

By: Senator(s) Fillingane

To: Rules

SENATE BILL NO. 2224

1 AN ACT TO CODIFY SECTION 5-3-1, MISSISSIPPI CODE OF 1972, TO
 2 CREATE A "RESTORING THE 10TH AMENDMENT COMMITTEE" AND PRESCRIBE
 3 ITS MEMBERSHIP AND AUTHORITY; TO DIRECT THE COMMITTEE TO IDENTIFY
 4 AND REPORT ON FEDERAL LAWS AND PROGRAMS WHICH HAVE BEEN PASSED BY
 5 THE UNITED STATES CONGRESS IN VIOLATION OF THE TENTH AMENDMENT TO
 6 THE UNITED STATES CONSTITUTION AND UNFUNDED MANDATES IMPOSED BY
 7 THE FEDERAL GOVERNMENT UPON THE STATE OF MISSISSIPPI; TO AMEND
 8 SECTIONS 5-3-27 AND 5-3-29, MISSISSIPPI CODE OF 1972, IN
 9 CONFORMITY; TO REPEAL SECTION 5-3-31, MISSISSIPPI CODE OF 1972,
 10 WHICH PROVIDES FOR A LEGISLATIVE COUNCIL; AND FOR RELATED
 11 PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** The Legislature finds:

14 (a) The 10th Article of Amendment to the Constitution
 15 of the United States (hereinafter in this section referred to as
 16 the "10th Amendment"), ratified on December 15, 1791, states, "The
 17 powers not delegated to the United States by the Constitution, nor
 18 prohibited by it to the States, are reserved to the States
 19 respectively, or to the people."

20 (b) The 10th Amendment expressly limits the powers of
 21 the federal government to those delegated by the Constitution and
 22 reaffirms and protects the freedom of the states to exercise those
 23 that are not.

24 (c) The 10th Amendment reflects the opposition of the
 25 Founding Fathers to a federal government with expansive powers;
 26 their intention for the powers of the states to act as a check on
 27 those of the federal government; and their concern that the
 28 federal government would attempt to usurp powers intended to
 29 remain with the states.

30 (d) The 10th Amendment assures that the people of the
 31 United States of America and each sovereign state in the Union of



32 States, now have, and have always had, rights the federal
33 government may not usurp.

34 (e) It is the responsibility of the State of
35 Mississippi to safeguard the 10th Amendment and to recognize that
36 it is as vital and valuable today as on the date of its
37 ratification.

38 **SECTION 2.** The following provision shall be codified as
39 Section 5-3-1, Mississippi Code of 1972:

40 5-3-1. (1) There is hereby created a committee to be known
41 as the "Restoring the 10th Amendment Committee," which shall be
42 composed of three (3) members of the Senate and three (3) members
43 of the House of Representatives. The members of the committee
44 from the House of Representatives shall be appointed by the
45 Speaker of the House of Representatives and the members of the
46 committee from the Senate shall be appointed by the Lieutenant
47 Governor. Such appointments to be made as soon as practicable
48 after the effective date of this act. When such appointments have
49 been made, the said committee shall meet and organize by electing
50 one (1) of their members as chairman, one (1) of their members as
51 vice chairman, and one (1) of their members as secretary. The
52 term of office of the members of such committee shall be the same
53 as their term as members of the Legislature, and vacancies
54 occurring thereon shall be filled by appointment by the Speaker or
55 the Lieutenant Governor, as the case may be.

56 (2) The Restoring the 10th Amendment Committee, created by
57 this chapter is hereby authorized and it shall be its duty to make
58 a study of unconstitutional activities in this state as defined in
59 Section 5-3-29 and unfunded mandates imposed by the federal
60 government upon the State of Mississippi. During any period when
61 a proposed federal rule is required under Chapter 5, Title 5,
62 United States Code, to be open for public comment, the Restoring
63 the 10th Amendment Committee may file with the head of the agency
64 proposing the rule a legal brief challenging the constitutionality



65 of the proposed rule under the 10th Article of Amendment to the
66 Constitution.

67 (3) It shall be the duty of such committee to keep full and
68 complete minutes and records of all its proceedings and actions,
69 which such minutes and records shall be open to the inspection of
70 any member of the Legislature at any reasonable time during the
71 regular hours of a business day.

72 (4) The committee hereby created shall have the power and
73 authority to sit in vacation after the sine die adjournment of the
74 Legislature.

75 (5) The said committee is hereby fully authorized and
76 empowered to subpoena and examine witnesses, to require the
77 appearance of any person and the production of any paper or
78 document as evidence, and to order the attendance of any witness
79 or the production of any paper, and in such cases, the committee
80 shall have the power to issue all necessary process which shall be
81 signed by the chairman, vice chairman or secretary of said
82 committee and shall be directed to the sheriff of any county or to
83 the bailiff or process server of said committee or the deputy of
84 either. When any such process has been served, obedience thereto
85 may be enforced by the attachment of the persons, papers and
86 records subpoenaed, and if any person should willfully refuse to
87 appear before such committee or to produce any paper or record in
88 obedience to any process issued and served, then the committee
89 shall have the authority to enforce obedience thereto by fine or
90 imprisonment in the discretion of the committee; but in the event
91 of imprisonment, the term thereof shall not extend beyond ten (10)
92 days after the reconvening of the Legislature unless the
93 Legislature, after reconvening within said time, shall otherwise
94 order by concurrent resolution.

95 (6) The committee hereby created is hereby vested with the
96 power and authority to employ counsel and to expend such



97 reasonable sum as compensation for such counsel as the committee
98 shall deem proper.

99 (7) The committee shall develop and make a report of its
100 findings to the members of the Mississippi Congressional
101 delegation and to every Regular Session of the Legislature along
102 with whatever recommended legislation it deems necessary.

103 **SECTION 3.** Section 5-3-27, Mississippi Code of 1972, is
104 amended as follows:

105 5-3-27. The Restoring the 10th Amendment Committee, created
106 by this chapter is hereby authorized and it shall be its duty to
107 make a study of unconstitutional activities in this state as
108 defined in Section 5-3-29 and unfunded mandates imposed by the
109 federal government upon the State of Mississippi * * *.

110 **SECTION 4.** Section 5-3-29, Mississippi Code of 1972, is
111 amended as follows:

112 5-3-29. "Unconstitutional activities" shall mean laws or
113 programs enacted by the United States Congress in which the
114 federal government has overstepped its Constitutional authority by
115 passing legislation which is left to the states or the people
116 under the Tenth Amendment to the United States Constitution. This
117 definition shall specifically include legislation relating to
118 health care, financial reform, and gun control, or any other
119 legislation not provided for or sanctioned by the Constitution of
120 the State of Mississippi or the Constitution of the United States.

121 **SECTION 5.** Section 5-3-31, Mississippi Code of 1972, which
122 provides for a legislative council, is hereby repealed.

123 **SECTION 6.** This act shall take effect and be in force from
124 and after July 1, 2011.

