

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 852**

Short Title: Investigative Grand Jury. (Public)

Sponsors: Representatives Blust; Brown, Cleveland, Dockham, Dollar, Gulley, Hilton, Setzer, and West.

Referred to: Judiciary I, if favorable, Appropriations.

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW CONVENING OF AN INVESTIGATIVE GRAND JURY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-622(h) is recodified as G.S. 15A-632(c).

**SECTION 2.** G.S. 15A-623(h) is recodified as G.S. 15A-632(d).

**SECTION 3.** G.S. 15A-632, as recodified by this act, reads as rewritten:

**"§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission or conspiracy of any of the following:

- (1) The misdemeanor or felony offense of obstruction of justice (Common law offense).
- (2) A violation of G.S. 14-7 (Murder) or G.S. 14-18 (Manslaughter).
- (3) A violation of G.S. 14-90 (Embezzlement), G.S. 14-100 (False pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery).
- (4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the distribution of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).
- (5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).
- (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to perjury, bribery of officials and jurors, obstructing justice, and secret listening), G.S. 14-228 (Relating to buying and selling of offices), G.S. 14-230 (Failing to discharge duties), G.S. 14-234 (Conflict of interest), or G.S. 14-234.1 (Misuse of confidential information).

- 1           (7) A violation of G.S. 14-254 (Corporate malfeasance).  
2           (8) A violation of Article 37 of Chapter 14 of the General Statutes  
3           (Relating to lotteries, gaming, bingo, and raffles).  
4           (9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled  
5           substances and continuing criminal enterprises).  
6           (10) A violation of G.S. 136-13 (Malfeasance at Department of  
7           Transportation), G.S. 136-13.1 (Use of position to influence elections  
8           or political action), G.S. 136-13.2 (Falsifying highway inspection  
9           reports), G.S. 136-14 (Profiting from official position at Department of  
10           Transportation; misuse of confidential information by Board  
11           members).  
12           (11) A violation of Article 20, 22, or 22A of Chapter 163 of the General  
13           Statutes (Relating to absentee ballots, corrupt practices and other  
14           offenses against the elective franchise, and regulation of contributions  
15           and expenditures in political campaigns).

16           (b) Appointment of Permanent Three-Judge Panel to Determine Whether to  
17 Convene Investigative Grand Jury. – Beginning July 1, 2005, and every two years  
18 thereafter, the Chief Justice shall appoint a permanent panel of three superior court  
19 judges to determine whether to order an investigative grand jury convened under this  
20 section. The panel of judges shall be appointed to serve for a term of two years. The  
21 Chief Justice shall fill any vacancy that occurs on the panel before the two-year term  
22 ends.

23           (c) Procedure for Determining Whether to Convene Investigative Grand Jury. –  
24 A written petition for convening of an investigative grand jury under this section may be  
25 filed by the district attorney, the district attorney's designated assistant, or a special  
26 prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at  
27 least three members of the North Carolina Conference of District Attorneys, and with  
28 the concurrence of the Attorney General, G.S. 114-11.6 with the Clerk of the North  
29 Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to  
30 determine whether to order the grand jury convened. The petition shall be forwarded to  
31 the Chief Justice who shall refer the petition to the panel of three judges established  
32 under subsection (b) of this section to determine whether to order the grand jury  
33 convened. A grand juryAn investigative grand jury under this section may be convened  
34 if the three-judge panel determines that all of the following:

- 35           (1) The petition alleges the commission of or a conspiracy to commit a  
36 violation of G.S. 90-95(h) or G.S. 90-95.1, any of the offenses listed in  
37 subsection (a) of this section, any part of which violation or conspiracy  
38 occurred in the county where the proposed investigative grand jury  
39 sits, sits or will sit, and that persons named in the petition have  
40 knowledge related to the identity of the perpetrators of those crimes  
41 but will not divulge that knowledge voluntarily or that such persons  
42 request that they be allowed to testify before the grand jury; and  
43 grand jury.

- 1           (2) The affidavit sets forth facts that establish probable cause to believe  
2           that the crimes specified in the petition have been committed and  
3           reasonable grounds to suspect that the persons named in the petition  
4           have knowledge related to the identity of the perpetrators of those  
5           crimes.

6           The affidavit shall be based upon personal knowledge or, if the source of the  
7           information and basis for the belief are stated, upon information and belief. The panel's  
8           order convening the grand jury as an investigative grand jury shall direct the grand jury  
9           to investigate the crimes and persons named in the petition, and shall be filed with the  
10          Clerk of the North Carolina Supreme Court. A grand jury so convened retains all  
11          powers, duties, and responsibilities of a grand jury under this Article. The contents of  
12          the petition and the affidavit shall not be disclosed. ~~Upon receiving a petition under this~~  
13          ~~subsection, the Chief Justice shall appoint a panel to determine whether the grand jury~~  
14          ~~should be convened as an investigative grand jury.~~

15          A grand jury authorized by this ~~subsection~~ section may be convened from an  
16          existing grand jury or grand juries authorized by ~~subsection (b) of this~~  
17          ~~section~~ G.S. 15A-622(b) or may be convened as an additional grand jury to an existing  
18          grand jury or grand juries. Notwithstanding ~~subsection (b) of this section,~~ G.S.  
19          15A-622(b), grand jurors impaneled pursuant to this ~~subsection~~ section shall serve for a  
20          period of 12 months, and, if an additional grand jury is convened, 18 persons shall be  
21          selected to constitute that grand jury. At any time for cause shown, the presiding  
22          superior court judge may excuse a juror temporarily or permanently, and in the latter  
23          event the court may impanel another person in place of the juror excused.

24          (d) Investigative Grand Jury Proceedings and Operations. – ~~If a grand jury an~~  
25          ~~investigative grand jury is convened pursuant to G.S. 15A-622(h), this section,~~  
26          ~~notwithstanding subsection (d) of this section, G.S. 15A-623(d), a prosecutor shall be~~  
27          ~~present to examine witnesses, and a court reporter shall be present and record the~~  
28          ~~examination of witnesses. The record shall be transcribed. If the prosecutor determines~~  
29          ~~that it is necessary to compel testimony from the witness, he the prosecutor may grant~~  
30          ~~use immunity to the witness. The grant of use immunity shall be given to the witness in~~  
31          ~~writing by the prosecutor and shall be signed by the prosecutor. The written grant of use~~  
32          ~~immunity shall also be read into the record by the prosecutor and shall include an~~  
33          ~~explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the~~  
34          ~~right to leave the grand jury room to consult with his the witness's counsel at reasonable~~  
35          ~~intervals and for a reasonable period of time upon the request of the witness.~~  
36          ~~Notwithstanding subsection (e) of this section, G.S. 15A-623(e), the record of the~~  
37          ~~examination of witnesses shall be made available to the examining prosecutor, and he~~  
38          ~~the prosecutor may disclose contents of the record to other investigative or~~  
39          ~~law-enforcement officers, the witness or his the witness's attorney to the extent that the~~  
40          ~~disclosure is appropriate to the proper performance of his the prosecutor's official~~  
41          ~~duties. The record of the examination of a witness may be used in a trial to the extent~~  
42          ~~that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings~~  
43          ~~convened pursuant to this act may be made upon written order of a superior court judge~~  
44          ~~if the judge determines disclosure is essential:~~

- 1           (1) To prosecute a witness who appeared before the grand jury for  
2           contempt or perjury; or  
3           (2) To protect a defendant's constitutional rights or statutory rights to  
4           discovery pursuant to G.S. 15A-903.

5           Upon the convening of the investigative grand jury pursuant to ~~approval by the~~  
6 ~~three-judge panel,~~this section, the district attorney shall subpoena the witnesses. The  
7 subpoena shall be served by the investigative grand jury officer, who shall be appointed  
8 by the court. The name of the person subpoenaed and the issuance and service of the  
9 subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that  
10 information. The presiding superior court judge shall hear any matter concerning the  
11 investigative grand jury in camera to the extent necessary to prevent disclosure of its  
12 existence. The court reporter for the investigative grand jury shall be present and record  
13 and transcribe the in camera proceeding. The transcription of any in camera proceeding  
14 and a copy of all subpoenas and other process shall be returned to the Chief Justice or to  
15 such member of the three-judge panel as the Chief Justice may designate, to be filed  
16 with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be  
17 subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an  
18 investigative grand jury has completed its investigation of the crimes alleged in the  
19 petition, the investigative functions of the grand jury shall be dissolved and such  
20 investigation shall cease. The District Attorney shall file a notice of dissolution of the  
21 investigative functions of the grand jury with the Clerk of the North Carolina Supreme  
22 Court."

23           **SECTION 4.** This act becomes effective January 1, 2008.