SENATE BILL No. 579

_____

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-6-3.9.

Synopsis: Investigation of election law violations. Authorizes the secretary of state (secretary) to conduct public or private investigations to determine whether a person has violated, is violating, or is about to violate Indiana election law. Gives the secretary certain investigative powers, including the power to issue subpoenas, compel the attendance of witnesses, require the filing of statements, and require the production of records, documents, and other things. Allows the secretary to apply to a circuit or superior court to enforce a subpoena. Allows a witness to apply to a circuit or superior court for relief from testifying or producing records, documents, or other things. Allows the secretary to make a written request to a court for use immunity, and requires the court to grant the secretary's request, for a witness that a court determines may properly refuse to testify or produce records, documents, or other things. Requires the secretary to forward the results of an investigation to the appropriate authorities, if the secretary finds evidence of the violation of election or criminal law. Requires the attorney general, at the secretary's request, to give all necessary assistance to the secretary in the investigation of possible election law violations.

Effective: July 1, 2009.

Young R Michael

January 20, 2009, read first time and referred to Committee on Elections.

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.
  Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.
  Conflict reconciliation: Text in a statute in *this style type* or *~~this style type~~* reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 579

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1   SECTION 1. IC 3-6-3.9 IS ADDED TO THE INDIANA CODE AS
2   A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3   1, 2009]:
4   **Chapter 3.9. Investigation of Violations of Election Law**
5   **Sec. 1. (a) The secretary of state may do either of the following:**
6   **(1) Conduct public or private investigations in Indiana as the**
7   **secretary of state considers necessary or appropriate to**
8   **determine whether a person has violated, is violating, or is**
9   **about to violate:**
10   **(A) this title;**
11   **(B) a rule adopted under this title; or**
12   **(C) an order issued under this title.**
13   **(2) Require or permit a person to:**
14   **(A) testify;**
15   **(B) file a statement; or**
16   **(C) produce a record;**
17   **under oath, or otherwise as the secretary of state determines,**

1   as to the facts and circumstances concerning a matter that
2   may be investigated under this chapter.
3 (b) In conducting an investigation under this chapter, the
4 secretary of state, or the secretary of state's designee, may do any
5 of the following:
6   (1) Administer oaths and affirmations.
7   (2) Issue a subpoena to require a witness to:
8   (A) provide testimony; or
9   (B) produce records, documents, or other things.
10   (3) Seek to compel:
11   (A) the attendance of a witness; or
12   (B) the production of records, documents, or other things.
13   (4) Take evidence.
14   (5) Require the filing of statements and other evidence.
15 (c) If a person does not appear, refuses to testify, refuses to file
16 a statement, refuses to produce records, or otherwise does not obey
17 a subpoena as required under this chapter, the secretary of state
18 may apply to the circuit or superior court of the county in which
19 the investigation is being conducted to enforce compliance with the
20 subpoena. The court may do any of the following:
21   (1) Hold the person in contempt.
22   (2) Order the person to appear before the secretary of state.
23   (3) Order the person to testify about the matter under
24   investigation.
25   (4) Order the production of records, documents, or other
26   things.
27   (5) Grant any other necessary or appropriate relief.
28 (d) This section does not preclude a person from applying to the
29 circuit or superior court in the county where the investigation is
30 being conducted for relief from a request to:
31   (1) testify;
32   (2) file a statement;
33   (3) produce records, documents, or other things; or
34   (4) obey a subpoena.
35 (e) If a witness in an investigation conducted under this chapter
36 refuses to answer a question or produce records, documents, or
37 other things, the secretary of state may file a written petition in the
38 circuit or superior court in the county where the investigation is
39 being conducted requesting a hearing on the refusal. The court
40 shall hold a hearing to determine whether the witness may lawfully
41 refuse to answer the question or produce the record, document, or
42 other thing.

1   **(f) If the court determines that the witness, based upon the**
2   **witness's privilege against self-incrimination, may properly refuse**
3   **to answer a question or produce a record, document, or other**
4   **thing, the secretary of state may make a written request that the**
5   **court grant use immunity to the witness. Upon written request of**
6   **the secretary of state, the court shall grant use immunity to the**
7   **witness. The court shall instruct the witness, by written order or in**
8   **open court, that:**
9   **(1) evidence the witness gives, or evidence derived from that**
10   **evidence, may not be used in any criminal proceedings against**
11   **the witness, unless the evidence:**
12   **(A) is volunteered by the witness; or**
13   **(B) is not responsive to a question; and**
14   **(2) the witness must answer the question asked or produce the**
15   **record, document, or other thing requested.**
16   **(g) A grant of use immunity under subsection (f) does not**
17   **prohibit the use of the evidence that the witness gives in a**
18   **investigation from being used in a prosecution for perjury under**
19   **IC 35-44-2-1. If a witness refuses to give the evidence after the**
20   **witness has been granted use immunity, the court may find the**
21   **witness in contempt.**
22   **(h) A witness who appears before the secretary of state is**
23   **entitled to receive for the witness's attendance fees and mileage**
24   **provided for witnesses in civil cases, which shall be audited and**
25   **paid by the state in the same manner as other expenses of the**
26   **secretary of state are audited and paid upon the presentation of a**
27   **proper voucher sworn to by the witness and approved by the**
28   **secretary of state. However, a witness subpoenaed by a party other**
29   **than the secretary of state is not entitled to a fee or compensation**
30   **from the state.**
31   **Sec. 2. (a) If, after conducting an investigation under section 1**
32   **of this chapter, the secretary of state determines that a person has**
33   **violated, is violating, or is about to violate:**
34   **(1) this title;**
35   **(2) a rule adopted under this title; or**
36   **(3) an order issued under this title;**
37   **the secretary of state shall refer the results of the investigation to**
38   **the appropriate local, state, or federal agency.**
39   **(b) If, after conducting an investigation under section 1 of this**
40   **chapter, the secretary of state determines that there is a basis for**
41   **belief that there may have been a violation of criminal law, the**
42   **secretary of state shall refer the results of the investigation to the**

C

o

p

y

1   **appropriate federal agencies or the appropriate prosecuting**
2   **attorney.**
3   **Sec. 3. At the secretary of state's request, the attorney general**
4   **shall give all necessary assistance to the secretary of state to**
5   **implement this chapter.**

C
o
p
y