

Regular Session, 2012

HOUSE BILL NO. 1125

BY REPRESENTATIVE BROADWATER

LEGISLATIVE AFFAIRS: Provides with respect to the issuance of subpoenas directing the testimony of former legislators regarding matters of legislative speech and debate

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 1469(5), Code of Criminal Procedure
3 Article 740, R.S. 13:3667.3(B), and R.S. 49:956.1, relative to the attendance and
4 testimony of legislators in certain court and administrative hearings; to extend the
5 requirement of a preliminary motion and hearing to former legislators where their
6 attendance or testimony is being solicited on matters relating to their former service
7 as lawmakers; to provide for definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Article 1469(5) is hereby amended and reenacted
10 to read as follows:

11 Art. 1469. Motion for order compelling discovery

12 A party, upon reasonable notice to other parties and all persons affected
13 thereby, may apply for an order compelling discovery as follows:

14 * * *

15 (5) An application for an order compelling discovery to a member or former
16 member of the legislature in his capacity as a state lawmaker, or a legislative
17 employee in his official capacity, when the legislature or either body thereof is not
18 a party to the proceeding may be made to the court in which the action is pending,
19 but no order compelling discovery shall issue except in strict conformity with the
20 provisions of R.S. 13:3667.3(C). For purposes of this Article "legislative employee"

1 means the clerk of the House of Representatives, the secretary of the Senate, or an
2 employee of the House of Representatives, the Senate, or the Legislative Bureau.

3 Section 2. Code of Criminal Procedure Article 740 is hereby amended and reenacted
4 to read as follows:

5 Art. 740. Restrictions on subpoenas; members of the legislature and personnel

6 No subpoena or order compelling discovery shall issue to compel the
7 attendance of a member of the Louisiana Legislature, or legislative employee, except
8 in strict conformity with the ~~provisions~~ provision of R.S. 13:3667.1 and ~~3667.3~~ no
9 subpoena or order compelling discovery shall issue to compel the attendance of a
10 member or former member of the Louisiana Legislature, or legislative employee,
11 except in strict conformity with the provision of R.S. 13:3667.3. For purposes of this
12 Article, "legislative employee" means the clerk of the House of Representatives, the
13 secretary of the Senate, and employees of the House of Representatives, the Senate,
14 and the Legislative Bureau.

15 Section 3. R.S. 13:3667.3(B) is hereby amended and reenacted to read as follows:

16 §3667.3. Statewide elected officials, members of the legislature, legislative
17 personnel, appointed heads of state departments, compelled appearance as
18 witness in court or at administrative proceeding, hearing required

19 * * *

20 B. For purposes of this Section:

21 (1) ~~"legislative~~ Legislative employee" means the clerk of the House of
22 Representatives, the secretary of the Senate, or an employee of the House of
23 Representatives, the Senate, or the Legislative Bureau.

24 (2) "Member" means a sitting or former member of the Louisiana
25 Legislature.

26 * * *

1 Section 4. R.S. 49:956.1 is hereby amended and reenacted to read as follows:

2 §956.1. Administrative proceedings; member of the legislature or personnel as
3 witness

4 An application for an order compelling discovery to a member or former
5 member of the legislature in his capacity as a state lawmaker, or a legislative
6 employee in his official capacity, when the legislature or either body thereof is not
7 a party to the proceeding may be made to the agency in which the action is pending,
8 but no order compelling discovery shall issue except in strict conformity with the
9 provisions of R.S. 13:3667.3(D). For the purposes of this Section "legislative
10 employee" shall mean the clerk of the House of Representatives, the secretary of the
11 Senate, or an employee of the House of Representatives, the Senate, or the
12 Legislative Bureau.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Broadwater

HB No. 1125

Abstract: Extends to former legislators the requirement that a hearing be held in advance of a subpoena being issued to compel a former legislator's attendance or testimony relating to his former capacity as a lawmaker.

Present law (R.S. 13:3667.3), in any civil or criminal misdemeanor case, or administrative proceeding in which a legislator is being subpoenaed to testify in his capacity as a state lawmaker or in which a legislative employee is being subpoenaed to testify in his official capacity, requires the requesting party to file a motion and requires the judge (or in the case of administrative proceedings, the agency, presiding officer, or administrative law judge) to conduct a hearing prior to the issuance of a subpoena.

Present law further requires the requesting party to set forth the facts which he seeks to elicit from the legislator or employee, the relevance of those facts to the case, and the basis for the party's belief that the legislator or employee has knowledge of those facts. Additionally, present law requires the party show cause why the testimony is not privileged under the privileges and immunities provision of the state constitution. Present law requires the judge (or in the case of administrative proceedings, the agency, presiding officer, or administrative law judge) to hold a hearing if he finds the motion to be well-founded and a denial would prejudice the requesting party. Present law requires 15-day notice of the hearing to be given to the member or employee, the attorney general, and clerk of the House or secretary of the Senate and requires the notice to contain the same information as required in the motion. Present law provides for supervisory writs for noncompliance.

Proposed law retains present law and extends the hearing requirements and other present law provisions to a former legislator in his former capacity as a lawmaker.

Present law provides rules of discovery in three general areas: civil proceedings (C.C.P. Art. 1469(5)), criminal proceedings (C.Cr.P. Art. 740), and administrative hearings (R.S. 49:956.1).

Proposed law retains present law in each of these three areas and extends the application of these provisions to a former legislator in his former capacity as a lawmaker.

(Amends C.C.P. Art. 1469(5), C.Cr.P. Art. 740, R.S. 13:3667.3(B), and R.S. 49:956.1)