

1 HB194
2 115972-1
3 By Representatives Gipson, Mask, Clouse, McClendon, Oden,
4 Greeson, Thomas (E), Wren, Davis, Hammon, McMillan, Vance,
5 Allen, Drake, Canfield, McDaniel, McCutcheon, Ward, Hill and
6 Morrow
7 RFD: Judiciary
8 First Read: 12-JAN-10

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8 SYNOPSIS: This bill would provide that the sheriff is
9 the senior law enforcement officer of the county.

10 This bill would require a federal employee,
11 before conducting an arrest or a search and seizure
12 in this state, to obtain permission from the
13 sheriff of the county in which the arrest or the
14 search and seizure would take place, or the
15 Attorney General if the sheriff refuses permission.
16 This bill would provide exceptions.

17 This bill would require the district
18 attorney to prosecute for kidnapping or theft or
19 any other applicable offense any federal employee
20 who conducts an arrest or a search and seizure
21 without first obtaining permission.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To provide for arrests and searches and seizures by
21 federal employees; to require federal employees to obtain
22 permission of the sheriff of the county or the Attorney
23 General; to provide exceptions; to authorize the prosecution
24 of certain federal employees who do not obtain permission; to
25 reject certain federal laws purporting to give federal
26 employees powers of a sheriff; and in connection therewith
27 would have as its purpose or effect the requirement of a new

1 or increased expenditure of local funds within the meaning of
2 Amendment 621 of the Constitution of Alabama of 1901, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. It is the intent of the Legislature to do
7 all of the following:

8 (1) Ensure maximum cooperation between federal
9 employees and local law enforcement authorities.

10 (2) Ensure that federal employees who carry out
11 arrests, searches, and seizures in this state receive the best
12 local knowledge and expertise available.

13 (3) Prevent misadventure affecting Alabama citizens
14 and their rights that results from lack of cooperation or
15 communication between federal employees operating in Alabama
16 and properly constituted local law enforcement authorities.

17 Section 2. The sheriff of each county is the senior
18 law enforcement officer of that county and is the most
19 authoritative law enforcement official in the county. The
20 primary duties of the sheriff are to keep the peace in the
21 county and to secure and protect the liberties and security of
22 the residents of the county.

23 Section 3. (a) A federal employee who is not
24 designated by state law as an Alabama peace officer may not
25 make an arrest or conduct a search or seizure in this state
26 without the written permission of the sheriff or a designee of
27 the sheriff of the county in which the arrest, search, or

1 seizure will occur unless one or more of the following
2 circumstances exists:

3 (1) The arrest, search, or seizure will take place
4 on a federal enclave for which jurisdiction has been actively
5 ceded to the United States of America by state law.

6 (2) The federal employee witnesses the commission of
7 a crime, the nature of which requires an immediate arrest.

8 (3) The arrest, search, or seizure is made pursuant
9 to federal or state customs or immigration laws.

10 (4) The intended subject of the arrest, search, or
11 seizure is an employee of the office of the sheriff of the
12 county or is an elected county or state officer.

13 (5) The federal employee has probable cause to
14 believe that the subject of the arrest, search, or seizure has
15 close connections with the sheriff, which connections are
16 likely to result in the subject being informed of the
17 impending arrest, search, or seizure.

18 (b) The county sheriff or designee of the sheriff
19 may refuse permission for any reason that the sheriff or
20 designee considers sufficient.

21 (c) A federal employee who desires to exercise an
22 exception pursuant to subdivision (4) of subsection (a) shall
23 obtain the written permission of the Attorney General for the
24 arrest, search, or seizure unless the resulting delay in
25 obtaining the permission would probably cause serious harm to
26 one or more individuals or to a community or would probably
27 cause flight of the subject of the arrest, search, or seizure

1 in order to avoid prosecution. The Attorney General may refuse
2 the permission for any reason that the Attorney General
3 considers sufficient.

4 (d) A federal employee who desires to exercise an
5 exception pursuant to subdivision (5) of subsection (a) shall
6 obtain the written permission of the Attorney General. The
7 request for permission shall include a written statement,
8 under oath, describing probable cause. The Attorney General
9 may refuse the request for any reason that the Attorney
10 General considers sufficient.

11 (e) (1) A request to the county sheriff or Attorney
12 General for permission shall contain the following:

13 a. The name of the subject of the arrest, search, or
14 seizure.

15 b. A clear statement of probable cause for the
16 arrest, search, or seizure or a federal arrest, search, or
17 seizure warrant that contains a clear statement of probable
18 cause.

19 c. A description of specific assets, if any, to be
20 searched for or seized.

21 d. A statement of the date and time that the arrest,
22 search, or seizure is to occur.

23 e. The address or location where the intended
24 arrest, search, or seizure will be attempted.

25 (2) The request may be in letter form, either typed
26 or handwritten, but must be countersigned with the original
27 signature of the sheriff or designee of the sheriff or by the

1 Attorney General to constitute valid permission. The
2 permission is valid for 48 hours after it is signed. The
3 sheriff or Attorney General shall keep a copy of the
4 permission request on file.

5 Section 4. (a) A federal official who conducts an
6 arrest, a search, or a seizure or an attempted arrest, search,
7 or seizure in violation of Section 2 shall be prosecuted by
8 the district attorney of the county for kidnapping if an
9 arrest or attempted arrest occurred, for trespass if a search
10 or attempted search occurred, for theft if a seizure or
11 attempted seizure occurred, and for any applicable homicide
12 offense if loss of life occurred.

13 (b) To the extent possible, any victim of a crime
14 under this act may receive benefits available to other victims
15 of crime in this state including, but not limited to, victims'
16 benefits from the Crime Victims' Compensation Fund.

17 (c) The district attorney shall prosecute once a
18 claim of violation of Section 2 has been made by the sheriff
19 or designee of the sheriff.

20 Section 5. Pursuant to the 10th Amendment to the
21 United States Constitution and this state's compact with other
22 states, the Legislature declares that any federal law
23 purporting to give federal employees the authority of a
24 sheriff in this state is not recognized by and is specifically
25 rejected by this state and is declared to be invalid in this
26 state.

1 Section 6. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.