

1 HB15
2 196356-2
3 By Representative Kitchens
4 RFD: State Government
5 First Read: 05-MAR-19
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ENROLLED, An Act,

Relating to state employees; to amend Section 36-26-28, Code of Alabama 1975, relating to suspensions without pay; to clarify that the total time of suspension may not exceed 30 business days in any year of service; and to provide the state employee 10 business days to accept the suspension or request a suspension hearing.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-26-28, Code of Alabama 1975, is amended to read as follows:

"§36-26-28.

"(a) An appointing authority ~~may, from time to time,~~ may peremptorily suspend any employee without pay or other compensation as punishment for improper behavior, but the suspension or total suspension by the appointing authority of the person shall not exceed 30 business days in any year of service. The suspension with loss of pay may be effected only by service upon the employee by the appointing authority of written charges setting out clearly the reasons for which the suspension is being considered. Within 10 business days, the employee must accept the suspension or request a suspension hearing. If the employee requests a suspension hearing, the appointing authority shall appoint an independent hearing officer to receive evidence and issue a recommendation on the

1 proposed suspension. The appointing authority may accept or
2 reject the recommendation of the hearing officer. If the
3 appointing authority rejects the recommendation, written
4 justification for the rejection must be provided to the
5 employee.

6 "(b) The appointing authority shall appoint an
7 independent hearing officer from a list of eligible hearing
8 officers which shall be maintained by the State Personnel
9 Department. The appointed hearing officer may be employed by
10 the appointing authority, but shall be independent of the
11 division or area in which the employee works. Any challenge as
12 to the appointment of the independent hearing officer shall be
13 made to the State Personnel Director within five days of
14 notification of the appointment. For the purposes of this
15 section, a hearing officer shall be any person or persons
16 approved by the State Personnel Department to hear a
17 suspension case. If it is the preference of the appointing
18 authority, a hearing officer may be appointed from the
19 Governmental Hearing Officer register, which is compiled and
20 maintained by the State Personnel Department.

21 "(c) Nothing in this section limits an appointing
22 authority's power to provide additional due process safeguards
23 to employees.

1 "(d) The burden of proof shall lie with the
2 appointing authority to prove the charges forming the basis of
3 the suspension.

4 "(e) Those departments or agencies currently having
5 an existing process for suspension hearings may continue to
6 use the existing process, provided that they observe tenents
7 of due process, including that the burden of proof shall lie
8 with the appointing authority.

9 "(f) ~~Further, this~~ This section shall not apply to
10 any department which currently employs and continues to employ
11 as a standard practice in such cases a pre-disciplinary
12 hearing before an independent hearing officer who makes a
13 recommendation for disciplinary action to the appointing
14 authority based upon a fair hearing of the matter."

15 Section 2. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.

