

1 HB240  
2 154242-1  
3 By Representative Mitchell  
4 RFD: Internal Affairs  
5 First Read: 15-JAN-14

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SYNOPSIS: Existing law does not provide for a comprehensive method for legislative committees to subpoena witnesses and documents.

This bill would provide standing committees of the House of Representatives and standing committees of the Senate with the authority to subpoena witnesses to testify before the committee and to subpoena documents as needed to conduct the business of the respective committee.

This bill would further provide for enforcement by the circuit court regarding persons failing to properly respond to a legislative subpoena.

This bill would provide for payment of certain expenses of witnesses.

A BILL  
TO BE ENTITLED  
AN ACT

1           Relating to standing legislative committees; to  
2 provide the authority to subpoena witnesses and documents; and  
3 to provide for enforcement and witness compensation.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5           Section 1. For purposes of this act "committee"  
6 means any standing committee of the House of Representatives  
7 or of the Senate.

8           Section 2. (a) A committee may issue subpoenas,  
9 including subpoenas duces tecum, for the following purposes:

10           (1) To enforce the attendance of witnesses for  
11 purposes of testifying concerning pending legislation or other  
12 subject matters as may be assigned to the committee by rule or  
13 resolution.

14           (2) To enforce the production of records, documents,  
15 papers, or other items of evidence necessary to conduct the  
16 business of the committee.

17           (b) Any subpoenas issued by a committee may be  
18 delivered to the Secretary of the Senate or the Clerk of the  
19 House of Representatives, as appropriate, who shall promptly  
20 serve or have served the subpoena upon the party named in the  
21 subpoena.

22           (c) The Secretary of the Senate and the Clerk of the  
23 House of Representatives may appoint any person over the age  
24 of 18 years to serve subpoenas on behalf of the Secretary or  
25 Clerk.

26           (d) A subpoena provided for by this act shall be  
27 signed by the chair of the committee issuing the subpoena.

1 (e) A subpoena provided for by this act shall be in  
2 the usual form of subpoenas issued by courts of record in the  
3 state that require the attendance of witnesses or the  
4 production of evidence. A subpoena is sufficient if it:

5 (1) States the particular committee before which the  
6 proceeding will be conducted.

7 (2) Is addressed to the witness.

8 (3) Requires the attendance of the witness at a time  
9 and place certain.

10 Section 3. (a) Any person who, having been served  
11 with a subpoena provided for by this act, fails to appear, or  
12 who, having appeared, willfully refuses to answer any question  
13 propounded by any member of the committee or who willfully  
14 refuses to produce any papers, documents, records, or other  
15 items of evidence, requested and deemed to be material by the  
16 committee, shall be in violation of this act.

17 (b) If a witness summoned by subpoena under this act  
18 fails to appear or, having appeared, fails to answer or  
19 produce documents as ordered, the chair of the committee shall  
20 certify those facts to the Circuit Court of the 15th Judicial  
21 Circuit. The circuit court, upon a finding that the person has  
22 violated this act, shall impose injunctive action to enforce  
23 the requirements of this act and may punish the violator for  
24 contempt as provided by law.

25 Section 4. (a) All witnesses subpoenaed to appear  
26 under this act, before giving their testimony, shall take an

1 oath or make an affirmation as provided by law for witnesses  
2 appearing in a court of law to give testimony.

3 (b) The chair of the committee may administer oaths  
4 or affirmations to witnesses appearing before his or her  
5 committee. Violation of such oath or affirmation is subject to  
6 the perjury laws of this state and to a determination by the  
7 circuit court of contempt.

8 Section 5. (a) If a witness refuses to testify on  
9 the basis of his or her privilege against self-incrimination  
10 and the person presiding over the committee meeting  
11 communicates to the witness that the witness is required to  
12 testify, the witness may not refuse to testify. However, the  
13 witness may not be held criminally liable or held to answer  
14 criminally based upon any fact or act directly related to that  
15 which he or she is required to testify. No statement made by  
16 the witness or paper produced by the witness during such  
17 required testimony shall be considered competent evidence in  
18 any criminal proceeding against the witness except in the  
19 prosecution for perjury or a finding of contempt.

20 (b) A witness may be sworn to testify under penalty  
21 of perjury without the immunity provided for in subsection (a)  
22 if all of the following conditions are met.

23 (1) The following statement is read or otherwise  
24 communicated to the witness:

25 "Alabama law provides that a person subpoenaed to  
26 testify before a committee of the Alabama Legislature cannot  
27 be held criminally liable or be held to answer criminally

1 based upon any fact or act directly related to that which he  
2 or she is required to testify about other than for perjury  
3 committed in testifying or a finding of contempt. However,  
4 this committee will not require your testimony. The committee  
5 does not wish to be placed in a position where it can be  
6 claimed that you received immunity from any possible criminal  
7 prosecution because of your testimony before this committee.  
8 Because you are not being given immunity from criminal  
9 prosecution, you have a constitutional right to refuse to  
10 testify before this committee. If you desire to waive your  
11 right not to testify and testify voluntarily, you will be  
12 given the opportunity to testify subject to all of the  
13 following conditions:

14 a. "If you do not wish to answer a question, you  
15 will so state.

16 b. "In the absence of such a statement, your answer  
17 to each question will be entirely voluntary.

18 c. "If you choose to testify, you will be sworn  
19 under oath and will be subject to criminal prosecution for  
20 perjury committed in testifying.

21 d. "If you choose to testify voluntarily, you are  
22 reminded that any self-incriminating statements you make can  
23 be used against you in criminal proceedings."

24 (2) After the statement quoted above is communicated  
25 to the witness, the witness shall answer the following  
26 questions in the affirmative:

1           a. "Do you understand these statements regarding  
2 your rights before this committee?"

3           b. "Do you wish to testify voluntarily under the  
4 conditions presented?"

5           (c) The consent to testify and subsequent testimony  
6 pursuant to subsection (b) constitute a knowing waiver of the  
7 privilege of the witness against self-incrimination.

8           Section 6. Any person subpoenaed to appear as a  
9 witness before a committee shall be entitled to compensation,  
10 including travel pay, as provided by law for witnesses  
11 subpoenaed to appear in civil cases in courts of record of  
12 this state. Upon requisitions signed by the chair of the  
13 committee, these payments shall be paid out of any funds  
14 appropriated to the use of the Legislature by means of  
15 warrants drawn by the State Comptroller on the State Treasury.

16           Section 7. (a) Nothing in this act shall be  
17 construed as inconsistent with any existing authority of the  
18 Legislature to exercise, in all proper cases, all other powers  
19 as expressly declared in the Constitution of Alabama of 1901.

20           (b) This act shall be read in para materia with  
21 other laws and practice which provide for the issuance of  
22 subpoenas by committees of the Legislature.

23           Section 8. All laws or parts of laws which conflict  
24 with this act are repealed.

25           Section 9. This act shall become effective  
26 immediately upon its passage and approval by the Governor, or  
27 upon its otherwise becoming a law.

