

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 85 (Delegate Simmons, *et al.*)
Rules and Executive Nominations

General Assembly - Legislative Inquiries and Examinations

This bill establishes the procedure through which the Legislative Policy Committee (LPC); the Joint Committee on Administrative, Executive, and Legislative Review (AELR); the Joint Committee on the Management of Public Funds; a legislative investigating committee; or any standing committee may file a petition to the circuit court for an order directing compliance with a subpoena or compelling testimony from a witness. The bill outlines the process for responding to such a petition; however, the respondent may not file either a motion to quash or a petition for an injunction regarding the subpoena. Unless the court determines that there are cases requiring a higher priority, the petition must take precedence on the court's docket.

The bill clarifies that LPC may delegate its authority to issue subpoenas, administer oaths, and take related actions to a special committee it created.

Fiscal Summary

State Effect: It is assumed that the number of cases in which the bill applies would be minimal; therefore, any impact on the Attorney General's Office, the courts, or the General Assembly would be absorbable within existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A committee's petition to direct compliance with a subpoena or to compel testimony must be filed in the Anne Arundel County Circuit Court or, at the discretion of the petitioner, in any county where the respondent resides, is employed, habitually engages in a vocation, or carries on a regular business. Unless there was no response to a subpoena, the petition must contain the questions that were asked or requests made of the respondent, and the respondent's answers or objections (if provided). In any hearing on such a petition, the court may not allow additional evidence. Moreover, the court must require the respondent to pay the petitioner reasonable expenses, including attorney's fees, unless the court determines that opposition to the petition was substantially justified or if other circumstances would render an injustice.

A party to a proceeding under the bill may appeal the circuit court's decision only by a petition to the Court of Appeals for the issuance of a writ of certiorari.

An investigating committee's code of fair procedures, as established in statute, does not limit the authority of a committee or one of its subcommittees to administer oaths and subpoena witnesses and records as authorized by law. Furthermore, the bill authorizes an investigating committee's hearings to be filmed, televised, or broadcast.

Current Law: LPC, the AELR committee, the Joint Committee on the Management of Public Funds, and the standing committees (with LPC approval), may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of documents, and take depositions. If a person fails to comply with a subpoena or fails to testify, a member of the committee may petition a circuit court to issue an order directing compliance with the subpoena or compelling testimony. Such an order is enforceable by proceedings for contempt.

Background:

Legislative Policy Committee

LPC consists of 28 members, with the Senate and House equally represented and the presiding officers serving as co-chairmen. Among other duties, LPC reviews the work of the standing committees; studies the operation of and recommends changes in the State's constitution, statutes, and common law; and coordinates and supervises the work of the General Assembly when it is not in session. LPC is authorized to hold a hearing on any matter and appoint a special committee.

Joint Committee on Administrative, Executive, and Legislative Review

Consisting of 20 members of the General Assembly, (10 members of each house), the AELR committee's primary function is to review all regulations proposed by executive units, with committee approval required for the emergency adoption of regulations. The committee also has the authority to examine the performance of officers and employees of any of the three branches of State government to determine compliance with State laws. It may review the operation of executive units and agencies and may make recommendations for improvements.

Joint Committee on the Management of Public Funds

Comprised of eight members (four from each house), the Joint Committee on the Management of Public Funds reviews policies and procedures for the investment and management of all State funds (except retirement funds).

Investigating Committee

An investigating committee includes a standing committee or one of its subcommittees, a joint committee or one of its subcommittees, and LPC or any of its committees or subcommittees. Statute sets forth a general code of fair procedures for the operation of an investigating committee, including its establishment, membership, officers, quorum, voting, scope of powers, and the procedure through which an investigating committee may subpoena witnesses, records, and testimony. Generally, an investigating committee may issue a subpoena if a majority of the committee's members vote to do so. Statute contains both the procedure under which an individual is to be served such a subpoena and the consequences if the individual does not comply with it.

Special Committee on State Employee Rights and Protections

The Special Committee on State Employee Rights and Protections, a committee created by an LPC resolution during the 2005 interim, examined numerous matters regarding the State Personnel Management System and terminations and separations of at-will employees. During the course of the special committee's hearings, it exercised its authority to issue subpoenas requiring individuals to testify before it several times. In three instances, it issued petitions asking the court to compel testimony from individuals who refused to answer certain questions during hearings of the special committee.

State Fiscal Effect: The Attorney General's Office advises that the authority to issue subpoenas is exercised infrequently by the General Assembly. Therefore, since it is assumed that the bill would apply in a limited number of cases, any impact on the

Attorney General's Office, the courts, or the General Assembly should be minimal and absorbable within existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 384 (Senator Frosh) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

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nas/jr

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