

1 SB310  
2 130730-8  
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

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To establish the Students First Act of 2011; to  
12 provide rights, remedies, and obligations with respect to  
13 employment actions affecting or involving certain employees or  
14 categories of employees of city and county boards of  
15 education, the Alabama Institute for Deaf and Blind, including  
16 production workers at the Alabama Industries for the Blind,  
17 educational and correctional institutions under the control of  
18 the Department of Youth Services, and two-year educational  
19 institutions operated under the authority and control of the  
20 Department of Postsecondary Education; to repeal existing  
21 statutes that are in conflict or that are otherwise  
22 inconsistent with this bill, including, but not limited to,  
23 portions of the Teacher Tenure Law, Article 1, commencing with  
24 Section 16-24-1, Chapter 24, Title 16, the Fair Dismissal Act,  
25 Article 4, commencing with Section 36-26-100, Chapter 26,  
26 Title 36, and Section 16-24B-7, Code of Alabama 1975, relating

1 to teacher transfers; and in connection therewith would have  
2 as its purpose or effect the requirement of a new or increased  
3 expenditure of local funds within the meaning of Amendment 621  
4 of the Constitution of Alabama of 1901, now appearing as  
5 Section 111.05 of the Official ReCompilation of the  
6 Constitution of Alabama of 1901, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 Section 2. The purpose of this act is to improve the  
11 quality of public education in the State of Alabama by doing  
12 all of the following:

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

15 (2) Restoring primary authority and responsibility  
16 for maintaining a competent educational workforce to employers  
17 covered by this act.

18 (3) Enhancing the ability of public educational  
19 agencies to increase student academic achievement and student  
20 performance through effective allocation of personnel  
21 resources.

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

25 (5) Eliminating costly, cumbersome, and  
26 counterproductive legal challenges to routine personnel

1 decisions by simplifying administrative adjudication and  
2 review of contested personnel decisions.

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

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

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

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

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

15 (4) EMPLOYER. The entity, institution, agency, or  
16 political subdivision of the state by which the employee who  
17 is subject to this act is employed. Employers subject to this  
18 act include all city and county boards of education, all  
19 educational and correctional institutions under the control of  
20 the Department of Youth Services, the Alabama Institute for  
21 Deaf and Blind, and two-year educational institutions operated  
22 under the authority and control of the Department of  
23 Postsecondary Education. Each two-year institution operated  
24 under the authority and control of the Department of  
25 Postsecondary Education is a separate employer for purposes of  
26 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  
26 the employee in order to be employed as a teacher in the

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

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

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

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

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

21 (1) Except as otherwise provided by Section 16-23-3,  
22 Code of Alabama 1975, a teacher who is not an employee of a  
23 two-year educational institution operated under the authority  
24 and control of the Department of Postsecondary Education,  
25 shall attain tenure upon the completion of three complete,  
26 consecutive school years of full-time employment as a teacher



1 with the same employer unless the governing board approves and  
2 issues written notice of termination to the teacher on or  
3 before the last day of the teacher's third consecutive,  
4 complete school year of employment. For purposes of this act,  
5 a probationary teacher whose employment or reemployment is  
6 effective prior to October 1 of the school year and who  
7 completes the school year shall be deemed to have served a  
8 complete school year. A teacher employed by a two-year  
9 educational institution operated under the authority and  
10 control of the Department of Postsecondary Education shall  
11 attain tenured status upon the completion of six consecutive  
12 semesters, excluding summer terms, at the same two-year  
13 institution, unless the president issues notice of termination  
14 to the teacher on or before 15 days prior to the end of the  
15 sixth consecutive semester of employment, excluding summer  
16 terms. No probationary teacher employed by a two-year  
17 educational institution operated under the authority and  
18 control of the Department of Postsecondary Education shall  
19 attain tenure during or at the completion of a summer term.  
20 For teachers who are required to hold a professional  
21 educator's certificate, time in service without such a  
22 certificate shall not be credited toward the attainment of  
23 tenure.

24 (2) A probationary classified employee who is not an  
25 employee of a two-year educational institution operated under  
26 the authority and control of the Department of Postsecondary

1 Education attains nonprobationary status upon the completion  
2 of three complete, consecutive school years of full-time  
3 employment with the same employer unless the governing body of  
4 the employer approves and issues written notice of termination  
5 to the employee on or before the fifteenth day of June  
6 immediately following the employee's third consecutive  
7 complete school year of employment. In the first year of each  
8 legislative quadrennium, the written notice shall be provided  
9 on or before June 30. For purposes of this act, a probationary  
10 classified employee whose employment or reemployment is  
11 effective prior to October 1 of the school year and who  
12 completes the school year shall be deemed to have served a  
13 complete school year. A probationary classified employee of a  
14 two-year educational institution operated under the authority  
15 and control of the Department of Postsecondary Education shall  
16 attain nonprobationary status upon the completion of 36  
17 consecutive months of employment at the same two-year  
18 institution, unless the president issues notice of termination  
19 to the classified employee on or before 15 days prior to the  
20 end of the thirty-sixth month of employment.

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

24 a. Only complete school years of service as defined  
25 in this act, including any leave that is credited to the  
26 employee for such purposes under board policy or applicable

1 law, may be credited to the attainment of tenure or  
2 nonprobationary status.

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

14 c. Except as expressly provided to the contrary  
15 elsewhere in this act, neither tenure nor nonprobationary  
16 status in this act creates or confers any enforceable right or  
17 protected interest in or to a specific position, rank, work  
18 site or location, assignment, title, or rate of compensation  
19 within those categories of employment.

20 d. Service performed as a teacher may not be  
21 converted to, recognized, or otherwise credited to the  
22 employee for the purpose of attaining nonprobationary status  
23 as a classified employee. Service performed in the capacity of  
24 a classified employee may not be converted to, recognized, or  
25 otherwise credited to the employee for the purpose of  
26 attaining tenure as a teacher, whether or not the classified

1 employee holds a certificate issued by the State Department of  
2 Education.

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

11 Section 5. (a) Probationary classified employees who  
12 are not employees of a two-year educational institution  
13 operated under the authority and control of the Department of  
14 Postsecondary Education may be terminated at the discretion of  
15 the employer upon written recommendation of the chief  
16 executive officer, a majority vote of the governing board, and  
17 issuance of written notice of termination to the employee at  
18 any time on or before the fifteenth day of June immediately  
19 following the employee's third consecutive, complete school  
20 year of employment. In the first year of each legislative  
21 quadrennium, the written notice shall be provided on or before  
22 June 30. A probationary classified employee of a two-year  
23 educational institution operated under the authority and  
24 control of the Department of Postsecondary Education may be  
25 terminated at the discretion of the president of such  
26 institution upon issuance of a written notice of termination

1 to the employee at any time on or before 15 days prior to the  
2 end of 36 consecutive months of employment at the same  
3 institution.

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

8 (c) Probationary teachers who are not employees of a  
9 two-year educational institution operated under the authority  
10 and control of the Department of Postsecondary Education may  
11 be terminated at the discretion of the employer upon the  
12 written recommendation of the chief executive officer, a  
13 majority vote of the governing board, and issuance of written  
14 notice of termination to the teacher on or before the  
15 fifteenth day of June. In the first year of each legislative  
16 quadrennium, the written notice shall be provided on or before  
17 June 30. A probationary teacher who has not been terminated on  
18 or before the dates specified above shall be deemed reemployed  
19 as a probationary teacher, except as provided in subdivision  
20 (1) of Section 4. The employment of any probationary teacher  
21 may be terminated before the completion of the school year  
22 upon at least 30 calendar days' written notice of the date on  
23 which the governing board is scheduled to vote on such  
24 recommendation. Upon issuance of such notice, the teacher may  
25 submit a written statement to the chief executive officer and  
26 the governing board explaining why such action should not be

1 taken. A probationary teacher employed by a two-year  
2 educational institution operated under the authority and  
3 control of the Department of Postsecondary Education may be  
4 terminated at the discretion of the president of such  
5 institution upon issuance of a written notice of termination  
6 to the employee at any time on or before 15 days prior to the  
7 end of the sixth consecutive semester of employment, excluding  
8 summer terms, at the same institution.

9 (d) The decision to terminate the employment of any  
10 probationary employee shall be final and no compensation shall  
11 thereafter be due to the employee, except as provided in  
12 subsection (b).

13 Section 6. (a) Tenured teachers and nonprobationary  
14 classified employees may be terminated at any time because of  
15 a justifiable decrease in the number of positions or for  
16 incompetency, insubordination, neglect of duty, immorality,  
17 failure to perform duties in a satisfactory manner, or other  
18 good and just cause, subject to the rights and procedures  
19 hereinafter provided. However, a vote or decision to approve a  
20 recommended termination on the part of a president of a  
21 two-year educational institution operated under the authority  
22 and control of the Department of Postsecondary Education or  
23 the governing board shall not be made for political or  
24 personal reasons.

25 (b) The termination of a tenured teacher or  
26 nonprobationary classified employee who is not an employee of

1 a two-year educational institution operated under the  
2 authority and control of the Department of Postsecondary  
3 Education shall be initiated by the recommendation of the  
4 chief executive officer in the form of a written notice of  
5 proposed termination to the employee. A tenured teacher or a  
6 nonprobationary classified employee who is employed by a  
7 two-year educational institution operated under the authority  
8 and control of the Department of Postsecondary Education may  
9 be terminated by the president of such institution upon the  
10 issuance of a written notice of proposed termination to the  
11 employee by the official of the institution who serves or  
12 functions as the senior personnel officer thereof. In either  
13 case, the notice shall state the reasons for the proposed  
14 termination, shall contain a short and plain statement of the  
15 facts showing that the termination is taken for one or more of  
16 the reasons listed in subsection (a), and shall be issued in  
17 conformity with subsection (k). The notice shall inform the  
18 employee, who is not an employee of a two-year educational  
19 institution operated under the authority and control of the  
20 Department of Postsecondary Education that, in order to  
21 request a hearing with the governing board, the employee must  
22 file a written request for such a hearing with the chief  
23 executive officer within 15 calendar days after issuance of  
24 the notice. Should the employee fail to timely file the  
25 request for hearing, the governing board shall vote on the  
26 recommended termination. Notice to employees of a two-year

1 educational institution operated under the authority and  
2 control of the Department of Postsecondary Education, shall  
3 inform such employee that, in order to request a hearing with  
4 the president of such institution, the employee must file a  
5 written request for such a hearing with the president within  
6 15 calendar days after issuance of the notice. Should the  
7 employee fail to timely file the request for hearing, the  
8 president of such institution shall act on the recommended  
9 termination and the president's decision shall be final. If  
10 the employee timely requests a hearing, the hearing shall be  
11 set by the employer not less than 30 and not more than 60  
12 calendar days from the date written notice of the time, date,  
13 and place of the hearing is issued to the employee, but may be  
14 rescheduled by agreement or for good cause shown.

15 (c) At the hearing, the chief executive officer or,  
16 for a two-year educational institution operated under the  
17 authority and control of the Department of Postsecondary  
18 Education, the official of such institution who serves or  
19 functions as the senior personnel officer thereof, based  
20 solely on the information provided by the recommending senior  
21 supervisor, shall bear the burden of proof with regard to  
22 disputed issues of material fact. The employee or his or her  
23 representative shall be afforded the opportunity to present  
24 testimony, other evidence, and argument on matters relevant to  
25 the proposed termination and to cross-examine witnesses whose  
26 testimony is proffered in support of the proposed termination.



1 The employee shall have the right to counsel at his or her  
2 expense. A court reporter shall record the proceedings at the  
3 expense of the State Department of Education or, if  
4 applicable, the two-year institution operated under the  
5 authority and control of the Department of Postsecondary  
6 Education. The hearing may be public or private at the  
7 election of the employee. The chief executive officer shall  
8 issue subpoenas compelling the appearance of witnesses on the  
9 employee's behalf upon the employee's timely request for  
10 issuance of such subpoenas and may issue subpoenas to any  
11 witness who the chief executive officer believes may have  
12 knowledge or evidence bearing on the issues presented for  
13 determination.

14 (d) Whether or not the employee requests a hearing  
15 before the governing board or the president of the two-year  
16 institution, the chief executive officer shall give written  
17 notice to the employee of the decision regarding the proposed  
18 termination within 10 calendar days after the vote of the  
19 board or the decision of the president. If the decision  
20 follows a hearing requested by the employee, the notice shall  
21 also inform the employee of the right to contest the decision  
22 by filing an appeal as provided in this act.

23 (e) An employee who is terminated following a  
24 hearing requested by the employee may obtain a review of an  
25 adverse decision by filing a written notice of appeal to the  
26 State Superintendent of Education within 15 days of receipt of

1 the decision. For employees of a two-year educational  
2 institution under the authority of the Department of  
3 Postsecondary Education, such notice of appeal shall be  
4 submitted to the Department of Postsecondary Education within  
5 15 days of the receipt of the decision. The State  
6 Superintendent of Education or the Department of Postsecondary  
7 Education shall refer the appeal to the Executive Director of  
8 the Alabama State Bar Association who shall obtain a panel of  
9 neutrals and administer the hearing officer selection process  
10 as is hereinafter provided. The notice of appeal shall state  
11 the grounds upon which it is based. A copy of the notice shall  
12 be simultaneously served by the employee on the chief  
13 executive officer of the employer or the president of the  
14 two-year institution under the authority and control of the  
15 Department of Postsecondary Education. Upon receiving notice  
16 of the employee's appeal, the employer shall compile and file  
17 the record of administrative proceedings, including any  
18 hearing transcript, with the hearing officer within 20 days  
19 after its receipt of the notice of appeal unless the time is  
20 extended by the hearing officer for good cause shown. Except  
21 as hereinafter provided, the appeal shall be submitted to the  
22 hearing officer. The hearing officer shall hold a hearing.  
23 Deference is given to the decision of the employer. A final  
24 ruling, either affirming or reversing the decision of the  
25 employer, shall be rendered within five days after the  
26 hearing.

1           (f) If the decision of the president or the  
2 governing board is set aside by the hearing officer, the  
3 employee shall be reinstated and credited with any benefits  
4 due under applicable statutes, salary schedules, or  
5 compensation policies. Either party may appeal an adverse  
6 decision rendered by a hearing officer to the Alabama Court of  
7 Civil Appeals by filing a notice of appeal to said court in  
8 accordance with the Alabama Rules of Appellate Procedure.

9           (g) The hearing officer assigned to review appeals  
10 hereunder shall be selected from a panel of neutrals comprised  
11 of five retired Alabama judges, excluding judges of probate,  
12 whose names appear on an official alternative dispute  
13 resolution roster maintained by the Alabama Bar Association.  
14 Members of the panel shall be identified by the Executive  
15 Director of the Alabama State Bar Association on a random and  
16 rotating basis and provided to the chief executive officer or  
17 the president of the two-year institution under the authority  
18 and control of the Department of Postsecondary Education. Upon  
19 receiving the names of the panel members, the parties may  
20 select the hearing officer from among the names provided or  
21 from any other source by agreement. Failing such agreement,  
22 the parties shall select the hearing officer by a process of  
23 alternating strikes in which the employee shall be provided  
24 the first strike and the employer the last strike. The hearing  
25 officer selection process shall be completed within 10  
26 calendar days of receipt by the parties of the panel of

1 potential hearing officers. The hearing officer shall not have  
2 a personal or professional interest that would conflict with  
3 his or her ability to render an objective decision. The  
4 hearing officer shall be paid for services rendered hereunder  
5 according to criteria, and at the prevailing rate, established  
6 by the State Department of Education under the supervision of  
7 the State Superintendent of Education and the Chancellor of  
8 the Department of Postsecondary Education from funds  
9 appropriated for such purposes by the Legislature. All hearing  
10 officers must agree to abide by all timelines provided in this  
11 section.

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

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

1 president of the two-year college from imposing a lesser  
2 sanction than that recommended by the senior personnel officer  
3 or to preclude a negotiated resolution by the president of  
4 matters, issues, and disputes arising under this act.

5 (2) Reductions in or modifications to employee  
6 compensation or benefits or of the length of the work or  
7 school year are not terminations or transfers for purposes of  
8 this act or otherwise subject to challenge or review under  
9 this act, provided that the action is all of the following:

10 a. Prospective in effect.

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

14 c. Applied to similarly situated employees within  
15 the two-year college, agency, or system, or within designated  
16 operating divisions, departments, or employment  
17 classifications therein.

18 (3) Layoffs or other personnel actions that are  
19 unavoidable reductions in the workforce beyond normal  
20 attrition due to decreased student enrollment or shortage of  
21 revenues as specified in Section 16-1-33, Code of Alabama  
22 1975, are not subject to challenge or review under this act.

23 (i) An employee may be suspended for cause with or  
24 without pay on the written recommendation of the president of  
25 a two-year educational institution alone or the chief  
26 executive officer and the approval of the governing board. The

1 suspension of a tenured teacher or a nonprobationary employee  
2 for no more than 20 work days without pay is not a termination  
3 of employment that is subject to review under this act.  
4 Adequate notice of the reason or reasons for the proposed  
5 suspension and an opportunity to present evidence and  
6 argument, either in person or in writing, to the president of  
7 a two-year educational institution or to the governing board  
8 with respect to the proposed action shall be afforded the  
9 employee before the imposition of the suspension. Suspensions  
10 of tenured teachers or nonprobationary classified employees  
11 without pay in excess of 20 work days are subject to the  
12 notice, hearing, and review requirements and procedures that  
13 apply to terminations of tenured teachers and nonprobationary  
14 classified employees under this act.

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

1 (k) Unless otherwise provided, notice for all  
2 purposes under this act shall be given by United States mail,  
3 certified delivery, by private mail carrier for next business  
4 day delivery, or by physical delivery to the employee or the  
5 last known address of the employee. Notice by certified mail  
6 or private mail carrier shall be deemed received by the  
7 employee and complete for purposes of this act two business  
8 days after the notice is deposited for certified delivery in  
9 the United States mail or placed with a private mail carrier  
10 for next business day delivery. The employer has the burden of  
11 producing evidence that service was affected in the manner  
12 permitted by this act, but the employee has the burden of  
13 proving that such service was not properly made.

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

1 (m) Unless otherwise specified by the president of a  
2 two-year educational institution or the governing board, a  
3 decision to terminate the employee or suspend the employee  
4 without pay shall be effective immediately, except that a  
5 tenured teacher or a nonprobationary classified employee shall  
6 continue to receive pay and benefits until a final ruling by  
7 the hearing officer or 75 calendar days, whichever occurs  
8 first from the date of the employer termination decision  
9 unless the termination is based on an act of moral turpitude,  
10 immorality, abandonment of job, incarceration, or neglect of  
11 duty. If the decision of the president of a two-year  
12 educational institution or the governing board is set aside  
13 and the employee is reinstated, the employee shall receive  
14 back pay and other relief as provided in subsection (f).

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

22 (b) A chief executive officer may reassign a teacher  
23 to any grade, position, or work location within the same  
24 school, campus, instructional facility, or, for two-year  
25 institutions operated under the authority and control of the  
26 Department of Postsecondary Education, to any teaching



1 position or work location that is under the control and  
2 jurisdiction of the institution, as the needs of the employer  
3 require. For a tenured teacher, except as required by acts of  
4 God or disasters that are beyond the reasonable control of the  
5 employer, written notice of the reassignment must be issued to  
6 the teacher no later than the twentieth calendar day after the  
7 first day of classes for students, and the teacher may not be  
8 involuntarily reassigned under this subsection more than one  
9 time in a school year, excluding summer term. The reassignment  
10 may only be to another position for which the teacher holds  
11 appropriate certification, and the reassignment may not entail  
12 a loss of or reduction in compensation. Such reassignments are  
13 not subject to challenge or review under this act. For  
14 reassignments due to acts of God or disasters later than the  
15 20th calendar day after the first day of class for students, a  
16 tenured teacher may request a hearing before the board prior  
17 to a vote of the board on the proposed transfer.

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

1 proposed transfer must be issued to the teacher by the  
2 president of a two-year educational institution alone or the  
3 chief executive officer no later than the twentieth calendar  
4 day after the first day of classes for students, and the  
5 teacher may not be involuntarily transferred under this  
6 subsection more than one time in a school year, excluding  
7 summer term. In the notice of proposed transfer, and prior to  
8 a final decision of the president of a two-year educational  
9 institution or the governing board, the teacher must be  
10 afforded an opportunity to meet with the president of a  
11 two-year educational institution or the governing board to  
12 demonstrate why the proposed transfer should not be approved.  
13 Such transfers are not subject to challenge or review under  
14 this act. Nothing herein shall be construed to authorize the  
15 involuntary transfer or reassignment of a tenured teacher  
16 employed by a two-year institution operated under the  
17 authority and control of the Department of Postsecondary  
18 Education to another such institution. If the proposed  
19 transfer is to a work site outside of the high school feeder  
20 pattern in which the teacher is currently working, then the  
21 teacher may request a hearing before the board prior to a vote  
22 of the board on the proposed transfer. For transfers due to  
23 acts of God or disasters later than the 20th calendar day  
24 after the first day of class for students, a tenured teacher  
25 may request a hearing before the board prior to a vote of the  
26 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  
26 control of the employer. Except as required by acts of God or

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

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

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

20 Section 8. Whenever this act affords an employee the  
21 right to be heard by the governing board or the president of a  
22 two-year institution under the authority and control of the  
23 Department of Postsecondary Education before a decision on the  
24 recommendation of the chief executive officer or chief  
25 personnel officer of the two-year institution is made, and  
26 such right to be heard is requested by the employee as

1 provided herein, the merits of the recommended employment  
2 action shall not be deliberated or determined by the governing  
3 board or the president of the two-year institution before the  
4 hearing except as provided for herein.

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

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

19 (b) If a conviction resulting in the revocation of  
20 the certificate of the teacher pursuant to Section 16-23-5,  
21 Code of Alabama 1975, is overturned on appeal, the State  
22 Superintendent of Education shall immediately reinstate the  
23 certificate upon receipt of notice of the reversal, and the  
24 employer shall either place the employee in a position for  
25 which the employee holds appropriate certification or place  
26 the employee on paid administrative leave. The employee shall

1 receive back pay and benefits from the date of termination to  
2 the date of reinstatement.

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

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

22 Section 11. No tenured teacher within the  
23 contemplation of subdivision (1) of Section 4 shall be  
24 permitted to terminate his or her employment within 30  
25 calendar days before the first day of the next school term for  
26 students, or, for employees of two-year institutions operated

1 under the authority and control of the Department of  
2 Postsecondary Education, within 30 calendar days before the  
3 commencement of the fall academic semester, unless such  
4 termination is mutually agreed upon. Any such employee may  
5 terminate his or her employment at any other time by giving  
6 five days' written notice to the president of a two-year  
7 educational institution or to the employing board of  
8 education. Any teacher terminating his or her employment in  
9 violation of this section is guilty of unprofessional conduct,  
10 and the State Superintendent of Education may revoke or  
11 suspend the certificate of such teacher.

12 Section 12. An employee who has attained tenure or  
13 nonprobationary status and has been denied a hearing before an  
14 employer subject to the requirements of this act may appeal  
15 for relief directly to the Chief Administrative Law Judge of  
16 the Office of Administrative Hearings, Division of  
17 Administrative Law Judges, Office of the Attorney General. The  
18 chief administrative law judge shall appoint an administrative  
19 law judge to address the issues raised in the appeal. The  
20 appeal shall state facts sufficient to allow the judge to  
21 determine tentatively whether or not the employer has complied  
22 with this act in failing to accord the employee a hearing. The  
23 employer may answer or deny in writing the facts set out in  
24 the employee appeal and, if the employer fails to do so, the  
25 facts set out in the appeal shall be taken as true. The judge  
26 shall review the request of the employee and the answer or



1 denial of the employer and shall determine, with or without a  
2 hearing, whether or not the employer has complied with this  
3 act in denying the employee a hearing as provided in this act.  
4 Based upon his or her findings, the judge shall either order a  
5 hearing before the employer or sustain the action taken by the  
6 employer. Any petition or application for judicial relief from  
7 the decision of the administrative law judge shall be filed in  
8 the circuit court of the county in which the principal  
9 administrative offices of the employer are located.

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

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

17 Section 14. All laws or parts of laws which conflict  
18 with this act are repealed. Specifically, portions of the  
19 Teacher Tenure Law, consisting of Article 1, commencing with  
20 Section 16-24-1, Chapter 24, Title 16; the Fair Dismissal Act,  
21 Article 4, commencing with Section 36-26-100, Chapter 26,  
22 Title 36; and Section 16-24B-7, Code of Alabama 1975, relating  
23 to teacher transfers, are repealed. The foregoing  
24 notwithstanding, and except as expressly provided otherwise in  
25 the act, the terms and phrases used in subsection (a) of  
26 Section 6 of the act to identify the reasons on which

1 termination may be based and in subsection (f) of Section 6 of  
2 the act to describe the standards by which decisions of the  
3 employer are to be reviewed by hearing officers shall be  
4 deemed to carry the meanings traditionally accorded the terms  
5 and phrases by the appellate courts of this state under prior  
6 law.

7 Section 15. Although this bill would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds, the bill is excluded from further  
10 requirements and application under Amendment 621, now  
11 appearing as Section 111.05 of the Official Recompilation of  
12 the Constitution of Alabama of 1901, as amended, because the  
13 bill requires expenditures only by a school board.

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

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

22 (1) Employees who have attained tenured status under  
23 the Teacher Tenure Law or nonprobationary status under the  
24 Fair Dismissal Act as of the effective date of this act, in  
25 the case of tenured teachers, shall be deemed tenured teachers  
26 under this act and, in the case of nonprobationary employees

1 within the meaning of the Fair Dismissal Act shall be deemed  
2 nonprobationary classified employees under this act. Employees  
3 who have not attained tenured status under the Teacher Tenure  
4 Law or nonprobationary status under the Fair Dismissal Act as  
5 of the effective date of this act shall be subject to the  
6 terms and provisions of this act respecting the attainment of  
7 teacher tenure or nonprobationary status, and all time in  
8 service that would have been credited toward the attainment of  
9 either tenure under the Teacher Tenure Law or nonprobationary  
10 status under the Fair Dismissal Act shall be credited toward  
11 the attainment of tenure or nonprobationary status in the  
12 corresponding employment category under this act.

13 (2) All employment actions and proceedings that have  
14 been initiated under either the Teacher Tenure Law or the Fair  
15 Dismissal Act that are pending on the effective date of this  
16 act shall be completed under the statutory procedures that  
17 were in effect on the date the action or proceeding was  
18 commenced.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

Senate

Read for the first time and referred to the Senate  
committee on Education..... 31-MAR-11

Read for the second time and placed on the calen-  
dar with 1 substitute and 2 amendments ..... 21-APR-11

Read for the third time and passed as amended .... 05-MAY-11

Yeas 18  
Nays 16

Patrick Harris  
Secretary