

1 SB411
2 116460-1
3 By Senator Pittman
4 RFD: Finance and Taxation Education
5 First Read: 11-FEB-10

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8 SYNOPSIS: Under existing law, the Fair Dismissal Act
9 provides procedures for the transfer and
10 termination of employment contracts of
11 postsecondary education employees.

12 This bill would establish the "Postsecondary
13 Instructional and Support Workers Act of 2010."

14 This bill would define postsecondary
15 probationary employees and nonprobationary
16 employees.

17 This bill would define postsecondary
18 full-time employees as those working 32.5 hours or
19 more each week.

20 This bill would establish employment
21 termination procedures for probationary employees
22 and nonprobationary employees.

23 This bill would allow a postsecondary
24 college president to transfer or reassign any
25 employee upon written notification to the employee.

26 This bill would allow employees to be
27 suspended without pay as a disciplinary measure and

1 establish a hearing process for an employee to
2 contest his or her suspension.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Creating the Postsecondary Instructional and Support
2 Workers Act of 2010, relating to the transfer and termination
3 of employment of probationary and nonprobationary
4 postsecondary educational employees; to add Chapter 24C of
5 Title 16 to the Code of Alabama 1975; to define probationary
6 and nonprobationary employees; to define full-time employees;
7 to establish employment termination procedures for
8 probationary and nonprobationary employees; to allow a
9 postsecondary college president to transfer or reassign any
10 employee upon written notification to the employee; to allow
11 employees to be suspended without pay as a disciplinary
12 measure and to establish a hearing process for an employee to
13 contest his or her suspension; and in connection therewith
14 would have as its purpose or effect the requirement of a new
15 or increased expenditure of local funds within the meaning of
16 Amendment 621 of the Constitution of Alabama of 1901, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Chapter 24C of Title 16 is added to the
21 Code of Alabama 1975, to read as follows:

22 §16-24C-1. Definitions.

23 For purposes of this chapter, the following terms
24 shall have the following meanings:

25 (1) EMPLOYEE. As used in this chapter, includes all
26 persons employed as instructors or support personnel by
27 two-year educational institutions under the control and

1 auspices of the State Board of Education. Full-time employees
2 are employees whose duties require 32.5 or more hours in each
3 normal working week of the college term, employing board
4 holidays excepted. Employees serving as presidents, vice
5 presidents, deans, program directors, or in an administrative
6 capacity, as well as all employees of the Department of
7 Postsecondary Education, are excluded from this chapter.

8 (2) NONPROBATIONARY EMPLOYEE. A regular employee of
9 a postsecondary college covered under this chapter who has
10 been employed for 60 consecutive months, and has been offered
11 and accepted reemployment for the succeeding college term.

12 (3) PROBATIONARY EMPLOYEE. A regular employee of a
13 postsecondary college covered under this chapter who has been
14 employed less than 60 consecutive months. For the purpose of
15 this definition, full-time instructors who are employed on an
16 academic year basis shall be considered to have been employed
17 12 months for each academic year served. An academic year is
18 the annual instructional calendar period beginning with the
19 first instructional day of the fall semester and ending on the
20 last instructional day of the ensuing spring semester.

21 §16-24C-2. Termination.

22 (a) Probationary employees. At any time during the
23 employee's probationary period, the college president may
24 terminate the employee by furnishing the employee written
25 notification at least 15 days prior to the effective date of
26 termination. The fact that an employee may have a written
27 employment contract does not suspend the provisions of this

1 section and any such contract shall be construed as including
2 the provisions of this section. The termination of a
3 probationary employee shall be final as of the effective date
4 specified in the notice.

5 (b) Nonprobationary employees. Termination of
6 employment of a nonprobationary employee may be for
7 incompetency, insubordination, neglect of duty, immorality,
8 felony conviction, violation of state or federal law,
9 violation of State Board of Education policies, violation of
10 directives or guidelines issued by the Chancellor of
11 Postsecondary Education, failure to perform duties in a
12 satisfactory manner, justifiable decrease in the number of
13 positions, or other good and just cause.

14 (c) A nonprobationary employee may be terminated
15 only in the following manner:

16 (1) The president of the employing college shall
17 give notice in writing to the nonprobationary employee stating
18 in detail the reasons for the proposed termination and an
19 effective date for such termination. The notice shall also
20 inform the nonprobationary employee that in order to contest
21 the cancellation the nonprobationary employee shall file with
22 the president, at least five days prior to the effective date
23 of the termination, notice of an intention to contest. Nothing
24 in this subsection shall prevent the suspension of a
25 nonprobationary employee pending a hearing on a proposed
26 termination and the final determination after the hearing. If
27 the nonprobationary employee does not properly file a notice

1 of intention to contest with the president at least five days
2 prior to the date established in the notice as the effective
3 date of the termination, the termination shall be final and
4 effective on such date.

5 (2) Should the employee properly file a notice of
6 intention to contest with the president within the time
7 allotted in this subsection, the president shall thereafter
8 serve a notice of hearing upon the employee by either personal
9 delivery to the employee or by United States registered or
10 certified mail with postage prepaid thereon to the
11 nonprobationary employee's last known address, notifying the
12 employee of the exact date, time, and place at which the
13 nonprobationary employee may appear at a hearing before a
14 hearing officer, whose name and mailing address shall be set
15 forth on the notice, to contest the termination, which date
16 and time shall be at least 20, but no more than 45, days after
17 the date of service of the notice, the service being effective
18 upon personal delivery, or upon five days after the date of
19 mailing, if mailed.

20 (3) At the contested hearing, which shall be public
21 or private at the discretion of the nonprobationary employee,
22 or the hearing officer in cases where the evidence involves
23 the good name and character of an individual or involves or is
24 about a minor child, the employee may appear with or without
25 counsel, be heard, present the testimony of witnesses under
26 oath, and present other evidence bearing upon the reasons for
27 the proposed termination, and may cross-examine witnesses. The

1 president, in person or by and through his or her designee or
2 the college's attorney, may also provide witnesses under oath
3 and other evidence in support of the termination. The hearing
4 officer shall administer oaths and issue subpoenas to compel
5 the attendance of witnesses and production of papers necessary
6 as evidence in connection with the dispute or claim. If
7 requested, the hearing officer shall issue subpoenas for
8 witnesses to testify under oath, either in support of the
9 termination or on behalf of the nonprobationary employee, and
10 the witnesses may receive the same mileage and per diem as
11 witnesses called in civil cases in the circuit court of the
12 county where the hearing is held, which shall be paid out of
13 college funds. The college may not be held accountable for
14 witness fees for more than 10 of the witnesses subpoenaed by
15 the nonprobationary employee. If a person refuses to obey a
16 subpoena, the hearing officer, or his or her authorized
17 representative, may invoke the aid of the circuit court in
18 order that the testimony or evidence be produced. Upon proper
19 showing, the court shall issue a subpoena or order requiring
20 the person to appear before the hearing officer in a
21 continuation of the hearing and produce evidence and give
22 testimony relating to the matter at issue. A person failing to
23 obey the court's subpoena or order shall be punishable by the
24 court as for contempt.

25 (4) Absent good cause demonstrated to the hearing
26 officer at the time of the hearing, the nonprobationary
27 employee and the president or representative may not call more

1 than 10 witnesses each. The hearing officer may refuse to
2 allow as evidence, exhibits or testimony that he or she
3 determines to be cumulative, irrelevant, immaterial,
4 impertinent, or scandalous. It shall be the duty of the
5 college to employ a court reporter to keep, and upon request
6 transcribe, a record of the proceedings at the hearing, and to
7 assemble and annex to the record all notices given to the
8 nonprobationary employee regarding the termination, all papers
9 filed with the president by the nonprobationary employee in
10 compliance with this chapter, a transcript of testimony and
11 other evidence at the hearing and the findings and decisions
12 of the president, such exhibits as may have been admitted to
13 the record by the hearing officer during the hearing, and a
14 separate annex of exhibits offered but not admitted to the
15 record, all of which shall be preserved by the hearing officer
16 for filing with the Court of Civil Appeals, should an appeal
17 be taken as provided in this chapter. The record shall be
18 delivered to the Clerk of the Court of Civil Appeals, to the
19 president of the college, and to the nonprobationary employee
20 within 30 business days from the day of the filing of a notice
21 of appeal.

22 (5) During the hearing, the hearing officer may also
23 consider the nonprobationary employee's employment history,
24 including matters occurring in prior years. Relevant and
25 material documents not contained in the employee's personnel
26 record file may be considered by the hearing officer. After
27 all evidence has been presented at the hearing, the hearing

1 officer shall accept the president's determination of
2 termination absent finding that the preponderance of credible
3 evidence demonstrates that the president's determination of
4 termination was arbitrary or capricious, or otherwise
5 unlawful. Within 15 days of a hearing, the hearing officer
6 shall make a written determination and shall report to the
7 parties whether the hearing officer accepts or rejects the
8 president's determination of termination by either personal
9 delivery to the president and employee or by United States
10 registered or certified mail, with postage prepaid thereon,
11 service of the report of decision being effective upon
12 personal delivery or upon five days after the date of mailing,
13 if mailed. The report of decisions shall include the findings
14 and reasons which support the hearing officer's decision.
15 Failure of the hearing officer to submit the report in a
16 timely manner shall not be prejudicial to the president or to
17 the employee.

18 §16-24C-3. Pay and benefits of employee after
19 cancellation or termination.

20 If the written determination after the hearing
21 supports the president's decision to terminate, the employment
22 of the nonprobationary employee is terminated. If the action
23 of the president is reversed upon court review, the employee
24 shall be entitled to any benefits or compensation he or she
25 would have been entitled to as an employee.

26 §16-24C-4. Hearing officers.

1 Hearing officers selected under this chapter shall
2 be selected by the Chancellor of the Department of
3 Postsecondary Education from a panel of hearing officers
4 established and maintained by the State Board of Education for
5 their fitness of character, impartiality, and otherwise in
6 accordance with State Board of Education policies. Hearing
7 officers may not have been employed by the employing college
8 in the preceding seven consecutive years.

9 §16-24C-5. Appeals.

10 (a) Upon appeal, the decision of the president in
11 terminating the employment of the nonprobationary employee
12 shall be final if the action complied with this chapter and
13 was not arbitrary or capricious, or otherwise unlawful. The
14 nonprobationary employee may appeal to obtain review upon the
15 record and exhibits of the hearing by the Alabama Court of
16 Civil Appeals.

17 (b) An appeal shall be taken by personal delivery or
18 by United States mail certified or return receipt requested,
19 delivered on or before the fifteenth day after service of the
20 report of decision of the hearing officer, a written notice of
21 appeal filed with the Court of Civil Appeals with a copy
22 delivered to the opposing party by the same means. If notice
23 of appeal is not properly filed and delivered within 15 days
24 after the employee or president receives the decision of the
25 hearing officer, the hearing officer's decision shall be
26 final. Notice shall be deemed received five days after it has

1 been sent by United States mail, certified or return receipt
2 requested.

3 (c) Upon appeal to the Court of Civil Appeals, the
4 appealing employee shall have the burden on appeal to show
5 from the record on appeal that the president's decision to
6 terminate was arbitrary or capricious, or otherwise unlawful.

7 §16-24C-6. Transfers and reassignment.

8 The president may transfer or reassign any employee
9 within the college upon written notification to the employee
10 by personal service or United States mail, certified or return
11 receipt requested to the employee's last known address. The
12 employee shall be deemed to have received notice five days
13 after the notice has been sent by United States mail,
14 certified or return receipt requested, to his or her last
15 known address.

16 §16-24C-7. Suspension without pay.

17 An employee may be suspended without pay as a
18 disciplinary measure for any of the grounds enumerated in
19 Section 16-24C-2 in the following manner:

20 (1) For suspensions without pay of not more than 30
21 days, the president shall give notice in writing to the
22 employee stating in detail the reason for the suspension
23 without pay and name an exact time and place at which the
24 employee may appear to answer the notice. The hearing before
25 the president shall not be less than 20 nor more than 30
26 calendar days after service of the notice on the employee by
27 United States mail, certified or return receipt requested, to

1 his or her last known address. The notice shall also inform
2 the employee that in order to contest the suspension, the
3 employee shall file by personal delivery, United States mail,
4 certified or return receipt requested, written notice of an
5 intent to contest the suspension with the president at least
6 five days before the date the matter is set for a hearing.
7 Upon failure to file notice of intent to contest, the
8 suspension without pay shall become effective. The hearing
9 proceedings shall be conducted in accordance with Section
10 16-24C-2, except that the college may not be required to
11 employ a court reporter to transcribe a record of the hearing,
12 and the hearing shall be conducted before the president, in
13 lieu of a hearing officer, unless the president shall notify
14 the employee of his or her decision to request that the
15 hearing be conducted by a hearing officer as provided in
16 Section 16-24C-2. The decision of the president or hearing
17 officer on a suspension without pay for greater than 10 days,
18 but not more than 30 days, shall be final and not subject to
19 appeal.

20 (2) Suspensions without pay of greater than 30 days
21 shall require notice and any hearing or appeal conducted shall
22 be in the same manner as is required for terminations.

23 §16-24C-8. Other discipline.

24 Nothing in this chapter shall be construed to
25 prohibit or otherwise limit the discretion of a president to
26 impose discipline upon any college employee and other
27 discipline in the nature of oral or written counseling or

1 reprimand, and suspension with pay, and neither shall this
2 chapter require a review, hearing, or appeal of the imposition
3 of other discipline, unless compensation is suspended,
4 reduced, or terminated in association therewith.

5 Section 2. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill requires expenditures only by a school board.

12 Section 3. This act shall become effective upon its
13 passage and approval by the Governor, or its otherwise
14 becoming law.