

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
 ADOPTED AS AMENDED (Y/N)
 ADOPTED W/O OBJECTION (Y/N)
 FAILED TO ADOPT (Y/N)
 WITHDRAWN (Y/N)
 OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Young offered the following:

Amendment (with title amendment)

Remove lines 191-336 and insert:

6 Section 4. Effective on the same date that HB 1297 or
 7 similar legislation takes effect, if such legislation is adopted
 8 in the same legislative session or an extension thereof and
 9 becomes a law, section 68.0831, Florida Statutes, is created to
 10 read:

68.0831 Subpoena.-

12 (1) As used in this section, the term "department" means
 13 the Department of Legal Affairs.

14 (2) Whenever the department has reason to believe that any
 15 person may be in possession, custody, or control of any
 16 documentary material or may have any information, which
 17 documentary material or information is relevant to a civil
 18 investigation authorized by s. 68.083, the department may,
 19 before the institution of a civil proceeding thereon, issue in
 20 writing and cause to be served upon the person a subpoena

Amendment No. 1

21 requiring the person to:

22 (a) Produce such documentary material for inspection and
23 copying or reproduction;

24 (b) Answer, under oath and in writing, written
25 interrogatories;

26 (c) Give sworn oral testimony concerning the documentary
27 material or information; or

28 (d) Furnish any combination of such material, answers, or
29 testimony.

30 (3) The subpoena shall:

31 (a) Be served upon the person in the manner required for
32 service of process in this state or by certified mail showing
33 receipt by the addressee or by the authorized agent of the
34 addressee.

35 (b) State the nature of the conduct that constitutes the
36 violation of this act and that is alleged to have occurred or to
37 be imminent.

38 (c) Describe the class or classes of documentary material
39 to be produced thereunder with such definiteness and certainty
40 as to permit such materials to be reasonably identified.

41 (d) Prescribe a date and time at which the person must
42 appear to testify, under oath or affirmation, or by which the
43 person must answer written interrogatories or produce the
44 documentary material for inspection or copying; however, such
45 date shall not be earlier than 30 days after the date of service
46 of the subpoena.

47 (e) Specify a place for the taking of testimony or for the
48 submission of answers to interrogatories and identify the person

Amendment No. 1

49 who is to take custody of any documentary material. Inspection
50 and copying of documentary material shall be carried out at the
51 place where the documentary material is located or at such other
52 place as may be thereafter agreed to by the person and such
53 designated custodian. Upon written agreement between the person
54 and the designated custodian, copies may be substituted for
55 original documents.

56 (4) Such subpoena may not require the production of any
57 documentary material, the submission of any answers to written
58 interrogatories, or the giving of any oral testimony if such
59 material, answers, or testimony would be protected from
60 disclosure under:

61 (a) The standards applicable to subpoenas or subpoenas
62 duces tecum issued by a court of this state in aid of a grand
63 jury investigation; or

64 (b) The standards applicable to a discovery request under
65 the Florida Rules of Civil Procedure, to the extent that the
66 application of such standards to any such subpoena is
67 appropriate and consistent with the provisions and purposes of
68 this act.

69 (5) This section does not limit the power of the
70 department to require the appearance of witnesses or production
71 of documents or other tangible evidence located outside the
72 state.

73 (6) Within 30 days after the service of a subpoena upon
74 any person or at any time before the return date specified
75 therein, whichever period is longer, the person served may file,
76 and serve on the department, a petition for an order of the

Amendment No. 1

77 court modifying or setting aside the subpoena. Any such petition
78 shall be filed in the circuit court of the Second Judicial
79 Circuit in and for Leon County. The time allowed for compliance
80 in whole or in part with the subpoena as deemed proper and
81 ordered by the court shall not run while the petition is pending
82 before the court. The petition shall specify each ground upon
83 which the petitioner relies in seeking relief and may be based
84 upon the failure of the subpoena to comply with this section or
85 upon any constitutional or other legal right or privilege of
86 such person.

87 (7) In case of the failure of any person to comply in
88 whole or in part with a subpoena and when such person has not
89 filed a petition under subsection (6), the circuit court of the
90 Second Judicial Circuit in and for Leon County, upon application
91 of the department, may issue an order requiring compliance. The
92 failure to obey the order of the court shall be punishable as a
93 contempt of court.

94 (8) The examination of all witnesses under this section
95 shall be conducted by the department before an officer
96 authorized to administer oaths in this state. The testimony
97 shall be taken stenographically or by a sound-recording device.
98 Any person compelled to appear under a subpoena for oral
99 testimony pursuant to this section may be accompanied,
100 represented, and advised by counsel. Counsel may advise such
101 person, in confidence, either upon the request of such person or
102 upon counsel's own initiative, with respect to any question
103 asked of such person. Such person or counsel may object on the
104 record to any question, in whole or in part, and shall briefly

Amendment No. 1

105 state for the record the reason for any such objection. If such
106 person refuses to answer any question, the person conducting the
107 examination may petition the circuit court as provided by
108 subsection (11).

109 (9) When the testimony is fully transcribed, the person
110 conducting the deposition shall afford the witness, and counsel,
111 if any, a reasonable opportunity to examine the transcript, and
112 the transcript shall be read to or by the witness, unless such
113 examination and reading is waived by the witness. Any changes in
114 form or substance that the witness desires to make shall be
115 entered and identified upon the transcript by the officer or the
116 department, with a statement of the reasons given by the witness
117 for making such changes. The transcript shall then be signed by
118 the witness unless the witness waives the signing in writing, is
119 ill, cannot be found, or refuses to sign. If the transcript is
120 not signed by the witness within 30 days after his or her being
121 afforded a reasonable opportunity to examine it, the person
122 conducting the examination shall sign it and state on the record
123 the fact of the waiver, illness, absence, or refusal to sign,
124 together with the reason, if any, given therefor. Any person
125 required to testify or to submit documentary evidence is
126 entitled, on payment of reasonable costs, to procure a copy of
127 any document produced by such person and of his or her own
128 testimony as stenographically reported or, in the case of a
129 deposition, as reduced to writing by or under the direction of
130 the person taking the deposition.

131 (10) The department shall have the authority to stipulate
132 to protective orders with respect to documents and information

Amendment No. 1

133 submitted in response to a subpoena under this section.

134 (11) The department may request that any natural person
135 who refuses to comply with this section on the ground that the
136 testimony or documents may incriminate him or her be ordered by
137 the circuit court to provide the testimony or the documents.
138 Except in a prosecution for perjury, a natural person who
139 complies with a court order to provide testimony or documents
140 after asserting a privilege against self-incrimination to which
141 he or she is entitled by law may not be subject to a criminal
142 proceeding with respect to the transaction to which he or she is
143 required to testify or produce documents. Any natural person who
144 fails to comply with such a court order to testify or produce
145 documents may be adjudged in contempt and imprisoned until the
146 time the person purges himself or herself of the contempt.

147 (12) While in the possession of the custodian, documentary
148 material, answers to interrogatories, and transcripts of oral
149 testimony shall be available, under such reasonable terms and
150 conditions as the department shall prescribe, for examination by
151 the person who produced such materials or answers or that
152 person's duly authorized representative.

153 (13) This section does not impair the authority of the
154 department to:

155 (a) Institute a civil proceeding under s. 68.083;

156 (b) Invoke the power of a court to compel the production
157 of evidence before a grand jury; or

158 (c) Maintain the confidential and exempt status of the
159 complaint and any other information as provided in s. 68.083(8).

160 (14) (a) A person who knows or has reason to believe that a

Amendment No. 1

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T I T L E A M E N D M E N T

Remove line 11 and insert:

F.S.; defining the term "department"; authorizing the Department
of Legal Affairs to