

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	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

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

**Amendment (with title amendment)**

5 Remove lines 189-336 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:

11 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

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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

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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

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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

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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

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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

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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