

1 SB310
2 130730-9
3 By Senators Pittman, Dial, Waggoner, Marsh, Taylor, Beason,
4 Williams, Blackwell and Whatley
5 RFD: Education
6 First Read: 31-MAR-11

1 SB310

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4 ENROLLED, An Act,

5 To establish the Students First Act of 2011; to
6 provide rights, remedies, and obligations with respect to
7 employment actions affecting or involving certain employees or
8 categories of employees of city and county boards of
9 education, the Alabama Institute for Deaf and Blind, including
10 production workers at the Alabama Industries for the Blind,
11 educational and correctional institutions under the control of
12 the Department of Youth Services, and two-year educational
13 institutions operated under the authority and control of the
14 Department of Postsecondary Education; to repeal existing
15 statutes that are in conflict or that are otherwise
16 inconsistent with this bill, including, but not limited to,
17 portions of the Teacher Tenure Law, Article 1, commencing with
18 Section 16-24-1, Chapter 24, Title 16, the Fair Dismissal Act,
19 Article 4, commencing with Section 36-26-100, Chapter 26,
20 Title 36, and Section 16-24B-7, Code of Alabama 1975, relating
21 to teacher transfers; and in connection therewith would have
22 as its purpose or effect the requirement of a new or increased
23 expenditure of local funds within the meaning of Amendment 621
24 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official ReCompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as the Students First Act of 2011.

6 Section 2. The purpose of this act is to improve the
7 quality of public education in the State of Alabama by doing
8 all of the following:

9 (1) Providing for fundamental fairness and due
10 process to employees covered by this act.

11 (2) Restoring primary authority and responsibility
12 for maintaining a competent educational workforce to employers
13 covered by this act.

14 (3) Enhancing the ability of public educational
15 agencies to increase student academic achievement and student
16 performance through effective allocation of personnel
17 resources.

18 (4) Investing employers covered by this act with the
19 discretion and flexibility necessary to make the most
20 effective use of limited educational resources.

21 (5) Eliminating costly, cumbersome, and
22 counterproductive legal challenges to routine personnel
23 decisions by simplifying administrative adjudication and
24 review of contested personnel decisions.

1 Section 3. For purposes of this act, the following
2 terms shall have the following meanings:

3 (1) CHIEF EXECUTIVE OFFICER. The chief
4 administrative and executive officer of the entity,
5 institution, agency, or political subdivision of the state
6 that is subject to this act and includes, without limitation,
7 superintendents of city or county boards of education and
8 presidents of two-year educational institutions operated under
9 authority and control of the Department of Postsecondary
10 Education. The term includes persons serving in such a
11 capacity on an acting or interim basis under lawful
12 appointment or by operation of law.

13 (2) CLASSIFIED EMPLOYEE. All adult bus drivers, all
14 full-time lunchroom or cafeteria workers, janitors,
15 custodians, maintenance personnel, secretaries and clerical
16 assistants, instructional aides or assistants, whether or not
17 certificated, non-certificated supervisors, and, except as
18 hereinafter provided, all other persons who are not teachers
19 as defined herein who are full-time employees of a city or
20 county board of education, two-year educational institutions
21 operated under the authority and control of the Department of
22 Postsecondary Education, the Alabama Institute for Deaf and
23 Blind, including production workers at the Alabama Industries
24 for the Blind, and educational and correctional institutions
25 under the control of the Department of Youth Services. The

1 term does not include the employer's chief executive officer,
2 vice president, or chief school financial officer. Full-time
3 employees include adult bus drivers and other employees whose
4 duties require 20 or more hours in each normal working week of
5 the school term, excluding holidays that are recognized by the
6 employer. Employees who are eligible for coverage under the
7 state Merit System are not covered by this act. A probationary
8 classified employee is a classified employee who has not
9 attained nonprobationary status.

10 (3) EMPLOYEE. Unless otherwise specified, and as
11 appropriate to the context, the term includes either a teacher
12 or a classified employee, or both, whose employment is subject
13 to this act.

14 (4) EMPLOYER. The entity, institution, agency, or
15 political subdivision of the state by which the employee who
16 is subject to this act is employed. Employers subject to this
17 act include all city and county boards of education, all
18 educational and correctional institutions under the control of
19 the Department of Youth Services, the Alabama Institute for
20 Deaf and Blind, and two-year educational institutions operated
21 under the authority and control of the Department of
22 Postsecondary Education. Each two-year institution operated
23 under the authority and control of the Department of
24 Postsecondary Education is a separate employer for purposes of
25 this act.

1 (5) GOVERNING BOARD. The body of elected or
2 appointed officials that is granted authority by law,
3 regulation, or policy to make employment decisions on behalf
4 of the employer. If final decision-making authority with
5 respect to employment decisions is conferred by law,
6 regulation, or duly adopted policy on an official,
7 administrator, or organizational unit other than a separate
8 governing board, the decision or action of such official,
9 administrator, or organizational unit, including the president
10 of a two-year educational institution operated under the
11 authority and control of the Department of Postsecondary
12 Education, is that of the governing board for purposes of this
13 act, and no additional approval of such decision or action
14 shall be required. Under such circumstances, the official,
15 administrator, president, or organizational unit shall assume
16 and exercise the duties of the governing board established by
17 this act. For purposes of this act, the State Board of
18 Education shall not be deemed to be or authorized to function
19 as the employer or the governing board of any employer covered
20 by this act.

21 (6) PROFESSIONAL EDUCATOR'S CERTIFICATE. A
22 certificate or license, by whatever name, designation, or
23 subclassification known or identified, issued by the State
24 Department of Education, or recognized under an approved
25 interstate reciprocity program, and that must be maintained by

1 the employee in order to be employed as a teacher in the
2 county and city schools of this state. A professional
3 educator's certificate does not include provisional,
4 alternative, or emergency certificates, or certificates or
5 licenses that are issued to instructional aides or assistants,
6 to substitute teachers, or to business, technical,
7 operational, or other employees whose job duties do not
8 require or entail the instruction of students or the regular
9 supervision of or interaction with employees with such job
10 duties.

11 (7) SCHOOL YEAR. The period beginning with the first
12 day of the annual school term and ending with the last day of
13 the annual school term on which classroom instructors are
14 required to report for duty, as established by the governing
15 board. For a two-year educational institution, the school year
16 shall be deemed to begin on the first day of the fall academic
17 semester and continuing through the final day of the spring
18 academic semester, but shall not include the summer academic
19 semester.

20 (8) TEACHER. All employees of entities that are
21 covered by this act who are required by law, regulation, or
22 employer policy to maintain a professional educator's
23 certificate issued by the State Department of Education and
24 who are employed by a city or county board of education, the
25 Alabama Institute for Deaf and Blind, or educational and

1 correctional institutions under the control of the Department
2 of Youth Services. The term also includes instructors employed
3 by two-year educational institutions operated under the
4 authority and control of the Department of Postsecondary
5 Education and principals who had attained tenure under prior
6 law, but who have not elected to become contract principals
7 under subsection (h) of Section 16-24B-3, Code of Alabama
8 1975. The term does not include an employer's chief executive
9 officer, chief school financial officer, or a principal who is
10 employed as or who has elected to become a contract principal
11 under subsection (h) of Section 16-24B-3, Code of Alabama
12 1975, whether or not certification is required for those
13 positions by law or policy, and does not include the president
14 or vice president of a two-year educational institution
15 operated under the authority and control of the Department of
16 Postsecondary Education. A probationary teacher is a teacher
17 who has not attained tenure.

18 Section 4. No action may be proposed or approved
19 based upon personal or political reasons on the part of the
20 employer, chief executive officer or governing board. A
21 teacher shall attain tenure and a classified employee shall
22 attain nonprobationary status as follows:

23 (1) Except as otherwise provided by Section 16-23-3,
24 Code of Alabama 1975, a teacher who is not an employee of a
25 two-year educational institution operated under the authority

1 and control of the Department of Postsecondary Education,
2 shall attain tenure upon the completion of three complete,
3 consecutive school years of full-time employment as a teacher
4 with the same employer unless the governing board approves and
5 issues written notice of termination to the teacher on or
6 before the last day of the teacher's third consecutive,
7 complete school year of employment. For purposes of this act,
8 a probationary teacher whose employment or reemployment is
9 effective prior to October 1 of the school year and who
10 completes the school year shall be deemed to have served a
11 complete school year. A teacher employed by a two-year
12 educational institution operated under the authority and
13 control of the Department of Postsecondary Education shall
14 attain tenured status upon the completion of six consecutive
15 semesters, excluding summer terms, at the same two-year
16 institution, unless the president issues notice of termination
17 to the teacher on or before 15 days prior to the end of the
18 sixth consecutive semester of employment, excluding summer
19 terms. No probationary teacher employed by a two-year
20 educational institution operated under the authority and
21 control of the Department of Postsecondary Education shall
22 attain tenure during or at the completion of a summer term.
23 For teachers who are required to hold a professional
24 educator's certificate, time in service without such a

1 certificate shall not be credited toward the attainment of
2 tenure.

3 (2) A probationary classified employee who is not an
4 employee of a two-year educational institution operated under
5 the authority and control of the Department of Postsecondary
6 Education attains nonprobationary status upon the completion
7 of three complete, consecutive school years of full-time
8 employment with the same employer unless the governing body of
9 the employer approves and issues written notice of termination
10 to the employee on or before the fifteenth day of June
11 immediately following the employee's third consecutive
12 complete school year of employment. In the first year of each
13 legislative quadrennium, the written notice shall be provided
14 on or before June 30. For purposes of this act, a probationary
15 classified employee whose employment or reemployment is
16 effective prior to October 1 of the school year and who
17 completes the school year shall be deemed to have served a
18 complete school year. A probationary classified employee of a
19 two-year educational institution operated under the authority
20 and control of the Department of Postsecondary Education shall
21 attain nonprobationary status upon the completion of 36
22 consecutive months of employment at the same two-year
23 institution, unless the president issues notice of termination
24 to the classified employee on or before 15 days prior to the
25 end of the thirty-sixth month of employment.

1 (3) All of the following additional terms,
2 conditions, and limitations apply to the attainment and
3 retention of tenure or nonprobationary status:

4 a. Only complete school years of service as defined
5 in this act, including any leave that is credited to the
6 employee for such purposes under board policy or applicable
7 law, may be credited to the attainment of tenure or
8 nonprobationary status.

9 b. Neither tenure nor nonprobationary status may be
10 attained as a chief executive officer, a chief school
11 financial officer, as a president or vice president of a
12 two-year educational institution operated under the authority
13 and control of the Department of Postsecondary Education, or
14 in or by virtue of employment in temporary, part-time,
15 substitute, summer school, occasional, seasonal, supplemental,
16 irregular, or like forms of employment, or in positions that
17 are created to serve experimental, pilot, temporary, or like
18 special programs, projects, or purposes, the funding and
19 duration of which are finite.

20 c. Except as expressly provided to the contrary
21 elsewhere in this act, neither tenure nor nonprobationary
22 status in this act creates or confers any enforceable right or
23 protected interest in or to a specific position, rank, work
24 site or location, assignment, title, or rate of compensation
25 within those categories of employment.

1 d. Service performed as a teacher may not be
2 converted to, recognized, or otherwise credited to the
3 employee for the purpose of attaining nonprobationary status
4 as a classified employee. Service performed in the capacity of
5 a classified employee may not be converted to, recognized, or
6 otherwise credited to the employee for the purpose of
7 attaining tenure as a teacher, whether or not the classified
8 employee holds a certificate issued by the State Department of
9 Education.

10 e. Neither tenured status nor time in probationary
11 service shall be transferable from one employer subject to
12 this act to another such employer, except that employees whose
13 employer changes by virtue of annexation, school district
14 formation, consolidation, or a similar reorganization over
15 which the employee has no control shall retain tenure or
16 nonprobationary status and service credit attained by virtue
17 of employment with the predecessor employer.

18 Section 5. (a) Probationary classified employees who
19 are not employees of a two-year educational institution
20 operated under the authority and control of the Department of
21 Postsecondary Education may be terminated at the discretion of
22 the employer upon written recommendation of the chief
23 executive officer, a majority vote of the governing board, and
24 issuance of written notice of termination to the employee at
25 any time on or before the fifteenth day of June immediately

1 following the employee's third consecutive, complete school
2 year of employment. In the first year of each legislative
3 quadrennium, the written notice shall be provided on or before
4 June 30. A probationary classified employee of a two-year
5 educational institution operated under the authority and
6 control of the Department of Postsecondary Education may be
7 terminated at the discretion of the president of such
8 institution upon issuance of a written notice of termination
9 to the employee at any time on or before 15 days prior to the
10 end of 36 consecutive months of employment at the same
11 institution.

12 (b) The compensation and benefits of a probationary
13 classified employee shall not be terminated before the
14 expiration of 15 calendar days from the date notice of
15 termination is issued to the employee.

16 (c) Probationary teachers who are not employees of a
17 two-year educational institution operated under the authority
18 and control of the Department of Postsecondary Education may
19 be terminated at the discretion of the employer upon the
20 written recommendation of the chief executive officer, a
21 majority vote of the governing board, and issuance of written
22 notice of termination to the teacher on or before the
23 fifteenth day of June. In the first year of each legislative
24 quadrennium, the written notice shall be provided on or before
25 June 30. A probationary teacher who has not been terminated on

1 or before the dates specified above shall be deemed reemployed
2 as a probationary teacher, except as provided in subdivision
3 (1) of Section 4. The employment of any probationary teacher
4 may be terminated before the completion of the school year
5 upon at least 30 calendar days' written notice of the date on
6 which the governing board is scheduled to vote on such
7 recommendation. Upon issuance of such notice, the teacher may
8 submit a written statement to the chief executive officer and
9 the governing board explaining why such action should not be
10 taken. A probationary teacher employed by a two-year
11 educational institution operated under the authority and
12 control of the Department of Postsecondary Education may be
13 terminated at the discretion of the president of such
14 institution upon issuance of a written notice of termination
15 to the employee at any time on or before 15 days prior to the
16 end of the sixth consecutive semester of employment, excluding
17 summer terms, at the same institution.

18 (d) The decision to terminate the employment of any
19 probationary employee shall be final and no compensation shall
20 thereafter be due to the employee, except as provided in
21 subsection (b).

22 Section 6. (a) Tenured teachers and nonprobationary
23 classified employees may be terminated at any time because of
24 a justifiable decrease in the number of positions or for
25 incompetency, insubordination, neglect of duty, immorality,

1 failure to perform duties in a satisfactory manner, or other
2 good and just cause, subject to the rights and procedures
3 hereinafter provided. However, a vote or decision to approve a
4 recommended termination on the part of a president of a
5 two-year educational institution operated under the authority
6 and control of the Department of Postsecondary Education or
7 the governing board shall not be made for political or
8 personal reasons.

9 (b) The termination of a tenured teacher or
10 nonprobationary classified employee who is not an employee of
11 a two-year educational institution operated under the
12 authority and control of the Department of Postsecondary
13 Education shall be initiated by the recommendation of the
14 chief executive officer in the form of a written notice of
15 proposed termination to the employee. A tenured teacher or a
16 nonprobationary classified employee who is employed by a
17 two-year educational institution operated under the authority
18 and control of the Department of Postsecondary Education may
19 be terminated by the president of such institution upon the
20 issuance of a written notice of proposed termination to the
21 employee by the official of the institution who serves or
22 functions as the senior personnel officer thereof. In either
23 case, the notice shall state the reasons for the proposed
24 termination, shall contain a short and plain statement of the
25 facts showing that the termination is taken for one or more of

1 the reasons listed in subsection (a), and shall be issued in
2 conformity with subsection (k). The notice shall inform the
3 employee, who is not an employee of a two-year educational
4 institution operated under the authority and control of the
5 Department of Postsecondary Education that, in order to
6 request a hearing with the governing board, the employee must
7 file a written request for such a hearing with the chief
8 executive officer within 15 calendar days after issuance of
9 the notice. Should the employee fail to timely file the
10 request for hearing, the governing board shall vote on the
11 recommended termination. Notice to employees of a two-year
12 educational institution operated under the authority and
13 control of the Department of Postsecondary Education, shall
14 inform such employee that, in order to request a hearing with
15 the president of such institution, the employee must file a
16 written request for such a hearing with the president within
17 15 calendar days after issuance of the notice. Should the
18 employee fail to timely file the request for hearing, the
19 president of such institution shall act on the recommended
20 termination and the president's decision shall be final. If
21 the employee timely requests a hearing, the hearing shall be
22 set by the employer not less than 30 and not more than 60
23 calendar days from the date written notice of the time, date,
24 and place of the hearing is issued to the employee, but may be
25 rescheduled by agreement or for good cause shown.

1 (c) At the hearing, the chief executive officer or,
2 for a two-year educational institution operated under the
3 authority and control of the Department of Postsecondary
4 Education, the official of such institution who serves or
5 functions as the senior personnel officer thereof, based
6 solely on the information provided by the recommending senior
7 supervisor, shall bear the burden of proof with regard to
8 disputed issues of material fact. The employee or his or her
9 representative shall be afforded the opportunity to present
10 testimony, other evidence, and argument on matters relevant to
11 the proposed termination and to cross-examine witnesses whose
12 testimony is proffered in support of the proposed termination.
13 The employee shall have the right to counsel at his or her
14 expense. A court reporter shall record the proceedings at the
15 expense of the State Department of Education or, if
16 applicable, the two-year institution operated under the
17 authority and control of the Department of Postsecondary
18 Education. The hearing may be public or private at the
19 election of the employee. The chief executive officer shall
20 issue subpoenas compelling the appearance of witnesses on the
21 employee's behalf upon the employee's timely request for
22 issuance of such subpoenas and may issue subpoenas to any
23 witness who the chief executive officer believes may have
24 knowledge or evidence bearing on the issues presented for
25 determination.

1 (d) Whether or not the employee requests a hearing
2 before the governing board or the president of the two-year
3 institution, the chief executive officer shall give written
4 notice to the employee of the decision regarding the proposed
5 termination within 10 calendar days after the vote of the
6 board or the decision of the president. If the decision
7 follows a hearing requested by the employee, the notice shall
8 also inform the employee of the right to contest the decision
9 by filing an appeal as provided in this act.

10 (e) An employee who is terminated following a
11 hearing requested by the employee may obtain a review of an
12 adverse decision by filing a written notice of appeal to the
13 State Superintendent of Education within 15 days of receipt of
14 the decision. For employees of a two-year educational
15 institution under the authority of the Department of
16 Postsecondary Education, such notice of appeal shall be
17 submitted to the Department of Postsecondary Education within
18 15 days of the receipt of the decision. The State
19 Superintendent of Education or the Department of Postsecondary
20 Education shall refer the appeal to the Executive Director of
21 the Alabama State Bar Association who shall obtain a panel of
22 neutrals and administer the hearing officer selection process
23 as is hereinafter provided. The notice of appeal shall state
24 the grounds upon which it is based. A copy of the notice shall
25 be simultaneously served by the employee on the chief

1 executive officer of the employer or the president of the
2 two-year institution under the authority and control of the
3 Department of Postsecondary Education. Upon receiving notice
4 of the employee's appeal, the employer shall compile and file
5 the record of administrative proceedings, including any
6 hearing transcript, with the hearing officer within 20 days
7 after its receipt of the notice of appeal unless the time is
8 extended by the hearing officer for good cause shown. Except
9 as hereinafter provided, the appeal shall be submitted to the
10 hearing officer. The hearing officer shall hold a hearing.
11 Deference is given to the decision of the employer. A final
12 ruling, either affirming or reversing the decision of the
13 employer, shall be rendered within five days after the
14 hearing.

15 (f) If the decision of the president or the
16 governing board is set aside by the hearing officer, the
17 employee shall be reinstated and credited with any benefits
18 due under applicable statutes, salary schedules, or
19 compensation policies. Either party may appeal an adverse
20 decision rendered by a hearing officer to the Alabama Court of
21 Civil Appeals by filing a notice of appeal to said court in
22 accordance with the Alabama Rules of Appellate Procedure.

23 (g) The hearing officer assigned to review appeals
24 hereunder shall be selected from a panel of neutrals comprised
25 of five retired Alabama judges, excluding judges of probate,

1 whose names appear on an official alternative dispute
2 resolution roster maintained by the Alabama Bar Association.
3 Members of the panel shall be identified by the Executive
4 Director of the Alabama State Bar Association on a random and
5 rotating basis and provided to the chief executive officer or
6 the president of the two-year institution under the authority
7 and control of the Department of Postsecondary Education. Upon
8 receiving the names of the panel members, the parties may
9 select the hearing officer from among the names provided or
10 from any other source by agreement. Failing such agreement,
11 the parties shall select the hearing officer by a process of
12 alternating strikes in which the employee shall be provided
13 the first strike and the employer the last strike. The hearing
14 officer selection process shall be completed within 10
15 calendar days of receipt by the parties of the panel of
16 potential hearing officers. The hearing officer shall not have
17 a personal or professional interest that would conflict with
18 his or her ability to render an objective decision. The
19 hearing officer shall be paid for services rendered hereunder
20 according to criteria, and at the prevailing rate, established
21 by the State Department of Education under the supervision of
22 the State Superintendent of Education and the Chancellor of
23 the Department of Postsecondary Education from funds
24 appropriated for such purposes by the Legislature. All hearing

1 officers must agree to abide by all timelines provided in this
2 section.

3 (h) The following additional terms, conditions, and
4 limitations apply to terminations and appeals therefrom:

5 (1) In considering termination recommendations made
6 by the chief executive officer, the governing board acts in an
7 independent and quasi-judicial capacity, and nothing in this
8 act shall be construed to prevent the governing board from
9 imposing a lesser sanction than that recommended by the chief
10 executive officer or to preclude a negotiated resolution by
11 the president or the governing board of matters, issues, and
12 disputes arising under this act. In considering termination
13 recommendations made by the senior personnel officer of a
14 two-year college under the authority of the Department of
15 Postsecondary Education, the president of the two-year college
16 acts in an independent and quasi-judicial capacity, and
17 nothing in this act shall be construed to prevent the
18 president of the two-year college from imposing a lesser
19 sanction than that recommended by the senior personnel officer
20 or to preclude a negotiated resolution by the president of
21 matters, issues, and disputes arising under this act.

22 (2) Reductions in or modifications to employee
23 compensation or benefits or of the length of the work or
24 school year are not terminations or transfers for purposes of

1 this act or otherwise subject to challenge or review under
2 this act, provided that the action is all of the following:

3 a. Prospective in effect.

4 b. Based on the recommendation of the president of a
5 two-year educational institution alone or the chief executive
6 officer and formal approval of the governing board.

7 c. Applied to similarly situated employees within
8 the two-year college, agency, or system, or within designated
9 operating divisions, departments, or employment
10 classifications therein.

11 (3) Layoffs or other personnel actions that are
12 unavoidable reductions in the workforce beyond normal
13 attrition due to decreased student enrollment or shortage of
14 revenues as specified in Section 16-1-33, Code of Alabama
15 1975, are not subject to challenge or review under this act.

16 (i) An employee may be suspended for cause with or
17 without pay on the written recommendation of the president of
18 a two-year educational institution alone or the chief
19 executive officer and the approval of the governing board. The
20 suspension of a tenured teacher or a nonprobationary employee
21 for no more than 20 work days without pay is not a termination
22 of employment that is subject to review under this act.

23 Adequate notice of the reason or reasons for the proposed
24 suspension and an opportunity to present evidence and
25 argument, either in person or in writing, to the president of

1 a two-year educational institution or to the governing board
2 with respect to the proposed action shall be afforded the
3 employee before the imposition of the suspension. Suspensions
4 of tenured teachers or nonprobationary classified employees
5 without pay in excess of 20 work days are subject to the
6 notice, hearing, and review requirements and procedures that
7 apply to terminations of tenured teachers and nonprobationary
8 classified employees under this act.

9 (j) Employees shall not be permitted to delay,
10 defer, or defeat the initiation or pursuit of any termination
11 or other employment action initiated under authority of this
12 act based upon the pendency or threatened initiation of
13 criminal proceedings arising out of the facts, circumstances,
14 or subject matter of the employment action. The appearance or
15 testimony of an employee in a proceeding authorized under this
16 act shall not cause the employee to waive, forfeit, or
17 relinquish any right against self-incrimination, and no such
18 testimony shall be admitted in any court of this state in a
19 criminal proceeding in which the right applies upon the timely
20 objection of the employee thereto.

21 (k) Unless otherwise provided, notice for all
22 purposes under this act shall be given by United States mail,
23 certified delivery, by private mail carrier for next business
24 day delivery, or by physical delivery to the employee or the
25 last known address of the employee. Notice by certified mail

1 or private mail carrier shall be deemed received by the
2 employee and complete for purposes of this act two business
3 days after the notice is deposited for certified delivery in
4 the United States mail or placed with a private mail carrier
5 for next business day delivery. The employer has the burden of
6 producing evidence that service was affected in the manner
7 permitted by this act, but the employee has the burden of
8 proving that such service was not properly made.

9 (l) In any proceeding for which review is provided
10 hereunder, the employer shall arrange for a transcript and
11 record of proceedings conducted before the president of a
12 two-year educational institution or the governing board to be
13 made and maintained by a qualified court reporter for use in
14 connection with such review. All fees and costs associated
15 with making and transcribing the record shall be paid or
16 reimbursed by the State Department of Education or, if
17 applicable, the two-year institution operated under the
18 authority and control of the Department of Postsecondary
19 Education in accordance with such reasonable rules,
20 regulations, and procedures as may be established for such
21 purpose by the departments.

22 (m) Unless otherwise specified by the president of a
23 two-year educational institution or the governing board, a
24 decision to terminate the employee or suspend the employee
25 without pay shall be effective immediately, except that a

1 tenured teacher or a nonprobationary classified employee shall
2 continue to receive pay and benefits until a final ruling by
3 the hearing officer or 75 calendar days, whichever occurs
4 first from the date of the employer termination decision
5 unless the termination is based on an act of moral turpitude,
6 immorality, abandonment of job, incarceration, or neglect of
7 duty. If the decision of the president of a two-year
8 educational institution or the governing board is set aside
9 and the employee is reinstated, the employee shall receive
10 back pay and other relief as provided in subsection (f).

11 Section 7. (a) Except as otherwise specified,
12 employees may be transferred or reassigned at any time as the
13 needs of the employer require to any position for which they
14 are qualified by skill, training, or experience by the
15 president of a two-year educational institution alone or upon
16 the recommendation of the chief executive officer and the
17 approval of the governing board.

18 (b) A chief executive officer may reassign a teacher
19 to any grade, position, or work location within the same
20 school, campus, instructional facility, or, for two-year
21 institutions operated under the authority and control of the
22 Department of Postsecondary Education, to any teaching
23 position or work location that is under the control and
24 jurisdiction of the institution, as the needs of the employer
25 require. For a tenured teacher, except as required by acts of

1 God or disasters that are beyond the reasonable control of the
2 employer, written notice of the reassignment must be issued to
3 the teacher no later than the twentieth calendar day after the
4 first day of classes for students, and the teacher may not be
5 involuntarily reassigned under this subsection more than one
6 time in a school year, excluding summer term. The reassignment
7 may only be to another position for which the teacher holds
8 appropriate certification, and the reassignment may not entail
9 a loss of or reduction in compensation. Such reassignments are
10 not subject to challenge or review under this act. For
11 reassignments due to acts of God or disasters later than the
12 20th calendar day after the first day of class for students, a
13 tenured teacher may request a hearing before the board prior
14 to a vote of the board on the proposed transfer.

15 (c) Tenured teachers may be transferred within an
16 agency or system to any grade or position outside of the
17 school, campus, or instructional facility to which the teacher
18 is assigned subject to the following terms and conditions: The
19 transfer must be to another position for which the employee
20 holds appropriate certification and the transfer must be
21 without loss of or reduction in compensation. Except as
22 required by acts of God or disasters that are beyond the
23 reasonable control of the employer, written notice of the
24 proposed transfer must be issued to the teacher by the
25 president of a two-year educational institution alone or the

1 chief executive officer no later than the twentieth calendar
2 day after the first day of classes for students, and the
3 teacher may not be involuntarily transferred under this
4 subsection more than one time in a school year, excluding
5 summer term. In the notice of proposed transfer, and prior to
6 a final decision of the president of a two-year educational
7 institution or the governing board, the teacher must be
8 afforded an opportunity to meet with the president of a
9 two-year educational institution or the governing board to
10 demonstrate why the proposed transfer should not be approved.
11 Such transfers are not subject to challenge or review under
12 this act. Nothing herein shall be construed to authorize the
13 involuntary transfer or reassignment of a tenured teacher
14 employed by a two-year institution operated under the
15 authority and control of the Department of Postsecondary
16 Education to another such institution. If the proposed
17 transfer is to a work site outside of the high school feeder
18 pattern in which the teacher is currently working, then the
19 teacher may request a hearing before the board prior to a vote
20 of the board on the proposed transfer. For transfers due to
21 acts of God or disasters later than the 20th calendar day
22 after the first day of class for students, a tenured teacher
23 may request a hearing before the board prior to a vote of the
24 board on the proposed transfer.

1 (d) Nonprobationary classified employees may be
2 transferred to any position for which they are qualified
3 within the agency or system by which they are employed
4 including, for employees of two-year institutions operated
5 under the authority and control of the Department of
6 Postsecondary Education, any work location that is under the
7 control and jurisdiction of the institution, if the transfer
8 is without loss of or reduction in compensation, written
9 notice of the proposed transfer is issued to the employee by
10 the president of the two-year educational institution or the
11 chief executive officer not less than 15 calendar days before
12 a final decision is made by the president of the two-year
13 educational institution alone or a vote thereon is taken by
14 the governing board, and the transfer is effective not less
15 than 15 calendar days after the date of the final decision. A
16 nonprobationary classified employee of an employer, other than
17 a two-year institution under the authority and control of the
18 Department of Postsecondary Education, who is proposed to be
19 transferred to a principal work site that is outside of the
20 high school feeder pattern in which the current work site of
21 the employee is located, shall be afforded an opportunity to
22 appeal in the same manner as a termination. This subdivision
23 shall not apply to employees whose daily work assignments and
24 duties require regular or periodic travel throughout the
25 school system or between work sites operated by or under the

1 control of the employer. Except as required by acts of God or
2 disasters that are beyond the reasonable control of the
3 employer, a nonprobationary classified employee may not be
4 involuntarily transferred more than one time in a school year,
5 excluding summer term. Such transfers are not subject to
6 challenge or review under this act. Nothing herein shall be
7 construed to authorize the involuntary transfer or
8 reassignment of a classified employee of a two-year
9 institution operated under the authority and control of the
10 Department of Postsecondary Education to another such
11 institution.

12 (e) Probationary teachers and probationary
13 classified employees may be transferred to another position
14 that provides for a lower rate or amount of compensation or a
15 shorter term of employment if the employee holds appropriate
16 certification or qualifications for the position, the notice
17 of proposed transfer contains a written explanation of the
18 effect of the transfer on the compensation of the employee,
19 and the notice informs the employee that he or she may object
20 in writing to the transfer before a final decision is made by
21 the president of the two-year educational institution alone or
22 a vote is taken thereon by the governing board. If approved by
23 the president of a two-year educational institution alone or
24 by vote of the board, the transfer shall be effective not less
25 than 15 calendar days after the date of the final decision.

1 Such transfers are not subject to challenge or review under
2 this act.

3 (f) A tenured teacher or nonprobationary classified
4 employee may be involuntarily transferred to another position
5 that provides for a lower rate or amount of pay or a shorter
6 term of employment, subject to the following terms and
7 conditions: The notice of proposed transfer and subsequent
8 proceedings, except for use of the term transfer, shall
9 conform and be subject to the substantive and procedural
10 standards and requirements that apply to termination of
11 nonprobationary employees under Section 6, and to appeals
12 therefrom. No vote or decision on such transfers shall be made
13 for political or personal reasons. Notwithstanding the
14 foregoing, transfers or reassignments that are made as a part
15 of, as a consequence of, or in conjunction with
16 reductions-in-force authorized under Section 16-1-33, Code of
17 Alabama 1975, or in order to comply with state or federal law
18 are not subject to challenge or review under this act, whether
19 or not such transfers or reassignments are to positions that
20 provide for a lower rate or amount of pay or a shorter term of
21 employment.

22 Section 8. Whenever this act affords an employee the
23 right to be heard by the governing board or the president of a
24 two-year institution under the authority and control of the
25 Department of Postsecondary Education before a decision on the

1 recommendation of the chief executive officer or chief
2 personnel officer of the two-year institution is made, and
3 such right to be heard is requested by the employee as
4 provided herein, the merits of the recommended employment
5 action shall not be deliberated or determined by the governing
6 board or the president of the two-year institution before the
7 hearing except as provided for herein.

8 Section 9. Nothing in this act shall restrict the
9 authority of the chief executive officer or the president of a
10 two-year institution under the authority and control of the
11 Department of Postsecondary Education to place an employee on
12 paid administrative leave or to make reasonable and customary
13 employment decisions not expressly provided for in this act
14 pending the disposition of proceedings authorized by this act
15 or otherwise in the exercise of sound administrative
16 discretion.

17 Section 10. (a) Any provision of this act or of any
18 other statute or rule to the contrary notwithstanding, the
19 employment of a teacher whose certificate is revoked by the
20 State Superintendent of Education pursuant to Section 16-23-5,
21 Code of Alabama 1975, shall thereby be summarily terminated.

22 (b) If a conviction resulting in the revocation of
23 the certificate of the teacher pursuant to Section 16-23-5,
24 Code of Alabama 1975, is overturned on appeal, the State
25 Superintendent of Education shall immediately reinstate the

1 certificate upon receipt of notice of the reversal, and the
2 employer shall either place the employee in a position for
3 which the employee holds appropriate certification or place
4 the employee on paid administrative leave. The employee shall
5 receive back pay and benefits from the date of termination to
6 the date of reinstatement.

7 (c) Nothing in this section shall be construed to
8 prevent the State Superintendent of Education or the employer
9 from pursuing other legal action against the teacher based
10 upon the circumstances underlying the conviction.

11 (d) If an employee is required to attain or hold a
12 certificate issued by the State Department of Education or
13 other licensing authority as a condition to his or her lawful
14 employment and such certificate or license has been revoked,
15 denied, suspended, or forfeited, or the employee has been
16 determined to be ineligible for such certificate or license by
17 the licensing authority, the rights, remedies, and procedures
18 provided by this act shall not apply or be available to such
19 employees. However, nothing in this subsection shall be
20 construed to deny such employees any right to contest,
21 challenge, or obtain review of any certification decision on
22 the part of the licensing authority that may be provided by
23 separate statute or departmental regulation including, but not
24 limited to, any recourse that is available under the Alabama
25 Administrative Procedure Act.

1 Section 11. No tenured teacher within the
2 contemplation of subdivision (1) of Section 4 shall be
3 permitted to terminate his or her employment within 30
4 calendar days before the first day of the next school term for
5 students, or, for employees of two-year institutions operated
6 under the authority and control of the Department of
7 Postsecondary Education, within 30 calendar days before the
8 commencement of the fall academic semester, unless such
9 termination is mutually agreed upon. Any such employee may
10 terminate his or her employment at any other time by giving
11 five days' written notice to the president of a two-year
12 educational institution or to the employing board of
13 education. Any teacher terminating his or her employment in
14 violation of this section is guilty of unprofessional conduct,
15 and the State Superintendent of Education may revoke or
16 suspend the certificate of such teacher.

17 Section 12. An employee who has attained tenure or
18 nonprobationary status and has been denied a hearing before an
19 employer subject to the requirements of this act may appeal
20 for relief directly to the Chief Administrative Law Judge of
21 the Office of Administrative Hearings, Division of
22 Administrative Law Judges, Office of the Attorney General. The
23 chief administrative law judge shall appoint an administrative
24 law judge to address the issues raised in the appeal. The
25 appeal shall state facts sufficient to allow the judge to

1 determine tentatively whether or not the employer has complied
2 with this act in failing to accord the employee a hearing. The
3 employer may answer or deny in writing the facts set out in
4 the employee appeal and, if the employer fails to do so, the
5 facts set out in the appeal shall be taken as true. The judge
6 shall review the request of the employee and the answer or
7 denial of the employer and shall determine, with or without a
8 hearing, whether or not the employer has complied with this
9 act in denying the employee a hearing as provided in this act.
10 Based upon his or her findings, the judge shall either order a
11 hearing before the employer or sustain the action taken by the
12 employer. Any petition or application for judicial relief from
13 the decision of the administrative law judge shall be filed in
14 the circuit court of the county in which the principal
15 administrative offices of the employer are located.

16 Section 13. (a) Leave of absence for a period of one
17 year for good cause may be granted to an employee by an
18 employer without impairing the tenured or nonprobationary
19 status of the employee. For valid reason, the employer may
20 extend the leave of absence for one additional year.

21 (b) Leave of absence for military service shall be
22 as provided in Section 31-2-13, Code of Alabama 1975.

23 Section 14. All laws or parts of laws which conflict
24 with this act are repealed. Specifically, portions of the
25 Teacher Tenure Law, consisting of Article 1, commencing with

1 Section 16-24-1, Chapter 24, Title 16; the Fair Dismissal Act,
2 Article 4, commencing with Section 36-26-100, Chapter 26,
3 Title 36; and Section 16-24B-7, Code of Alabama 1975, relating
4 to teacher transfers, are repealed. The foregoing
5 notwithstanding, and except as expressly provided otherwise in
6 the act, the terms and phrases used in subsection (a) of
7 Section 6 of the act to identify the reasons on which
8 termination may be based and in subsection (f) of Section 6 of
9 the act to describe the standards by which decisions of the
10 employer are to be reviewed by hearing officers shall be
11 deemed to carry the meanings traditionally accorded the terms
12 and phrases by the appellate courts of this state under prior
13 law.

14 Section 15. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill requires expenditures only by a school board.

21 Section 16. (a) Subdivision (2) and subdivision (3)
22 of subsection (h) of Section 6 shall be effective immediately
23 following passage and approval of this act by the Governor, or
24 its otherwise becoming law.

1 (b) Subject to the following terms and
2 qualifications, the remainder of this act shall be effective
3 on July 1, 2011, following passage and approval of this act by
4 the Governor, or its otherwise becoming law:

5 (1) Employees who have attained tenured status under
6 the Teacher Tenure Law or nonprobationary status under the
7 Fair Dismissal Act as of the effective date of this act, in
8 the case of tenured teachers, shall be deemed tenured teachers
9 under this act and, in the case of nonprobationary employees
10 within the meaning of the Fair Dismissal Act shall be deemed
11 nonprobationary classified employees under this act. Employees
12 who have not attained tenured status under the Teacher Tenure
13 Law or nonprobationary status under the Fair Dismissal Act as
14 of the effective date of this act shall be subject to the
15 terms and provisions of this act respecting the attainment of
16 teacher tenure or nonprobationary status, and all time in
17 service that would have been credited toward the attainment of
18 either tenure under the Teacher Tenure Law or nonprobationary
19 status under the Fair Dismissal Act shall be credited toward
20 the attainment of tenure or nonprobationary status in the
21 corresponding employment category under this act.

22 (2) All employment actions and proceedings that have
23 been initiated under either the Teacher Tenure Law or the Fair
24 Dismissal Act that are pending on the effective date of this
25 act shall be completed under the statutory procedures that

1 were in effect on the date the action or proceeding was
2 commenced.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB310

Senate 05-MAY-11

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

Patrick Harris
Secretary

House of Representatives
Passed: 25-MAY-11

By: Senator Pittman