

SENATE BILL 384

P5

71r1453
CF HB 85

By: **Senator Frosh**

Introduced and read first time: February 2, 2007

Assigned to: Rules

Re-referred to: Judicial Proceedings, March 2, 2007

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2007

CHAPTER _____

1 AN ACT concerning

2 **General Assembly – Legislative Inquiries and Examinations**

3 FOR the purpose of clarifying that the Legislative Policy Committee may delegate its
4 authority to issue subpoenas, administer oaths, and take other related actions
5 to any committee created by the Legislative Policy Committee; providing certain
6 venue and procedures for certain legislative committees that have the power to
7 issue subpoenas whenever those committees seek to take legal action to obtain
8 compliance with a subpoena or to compel testimony; providing that the
9 provisions of law that establish a code of fair procedures for the operation of a
10 legislative investigating committee do not limit the authority of a committee or
11 subcommittee of the General Assembly to exercise the power to administer
12 oaths or subpoena witnesses and records as otherwise authorized by law;
13 repealing a prohibition on the filming, televising, or broadcasting, in whole or in
14 part, of certain hearings; providing for procedures and venue with respect to the
15 filing of a petition for an order directing compliance with a subpoena or
16 compelling testimony; requiring that papers, books, accounts, documents,
17 testimony, and records sought in accordance with a subpoena issued in
18 accordance with certain provisions of law in connection with a lawfully
19 authorized legislative inquiry or examination be pertinent to the inquiry or
20 examination; providing that the papers, books, accounts, documents, testimony,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 or records are considered pertinent if they meet certain criteria; providing that
 2 the party whose conduct necessitated the filing of the petition has a certain
 3 number of days to respond to the petition; providing that a response by the
 4 party whose conduct necessitated the petition is the ~~party's sole remedy for~~
 5 ~~objecting only pleading that an objecting party may file to object~~ to a subpoena
 6 and prohibiting that party from filing a motion to quash or a petition for an
 7 injunction with respect to the subpoena; requiring proceedings to enforce
 8 compliance with a subpoena issued by a legislative committee to be handled by
 9 the court in a certain manner; prohibiting the introduction of additional
 10 evidence in any hearing in a proceeding on a petition to comply with a subpoena
 11 or to compel testimony; ~~requiring the court, under certain circumstances, to~~
 12 ~~order the party whose conduct necessitated the petition to pay the petitioner~~
 13 ~~reasonable expenses, including attorney's fees; providing for a certain exception;~~
 14 providing that a party to a proceeding to enforce compliance with a subpoena
 15 may appeal the decision of the court only in a certain manner; providing for the
 16 application of this Act; and generally relating to legislative inquiries and
 17 examinations.

18 BY repealing and reenacting, with amendments,

19 Article – State Government

20 Section 2–407, 2–408, 2–507, 2–807, 2–1104, 2–1602, and 2–1609(c)

21 Annotated Code of Maryland

22 (2004 Replacement Volume and 2006 Supplement)

23 BY adding to

24 Article – State Government

25 Section 2–1802 and 2–1803

26 Annotated Code of Maryland

27 (2004 Replacement Volume and 2006 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 29 MARYLAND, That the Laws of Maryland read as follows:

30 **Article – State Government**

31 2–407.

32 (a) The Committee has the following functions:

33 (1) to review the work of the standing committees;

34 (2) to collect information about the government and general welfare of
 35 the State;

1 (3) to study the operation of and recommend changes in the
2 Constitution, statutes, and common law of the State;

3 (4) to study the rules and procedures of the Senate and the House and
4 recommend changes that would improve and expedite the consideration of legislation
5 by the General Assembly;

6 (5) to coordinate and supervise generally the work of the General
7 Assembly when it is not in session;

8 (6) to prepare or endorse a legislative program that includes the bills,
9 resolutions, or other recommendations of the Committee that are to be presented to
10 the General Assembly at its next session; and

11 (7) to carry out its powers and duties under the Maryland Program
12 Evaluation Act.

13 (b) To carry out its functions, the Committee:

14 (1) shall receive, from any source, suggestions for legislation or
15 investigation;

16 (2) may hold a hearing on any matter;

17 (3) may appoint a special committee **AND DELEGATE TO THAT**
18 **COMMITTEE THE AUTHORITY SPECIFIED IN § 2-408 OF THIS SUBTITLE;**

19 (4) may refer a matter for study and report to any of its special
20 committees or any committee of the General Assembly;

21 (5) shall consider the reports of standing, statutory, and special
22 committees;

23 (6) may have any bill or resolution prepared to carry out its
24 recommendations; and

25 (7) when the General Assembly is not in session:

26 (i) may accept a gift or grant of money from a person or public
27 agency for any purpose that relates to the activities of the Legislative Policy
28 Committee or of any other standing, statutory, or special committee; and

1 (ii) may spend the money for that purpose, in accordance with
2 the State budget.

3 2–408.

4 (a) In carrying out any of its functions or powers, the Committee may:

5 (1) issue subpoenas;

6 (2) compel the attendance of witnesses;

7 (3) compel the production of any papers, books, accounts, documents,
8 and testimony;

9 (4) administer oaths; and

10 (5) cause the depositions of witnesses, who reside in or outside of the
11 State, to be taken in the manner provided by law for taking depositions in a civil case.

12 (b) (1) If a person fails to comply with a subpoena issued under this
13 section or fails to testify on any matter on which the person lawfully may be
14 interrogated, on petition of a member of the Committee, a circuit court may pass an
15 order directing compliance with the subpoena or compelling testimony and may
16 enforce the order by proceedings for contempt.

17 (2) **VENUE AND PROCEDURES FOR A PROCEEDING UNDER**
18 **PARAGRAPH (1) OF THIS SUBSECTION TO DIRECT COMPLIANCE WITH A**
19 **SUBPOENA OR COMPEL TESTIMONY ARE AS PROVIDED IN ~~§ 2-1802~~ § 2-1803 OF**
20 **THIS TITLE.**

21 (c) False swearing by a witness before the Committee is perjury.

22 2–507.

23 (a) In carrying out any of its functions or powers, the Committee may:

24 (1) issue subpoenas;

25 (2) compel the attendance of witnesses;

1 (3) compel the production of any papers, books, accounts, documents,
2 and testimony;

3 (4) administer oaths; and

4 (5) cause the depositions of witnesses, who reside in or outside of the
5 State, to be taken in the manner provided by law for taking depositions in a civil case.

6 (b) (1) If a person fails to comply with a subpoena issued under this
7 section or fails to testify on any matter on which the person lawfully may be
8 interrogated, on petition of a member of the Committee, a circuit court may pass an
9 order directing compliance with the subpoena or compelling testimony and may
10 enforce the order by proceedings for contempt.

11 (2) **VENUE AND PROCEDURES FOR A PROCEEDING UNDER**
12 **PARAGRAPH (1) OF THIS SUBSECTION TO DIRECT COMPLIANCE WITH A**
13 **SUBPOENA OR COMPEL TESTIMONY ARE AS PROVIDED IN ~~§ 2-1802~~ § 2-1803 OF**
14 **THIS TITLE.**

15 2-807.

16 (a) In carrying out any of its functions or powers, the Committee may:

17 (1) issue subpoenas;

18 (2) compel the attendance of witnesses;

19 (3) compel the production of any papers, books, accounts, documents,
20 and testimony;

21 (4) administer oaths; and

22 (5) cause the depositions of witnesses, who reside in or outside of the
23 State, to be taken in the manner provided by law for taking depositions in a civil case.

24 (b) (1) If a person fails to comply with a subpoena issued under this
25 section or fails to testify on any matter on which the person lawfully may be
26 interrogated, on petition of a member of the Committee, a circuit court may pass an
27 order directing compliance with the subpoena or compelling testimony and may
28 enforce the order by proceedings for contempt.

1 **(2) VENUE AND PROCEDURES FOR A PROCEEDING UNDER**
2 **PARAGRAPH (1) OF THIS SUBSECTION TO DIRECT COMPLIANCE WITH A**
3 **SUBPOENA OR COMPEL TESTIMONY ARE AS PROVIDED IN ~~§ 2-1802~~ § 2-1803 OF**
4 **THIS TITLE.**

5 2-1104.

6 (a) With the prior approval of the Legislative Policy Committee, a standing
7 committee, in carrying out any of its functions or powers, may:

8 (1) issue subpoenas;

9 (2) compel the attendance of witnesses;

10 (3) compel the production of any papers, books, accounts, documents,
11 and testimony;

12 (4) administer oaths; and

13 (5) cause the depositions of witnesses, who reside in or outside of the
14 State, to be taken in the manner provided by law for taking depositions in a civil case.

15 (b) **(1)** If a person fails to comply with a subpoena issued under this
16 section or fails to testify on any matter on which the person lawfully may be
17 interrogated, on petition of a member of the standing committee, a circuit court may
18 pass an order directing compliance with the subpoena or compelling testimony and
19 may enforce the order by proceedings for contempt.

20 **(2) VENUE AND PROCEDURES FOR A PROCEEDING UNDER**
21 **PARAGRAPH (1) OF THIS SUBSECTION TO DIRECT COMPLIANCE WITH A**
22 **SUBPOENA OR COMPEL TESTIMONY ARE AS PROVIDED IN ~~§ 2-1802~~ § 2-1803 OF**
23 **THIS TITLE.**

24 (c) False swearing by a witness before a standing committee is perjury.

25 2-1602.

26 (a) This subtitle establishes a code of fair procedures for the operation of an
27 investigating committee so that it may hold hearings and otherwise properly carry out
28 its powers and duties fairly, impartially, and consistently with:

1 (1) the constitutional rights of a person who is involved in a
2 proceeding of the investigating committee; and

3 (2) the public good.

4 (b) This subtitle does not limit the acquisition of information or evidence by
5 an investigating committee through a lawful means other than as provided in this
6 subtitle.

7 (c) **THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF A COMMITTEE**
8 **OF THE GENERAL ASSEMBLY OR ANY SUBCOMMITTEE OF A COMMITTEE OF THE**
9 **GENERAL ASSEMBLY TO EXERCISE THE POWER TO ADMINISTER OATHS AND**
10 **SUBPOENA WITNESSES AND RECORDS AS OTHERWISE AUTHORIZED BY LAW.**

11 2-1609.

12 (c) [(1)] A hearing shall be public unless, by a majority vote of all of the
13 members of the investigating committee, the investigating committee determines
14 otherwise.

15 [(2) A hearing may not be filmed, televised, or broadcast, in whole or in
16 part.]

17 **2-1802.**

18 (A) PAPERS, BOOKS, ACCOUNTS, DOCUMENTS, TESTIMONY, AND
19 RECORDS SOUGHT IN ACCORDANCE WITH A SUBPOENA ISSUED UNDER § 2-408, §
20 2-507, § 2-807, § 2-1104, OR § 2-1608 OF THIS TITLE IN CONNECTION WITH A
21 LAWFULLY AUTHORIZED LEGISLATIVE INQUIRY OR EXAMINATION MUST BE
22 PERTINENT TO THE INQUIRY OR EXAMINATION.

23 (B) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, PAPERS,
24 BOOKS, ACCOUNTS, DOCUMENTS, TESTIMONY, OR RECORDS ARE CONSIDERED
25 PERTINENT IF THEY:

26 (1) RELATE TO THE MATTERS UNDER INQUIRY OR EXAMINATION;

27 (2) ASSIST IN ASSESSING THE CREDIBILITY OF A WITNESS;

28 (3) CONTRADICT OR CORROBORATE THE TESTIMONY OF A
29 WITNESS; OR

1 **(4) DEMONSTRATE THE EXISTENCE OF UNDUE INFLUENCE ON A**
2 **WITNESS.**

3 **2-1803.**

4 **(A) THIS SECTION APPLIES TO A PETITION FOR AN ORDER DIRECTING**
5 **COMPLIANCE WITH A SUBPOENA OR COMPELLING TESTIMONY UNDER § 2-408, §**
6 **2-507, § 2-807, OR § 2-1104 OF THIS TITLE.**

7 **(B) THE PETITION SHALL BE FILED IN THE CIRCUIT COURT FOR ANNE**
8 **ARUNDEL COUNTY OR, AT THE ELECTION OF THE PETITIONER, IN ANY COUNTY**
9 **IN WHICH VENUE WOULD BE APPROPRIATE UNDER § 6-201 OF THE COURTS**
10 **ARTICLE.**

11 **(C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE**
12 **PETITION SHALL SET FORTH THE QUESTIONS OR REQUESTS THAT WERE ASKED**
13 **OR MADE OF THE PARTY WHOSE CONDUCT NECESSITATED THE PETITION AND,**
14 **IF ANY, THE ANSWERS OR OBJECTIONS PROVIDED OR RAISED BY THAT PARTY.**

15 **(2) THE PETITIONER MAY SATISFY THE PROVISIONS OF**
16 **PARAGRAPH (1) OF THIS SUBSECTION BY ATTACHING THE RELEVANT PORTIONS**
17 **OF A TRANSCRIPT TO THE PETITION.**

18 **(3) THE PETITIONER NEED NOT COMPLY WITH THE PROVISIONS**
19 **OF PARAGRAPH (1) OF THIS SUBSECTION IF THERE HAS BEEN NO RESPONSE TO**
20 **THE SUBPOENA.**

21 **(D) ANY RESPONSE TO THE PETITION SHALL BE FILED BY THE PARTY**
22 **SERVED WITH THE PETITION WITHIN 15 DAYS AFTER BEING SERVED WITH THE**
23 **PETITION, UNLESS THAT TIME PERIOD IS SHORTENED BY ORDER OF THE COURT.**

24 **(E) (1) A RESPONSE TO A PETITION FILED BY THE PARTY WHOSE**
25 **CONDUCT NECESSITATED THE PETITION IS THE ~~PARTY'S SOLE REMEDY FOR~~**
26 **~~OBJECTING~~ ONLY PLEADING THAT AN OBJECTING PARTY MAY FILE TO OBJECT**
27 **TO A SUBPOENA.**

28 **(2) THE PARTY WHOSE CONDUCT NECESSITATED THE PETITION**
29 **MAY NOT FILE A MOTION TO QUASH OR A PETITION FOR AN INJUNCTION WITH**
30 **RESPECT TO THE SUBPOENA.**

1 (F) (1) EXCEPT FOR CASES THAT THE COURT CONSIDERS TO
2 REQUIRE A HIGHER PRIORITY, A PROCEEDING UNDER THIS SECTION,
3 INCLUDING ANY SUBSEQUENT APPELLATE JUDICIAL REVIEW, SHALL:

4 (I) TAKE PRECEDENCE ON THE COURT'S DOCKET;

5 (II) BE HEARD AT THE EARLIEST PRACTICABLE DATE; AND

6 (III) BE EXPEDITED IN EVERY WAY.

7 (2) IN ANY HEARING ON THE PETITION IN A PROCEEDING UNDER
8 THIS SECTION, THE COURT MAY NOT ALLOW ANY ADDITIONAL EVIDENCE.

9 ~~(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
10 ~~SUBSECTION, THE COURT, AFTER PROVIDING AN OPPORTUNITY FOR A HEARING,~~
11 ~~SHALL REQUIRE THE PARTY WHOSE CONDUCT NECESSITATED THE PETITION TO~~
12 ~~PAY THE PETITIONER THE REASONABLE EXPENSES, INCLUDING ATTORNEY'S~~
13 ~~FEES, INCURRED IN OBTAINING THE COURT ORDER.~~

14 ~~(2) THE PROVISIONS OF PARAGRAPH (1) DO NOT APPLY IF THE~~
15 ~~COURT FINDS THAT THE OPPOSITION TO THE PETITION WAS SUBSTANTIALLY~~
16 ~~JUSTIFIED OR THAT OTHER CIRCUMSTANCES WOULD RENDER AN INJUSTICE IF~~
17 ~~THE COURT REQUIRED THE PAYMENT OF EXPENSES TO THE PETITIONER.~~

18 ~~(H)~~ (G) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PARTY
19 TO A PROCEEDING UNDER THIS SECTION MAY APPEAL THE DECISION OF THE
20 CIRCUIT COURT ONLY BY A PETITION TO THE COURT OF APPEALS FOR THE
21 ISSUANCE OF A WRIT OF CERTIORARI.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed to apply only prospectively and may not be applied or interpreted to have an
24 effect on or application to any cause of action arising before the effective date of this
25 Act.

26 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2007.