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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 188 - 333
and insert:

Section 4. Effective on the same date that SB 1496 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law, section 68.0831, Florida Statutes, is created to read:

68.0831 Subpoena.—

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

(2) Whenever the department has reason to believe that any



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

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

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

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

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

29 (3) The subpoena shall:

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

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

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

40 (d) Prescribe a date and time at which the person must
41 appear to testify, under oath or affirmation, or by which the
42 person must answer written interrogatories or produce the



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43 documentary material for inspection or copying; however, such
44 date shall not be earlier than 30 days after the date of service
45 of the subpoena.

46 (e) Specify a place for the taking of testimony or for the
47 submission of answers to interrogatories and identify the person
48 who is to take custody of any documentary material. Inspection
49 and copying of documentary material shall be carried out at the
50 place where the documentary material is located or at such other
51 place as may be thereafter agreed to by the person and such
52 designated custodian. Upon written agreement between the person
53 and the designated custodian, copies may be substituted for
54 original documents.

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

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

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

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

71 (6) Within 30 days after the service of a subpoena upon any



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72 person or at any time before the return date specified therein,
73 whichever period is longer, the person served may file, and
74 serve on the department, a petition for an order of the court
75 modifying or setting aside the subpoena. Any such petition shall
76 be filed in the circuit court of the Second Judicial Circuit in
77 and for Leon County. The time allowed for compliance in whole or
78 in part with the subpoena as deemed proper and ordered by the
79 court shall not run while the petition is pending before the
80 court. The petition shall specify each ground upon which the
81 petitioner relies in seeking relief and may be based upon the
82 failure of the subpoena to comply with this section or upon any
83 constitutional or other legal right or privilege of such person.

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

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



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101 record to any question, in whole or in part, and shall briefly
102 state for the record the reason for any such objection. If such
103 person refuses to answer any question, the person conducting the
104 examination may petition the circuit court as provided by
105 subsection (11).

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

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



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130 submitted in response to a subpoena under this section.

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

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

150 (13) This section does not impair the authority of the
151 department to:

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

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

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

157 (14) (a) A person who knows or has reason to believe that a
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159 ===== T I T L E A M E N D M E N T =====

160 And the title is amended as follows:

161 Delete lines 10 - 35

162 and insert:

163 files an action under the act; creating s. 68.0831,
164 F.S.; defining the term "department"; authorizing the
165 Department of Legal Affairs to issue subpoenas for
166 specified purposes before the institution of civil
167 proceedings; providing requirements for the content
168 and service of subpoenas; providing that such
169 subpoenas may not require specified protected
170 documents or testimony; specifying that the
171 department's power to require the appearance of
172 witnesses or production of documents or other tangible
173 evidence located outside the state is unaffected;
174 providing for petitions to modify or set aside
175 subpoenas; providing for orders to comply with
176 subpoenas; providing for the examination of witnesses;
177 providing for review of transcripts of testimony;
178 authorizing the department to stipulate to protective
179 orders of submitted documents and information;
180 providing for natural persons who decline to testify
181 or produce documents after asserting a privilege
182 against self-incrimination to be ordered to testify or
183 produce documents; providing for contempt to comply
184 with such orders; providing for examination of
185 testimony, answers, or materials by the person who
186 produced such materials or answers; providing
187 applicability; prohibiting a person knowing or having



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reason to believe that a subpoena is pending from
tampering with evidence; providing civil penalties;