

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

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

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

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

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

1 shall be implemented by the director until adopted by the
2 commission in accordance with Sections 41-22-1 to 41-22-27,
3 inclusive, the Alabama Administrative Procedure Act.

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

12 "(h) The director may, with the approval of the
13 Attorney General, appoint a competent attorney as legal
14 counsel for the commission. The legal counsel shall be of good
15 moral and ethical character, licensed to practice law in this
16 state, and a member in good standing of the Alabama Bar
17 Association. The legal counsel shall be commissioned as an
18 assistant or deputy attorney general and shall, in addition to
19 the powers and duties herein conferred, have the authority and
20 duties of an assistant or deputy attorney general, except,
21 that his or her entire time shall be devoted to the
22 commission. The attorney shall act as an attorney for the
23 commission in actions or proceedings brought by or against the
24 commission pursuant to any provisions of law under the
25 commission's jurisdiction, or in which the commission joins or
26 intervenes as to a matter within the commission's
27 jurisdiction, or as a friend of the court or otherwise.

1 ~~provided however, nothing in this chapter shall be deemed as a~~
2 ~~direct grant of subpoena power to the commission. The~~
3 ~~commission shall have subpoena power. Subpoenas shall be~~
4 ~~issued only in cases where complaints have been filed that~~
5 ~~have proceeded beyond the preliminary inquiry stage. In the~~
6 ~~course of an investigation, the commission may subpoena~~
7 ~~witnesses and compel their attendance, and may also require~~
8 ~~the production of books, papers, documents, and other~~
9 ~~evidence. If any person fails to comply with any subpoena~~
10 ~~lawfully issued, or if any witness refuses to produce evidence~~
11 ~~or to testify as to any matter relevant to the investigation,~~
12 ~~it shall be the duty of any court of competent jurisdiction or~~
13 ~~the judge thereof, upon the application of the director to~~
14 ~~compel obedience by attachment proceedings for contempt, as in~~
15 ~~the case of disobedience of the requirements of a subpoena~~
16 ~~issued for such court or a refusal to testify therein. A~~
17 ~~subpoena shall be issued only upon the express written~~
18 ~~authorization of the director.~~

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

1 36-21-51, inclusive, and shall in all ways and for all
2 purposes be considered law enforcement officers entitled to
3 all benefits provided in Section 36-15-6(f); provided however
4 such investigators shall only exercise their power of arrest
5 as granted under this chapter pursuant to an order issued by a
6 court of competent jurisdiction."

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.