

SIDE-BY-SIDE: H. 3945 McMaster-Medlock, House Version (5/1/13) and Senate Version (2/27/14)

<p align="center"><u>McMaster-Medlock Commission</u></p>	<p align="center"><u>H.3945</u> <i>As passed by the House 5/1/13</i></p>	<p align="center"><u>H.3945</u> <i>As passed by the Senate 2/27/14</i></p>
<p>1. CREATES INDEPENDENT REVIEW, INVESTIGATIONS AND OVERSIGHT of ethics issues and complaints by removing jurisdiction from the House and Senate Ethics Committee involving all aspects of complaints, including the investigation and adjudication of complaints.</p> <p><i>*Proposes statutory change, not constitutional amendment. House and Senate would continue to exercise its authority “to punish its members for disorderly behavior” by expulsion, reprimand, etc.</i></p>	<p align="center">INDEPENDENT INVESTIGATIONS NOT INCLUDED</p> <p>*Keeps current law but merges legislative committees and adds citizen members.</p> <p>Merges the legislative ethics committees to create the <u>Joint Committee on Ethics</u> (maintains full enforcement powers over investigations and adjudications for members of the General Assembly, their staff, and candidates.</p> <p>Composed of 16 members, including bipartisan requirements:</p> <ul style="list-style-type: none"> • (4) Senators, selected by the Senate; • (4) House members, selected by the House; • (4) Non-Legislators, selected by the Senate; and • (4) Non-Legislators, selected by the House. <p><i>Amending 8-13-510 to create 8-13-510(A-D).</i></p> <p>Maintains confidentiality of documents until a finding of probable cause. <i>Amending 8-13-540(2)(a)</i></p> <p>Keeps current law requiring Joint Committee hearings to be held in executive session. <i>Amending 8-13-540(3).</i></p> <p>Removes reprimands and replaces it with the levying of a penalty pursuant to 8-13-1510 or 8-13-1520. <i>Amending 8-13-540(4)(a).</i> (Section 1)</p>	<p align="center">INDEPENDENT INVESTIGATIONS NOT INCLUDED</p> <p>*Keeps current law</p> <p><u>Retains the State Ethics Commission and legislative ethics committees.</u></p> <p>Maintains, for the Commission, confidentiality of documents until a finding of probable cause. <i>Amending 8-13-320(10)(g).</i></p> <p>Requires all Commission hearings to be public, but does not require legislative committee hearings to be public. <i>Amending 8-13-320(10)(j).</i></p> <p>Requires that reprimands made by the Committees be public. Removes private reprimands as a penalty. <i>Amending 8-13-540(3).</i></p> <p><i>*Adds the following penalties for legislators: civil penalties for non-technical violations up to \$2,000 for each violation and forfeitures of unlawful gifts. Amending 8-13-540(3)(c) and 8-13-540(3)(d) respectively.</i></p> <p><i>*Adds language allowing committees to issue formal and informal advisory opinions, which can be binding in subsequent charges against the requester if relied upon in good faith. (This language is similar to current law for non-legislators, EXCEPT informal opinions are not addressed for non-legislators in current law.) Adding 8-13-535.</i></p> <p><i>*Adds requirements for the Commission and Committees to provide training seminars. Adding new subsections under 8-13-320 and 8-13-520.(Section 26)</i></p>
<p>2. PRIVATE INCOME DISCLOSURE</p> <p>Requires disclosure by public official, his immediate family</p>	<p align="center">INCLUDED IN PART (Does not include disclosure of amounts and limits disclosure of contractual relationship.)</p>	<p align="center">INCLUDED IN PART (Does not include disclosure of amounts.)</p> <p>*Senate Version provides for broader</p>

<p>and his business of <u>sources</u> of private and public income AND <u>sources and amounts</u> of income received from:</p> <ol style="list-style-type: none"> a. Lobbyist's principals b. Gov't regulated source c. Any gov't contracts. <p>*Includes disclosure of income from consultants and independent contracts.</p>	<p>Includes disclosure of "<u>the source of any other income in excess of \$2,500</u>" that is contained on a <u>W-2, K-1, 1099, or any other IRS form</u>, but not mutual funds. <i>Amending 8-13-1120(A)(10).</i></p> <p>Includes disclosure of "<u>the specific source and amount of income received</u>" by a public official, a public official's immediate family, or a business with which the public official is associated if directly derived from a</p> <ol style="list-style-type: none"> (1) <u>lobbyist principal</u>. <p><i>Amending 8-13-1120(A)(11).</i></p> <p>Includes disclosure of "<u>the name of any governmental entity</u>" at the public official's level of government if directly derived by a public official, a public official's immediate family, or a business with which the public official is associated. <i>Amending 8-13-1120(A)(12).</i></p> <p style="text-align: center;">(Section 8)</p>	<p>disclosure because includes disclosure of all contractual relationships.</p> <p>Requires a filer to disclose the amount of a contract between the government entity that he serves and himself or his business where he is employed. (Clarifies that disclosure of public source of income is from the specific contract between the filer's employer and the public entity he serves, rather than the income or salary from the filer's employer. E.g. A contract for services exist between a filer's employer and the board that the filer serves on - disclosure of the amount and source of the contract is required on the SEI which is more relevant information to determine conflicts of interest.) <i>Amending 8-13-1120(A)(8).</i></p> <p>Requires a filer to disclose the <u>source of any income received</u>, with limited exceptions for court orders, mutual funds. <i>Amending 8-13-1120(A)(10).</i></p> <p>Requires a filer who is a "public official" to disclose the <u>specific source</u> of income received by a filer, his immediate family, or his business if the public official or his family directly derives income from a:</p> <ol style="list-style-type: none"> (1) Contractual relationship with a lobbyist's principal; (2) Contractual relationship with a state or local governmental entity; (3) Source regulated by the filer's level of government entity. <p><i>Amending 8-13-1120(A)(11).</i></p> <p>Requires a filer who is a "public member" to disclose the <u>specific source</u> of income received by him, his immediate family, or a business with which he or his immediate family is associated from a source regulated by the public member's governmental regulatory agency. <i>Amending 8-13-1120(A)(12).</i></p> <p>Adds to the requirement when disclosing real property values that the filer knows that his interest has been or could be expected to be a conflict of interest based upon information actually known to the filer. <i>Amending 8-13-1120(A)(3)(a)(ii).</i></p> <p style="text-align: center;">(Section 40)</p>
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<p>3. STRENGTHENING CONFLICT OF INTEREST REQUIRMENTS by prohibiting legislators from “influencing in any way” the process of confirming appointees to boards if they represent clients before that board.</p>	<p style="text-align: center;">INCLUDED</p> <p>*House Recusal language requires more recusal because doesn’t add exception for procedural votes.</p> <p>Requires public officials with conflicts of interest to abstain from all votes on matters considered by committees, subcommittees, study committees, or any components of the body or agency. <i>Amending 8-13-700(B).</i></p> <p>Clarifies that recusal is required during consideration of a matter when a conflict arises. <i>Adding new subsection (F) to 8-13-700.</i></p> <p style="text-align: center;">(Section 3 and 4)</p>	<p style="text-align: center;">INCLUDED IN PART</p> <p>*Adds prohibitions regarding use of office for financial gain; but exempts procedural votes for recusals.</p> <p>Strengthens conflict of interest provisions by expanding the prohibition for using official position for financial gain, to include: prohibiting a public official, member, or employee from participating in private business during the hours of employment; or from using supplies of the State or a political subdivision for private business. Does not include incidental communications for part-time members or employees (i.e. legislators). <i>Amending 8-13-700(A)(2) and 8-13-700(A)(3).</i></p> <p>Expands recusals for conflicts of interest at any level in the voting or appointment process, including committees, subcommittees, study committees, or other components. <u>Does not apply to procedural matters.</u> <i>Adding 8-13-700(F).</i></p> <p>Clarifies that recusal is required during consideration of a matter when a conflict arises.</p> <p style="text-align: center;">(Section 27)</p>
<p>4. STRENGTHENS PENALTIES FOR CRIMINAL VIOLATIONS OF 4 ETHICS STATUTES:</p> <p>Sections 8-13-: -700 (use of public office for financial gain); -720 (receiving payment for giving advice as public official); -725 (disclosing confidential information for financial gain); -1348 (use of campaign funds for personal use).</p> <p>Adds felony penalty for violations of the above statutes if the illegal economic benefit gained by the public official is over \$10,000.</p>	<p style="text-align: center;">INCLUDED IN PART</p> <p>*House Version enhances penalty for 1 provision of Ethics Act; makes it harder to find a criminal violation for any violation of the Act.</p> <p>For -720 only (receiving payment for giving advice as public official):</p> <ul style="list-style-type: none"> • Felony (\$10k/10 yrs./permanent disqualification). <p><i>Amending 8-13-720 to add new paragraph at the end.</i>(Section 5)</p> <p>For general violations of the Ethics Code (everything but late filing violations):</p> <ul style="list-style-type: none"> • Adds “willful” and keeps the same criminal penalties (\$5,000/one-year imprisonment/both). • Increases max. civil penalties from \$2,000 to \$2,500 <p><i>Amending 8-13-1520(B).</i>(Section 19)</p> <p>*Maintains civil penalties for late fees.</p>	<p style="text-align: center;">INCLUDED IN PART</p> <p>*Senate Version is stronger; enhances penalties for 3 provisions of the Ethics Act.</p> <p>For -720 (receiving payment for giving advice as public official):</p> <ul style="list-style-type: none"> • Misdemeanor (\$5k/1 yr.) • Felony (\$10k/10 yrs.) <p><i>Amending 8-13-720.</i>(Section 30)</p> <p>For -725 (disclosing confidential information for financial gain):</p> <ul style="list-style-type: none"> • Misdemeanor (\$5k/1 yr.) • Felony (\$10k/10 yrs.) <p><i>Amending 8-13-725(A).</i> (Section 31)</p> <p>For -1348 (use of campaign funds for personal use):</p> <ul style="list-style-type: none"> • Misdemeanor (\$5k/1 yr.) • Felony (\$10k/10 yrs.) <p><i>Amending 8-13-1348(F).</i>(Section 71)</p> <p>*Adds a provision prohibiting Cabinet heads and employees from soliciting</p>

	(Section 18). <i>Amending 8-13-1510(A).</i> *Adds a provision to prohibit solicitations by the head of any state agency who is selected by the Governor, General Assembly, or an appointed or elected board member. (Section 15) <i>Adding Section 8-13-1338(A)(5)</i>	campaign contributions for a statewide candidate. (Section 28). <i>Adding 8-13-704.</i>
5. DISCLOSURE OF FEES: Requires legislators to report fees received to self/firm where a state agency is an opposing party.	NOT INCLUDED	NOT INCLUDED *Removed on 2 nd Reading; was in subcommittee and full committee versions.
6. FIXES DEFINITION OF “COMMITTEE” to include “THE major purpose to support or oppose a candidate” which will re-institute reporting by independent expenditure committees. *Needed in response to <i>SC Citizens for Life v. Krawcheck</i> which invalidated current independent expenditure law.	✓ INCLUDED BUT NOT AS EXPANSIVE Changes the definition of “committee” to conform with “the major purpose”. *Adds reporting requirement for “blackout” period 20 days before an election for certain contributions. <i>Amending 8-13-1300(6).</i> *Records of occupation of donors must be requested and a written request for the information will satisfy the requirement. <i>Amending 8-13-1302(A)(6).</i> (Section 9)	✓ INCLUDED Changes the definition of “committee” to conform with “the major purpose” language, <u>including adding factors</u> : the committee’s organizational documents, over 50% of in-state disbursements to support or oppose a candidate, over 50% total disbursements made to support or oppose a candidate, and the committee’s public oral or written statements. <i>Amending 8-13-1300 (6).</i> (Sections 47, et. seq.) Adds definition and reporting requirements for “independent expenditure-only committees” (<i>Amending 8-13-1300 to add new definition, Section 55</i>) (<i>Adding 8-13-1311 for requirements, Section 59</i>). Adds definition and reporting requirements for “electioneering communication” (<i>Amending 8-13-1300 to add new definition, Section 54</i>) (<i>Adding 8-13-1313, Section 61</i>). *Adds reporting requirement for “blackout” period 5 days immediately before an election for certain contributions and expenditures. <i>Amending 8-13-1308(F), Section 57.</i> *Requires disclosure of campaign bank account statements for General Assembly members and constitutional officers. <i>Amending 8-13-1317, Section 63.</i> *Single spreadsheet upload to State Ethic Commission of reporting information allowed in form approved by SEC. <i>Amending 8-13-365, Section 56.</i>

		*Makes other changes to campaign finance statutes.
<p>7. ABOLISHES LEADERSHIP PACS.</p> <p><i>*Suggests increasing individual contribution limits.</i></p>	<p>INCLUDED</p> <p>Prohibits contributions by “Leadership PACs” and removes the exception in § 8-13-1340 allowing “Leadership PACs”. <i>Amending 8-13-1314(A)(5).</i></p> <p>*§ 8-13-1340 (C) which refers to assets of a public official is not struck. (Senate version strikes (C).) (Sections 13 and 16)</p>	<p>INCLUDED</p> <p>Removes exception in § 8-13-1340 allowing “Leadership PACs”. <i>Amending 8-13-1340(E).</i></p> <p>Does not add language prohibiting contributions by “Leadership PACs”. (Section 69)</p>
<p>8. EXPANDS REGULATION OF LOBBYING TO LOCAL LEVEL OF GOVERNMENT.</p> <p>Raises the lobbyist registration fee above \$100.</p>	<p>INCLUDED (*Concerns raised about economic development work at local level which is why Senate removed.)</p> <p>Definition of “lobbying” includes the enactment of ordinances or other local initiatives by county or municipal governing bodies, including those by mayors, municipal, county administrators, or school districts. <i>Amending 2-17-10(12)(e).</i></p> <p>(Section 2)</p>	<p>INCLUDED IN PART</p> <p>Raises lobbying fee from \$100 to \$200 for lobbyists and lobbyist principals. <i>Amending 2-17-20(A) for lobbyists and 2-17-25(A) for lobbyist principals.</i> (Sections 1 & 2)</p> <p>*Adds a definition and regulations for consultants. <i>Adding 2-17-10(22) and 2-17-2; amending other sections in Chapter 17, Title 2.</i></p> <p>*Does NOT expand the definition of “lobbyist” to include local government work.</p>
<p>9. ESTABLISHES THE PUBLIC INTEGRITY UNIT to investigate allegations of criminal public corruption for prosecution.</p>	<p>INCLUDED</p> <p>(Sections 20)</p> <p>Includes a sunset provision (Section 22) <i>Adding Chapter 2: Public Integrity Unit to Title 23.</i></p>	<p>NOT INCLUDED</p> <p><i>S.505 (Hayes) in Senate Subcommittee</i></p>
<p>10. PROHIBITS CAMPAIGN FUNDS TO BE USED TO PAY PENALTIES from criminal violations of the Ethics Act.</p>	<p>✓ INCLUDED</p> <p>*Adds no use of campaign funds to pay penalties and fines for findings of misconduct by SEC and Joint Ethics Committee. <i>Amending 8-13-1348(A).</i> (Section 17)</p>	<p>✓ INCLUDED</p> <p>(Section 51) <i>Amending 8-13-1348(A)(2).</i></p>