

1 SB76
2 134903-3
3 By Senator Scofield
4 RFD: Governmental Affairs
5 First Read: 07-FEB-12
6 PFD: 12/06/2011

1 SB76

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4 ENROLLED, An Act,

5 Relating to suspensions of classified employees; to
6 amend Section 36-26-28, Code of Alabama 1975, to revise the
7 suspension process for classified employees; to eliminate
8 post-suspension review of suspensions; to provide for a
9 hearing before an independent hearing officer; to provide
10 procedures for appointment of an independent hearing officer;
11 to provide a classified employee with the right to challenge
12 the appointment of a particular hearing officer; and to apply
13 the suspension-challenge process to all state departments and
14 agencies regardless of size or use of particular challenge
15 procedures.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§36-26-28.

20 "(a) An appointing authority may, from time to time,
21 peremptorily suspend any employee without pay or other
22 compensation as punishment for improper behavior, but the
23 suspension or total suspension by the appointing authority of
24 the person shall not exceed 30 days in any year of service.
25 The suspension with loss of pay may be effected only by

1 service upon the employee by the appointing authority of
2 written charges setting out clearly the reasons for which the
3 suspension is being considered. Within 10 days, the employee
4 must accept the suspension or request a suspension hearing. If
5 the employee requests a suspension hearing, the appointing
6 authority shall appoint an independent hearing officer to
7 receive evidence and issue a recommendation on the proposed
8 suspension. The appointing authority may accept or reject the
9 recommendation of the hearing officer. If the appointing
10 authority rejects the recommendation, written justification
11 for the rejection must be provided to the employee.

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

1 Governmental Hearing Officer register, which is compiled and
2 maintained by the State Personnel Department.

3 "(c) Nothing in this section limits an appointing
4 authority's power to provide additional due process safeguards
5 to employees.

6 "(d) The burden of proof shall lie with the
7 appointing authority to prove the charges forming the basis of
8 the suspension.

9 "(e) Those departments or agencies currently having
10 an existing process for suspension hearings may continue to
11 use the existing process, provided that they observe tenets
12 of due process including that the burden of proof shall lie
13 with the appointing authority.

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

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB76
Senate 21-FEB-12
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 10-MAY-12

By: Senator Scofield