

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1432
Judiciary II (Criminal) Committee Substitute Adopted 5/22/07

Short Title: Challenge to Administrative Subpoena. (Public)

Sponsors:

Referred to:

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR A MEANINGFUL CHALLENGE TO AN
3 ADMINISTRATIVE SUBPOENA.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 96-4(h) reads as rewritten:

6 "§ 96-4. Administration.

7 ...

8 (h) Oaths and Witnesses. – In the discharge of the duties imposed by this
9 Chapter, the chairman and any duly authorized representative or member of the
10 Commission shall have power to administer oaths and affirmations, take depositions,
11 certify to official acts, and issue subpoenas to compel the attendance of witnesses and
12 the production of books, papers, correspondence, memoranda, and other records deemed
13 necessary as evidence in connection with a disputed claim or the administration of this
14 Chapter. Upon a motion, the chairman and any duly authorized representative or
15 member of the Commission may quash a subpoena if, after a hearing, the Commission
16 finds any of the following:

17 (1) The subpoena requires the production of evidence that does not relate
18 to a matter in issue.

19 (2) The subpoena fails to describe with sufficient particularity the
20 evidence required to be produced.

21 (3) The subpoena is subject to being quashed for any other reason
22 sufficient in law."

23 SECTION 2. G.S. 96-4 is amended by adding a new subsection to read:

24 "(h1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to
25 quash a subpoena pursuant to subsection (h) of this section shall be heard at least 10
26 days prior to the hearing for which the subpoena was issued. The denial of a motion to
27 quash a subpoena is subject to immediate judicial review in the Superior Court of Wake
28 County or in the superior court of the county where the person subject to the subpoena
29 resides."

1 **SECTION 3.** G.S. 105-290(d) reads as rewritten:

2 "**§ 105-290. Appeals to Property Tax Commission.**

3 ...

4 (d) Witnesses and Documents. – Upon its own motion or upon the request of any
5 party to an appeal, the Property Tax Commission, or any member of the Commission, or
6 any employee of the Department of Revenue so authorized by the Commission shall
7 examine witnesses under oath administered by any member of the Commission or any
8 employee of the Department so authorized by the Commission, and examine the
9 documents of any person if there is ground for believing that information contained in
10 such documents is pertinent to the decision of any appeal pending before the
11 Commission, regardless of whether such person is a party to the proceeding before the
12 Commission. Witnesses and documents examined under the authority of this subsection
13 (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1),
14 below. The travel expenses of any witness subpoenaed and the cost of serving any
15 subpoena shall be borne by the party that requested the subpoena.

16 (1) The Property Tax Commission, a member of the Commission, or any
17 employee of the Department of Revenue authorized by the
18 Commission, is authorized and empowered to subpoena witnesses and
19 to subpoena documents upon a subpoena to be signed by the chairman
20 of the Commission directed to the witness or witnesses or to the person
21 or persons having custody of the documents sought. Subpoenas issued
22 under this subdivision may be served by any officer authorized to
23 serve subpoenas.

24 (2) Any person who shall willfully fail or refuse to appear, to produce
25 subpoenaed documents in response to a subpoena, or to testify as
26 provided in this subsection (d) shall be guilty of a Class 1
27 misdemeanor.

28 (3) Upon a motion, the Property Tax Commission, or a member of the
29 Commission may quash a subpoena if, after a hearing, the Commission
30 finds any of the following:

- 31 a. The subpoena requires the production of evidence that does not
32 relate to a matter in issue.
33 b. The subpoena fails to describe with sufficient particularity the
34 evidence required to be produced.
35 c. The subpoena is subject to being quashed for any other reason
36 sufficient in law."

37 **SECTION 4.** G.S. 105-290 is amended by adding a new subsection to read:

38 "(d1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to
39 quash a subpoena pursuant to subdivision (d)(3) of this section shall be heard at least 10
40 days prior to the hearing for which the subpoena was issued. The denial of a motion to
41 quash a subpoena is subject to immediate judicial review in the Superior Court of Wake
42 County or in the superior court of the county where the person subject to the subpoena
43 resides."

44 **SECTION 5.** This act is effective when it becomes law.