

1 SB1
2 125175-2
3 By Senators Ward, Holtzclaw, Williams, Allen, Brewbaker,
4 Holley, Blackwell, Reed, Bussman, Dial, Waggoner, McGill, Orr,
5 Pittman, Brooks, Sanford, Marsh, Beason, Glover, Whatley, and
6 Scofield
7 RFD: Constitution, Campaign Finance, Ethics, and Elections
8 First Read: 08-DEC-10

1 SB1

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4 ENROLLED, An Act,

5 Relating to the Alabama Code of Ethics, to amend
6 Sections 36-25-3, 36-25-4 and 36-25-27 of the Code of Alabama
7 1975, to amend the procedures for appointment and confirmation
8 of members of the State Ethics Commission, require at least
9 one member of the State Ethics Commission be a State of
10 Alabama-licensed attorney in good standing, and provide for
11 revised standards and procedures for acting on complaints and
12 authorizing a formal investigation, subpoena power for the
13 commission, new procedures for post-investigation referral and
14 status reports by the Attorney General or district attorney,
15 and to provide further for penalties and violations.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 36-25-3, 36-25-4 and 36-25-27 of
18 the Code of Alabama 1975, are amended to read as follows:

19 "§36-25-3.

20 "(a) There is hereby created a State Ethics
21 Commission composed of five members, each of whom shall be a
22 fair, equitable citizen of this state and of high moral
23 character and ability. The following persons shall not be
24 eligible to be appointed as members: (1) a public official;
25 (2) a candidate; (3) a registered lobbyist and his or her

1 principal; or (4) a former employee of the commission. No
2 member of the commission shall be eligible for reappointment
3 to succeed himself or herself. The members of the commission
4 shall be appointed by the following officers: The Governor,
5 the Lieutenant Governor, or in the absence of a Lieutenant
6 Governor, the Presiding Officer of the Senate, and the Speaker
7 of the House of Representatives. Appointments shall be subject
8 to Senate confirmation and persons appointed shall assume
9 their duties upon confirmation by the Senate. The members of
10 the first commission shall be appointed for terms of office
11 expiring one, two, three, four, and five years, respectively,
12 from September 1, 1975. Successors to the members of the first
13 commission shall serve for a term of five years beginning
14 service on September 1 of the year appointed and serving until
15 their successors are appointed and confirmed. If at any time
16 there should be a vacancy on the commission, a successor
17 member to serve for the unexpired term applicable to such
18 vacancy shall be appointed by the Governor. The commission
19 shall elect one member to serve as chair of the commission and
20 one member to serve as vice chair. The vice chair shall act as
21 chair in the absence or disability of the chair or in the
22 event of a vacancy in that office.

23 "Beginning with the first vacancy on the Ethics
24 Commission after October 1, 1995, if there is not a Black
25 member serving on the commission, that vacancy shall be filled

1 by a Black appointee. Any vacancy thereafter occurring on the
2 commission, shall also be filled by a Black appointee if there
3 is no Black member serving on the commission at that time.

4 "Beginning with the first vacancy on the State
5 Ethics Commission after the effective date of this act, the
6 commission shall always have as a member a State of
7 Alabama-licensed attorney in good standing.

8 "(b) A vacancy in the commission shall not impair
9 the right of the remaining members to exercise all the powers
10 of the commission, and three members thereof shall constitute
11 a quorum.

12 "(c) The commission shall at the close of each
13 fiscal year, or as soon thereafter as practicable, report to
14 the Legislature and the Governor concerning the actions it has
15 taken, the name, salary, and duties of the director, the names
16 and duties of all individuals in its employ, the money it has
17 disbursed, other relevant matters within its jurisdiction, and
18 such recommendations for legislation as the commission deems
19 appropriate.

20 "(d) Members of the commission, while serving on the
21 business of the commission, shall be entitled to receive
22 compensation at the rate of fifty dollars (\$50) per day, and
23 each member shall be paid his or her travel expenses incurred
24 in the performance of his or her duties as a member of the
25 commission as other state employees and officials are paid

1 when approved by the chair. If for any reason a member of the
2 commission wishes not to claim and accept the compensation or
3 travel expenses, the member shall inform the director, in
4 writing, of the refusal. The member may at any time during his
5 or her term begin accepting compensation or travel expenses;
6 however, the member's refusal for any covered period shall act
7 as an irrevocable waiver for that period.

8 "(e) All members, officers, agents, attorneys, and
9 employees of the commission shall be subject to this chapter.
10 The director, members of the commission, and all employees of
11 the commission may not engage in partisan political activity,
12 including the making of campaign contributions, on the state,
13 county, and local levels. The prohibition shall in no way act
14 to limit or restrict such persons' ability to vote in any
15 election.

16 "(f) The commission shall appoint a full-time
17 director. Appointment of the director shall be subject to
18 Senate confirmation, and the person appointed shall assume his
19 or her duties upon confirmation by the Senate. If the Senate
20 fails to vote on an appointee's confirmation before adjourning
21 sine die during the session in which the director is
22 appointed, the appointee is deemed to be confirmed. No
23 appointee whose confirmation is rejected by the Senate may be
24 reappointed. The director shall serve at the pleasure of the
25 commission and shall appoint such other employees as needed.

1 All such employees, except the director, shall be employed
2 subject to the state Merit System law, and their compensation
3 shall be prescribed pursuant to that law. The employment of
4 attorneys shall be subject to subsection (h). The compensation
5 of the director shall be fixed by the commission, payable as
6 the salaries of other state employees. The director shall be
7 responsible for the administrative operations of the
8 commission and shall administer this chapter in accordance
9 with the commission's policies. No rule shall be implemented
10 by the director until adopted by the commission in accordance
11 with Sections 41-22-1 to 41-22-27, inclusive, the Alabama
12 Administrative Procedure Act.

13 "(g) The director may appoint part-time stenographic
14 reporters or certified court reporters, as needed, to take and
15 transcribe the testimony in any formal or informal hearing or
16 investigation before the commission or before any person
17 authorized by the commission. The reporters are not full-time
18 employees of the commission, are not subject to the Merit
19 System law, and may not participate in the State Retirement
20 System.

21 "(h) The director, with the approval of the Attorney
22 General, may appoint a competent attorney as legal counsel for
23 the commission. The legal counsel shall be of good moral and
24 ethical character, licensed to practice law in this state, and
25 a member in good standing of the Alabama Bar Association. The

1 legal counsel shall be commissioned as an assistant or deputy
2 attorney general and, in addition to the powers and duties
3 herein conferred, shall have the authority and duties of an
4 assistant or deputy attorney general, except, that his or her
5 entire time shall be devoted to the commission. The attorney
6 shall act as an attorney for the commission in actions or
7 proceedings brought by or against the commission pursuant to
8 any law under the commission's jurisdiction or in which the
9 commission joins or intervenes as to a matter within the
10 commission's jurisdiction or as a friend of the court or
11 otherwise.

12 "(i) The director shall designate in writing the
13 chief investigator, should there be one, and a maximum of six
14 full-time investigators who shall be and are hereby
15 constituted law enforcement officers of the State of Alabama
16 with full and unlimited police power and jurisdiction to
17 enforce the laws of this state pertaining to the operation and
18 administration of the commission and this chapter.

19 Investigators shall meet the requirements of the Alabama Peace
20 Officers' Standards and Training Act, Sections 36-21-40 to
21 36-21-51, inclusive, and shall in all ways and for all
22 purposes be considered law enforcement officers entitled to
23 all benefits provided in Section 36-15-6(f). Notwithstanding
24 the foregoing, the investigators shall only exercise their

1 power of arrest as granted under this chapter pursuant to an
2 order issued by a court of competent jurisdiction.

3 "§36-25-4.

4 "(a) The commission shall do all of the following:

5 "(1) Prescribe forms for statements required to be
6 filed by this chapter and make the forms available to persons
7 required to file such statements.

8 "(2) Prepare guidelines setting forth recommended
9 uniform methods of reporting for use by persons required to
10 file statements required by this chapter.

11 "(3) Accept and file any written information
12 voluntarily supplied that exceeds the requirements of this
13 chapter.

14 "(4) Develop, where practicable, a filing, coding,
15 and cross-indexing system consistent with the purposes of this
16 chapter.

17 "(5) Make reports and statements filed with the
18 commission available during regular business hours and online
19 via the Internet to public inquiry subject to such regulations
20 as the commission may prescribe.

21 "(6) Preserve reports and statements for a period
22 consistent with the statute of limitations as contained in
23 this chapter. The reports and statements, when no longer
24 required to be retained, shall be disposed of by shredding the
25 reports and statements and disposing of or recycling them, or

1 otherwise disposing of the reports and statements in any other
2 manner prescribed by law. Nothing in this section shall in any
3 manner limit the Department of Archives and History from
4 receiving and retaining any documents pursuant to existing
5 law.

6 "(7) Make investigations with respect to statements
7 filed pursuant to this chapter, and with respect to alleged
8 failures to file, or omissions contained therein, any
9 statement required pursuant to this chapter and, upon
10 complaint by any individual, with respect to alleged violation
11 of any part of this chapter to the extent authorized by law.
12 When in its opinion a thorough audit of any person or any
13 business should be made in order to determine whether this
14 chapter has been violated, the commission shall direct the
15 Examiner of Public Accounts to have an audit made and a report
16 thereof filed with the commission. The Examiner of Public
17 Accounts, upon receipt of the directive, shall comply
18 therewith.

19 "(8) Report suspected violations of law to the
20 appropriate law-enforcement authorities.

21 "(9) Issue and publish advisory opinions on the
22 requirements of this chapter, based on a real or hypothetical
23 set of circumstances. Such advisory opinions shall be adopted
24 by a majority vote of the members of the commission present
25 and shall be effective and deemed valid until expressly

1 overruled or altered by the commission or a court of competent
2 jurisdiction. The written advisory opinions of the commission
3 shall protect the person at whose request the opinion was
4 issued and any other person reasonably relying, in good faith,
5 on the advisory opinion in a materially like circumstance from
6 liability to the state, a county, or a municipal subdivision
7 of the state because of any action performed or action
8 refrained from in reliance of the advisory opinion. Nothing in
9 this section shall be deemed to protect any person relying on
10 the advisory opinion if the reliance is not in good faith, is
11 not reasonable, is not in a materially like circumstance. The
12 commission may impose reasonable charges for publication of
13 the advisory opinions and monies shall be collected,
14 deposited, dispensed, or retained as provided herein. On
15 October 1, 1995, all prior advisory opinions of the commission
16 in conflict with this chapter, shall be ineffective and
17 thereby deemed invalid and otherwise overruled unless there
18 has been any action performed or action refrained from in
19 reliance of a prior advisory opinion.

20 "(10) Initiate and continue, where practicable,
21 programs for the purpose of educating candidates, officials,
22 employees, and citizens of Alabama on matters of ethics in
23 government service.

24 "(11) In accordance with Sections 41-22-1 to
25 41-22-27, inclusive, the Alabama Administrative Procedure Act,

1 prescribe, publish, and enforce rules to carry out this
2 chapter.

3 "(b) Except as necessary to permit the sharing of
4 information and evidence with the Attorney General or a
5 district attorney, a complaint filed pursuant to this chapter,
6 together with any statement, evidence, or information received
7 from the complainant, witnesses, or other persons shall be
8 protected by and subject to the same restrictions relating to
9 secrecy and nondisclosure of information, conversation,
10 knowledge, or evidence of Sections 12-16-214 to 12-16-216,
11 inclusive, except that a violation of this section shall
12 constitute a Class C felony. Such restrictions shall apply to
13 all investigatory activities taken by the director, the
14 commission, or a member thereof, staff, employees, or any
15 person engaged by the commission in response to a complaint
16 filed with the commission and to all proceedings relating
17 thereto before the commission. Such restrictions shall also
18 apply to all information and evidence supplied to the Attorney
19 General or district attorney.

20 "(c) The commission shall not take any investigatory
21 action on a telephonic or written complaint against a
22 respondent so long as the complainant remains anonymous.
23 Investigatory action on a complaint from an identifiable
24 source shall not be initiated until the true identity of the
25 source has been ascertained and written verification of such

1 ascertainment is in the commission's files. The complaint may
2 only be filed by a person who has or persons who have credible
3 and verifiable information supporting the allegations
4 contained in the complaint. A complainant may not file a
5 complaint for another person or persons in order to circumvent
6 this subsection. Prior to commencing any investigation, the
7 commission shall: (1) receive a written and signed complaint
8 which sets forth in detail the specific charges against a
9 respondent, and the factual allegations which support such
10 charges; and (2) the director shall conduct a preliminary
11 inquiry in order to make an initial determination that the
12 complaint, on its face alleges facts which if true, would
13 constitute a violation of this chapter and that reasonable
14 cause exists to conduct an investigation. If the director
15 determines that the complaint does not allege a violation or
16 that reasonable cause does not exist, the charges shall be
17 dismissed, but such action must be reported to the commission.
18 The commission shall be entitled to authorize an investigation
19 upon written consent of four commission members, upon an
20 express finding that probable cause exists that a violation or
21 violations of this chapter have occurred. Upon the
22 commencement of any investigation, the Alabama Rules of
23 Criminal Procedure as applicable to the grand jury process
24 promulgated by the Alabama Supreme Court shall apply and shall
25 remain in effect until the complaint is dismissed or disposed

1 of in some other manner. A complaint may be initiated by a
2 vote of four members of the commission, provided, however,
3 that the commission shall not conduct the hearing, but rather
4 the hearing shall be conducted by three active or retired
5 judges, who shall be appointed by the Chief Justice of the
6 Alabama Supreme Court, at least one of whom shall be Black.
7 The three-judge panel shall conduct the hearing in accordance
8 with the procedures contained in this chapter and in
9 accordance with the rules of the commission. If the
10 three-judge panel unanimously finds that a person covered by
11 this chapter has violated it, the three-judge panel shall
12 forward the case to the district attorney for the jurisdiction
13 in which the alleged acts occurred or to the Attorney General.
14 In all matters that come before the commission concerning a
15 complaint on an individual, the laws of due process shall
16 apply.

17 "(d) Not less than 45 days prior to any hearing
18 before the commission, the respondent shall be given notice
19 that a complaint has been filed against him or her and shall
20 be given a summary of the charges contained therein. Upon the
21 timely request of the respondent, a continuance of the hearing
22 for not less than 30 days shall be granted for good cause
23 shown. The respondent charged in the complaint shall have the
24 right to be represented by retained legal counsel. The

1 commission may not require the respondent to be a witness
2 against himself or herself.

3 "(e) The commission shall provide discovery to the
4 respondent pursuant to the Alabama Rules of Criminal Procedure
5 as promulgated by the Alabama Supreme Court.

6 "(f) (1) All fees, penalties, and fines collected by
7 the commission pursuant to this chapter shall be deposited
8 into the State General Fund.

9 "(2) All monies collected as reasonable payment of
10 costs for copying, reproductions, publications, and lists
11 shall be deemed a refund against disbursement and shall be
12 deposited into the appropriate fund account for the use of the
13 commission.

14 "(g) In the course of an investigation, the
15 commission may subpoena witnesses and compel their attendance
16 and may also require the production of books, papers,
17 documents, and other evidence. If any person fails to comply
18 with any subpoena lawfully issued, or if any witness refuses
19 to produce evidence or to testify as to any matter relevant to
20 the investigation, it shall be the duty of any court of
21 competent jurisdiction or the judge thereof, upon the
22 application of the director, to compel obedience upon penalty
23 for contempt, as in the case of disobedience of a subpoena
24 issued for such court or a refusal to testify therein. A
25 subpoena may be issued only upon the vote of four members of

1 the commission upon the express written request of the
2 director. The subpoena shall be subject to Rules 17.1, 17.2,
3 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The
4 commission upon seeking issuance of the subpoena shall serve a
5 notice to the recipient of the intent to serve such subpoena.
6 Upon the expiration of 10 days from the service of the notice
7 and the proposed subpoena shall be attached to the notice. Any
8 person or entity served with a subpoena may serve an objection
9 to the issuance of the subpoena within 10 days after service
10 of the notice on the grounds set forth under Rule 17.3(c) of
11 the Alabama Rules of Criminal Procedure, and in such event the
12 subpoena shall not issue until an order to dismiss, modify, or
13 issue the subpoena is entered by a state court of proper
14 jurisdiction, the order to be entered within 30 days after
15 making of the objection. Any vote taken by the members of the
16 commission relative to the issuance of a subpoena shall be
17 protected by and subject to the restrictions relating to
18 secrecy and nondisclosure of information, conversation,
19 knowledge, or evidence of Sections 12-16-214 to 12-16-216,
20 inclusive.

21 "(h) After receiving or initiating a complaint, the
22 commission has 180 days to determine whether probable cause
23 exists. At the expiration of 180 days from the date of receipt
24 or commencement of a complaint, if the commission does not
25 find probable cause, the complaint shall be deemed dismissed

1 and cannot be reinstated based on the same facts alleged in
2 the complaint. Upon good cause shown from the general counsel
3 and chief investigator, the director may request from the
4 commission a one-time extension of 180 days. Upon the majority
5 vote of the commission, the staff may be granted a one-time
6 extension of 180 days in which to complete the investigation.
7 If the commission finds probable cause that a person covered
8 by this chapter has violated it, the case and the commission's
9 findings shall be forwarded to the district attorney for the
10 jurisdiction in which the alleged acts occurred or to the
11 Attorney General. The case, along with the commission's
12 findings, shall be referred for appropriate legal action.
13 Nothing in this section shall be deemed to limit the
14 commission's ability to take appropriate legal action when so
15 requested by the district attorney for the appropriate
16 jurisdiction or by the Attorney General.

17 "(i) Within 180 days of receiving a case referred by
18 the commission, the Attorney General or district attorney to
19 whom the case was referred may, upon written request of the
20 commission notify the commission, in writing, stating whether
21 he or she intends to take action against the respondent,
22 including an administrative disposition or settlement, conduct
23 further investigation, or close the case without taking
24 action. If the Attorney General or district attorney decides
25 to pursue the case, he or she may, upon written request of the

1 commission, inform the commission of the final disposition of
2 the case. The written information pursuant to this section
3 shall be maintained by the commission and made available upon
4 request as a public record. The director may request an oral
5 status update from the Attorney General or district attorney
6 from time to time."

7 "§36-25-27.

8 "(a) (1) Except as otherwise provided, any person
9 subject to this chapter who intentionally violates any
10 provision of this chapter other than those for which a
11 separate penalty is provided for in this section shall, upon
12 conviction, be guilty of a Class B felony.

13 "(2) Any person subject to this chapter who violates
14 any provision of this chapter other than those for which a
15 separate penalty is provided for in this section shall, upon
16 conviction, be guilty of a Class A misdemeanor.

17 "(3) Any person subject to this chapter who
18 knowingly violates any disclosure requirement of this chapter
19 shall, upon conviction, be guilty of a Class A misdemeanor.

20 "(4) Any person who knowingly makes or transmits a
21 false report or complaint pursuant to this chapter shall, upon
22 conviction, be guilty of a Class A misdemeanor and shall be
23 liable for the actual legal expenses incurred by the
24 respondent against whom the false report or complaint was
25 filed.

1 "(5) Any person who makes false statements to an
2 employee of the commission or to the commission itself
3 pursuant to this chapter without reason to believe the
4 accuracy of the statements shall, upon conviction, be guilty
5 of a Class A misdemeanor.

6 "(6) Any person subject to this chapter who
7 intentionally violates this chapter relating to secrecy shall,
8 upon conviction, be guilty of a Class C felony.

9 "(7) Any person subject to this chapter who
10 intentionally fails to disclose information required by this
11 chapter shall, upon conviction, be guilty of a Class A
12 misdemeanor.

13 "(b) The commission if petitioned or agreed to by a
14 respondent and the Attorney General or district attorney
15 having jurisdiction, by unanimous vote of the members present
16 may administratively resolve a complaint filed pursuant to
17 this chapter for minor violations. The commission may levy an
18 administrative penalty not to exceed one thousand dollars
19 (\$1,000) for any minor violation of this chapter including,
20 but not limited to, the failure to timely file a complete and
21 correct statement of economic interests. The commission shall,
22 in addition to any administrative penalty, order restitution
23 in the amount of any economic loss to the state, county, and
24 municipal governments and their instrumentalities and such
25 restitution shall when collected be paid by the commission, to

1 the entity having the economic loss. In any case in which an
2 administrative penalty is imposed, the administrative penalty
3 shall not be less than three times the amount of any economic
4 loss to the state, county, and municipal governments or their
5 instrumentalities or any economic gain or benefit to the
6 public official or public employee, or whichever sum is
7 greater. The commission, through its attorney, shall institute
8 proceedings to recover any penalties or restitution or other
9 such funds so ordered pursuant to this section which are not
10 paid by, or on behalf of the public official or public
11 employee or other person who has violated this chapter.
12 Nothing in this section shall be deemed in any manner to
13 prohibit the commission and the respondent from entering into
14 a consent decree settling a complaint which has previously
15 been designated by the commission for administrative
16 resolution, so long as the consent decree is approved by the
17 commission. If the commission, the respondent, and the
18 Attorney General or district attorney having jurisdiction, all
19 concur that a complaint is deemed to be handled
20 administratively, the action shall preclude any criminal
21 prosecution pursuant to this chapter at the state, county, or
22 municipal level.

23 "(c) The enforcement of this chapter shall be vested
24 in the commission; provided however, nothing in this chapter
25 shall be deemed to limit or otherwise prohibit the Attorney

1 General or the district attorney for the appropriate
2 jurisdiction from enforcing any provision of this chapter as
3 they deem appropriate. In the event the commission, by
4 majority vote, finds that any provision of this chapter has
5 been violated, the alleged violation and any investigation
6 conducted by the commission shall be referred to the district
7 attorney of the appropriate jurisdiction or the Attorney
8 General. The commission shall provide any and all appropriate
9 assistance to such district attorney or Attorney General. Upon
10 the request of such district attorney or the Attorney General,
11 the commission may institute, prosecute, or take such other
12 appropriate legal action regarding such violations, proceeding
13 therein with all rights, privileges, and powers conferred by
14 law upon assistant attorneys general.

15 "(d) Nothing in this chapter limits the power of the
16 state to punish any person for any conduct which otherwise
17 constitutes a crime by statute or at common law.

18 "(e) The penalties prescribed in this chapter do not
19 in any manner limit the power of a legislative body to
20 discipline its own members or to impeach public officials and
21 do not limit the powers of agencies, departments, boards, or
22 commissions to discipline their respective officials, members,
23 or employees.

24 "(f) Each circuit court of this state shall have
25 jurisdiction of all cases and actions relative to judicial

1 review, violations, or the enforcement of this chapter, and
2 the venue of any action pursuant to this chapter shall be in
3 the county in which the alleged violation occurred, or in
4 those cases where the violation or violations occurred outside
5 the State of Alabama, in Montgomery County. In the case of
6 judicial review of any administrative decision of the
7 commission, the commission's order, rule, or decision shall be
8 taken as prima facie just and reasonable and the court shall
9 not substitute its judgment for that of the commission as to
10 the weight of the evidence on questions of fact except where
11 otherwise authorized by law.

12 "(g) Any felony prosecution brought pursuant to this
13 chapter shall be commenced within four years after the
14 commission of the offense.

15 "(h) Any misdemeanor prosecution brought pursuant to
16 this chapter shall be commenced within two years after the
17 commission of the offense.

18 "(i) Nothing in this chapter is intended to nor is
19 to be construed as repealing in any way the provisions of any
20 of the criminal laws of this state."

21 Section 2. Notwithstanding any other law,
22 regulation, or rule, no complaints shall be made available to
23 the public or available on the Internet until the disposition
24 of the matter. In no event may a complaint be made public or
25 available on the Internet if the complaint is dismissed or

1 found not to have probable cause. In the matters where the
2 complaint is dismissed or found not to have probable cause,
3 only the disposition of the matter may be made available to
4 the public or available on the Internet. Nothing in this
5 section shall be deemed a direct grant of authority for the
6 commission to publicize or make available on the Internet any
7 complaint or investigation if not permitted by any other law,
8 regulation, or rule.

9 Section 3. This act takes effect January 1, 2011.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB1
Senate 10-DEC-10
I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 15-DEC-10
I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

McDowell Lee
Secretary

House of Representatives
Passed: 15-DEC-10, as amended
House of Representatives
Passed: 15-DEC-2010, as amended by Conference Committee Report.

By: Senator Ward