

1 SB21
2 168229-4
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 03-MAR-15
6 PFD: 02/04/2015

1 SB21

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4 ENROLLED, An Act,

5 Relating to the Open Meetings Act of 2005; to amend
6 Sections 36-25A-1, 36-25A-2, 36-25A-3, and 36-25A-9, Code of
7 Alabama 1975, to define and prohibit serial meetings; to
8 further define deliberation, governmental body, and meeting to
9 apply to the exchange of information or ideas among a quorum
10 of members of a committee, subcommittee, or full governmental
11 body intended to arrive at or influence a decision as to how
12 any members of the governmental body should vote on a specific
13 matter that, at the time of the exchange, the participating
14 members expect to come before the committee, subcommittee, or
15 full governmental body immediately following the discussion or
16 at a later time; to clarify that the Alabama Legislature is
17 solely governed by the Alabama Constitution which establishes
18 that the doors of each house of the Alabama Legislature shall
19 be open to the public except when secrecy is required under
20 the circumstances and that no other provision of this chapter
21 applies to the Alabama Legislature; to provide that private
22 citizens under certain conditions may bring civil actions
23 under the Open Meetings Act; to provide that the prevailing
24 plaintiff shall receive any civil penalties awarded against

1 the defendants; and to set a minimum penalty for a violation
2 of the Open Meetings Act at \$1.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 36-25A-1, 36-25A-2, 36-25A-3,
5 and 36-25A-9, Code of Alabama 1975, are amended to read as
6 follows:

7 "§36-25A-1.

8 "(a) It is the policy of this state that the
9 deliberative process of governmental bodies shall be open to
10 the public during meetings as defined in Section 36-25A-2(6).
11 Except for executive sessions permitted in Section 36-25A-7(a)
12 or as otherwise expressly provided by other federal or state
13 laws or statutes, all meetings of a governmental body shall be
14 open to the public and no meetings of a governmental body may
15 be held without providing notice pursuant to the requirements
16 of Section 36-25A-3. No executive sessions are required by
17 this chapter to be held under any circumstances. ~~Electronic~~
18 Serial meetings or electronic communications shall not be
19 utilized to circumvent any of the provisions of this chapter.

20 "(b) This chapter shall be known and may be cited as
21 the "Alabama Open Meetings Act."

22 "§36-25A-2.

23 "As used in and for determining the applicability of
24 this chapter, the following words shall have the following
25 meanings solely for the purposes of this chapter:

1 "(1) DELIBERATION. An exchange of information or
2 ideas among a quorum of members of a subcommittee, committee,
3 or full governmental body intended to arrive at or influence a
4 decision as to how ~~the~~ any members of the subcommittee,
5 committee, or full governmental body should vote on a specific
6 matter that, at the time of the exchange, the participating
7 members expect to come before the subcommittee, committee, or
8 full body immediately following the discussion or at a later
9 time.

10 "(2) EXECUTIVE SESSION. That portion of a meeting of
11 a subcommittee, committee, or full governmental body from
12 which the public is excluded for one or more of the reasons
13 prescribed in Section 36-25A-7(a).

14 "(3) GENERAL REPUTATION AND CHARACTER.
15 Characteristics or actions of a person directly involving good
16 or bad ethical conduct, moral turpitude, or suspected criminal
17 activity, not including job performance.

18 "(4) GOVERNMENTAL BODY. All boards, bodies, and
19 commissions of the executive and legislative departments of
20 the state or its political subdivisions or municipalities
21 which expend or appropriate public funds; all multimember
22 governing bodies of departments, agencies, institutions, and
23 instrumentalities of the executive and legislative departments
24 of the state or its political subdivisions or municipalities,
25 including, without limitation, all corporations and other

1 instrumentalities whose governing boards are comprised of a
2 majority of members who are appointed or elected by the state
3 or its political subdivisions, counties, or municipalities;
4 ~~and~~ all quasi-judicial bodies of the executive and legislative
5 departments of the state; and all standing, special, or
6 advisory committees or subcommittees of, or appointed by, the
7 body. The term "governmental body" does not include any of the
8 following:

9 "a. Legislative party caucuses or coalitions.

10 "b. Alabama appellate or trial courts, except as
11 required by the constitution of this state or any body
12 governed by rules of the Alabama Supreme Court.

13 "c. Voluntary membership associations comprised of
14 public employees, retirees, counties, municipalities, or their
15 instrumentalities which have not been delegated any
16 legislative or executive functions by the Legislature or
17 Governor.

18 "(5) JOB PERFORMANCE. The observed conduct or
19 actions of a public employee or public official while on the
20 job in furtherance of his or her assigned duties. Job
21 performance includes whether a person is meeting, exceeding,
22 or failing to meet job requirements or whether formal
23 employment actions should be taken by the governmental body.
24 Job performance does not include the general reputation and
25 character of the person being discussed.

1 "(6) MEETING. a. Subject to the limitations herein,
2 the term meeting shall only apply to the following:

3 "1. The prearranged gathering of a quorum of a
4 governmental body or a quorum of a committee or subcommittee
5 of a governmental body at a time and place which is set by law
6 or operation of law.

7 "2. The prearranged gathering of a quorum of a
8 governmental body or a quorum of a committee or subcommittee
9 of a governmental body during which the full governmental
10 body, committee, or subcommittee of the governmental body is
11 authorized, either by law or otherwise, to exercise the powers
12 which it possesses or approve the expenditure of public funds.

13 "3. The gathering, whether or not it was
14 prearranged, of a quorum of a governmental body ~~or a quorum of~~
15 ~~a committee or a subcommittee of a governmental body~~ during
16 which the members of the governmental body deliberate specific
17 matters that, at the time of the exchange, the participating
18 members expect to come before the full governmental body,
19 ~~committee, or subcommittee~~ at a later date.

20 "4. The gathering, whether or not it was
21 prearranged, of a quorum of a committee or subcommittee of a
22 governmental body during which the members of the committee or
23 subcommittee deliberate specific matters relating to the
24 purpose of the committee or subcommittee that, at the time of
25 the exchange, the participating members expect to come before

1 the full governmental body, committee, or subcommittee at a
2 later date.

3 "b. The term "meeting" shall not include:

4 "1. Occasions when a quorum of a governmental body,
5 committee, or subcommittee attends social gatherings,
6 conventions, conferences, training programs, press
7 conferences, media events, association meetings and events or
8 gathers for on-site inspections or meetings with applicants
9 for economic incentives or assistance from the governmental
10 body, or otherwise gathers so long as the subcommittee,
11 committee, or full governmental body does not deliberate
12 specific matters that, at the time of the exchange, the
13 participating members expect to come before the subcommittee,
14 committee, or full governmental body at a later date.

15 "2. Occasions when a quorum of a subcommittee,
16 committee, or full governmental body gathers, in person or by
17 electronic communication, with state or federal officials for
18 the purpose of reporting or obtaining information or seeking
19 support for issues of importance to the subcommittee,
20 committee, or full governmental body.

21 "3. Occasions when a quorum of a subcommittee,
22 committee, or full governmental body, including two members of
23 a full governmental body having only three members, gathers to
24 discuss an economic, industrial, or commercial prospect or
25 incentive that does not include a conclusion as to

1 recommendations, policy, decisions or final action on the
2 terms of a request or an offer of public financial resources.

3 "c. Nothing herein shall restrict or prevent two
4 members of the same full governmental body from talking
5 together without deliberation, including two members of a full
6 governmental body having only three members, and nothing
7 herein shall restrict or prevent a mayor or executive director
8 of a city or municipality who is not a voting member of the
9 city or municipal council from talking or deliberating with a
10 member of the city or municipal council.

11 "(7) OPEN OR PUBLIC PORTION OF A MEETING. The open
12 or public portion of a meeting is that portion which has not
13 been closed for executive session in accordance with this
14 chapter, for which prior notice was given in compliance with
15 this chapter, and which is conducted so that constituents of
16 the governmental body, members of the media, persons
17 interested in the activities of the governmental body, and
18 citizens of this state could, if they desired, attend and
19 observe.

20 "(8) PROFESSIONAL COMPETENCE. The ability of an
21 individual to practice a profession within the profession's
22 acceptable standards of care and responsibility. A profession
23 is a vocation requiring certification by the State of Alabama
24 or passage of a state licensing examination that may only be
25 granted to or taken by persons who have completed at least

1 three years of college-level education and obtained at least a
2 college-level degree.

3 "(9) PUBLIC EMPLOYEE. Any person employed at the
4 state, county, or municipal levels of government or their
5 instrumentalities, including governmental corporations and
6 authorities, who is paid in whole or in part from state,
7 county, or municipal funds. A public employee does not include
8 a person employed on a part-time basis whose employment is
9 limited to providing professional services other than
10 lobbying, the compensation for which constitutes less than 50
11 percent of the part-time employee's income.

12 "(10) PUBLIC FUNDS. Taxes or fees charged or
13 collected by a governmental body or from the sale of public
14 property including, but not limited to, matching funds from
15 the federal government or income derived from the investment
16 of taxes or fees.

17 "(11) PUBLIC OFFICIAL. Any person elected to public
18 office, whether or not that person has taken office, by the
19 vote of the people at state, county, or municipal levels of
20 government or their instrumentalities, including governmental
21 corporations, and any person appointed to a position at the
22 state, county, or municipal levels of government or their
23 instrumentalities, including governmental corporations.

24 "(12) QUORUM. Unless otherwise provided by law, a
25 quorum is a majority of the voting members of a governmental

1 body. Except where a governmental body is prohibited from
2 holding a non-emergency meeting as defined in subdivision
3 (6)a.1. between the date of election of members and the date
4 such members take office, any person elected to serve on a
5 governmental body shall be counted in the determination of
6 whether a quorum of that governmental body is present, except
7 for any meeting as defined in subdivisions (6)a.1. and 2.,
8 beginning on the date of certification of the results of the
9 general election. In the case of appointment to a governmental
10 body, any person shall be counted in the determination of
11 whether a quorum of that governmental body is present, except
12 for any meeting as defined in subdivisions (6)a.1. and 2.,
13 from the date that the appointment is made or issued whether
14 or not the appointment is effective on that date.

15 "(13) SERIAL MEETING. a. The term serial meeting
16 applies to any series of gatherings of two or more members of
17 a governmental body, at which:

18 "1. Less than a quorum is present at each individual
19 gathering and each individual gathering is attended by at
20 least one member who also attends one or more other gatherings
21 in the series.

22 "2. The total number of members attending two or
23 more of the series of gatherings collectively constitutes a
24 quorum.

1 "3. There is no notice or opportunity to attend
2 provided to the public in accordance with the Alabama Open
3 Meetings Act.

4 "4. The members participating in the gatherings
5 deliberate specific matters that, at the time of the exchange,
6 the participating members expect to come before the
7 subcommittee, committee or full governmental body at a later
8 date.

9 "5. The series of gatherings was held for the
10 purpose of circumventing the provisions of this chapter.

11 "6. At least one of the meetings in the series
12 occurs within seven calendar days of a vote on any of the
13 matters deliberated.

14 "b. The term serial meeting does not include:

15 "1. Gatherings, including a gathering of two members
16 of a full governmental body having only three members, at
17 which no deliberations were conducted or the sole purpose was
18 to exchange background and education information with members
19 on specific issues shall not be considered a serial meeting
20 under this chapter.

21 "2. A series of gatherings related to a search to
22 fill a position required to file a statement of economic
23 interests with the Alabama Ethics Commission pursuant to
24 Section 36-25-14 until the search has been narrowed to three
25 or fewer persons under consideration.

1 "3. A gathering or series of gatherings involving
2 only a single member of a governmental body.

3 "4. A series of gatherings by the trustees of an
4 institution of higher education established by the
5 Constitution of Alabama of 1901, as amended, involving a
6 search to fill a position that directs the institution or a
7 department or major divisions thereof, including the position
8 of president, vice president, provost, dean, department head,
9 or athletic coach.

10 "5. A public official who is a member of a
11 non-profit professional association comprised of members of
12 the same profession, when discussing or participating in the
13 formation of the policy or policies of the professional
14 association of which the public official is a member. This
15 exception shall apply to both legislative policies of the
16 professional association and regulatory polices of the
17 professional association of which the public official is a
18 member, and regardless of whether or not a quorum of the
19 members of the governmental body are members of the same
20 professional association."

21 "§36-25A-3.

22 "(a) Unless otherwise specified by law and as
23 provided herein, any governmental body subject to this
24 chapter, except for an advisory board, advisory commission,
25 advisory committee, task force, or other advisory body created

1 solely to make recommendations on public policy issues and
2 composed of persons who do not receive compensation for their
3 service as members of the board, commission, committee, task
4 force, or body from public funds, shall post notice of all
5 meetings, as defined in Section 36-25A-2(6)a.1., at least
6 seven calendar days prior to the meeting as follows:

7 "(1) The Alabama Legislature is solely governed by
8 the Alabama Constitution which establishes that the doors of
9 each house of the Alabama Legislature shall be open to the
10 public unless a vote is taken that secrecy is required under
11 the circumstances. The respective houses of the Alabama
12 Legislature shall develop rules consistent with the
13 Constitution of Alabama of 1901, providing for access to and
14 prior notice of all sessions and standing committee and
15 standing subcommittee meetings and all meetings of permanent
16 and joint legislative committees. Because the Alabama
17 Legislature is solely governed by the Alabama Constitution and
18 sets its own rules to ensure public access as guaranteed by
19 the Constitution, no other provision of this chapter applies
20 to the Alabama Legislature.

21 "(2) Any governmental body with statewide
22 jurisdiction shall submit notice of its meeting to the
23 Secretary of State. The Secretary of State shall post the
24 notice on the Internet for at least seven calendar days prior
25 to the day of the meeting. The Secretary of State shall also

1 send electronic mail notifications to anyone who has
2 registered with the Secretary of State to receive notification
3 of meetings. The Secretary of State may promulgate reasonable
4 rules and regulations necessary for the uniform receipt and
5 posting of notice and of registration for electronic mail
6 notification. The Secretary of State shall provide during
7 regular office hours a computer terminal at a place convenient
8 to the public in the office of the Secretary of State that
9 members of the public may use to view notices of meetings
10 posted by the Secretary of State. Any governmental body with
11 less than statewide jurisdiction may also submit notice to the
12 Secretary of State for posting on the website. Nothing shall
13 prevent a governmental body subject to this subsection from
14 posting notice in any additional manner.

15 "(3) A municipal governmental body shall post notice
16 of each meeting on a bulletin board at a place convenient to
17 the public in the city hall, provided, however, that a
18 corporation a majority of whose governing board is appointed
19 or elected by a municipality and that has a principal office
20 separate from the city hall may, in lieu of posting notice in
21 the city hall, post notice of each meeting on a bulletin board
22 at a place convenient to the public in the principal office of
23 the corporation or other instrumentality.

1 "(4) A local school board shall post notice of each
2 meeting on a bulletin board at a place convenient to the
3 public in the central administrative office of the board.

4 "(5) Any other governmental body shall post notice
5 of each meeting in a reasonable location or shall use a
6 reasonable method of notice that is convenient to the public.
7 Any change of the location or method for posting notices of
8 meetings shall not take effect until the change has been
9 approved at an open meeting by the members of the governmental
10 body and announced to the public at an open meeting.

11 "(6) If practicable, a governmental body other than
12 those with statewide jurisdiction, in addition to the posting
13 requirements, shall provide direct notification of a meeting,
14 as defined in Section 36-25A-2(6)a., to any member of the
15 public or news media covering that governmental body who has
16 registered with the governmental body to receive notification
17 of meetings. A governmental body may promulgate reasonable
18 rules and regulations necessary for the uniform registration
19 and payment for direct notice and for the distribution of the
20 notices. The governmental body may choose to transmit a notice
21 using electronic mail, telephone, facsimile, the United States
22 Postal Service, or any other method reasonably likely to
23 provide the requested notice. The actual cost of issuing
24 notices, if there is one, may be required to be paid in
25 advance by the person requesting notice by the governmental

1 body. Direct notice to persons who have registered with the
2 governmental body shall, at a minimum, contain the time, date,
3 and place of the meeting.

4 "(b) Unless otherwise specified by law directly
5 applicable to the governmental body, notice of a meeting, as
6 defined in Section 36-25A-2(6)a.2. and 3. as well as meetings
7 called pursuant to Section 11-43-50 shall be posted as soon as
8 practicable after the meeting is called and in no event less
9 than 24 hours before the meeting is scheduled to begin, unless
10 such notice (i) is prevented by emergency circumstances
11 requiring immediate action to avoid physical injury to persons
12 or damage to property; or (ii) relates to a meeting to be held
13 solely to accept the resignation of a public official or
14 employee. In such situations, notice shall be given as soon as
15 practical, but in no case less than one hour before the
16 meeting is to begin. At the same time general notice is given,
17 special notice shall be directed to any person who has
18 registered to receive direct notices pursuant to the
19 provisions of subsection (a)(6).

20 "(c) Posted notice pursuant to this section shall
21 include the time, date, and place of meeting. If a preliminary
22 agenda is created, it shall be posted as soon as practicable
23 in the same location or manner as the notice given pursuant to
24 this section. A governmental body may discuss at a meeting
25 additional matters not included in the preliminary agenda. If

1 a preliminary agenda is not available, the posted notice shall
2 include a general description of the nature and purpose of the
3 meeting.

4 "(d) County commissions which provide proper notice
5 in conformance with Section 11-3-8 shall not be required to
6 comply with subsections (a), (b), and (c) of this section, nor
7 shall committees or subcommittees of such commissions so long
8 as the committees also comply with the notice procedures
9 applicable to the full commission in Section 11-3-8.

10 "(e) Governmental bodies may give, but shall not be
11 required to give, notice of quasi-judicial or contested case
12 hearings which could properly be conducted as an executive
13 session under this chapter or existing state law.

14 "(f) A governmental body is authorized, but not
15 required, to provide notice in addition to that specified in
16 this section and to provide notice for gatherings which are
17 not meetings as defined in Section 36-25A-2(6).

18 "§36-25A-9.

19 "(a) ~~Enforcement~~ This chapter is designed and
20 intended to hold members of governmental bodies, and the
21 bodies themselves, accountable to the public for violations of
22 this chapter. Therefore, enforcement of this chapter, except a
23 violation of Section 26-25A-3(a)(1), may be sought by civil
24 action brought in the county where the governmental body's
25 primary office is located by any media organization, any

1 Alabama citizen impacted by the alleged violation to an extent
2 which is greater than the impact on the public at large, the
3 Attorney General, or the district attorney for the circuit in
4 which the governmental body is located; provided, however,
5 that no member of a governmental body may serve as a plaintiff
6 in an action brought against another member of the same
7 governmental body for an alleged violation of this chapter.
8 The complaint shall be verified, shall state specifically the
9 applicable ground or grounds for the complaint as set out in
10 subdivisions (1) through (4) of subsection (b), and shall name
11 in their official capacity all members of the governmental
12 body remaining in attendance at the alleged meeting held in
13 violation of this chapter. If filed by an Alabama citizen, the
14 complaint shall state specifically how the person is or will
15 be impacted by the alleged violation to an extent which is
16 greater than the impact on the public at large. Members of a
17 governmental body who are named as a defendant in a complaint
18 under this chapter shall serve an initial response to the
19 complaint within seven business days of personal service of
20 the complaint. A preliminary hearing on the complaint filed
21 shall be held no later than 10 business days after the date of
22 the filing of the defendant or defendants' initial response to
23 the complaint or, if no response is filed, no later than 17
24 business days after the filing of the complaint, or on the
25 nearest day thereafter as the court shall fix, having regard

1 to the speediest possible determination of the cause
2 consistent with the rights of the parties.

3 "(b) In the preliminary hearing on the complaint,
4 the plaintiff shall establish by a preponderance of the
5 evidence that a meeting of the governmental body occurred and
6 that each defendant attended the meeting. Additionally, to
7 establish a prima facie case the plaintiff must present
8 substantial evidence of one or more of the following claims:

9 "(1) That the defendants disregarded the
10 requirements for proper notice of the meeting pursuant to the
11 applicable methods set forth in Section 36-25A-3.

12 "(2) That the defendants disregarded the provisions
13 of this chapter during a meeting, other than during an
14 executive session.

15 "(3) That the defendants voted to go into executive
16 session and while in executive session the defendants
17 discussed matters other than those subjects included in the
18 motion to convene an executive session as required by Section
19 36-25A-7(b).

20 "(4) That, other than a claim under subdivisions (1)
21 through (3), the defendants intentionally violated other
22 provisions of this chapter.

23 "(c) If the court finds that the plaintiff has met
24 its initial burden of proof as required in subsection (b) at
25 the preliminary hearing, the court shall establish a schedule

1 for discovery and set the matter for a hearing on the merits.
2 If, at the preliminary hearing, the plaintiff has presented
3 its prima facie case that an executive session appears to have
4 been improperly conducted as set out in subsection (b) (3), the
5 defendants shall bear the burden of proof at the hearing on
6 the merits to prove by a preponderance of the evidence that
7 the discussions during the executive session were limited to
8 matters related to the subjects included in the motion to
9 convene an executive session required in Section 36-25A-7(a).

10 "(d) During a proceeding involving claims brought
11 under subsection (b) (3), the court shall conduct an in camera
12 proceeding or adopt another procedure as necessary to protect
13 the confidentiality of the matters discussed during the
14 executive session, and if there is a determination that the
15 executive session was authorized by this chapter, the matters
16 shall not be disclosed or utilized in any other legal
17 proceeding by any individual or attorney who attends the in
18 camera portion of the proceedings.

19 "(e) Upon proof by a preponderance of the evidence
20 of a defendant's violation of this chapter, the circuit court
21 shall issue an appropriate final order including, if
22 appropriate, a declaratory judgment or injunction. Prior to a
23 final determination of the merits, temporary restraining
24 orders or preliminary injunctions may be issued upon proper
25 motion and proof as provided and required in the Alabama Rules

1 of Civil Procedure. A final order on the merits shall be
2 issued within 60 days after the preliminary hearing unless a
3 longer period is consented to by all parties and the court.

4 "(f) The court may invalidate the action or actions
5 taken during a meeting held in violation of this chapter,
6 provided that the complaint is filed within 21 days of the
7 date when the action is made public, the violation was not the
8 result of mistake, inadvertence, or excusable neglect, and
9 invalidation of the governmental action taken would not unduly
10 prejudice third parties who have changed their position or
11 taken action in good faith reliance upon the challenged action
12 of the governmental body; provided further, however, that any
13 action taken at an open meeting conducted in a manner
14 consistent with this chapter shall not be invalidated because
15 of a violation of this chapter which occurred prior to such
16 meeting.

17 "(g) A final order issued against a defendant shall
18 state specifically upon which claim or claims in subdivisions
19 (1) through (4) the ruling is based. For each meeting proven
20 to be held in violation of this chapter for one or more
21 reasons, the court shall impose a civil penalty payable to the
22 plaintiff(s). The maximum penalty for each meeting shall not
23 exceed one thousand dollars (\$1,000) or one half of the
24 defendant's monthly salary for service on the governmental
25 body, whichever is less. The minimum penalty shall be one

1 dollar (\$1). With regard to claims related to improper
2 discussions during executive sessions, monetary penalties may
3 only be assessed against defendant members of a governmental
4 body who voted to go into an executive session and who
5 remained in the executive session during a discussion
6 determined by the court not to have been authorized by this
7 chapter. Penalties imposed against a member of a governmental
8 body found to have acted in violation of this chapter shall
9 not be paid by nor reimbursed to the member by the
10 governmental body he or she serves. If more than one cause of
11 action is filed pursuant to this chapter, all causes of action
12 based on or arising out of the same alleged violation or
13 violations shall be consolidated into the action that was
14 first filed and any party may intervene into the consolidated
15 action pursuant to the Alabama Rules of Civil Procedure, and
16 no member found to have acted in violation of this chapter by
17 a final court order and assessed a penalty as authorized
18 herein shall be subject to further liability or penalty to the
19 same or different plaintiffs in separate causes of action for
20 the same violation or violations."

21 (h) A governmental body is authorized to pay for or
22 provide for the legal expenses of present or former members of
23 the body named as defendants in a proceeding under this
24 chapter."

1 Section 2. 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.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB21

Senate 18-MAR-15

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 02-JUN-15

Senate concurred in House amendment 03-JUN-15

By: Senator Ward