

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE DRS55333-MC-111 (3/13)

Short Title: Challenge to Administrative Subpoena. (Public)

Sponsors: Senator Atwater.

Referred to:

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

1 County or in the superior court of the county where the person subject to the subpoena
2 resides."

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

4 **"§ 105-290. Appeals to Property Tax Commission.**

5 ...

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

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

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

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

33 a. The subpoena requires the production of evidence that does not
34 relate to a matter in issue.

35 b. The subpoena fails to describe with sufficient particularity the
36 evidence required to be produced.

37 c. The subpoena is subject to being quashed for any other reason
38 sufficient in law."

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

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

1 County or in the superior court of the county where the person subject to the subpoena
2 resides."

3 **SECTION 5.** G.S. 150B-39(c) reads as rewritten:

4 **"§ 150B-39. Depositions; discovery; subpoenas.**

5 ...

6 (c) In preparation for, or in the conduct of, a contested case subpoenas may be
7 issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency
8 may quash a subpoena if, upon a hearing, the agency finds that the evidence, the
9 production of which is required, does not relate to a matter in issue, the subpoena does
10 not describe with sufficient particularity the evidence the production of which is
11 required, or for any other reason sufficient in law the subpoena may be quashed. A
12 hearing on a motion to quash a subpoena pursuant to this subsection shall be heard at
13 least 10 days prior to the hearing for which the subpoena was issued. The denial of a
14 motion to quash a subpoena is subject to immediate judicial review in the Superior
15 Court of Wake County or in the superior court of the county where the person subject to
16 the subpoena resides. Witness fees shall be paid by the party requesting the subpoena to
17 subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or
18 employees who are subpoenaed shall not be entitled to any witness fees, but they shall
19 receive their normal salary and they shall not be required to take any annual leave for
20 the witness days. Travel expenses of State officials or employees who are subpoenaed
21 shall be reimbursed as provided in G.S. 138-6."

22 **SECTION 6.** This act is effective when it becomes law.