

1 HB465
2 128188-1
3 By Representatives Fincher, McClurkin, Mask, Ison, McMillan,
4 Williams (P), Roberts, Gaston, Ball, Sanderford, Brown,
5 Wallace, Weaver, Buttram, Lee, Clouse, Henry, Collins, Barton,
6 Williams (J), Faust, Love, Wood, Shiver, Hubbard (M), Greer,
7 McCutcheon, Canfield, Bridges, McClendon, Hammon, Chesteen,
8 Baughn, Wren, Patterson, Moore (B), Williams (D), Vance and
9 Farley
10 RFD: Education Policy
11 First Read: 06-APR-11

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish the Students First
9 Act of 2011.

10 This bill would provide rights, remedies,
11 and obligations with respect to employment actions
12 affecting or involving certain employees or
13 categories of employees of county and city boards
14 of education, the Alabama Institute for Deaf and
15 Blind, the Alabama Industrial School for Boys, the
16 Alabama Industrial School for Girls, the Alabama
17 Industrial School at Mt. Meigs, and two-year
18 educational institutions operated under the
19 authority and control of the Department of
20 Postsecondary Education.

21 This bill would repeal existing statutes
22 that are in conflict or that are otherwise
23 inconsistent with this bill, including, but not
24 limited to, the Fair Dismissal Act, the Teacher
25 Tenure Law, and the law prescribing procedures for
26 teacher transfers.

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

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

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To establish the Students First Act of 2011; to
27 provide rights, remedies, and obligations with respect to

1 employment actions affecting or involving certain employees or
2 categories of employees of county and city boards of
3 education, the Alabama Institute for Deaf and Blind, the
4 Alabama Industrial School for Boys, the Alabama Industrial
5 School for Girls, the Alabama Industrial School at Mt. Meigs,
6 and two-year educational institutions operated under the
7 authority and control of the Department of Postsecondary
8 Education; to repeal existing statutes that are in conflict or
9 that are otherwise inconsistent with this bill, including, but
10 not limited to, portions of the Teacher Tenure Law, Article 1,
11 commencing with Section 16-24-1, Chapter 24, Title 16, the
12 Fair Dismissal Act, Article 4, commencing with Section
13 36-26-100, Chapter 26, Title 36, and Section 16-24B-7, Code of
14 Alabama 1975, relating to teacher transfers; and in connection
15 therewith would have as its purpose or effect the requirement
16 of a new or increased expenditure of local funds within the
17 meaning of Amendment 621 of the Constitution of Alabama of
18 1901, now appearing as Section 111.05 of the Official
19 Recompilation of the Constitution of Alabama of 1901, as
20 amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 Section 2. The purpose of this act is to improve the
25 quality of public education in the State of Alabama by doing
26 all of the following:

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

3 (2) Restoring primary authority and responsibility
4 for maintaining a competent educational workforce to employers
5 covered by this act.

6 (3) Enhancing the ability of public educational
7 agencies to increase student academic achievement and student
8 performance through effective allocation of personnel
9 resources.

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

13 (5) Eliminating costly, cumbersome, and
14 counterproductive legal challenges to routine personnel
15 decisions by simplifying administrative adjudication and
16 judicial review of contested personnel decisions.

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

19 (1) CHIEF EXECUTIVE OFFICER. The chief
20 administrative and executive officer of the entity,
21 institution, agency, or political subdivision of the state
22 that is subject to this act and includes, without limitation,
23 superintendents of local boards of education and presidents of
24 two-year educational institutions operated under authority and
25 control of the Department of Postsecondary Education.

26 (2) CLASSIFIED EMPLOYEE. All adult bus drivers, all
27 full-time lunchroom or cafeteria workers, janitors,

1 custodians, maintenance personnel, secretaries and clerical
2 assistants, instructional aides or assistants, whether or not
3 certificated, non-certificated supervisors, and, except as
4 hereinafter provided, all other persons who are not
5 professional employees as defined herein who are full-time
6 employees of a local board of education, two-year educational
7 institutions operated under the authority and control of the
8 Department of Postsecondary Education, the Alabama Institute
9 for Deaf and Blind, including production workers at the
10 Alabama Industries for the Blind, and educational and
11 correctional institutions under the control of the Department
12 of Youth Services. The term does not include the employer's
13 chief executive officer or chief school financial officer.
14 Full-time employees include adult bus drivers and other
15 employees whose duties require 20 or more hours in each normal
16 working week of the school term, excluding holidays that are
17 recognized by the employer. Employees who are eligible for
18 coverage under the state Merit System are not covered by this
19 act.

20 (3) EMPLOYEE. Unless otherwise specified, and as
21 appropriate to the context, the term includes either a
22 professional or classified employee whose employment is
23 subject to this act.

24 (4) EMPLOYER. The entity, institution, agency, or
25 political subdivision of the state by which the employee who
26 is subject to this act is employed. Each two-year institution
27 operated under the authority and control of the Department of

1 Postsecondary Education is a separate employer for purposes of
2 this act.

3 (5) GOVERNING BOARD. The body of elected or
4 appointed officials that is granted final authority by law,
5 regulation, or policy to make employment decisions. If final
6 decision making authority with respect to employment decisions
7 is conferred by law, regulation, or duly adopted policy on an
8 official, administrator, or organizational unit other than a
9 separate governing board, the final decision or action of such
10 official, administrator, or organizational unit, which shall
11 include the president of a two-year educational institution
12 operated under the authority and control of the Department of
13 Postsecondary Education, is that of the governing board for
14 purposes of this act, and no additional approval of such
15 decision or action shall be required. Under such
16 circumstances, the official, administrator, or organizational
17 unit shall assume and exercise the duties of the governing
18 board established by this act.

19 (6) PROFESSIONAL EDUCATOR'S CERTIFICATE. A
20 certificate or license, by whatever name, designation, or
21 subclassification known or identified, issued by the State
22 Department of Education, or recognized under an approved
23 interstate reciprocity program, and maintained by the employee
24 in order to be employed as a teacher in the county and city
25 schools of this state. A professional educator's certificate
26 does not include certificates or licenses that are issued to
27 instructional aides or assistants, to substitute teachers, or

1 to business, technical, operational, or other employees whose
2 job duties do not require or entail the instruction of
3 students or the regular supervision of or interaction with
4 employees with such job duties.

5 (7) PROFESSIONAL EMPLOYEE. All employees of entities
6 that are covered by this act who are required by law,
7 regulation, or employer policy to maintain a professional
8 educator's certificate issued by the State Department of
9 Education and who are employed by a local board of education,
10 the Alabama Institute for Deaf and Blind, the Alabama
11 Industrial School for Boys, the Alabama Industrial School for
12 Girls, the Alabama Industrial School at Mt. Meigs, and
13 instructors employed by two-year educational institutions
14 operated under the authority and control of the Department of
15 Postsecondary Education. Professional employees include
16 principals who had attained tenure under prior law, but who
17 have not elected to become contract principals under
18 subsection (h) of Section 16-24B-3, Code of Alabama 1975. The
19 term does not include an employer's chief executive officer,
20 chief school financial officer, or a principal who is employed
21 as or who has elected to become a contract principal under
22 subsection (h) of Section 16-24B-3, Code of Alabama 1975,
23 whether or not such certification is required for those
24 positions by law or policy, and does not include the president
25 or vice president of a two-year educational institution
26 operated under the authority and control of the Department of
27 Postsecondary Education.

1 Section 4. An employee shall attain nonprobationary
2 status as follows:

3 (1) A probationary professional employee shall
4 attain nonprobationary status upon the completion of three
5 complete, consecutive school years of full-time employment as
6 a professional employee with the same employer unless the
7 governing board approves and issues notice of termination to
8 the professional employee on or before the fifteenth day of
9 June immediately following the professional employee's third
10 consecutive, complete school year of employment. For employees
11 who are required to hold a professional educator's
12 certificate, time in service without such a certificate issued
13 or recognized by the State Department of Education shall not
14 be credited toward the attainment of nonprobationary status.

15 (2) A probationary classified employee attains
16 nonprobationary status upon the completion of three complete,
17 consecutive school years of full-time employment with the same
18 employer unless the governing body of the employer approves
19 and issues notice of termination to the employee on or before
20 the fifteenth day of June immediately following the employee's
21 third consecutive complete school year of employment.

22 (3) Professional and classified employees of
23 two-year educational institutions operated under the authority
24 and control of the Department of Postsecondary Education shall
25 attain nonprobationary status in the manner prescribed in
26 subdivision (1) and subdivision (2), respectively, except
27 that, in lieu of three consecutive, complete, school years of

1 service, such employees shall be required to complete six
2 consecutive academic semesters of employment at the same
3 two-year educational institution, beginning with the fall
4 academic semester.

5 (4) All of the following additional terms,
6 conditions, and limitations apply to the attainment and
7 retention of nonprobationary status:

8 a. Except as qualified by subdivision (3), only
9 complete school years of service, including any leave that is
10 credited to the employee for such purposes under board policy
11 or applicable law, may be credited to the attainment of
12 nonprobationary status.

13 b. Nonprobationary status may not be attained as a
14 chief executive officer, a chief school financial officer, as
15 a president or vice president of a two-year educational
16 institution operated under the authority and control of the
17 Department of Postsecondary Education, or in or by virtue of
18 employment in temporary, part-time, substitute, summer school,
19 occasional, seasonal, supplemental, irregular, or like forms
20 of employment, or in positions that are created to serve
21 experimental, pilot, temporary, or like special programs,
22 projects, or purposes, the funding and duration of which are
23 finite.

24 c. Nonprobationary status is attained and maintained
25 only in the general categories of either professional or
26 classified employment. Such status does not create or confer
27 any enforceable right or protected interest in or to a

1 specific position, rank, work site or location, assignment,
2 title, or rate of compensation within those categories of
3 employment.

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

14 e. An employer does not forfeit its discretion to
15 terminate an employee by virtue of any actual or alleged
16 breach, default, or omission on the part of the employer with
17 respect to the administration or implementation of any
18 contract, policy, or evaluation score, rating, grade, or
19 procedure.

20 f. Neither nonprobationary status nor time in
21 probationary service shall be transferable from one employer
22 subject to this act to another such employer, except that
23 employees whose employer changes by virtue of annexation,
24 school district formation, consolidation, or a similar
25 reorganization over which the employee has no control shall
26 retain nonprobationary status and service credit attained by
27 virtue of employment with the predecessor employer.

1 Section 5. (a) Except as qualified by subdivision
2 (5) of Section 3, probationary employees may be terminated at
3 the discretion of the employer, upon recommendation of the
4 chief executive officer and a majority vote of the governing
5 board, and issuance of written notice of termination to the
6 employee at any time on or before the fifteenth day of June
7 immediately following the employee's third consecutive,
8 complete school year of employment.

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

13 (c) Probationary professional employees whose
14 termination is proposed to be effective before the completion
15 of the school term shall be provided at least 30 calendar
16 days' written notice of the proposed action and the date on
17 which the governing board is scheduled to vote on such
18 recommendation. Upon issuance of such notice, the professional
19 employee may submit a written statement to the chief executive
20 officer and the governing board explaining why such action
21 should not be taken.

22 (d) The decision to terminate the employment of a
23 probationary employee shall be final.

24 Section 6. (a) Nonprobationary employees may be
25 terminated at any time because of a justifiable decrease in
26 the number of positions or for incompetency, insubordination,
27 neglect of duty, immorality, or failure to perform duties in a

1 satisfactory manner, including, for professional employees, a
2 consistent or pervasive record of inadequate student
3 achievement or performance under the employee's supervision,
4 or other good and just cause, subject to the rights and
5 procedures hereinafter provided.

6 (b) Except as qualified by subdivision (5) of
7 Section 3, the termination of a nonprobationary employee shall
8 be initiated by the recommendation of the chief executive
9 officer in the form of a written notice of proposed
10 termination to the employee. Such notice shall state the
11 reasons for the proposed termination, shall contain a short
12 and plain statement of the facts showing that the termination
13 is taken for one or more of the reasons listed in subsection
14 (a), and shall be issued in conformity with subsection (j).
15 The notice shall inform the employee that in order to request
16 a hearing with the governing board, the employee shall file a
17 written request for such a hearing with the chief executive
18 officer within 15 calendar days after issuance of the notice.
19 Should the employee fail to timely file the request for
20 hearing, the governing board shall vote on the recommended
21 termination and its decision shall be final. If the employee
22 timely requests a hearing, the hearing shall be set by the
23 employer upon not less than 15 calendar days' written notice
24 of the date, time, and place thereof to the employee. The
25 hearing shall be set no later than 30 calendar days from the
26 date notice thereof is issued to the employee, but may be
27 rescheduled by agreement or for good cause shown.

1 (c) At the hearing, the employee or his or her
2 representative shall be afforded the opportunity to present
3 testimony, other evidence, and argument to the governing board
4 on matters relevant to the proposed termination and to
5 cross-examine witnesses whose testimony is proffered in
6 support of the proposed termination. The employee shall have
7 the right to counsel at his or her expense. A court reporter
8 shall record the proceedings at the expense of the State
9 Department of Education or, if applicable, the two-year
10 institution operated under the authority and control of the
11 Department of Postsecondary Education. The hearing may be
12 public or private at the election of the employee. The chief
13 executive officer shall issue up to eight subpoenas compelling
14 the appearance of witnesses on the employee's behalf upon the
15 employee's timely request for issuance of such subpoenas and
16 may issue subpoenas to any witness who the chief executive
17 officer believes may have knowledge or evidence bearing on the
18 issues presented for determination.

19 (d) Whether or not the employee requests a hearing
20 before the governing board, the chief executive officer shall
21 give written notice to the employee of the decision of the
22 governing board regarding the proposed termination within 10
23 calendar days after the vote of the board. If the decision of
24 the governing board follows a hearing requested by the
25 employee, the notice shall also inform the employee of the
26 right to contest the decision of the board by filing an appeal
27 as provided in this act.

1 (e) An employee who is terminated by vote of the
2 governing board following a hearing requested by the employee
3 may appeal an adverse decision by filing a complaint in the
4 circuit court of the county in which the employer has its
5 principal administrative offices within 30 days of receipt of
6 the decision of the board. The complaint shall be in the form
7 of a civil action, shall state the grounds upon which the
8 appeal is based, and shall be served in accordance with the
9 Alabama Rules of Civil Procedure on the chief executive
10 officer of the employer. The employer shall respond to the
11 complaint in the manner prescribed by the Alabama Rules of
12 Civil Procedure. The appeal shall thereafter be submitted to
13 the court for determination solely on the record of
14 proceedings before the governing board and any legal arguments
15 based thereupon.

16 (f) The decision of the governing board shall be
17 entitled to a presumption of correctness. The court may not
18 substitute its judgment for that of the board with regard to
19 matters implicating administrative discretion, and the
20 decision of the board may be set aside by the court only upon
21 a showing by the employee and an express finding by the court
22 that the decision was arbitrary and capricious, a manifest
23 abuse of discretion, or the product of a material violation of
24 the procedural rights of the employee. If the decision of the
25 governing board is set aside and the employee is reinstated,
26 the court shall order back pay and other appropriate equitable
27 relief. Upon a further express finding that the decision of

1 the board was wholly without factual foundation and was based
2 on malice or ill will on the part of the governing board
3 itself, the court may order the board to pay or reimburse the
4 employee for any actual and reasonable out-of-pocket costs,
5 fees, or expenses incurred by the employee in obtaining a
6 reversal of the decision of the board, including reasonable
7 attorney's fees, unless the costs, expenses, or fees were
8 incurred under, covered by, or would ultimately be paid or
9 reimbursed to an insurer, organization, or other entity under
10 a contractual agreement or other arrangement for the provision
11 of legal services to the employee. Either party may appeal an
12 adverse decision by the trial court in accordance with the
13 Alabama Rules of Appellate Procedure.

14 (g) The following additional terms, conditions, and
15 limitations apply to terminations and appeals therefrom:

16 (1) This act shall not be construed to prevent the
17 governing board from imposing a lesser sanction than that
18 recommended by the chief executive officer or to preclude a
19 negotiated resolution of matters, issues, and disputes arising
20 under this act.

21 (2) Reductions in or modifications to employee
22 compensation or benefits or of the length of the work or
23 school year are not terminations or transfers for purposes of
24 this act or otherwise subject to challenge or review under
25 this act, provided that the action is all of the following:

26 a. Prospective in effect.

1 b. Based on the recommendation of the chief
2 executive officer and formal approval of the governing board.

3 c. Applied to similarly situated employees
4 throughout the agency or system or within designated operating
5 divisions, departments, or employment classifications within
6 the agency or system.

7 (3) Layoffs or other personnel actions approved
8 under reductions-in-force within the meaning of Section
9 16-1-33, Code of Alabama 1975, are not subject to challenge or
10 review under this act.

11 (h) An employee may be suspended for cause with or
12 without pay on the written recommendation of the chief
13 executive officer and approval of the governing board. The
14 suspension of a nonprobationary employee for no more than 45
15 work days without pay is not a termination of employment that
16 is subject to review under this act. Adequate notice of the
17 reason or reasons for the proposed suspension and an
18 opportunity to present evidence and argument, either in person
19 or in writing, to the governing board with respect to the
20 proposed action shall be afforded the employee before the
21 imposition of the suspension. Suspensions of nonprobationary
22 employees without pay in excess of 45 work days are subject to
23 the notice, hearing, and review requirements and procedures
24 that apply to terminations of nonprobationary employees under
25 this act.

26 (i) Employees shall not be permitted to delay,
27 defer, or defeat the initiation or pursuit of any termination

1 or other employment action initiated under authority of this
2 act based upon the pendency or threatened initiation of
3 criminal proceedings arising out of the facts, circumstances,
4 or subject matter of the employment action. The appearance or
5 testimony of an employee in a proceeding authorized under this
6 act shall not cause the employee to waive, forfeit, or
7 relinquish any right against self-incrimination, and no such
8 testimony shall be admitted in any court of this state in a
9 criminal proceeding in which the right applies upon the timely
10 objection of the employee thereto.

11 (j) Unless otherwise provided, notice for all
12 purposes under this act shall be given by United States mail,
13 certified delivery, by private mail carrier for next business
14 day delivery, or by physical delivery to the employee or the
15 last known address of the employee. Notice by certified mail
16 or private mail carrier shall be deemed received by the
17 employee and complete for purposes of this act two business
18 days after the notice is deposited for certified delivery in
19 the United States mail or placed with a private mail carrier
20 for next business day delivery. The employer has the burden of
21 producing evidence that service was affected in the manner
22 permitted by this act, but the employee has the burden of
23 proving that such service was not properly made.

24 (k) In any proceeding for which judicial review is
25 provided hereunder, the employer shall arrange for a
26 transcript and record of proceedings conducted before the
27 governing board to be made and maintained by a qualified court

1 reporter for use in connection with such review. All fees and
2 costs associated with making and transcribing the record shall
3 be paid or reimbursed by the State Department of Education or,
4 if applicable, the two-year institution operated under the
5 authority and control of the Department of Postsecondary
6 Education in accordance with such reasonable rules,
7 regulations, and procedures as may be established for such
8 purpose by the departments.

9 (1) Unless otherwise specified by the governing
10 board, a decision to terminate the employee or to suspend the
11 employee without pay shall be effective immediately, and the
12 employee shall not be entitled to be paid pending the outcome
13 of any appeal of the decision that may be filed by the
14 employee. If the decision of the governing board is set aside
15 and the employee is reinstated, the court shall order back pay
16 and other appropriate equitable relief as provided in
17 subsection (f).

18 Section 7. (a) Except as otherwise specified,
19 probationary and nonprobationary employees may be transferred
20 or reassigned, at any time as the needs of the employer
21 require, to any position for which they are qualified by
22 skill, training, or experience, upon the recommendation of the
23 chief executive officer and approval of the governing board.

24 (b) A chief executive officer may reassign a
25 nonprobationary professional employee to any grade,
26 professional position, or work location within the same
27 school, campus, instructional facility, or, for two-year

1 institutions operated under the authority and control of the
2 Department of Postsecondary Education, to any professional
3 position or work location that is under the control and
4 jurisdiction of the institution, as the needs of the employer
5 require. The employee may not be involuntarily reassigned more
6 than one time in a school year, the reassignment may only be
7 to another position for which the employee holds appropriate
8 certification, and the reassignment may not entail a loss of
9 or reduction in compensation. Such reassignments are not
10 subject to challenge or review under this act.

11 (c) Nonprobationary professional employees may be
12 transferred within an agency or system to any grade or
13 professional position outside of the school, campus, or
14 instructional facility to which the employee is assigned if
15 the transfer is to another position for which the employee
16 holds appropriate certification, the transfer is without loss
17 of or reduction in compensation, written notice of the
18 proposed transfer is issued to the employee by the chief
19 executive officer not less than 15 calendar days before a vote
20 thereon by the governing board, and the transfer is effective
21 not less than 15 calendar days after the date of the board
22 vote. A nonprobationary employee may not be involuntarily
23 transferred more than one time in a school year. Such
24 transfers are not subject to challenge or review under this
25 act. Nothing herein shall be construed to authorize the
26 involuntary transfer or reassignment of a professional
27 employee of a two-year institution operated under the

1 authority and control of the Department of Postsecondary
2 Education to another such institution.

3 (d) Nonprobationary classified employees may be
4 transferred to any position for which they are qualified
5 within the agency or system by which they are employed
6 including, for employees of two-year institutions operated
7 under the authority and control of the Department of
8 Postsecondary Education, any work location that is under the
9 control and jurisdiction of the institution, provided that the
10 transfer is without loss of or reduction in compensation,
11 written notice of the proposed transfer is issued to the
12 employee by the chief executive officer not less than 15
13 calendar days before a vote thereon by the governing board,
14 and the transfer is effective not less than 15 calendar days
15 after the date of the board vote. A nonprobationary classified
16 employee may not be involuntarily transferred more than one
17 time in a school year. Such transfers are not subject to
18 challenge or review under this act. Nothing herein shall be
19 construed to authorize the involuntary transfer or
20 reassignment of a classified employee of a two-year
21 institution operated under the authority and control of the
22 Department of Postsecondary Education to another such
23 institution.

24 (e) A probationary professional or classified
25 employee may be transferred to another position that provides
26 for a lower rate or amount of compensation or a shorter term
27 of employment if: The employee holds appropriate certification

1 or qualifications for the position, the notice of proposed
2 transfer contains a written explanation of the effect of the
3 transfer on the compensation of the employee, and the notice
4 informs the employee that he or she may object in writing to
5 the transfer before a vote of the governing board. If approved
6 by vote of the board, the transfer shall be effective not less
7 than 15 calendar days after the date of the board vote. Such
8 transfers are not subject to challenge or review under this
9 act.

10 (f) A nonprobationary professional or classified
11 employee may be involuntarily transferred to another position
12 that provides for a lower rate or amount of pay or a shorter
13 term of employment, subject to the following condition: The
14 notice of proposed transfer and subsequent proceedings, except
15 for use of the term transfer, shall conform and be subject to
16 the substantive and procedural standards and requirements that
17 apply to termination of nonprobationary employees under
18 Section 6, and to appeals therefrom. Notwithstanding the
19 foregoing, transfers or reassignments that are made as a part
20 of, as a consequence of, or in conjunction with
21 reductions-in-force authorized under Section 16-1-33, Code of
22 Alabama 1975, or in order to comply with state or federal law
23 are not subject to challenge or review under this act, whether
24 or not such transfers or reassignments are to positions that
25 provide for a lower rate or amount of pay or a shorter term of
26 employment.

1 (g) Nothing in this act shall restrict the authority
2 of the chief executive officer to place an employee on paid
3 administrative leave or to make reasonable and customary
4 employment decisions not expressly provided for in this act
5 pending the disposition of proceedings authorized by this act
6 or otherwise in the exercise of sound administrative
7 discretion.

8 Section 8. (a) Any provision of this act or of any
9 other statute or rule to the contrary notwithstanding, the
10 employment of a professional employee whose certificate is
11 revoked by the State Superintendent of Education pursuant to
12 Section 16-23-5, Code of Alabama 1975, shall thereby be
13 summarily terminated.

14 (b) If a conviction resulting in the revocation of
15 the certificate of the professional employee pursuant to
16 Section 16-23-5, Code of Alabama 1975, is overturned on
17 appeal, the State Superintendent of Education shall
18 immediately reinstate the certificate upon receipt of notice
19 of the reversal, and the employer shall either place the
20 employee in a position for which the employee holds
21 appropriate certification or place the employee on paid
22 administrative leave. The employee shall receive back pay and
23 benefits from the date of termination to the date of
24 reinstatement.

25 (c) Nothing in this section shall be construed to
26 prevent the State Superintendent of Education or the employer
27 from pursuing other legal action against the professional

1 employee based upon the circumstances underlying the
2 conviction.

3 (d) A classified or professional employee who is
4 required to attain, maintain, or hold a certificate issued by
5 the State Department of Education or other licensing authority
6 as a condition to his or her lawful employment by the
7 employer, and whose certificate or license has been revoked,
8 denied, or suspended, or who has forfeited or is otherwise
9 ineligible for such certificate or license may not challenge
10 his or her termination or suspension based on such
11 circumstances under this act.

12 Section 9. No nonprobationary professional employee
13 within the contemplation of subdivision (1) of Section 4 shall
14 be permitted to terminate his or her employment within 30
15 calendar days before the first day of the next school term for
16 students, or, for employees of two-year institutions operated
17 under the authority and control of the Department of
18 Postsecondary Education, within 30 calendar days before the
19 commencement of the fall academic semester, unless such
20 termination is mutually agreed upon. Any such employee may
21 terminate his or her employment at any other time by giving
22 five days' written notice to the employing board of education.
23 Any employee terminating his or her employment in violation of
24 this section is guilty of unprofessional conduct, and the
25 State Superintendent of Education may revoke or suspend the
26 certificate of such employee.

1 Section 10. An employee who has attained
2 nonprobationary status and has been denied a hearing before an
3 employer subject to the requirements of this act may appeal
4 for relief directly to the Chief Administrative Law Judge of
5 the Office of Administrative Hearings, Division of
6 Administrative Law Judges, Office of the Attorney General. The
7 chief administrative law judge shall appoint an administrative
8 law judge to address the issues raised in the appeal. The
9 appeal shall state facts sufficient to allow the judge to
10 determine tentatively whether or not the employer has complied
11 with this act in failing to accord the employee a hearing. The
12 employer may answer or deny in writing the facts set out in
13 the employee appeal and, if the employer fails to do so, the
14 facts set out in the appeal shall be taken as true. The judge
15 shall review the request of the employee and the answer or
16 denial of the employer and shall determine, with or without a
17 hearing, whether or not the employer has complied with this
18 act in denying the employee a hearing as provided in this act.
19 Based upon his or her findings, the judge shall either order a
20 hearing before the employer or sustain the action taken by the
21 employer. The decision of the administrative law judge under
22 this section shall be final. Any petition or application for
23 judicial relief therefrom shall be filed in the circuit court
24 of the county in which the principal administrative offices of
25 the employer are located.

26 Section 11. (a) Leave of absence for a period of one
27 year for good cause may be granted to an employee by an

1 employer without impairing the nonprobationary status of the
2 employee. For valid reason, the employer may extend the leave
3 of absence for one additional year.

4 (b) Upon the request of an employee who has
5 heretofore or who shall hereafter enter the military service
6 of the United States at a time when there is an existing state
7 of war between the United States of America and any other
8 country, leave of absence shall be granted to such employee
9 for the duration of the war and until the beginning of the
10 school year next succeeding the date on which the employee is
11 released from military service. On or before such date, the
12 employee shall give written notice to the employer regarding
13 whether he or she desires to be reemployed by the employer. If
14 such notice is not received by the employer, or if the
15 employee notifies the employer on or before that date that he
16 or she does not desire reemployment, the employer has no
17 further responsibility with respect to reemployment of the
18 employee. For the purposes of this subsection, the term
19 military service of the United States shall include service
20 with the United States Army, Navy, Marine Corps, Coast Guard,
21 Army Specialist Corps, Women's Army Auxiliary Corps, Women's
22 Volunteer Navy Reserve, those persons commissioned in the
23 Public Health Service, and those persons entering into the
24 service of any similar organization heretofore or hereafter
25 formed by the government of the United States. A probationary
26 employee entering the military service of the United States
27 who has accumulated one or more years of employment experience

1 with an employer immediately before entering military service,
2 shall be given credit for such experience with the employer
3 toward the attainment of nonprobationary status if such
4 employee is reemployed by the employer within one year after
5 his or her release from military service. This section shall
6 not be construed to limit the greater rights of employees
7 covered hereby, if any, that may be conferred by separately
8 enacted state or federal law.

9 Section 12. All laws or parts of laws which conflict
10 with this act are repealed. Specifically, portions of the
11 Teacher Tenure Law, consisting of Article 1, commencing with
12 Section 16-24-1, Chapter 24, Title 16; the Fair Dismissal Act,
13 Article 4, commencing with Section 36-26-100, Chapter 26,
14 Title 36; and Section 16-24B-7, Code of Alabama 1975, relating
15 to teacher transfers, are repealed.

16 Section 13. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill requires expenditures only by a school board.

23 Section 14. (a) Subdivision (2) and subdivision (3)
24 of subsection (g) of Section 6 shall be effective immediately
25 following passage and approval of this act by the Governor, or
26 its otherwise becoming law.

1 (b) Subject to the following terms and
2 qualifications, the remaining provisions of this act shall be
3 effective on July 1, 2011, following passage and approval of
4 this act by 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 nonprobationary
9 professional employees under this act and, in the case of
10 nonprobationary employees within the meaning of the Fair
11 Dismissal Act shall be deemed nonprobationary classified
12 employees under this act. Employees who have not attained
13 tenured status under the Teacher Tenure Law or nonprobationary
14 status under the Fair Dismissal Act as of the effective date
15 of this act shall be subject to the terms and provisions of
16 this act respecting the attainment of nonprobationary status,
17 and all time in service that would have been credited toward
18 the attainment of either tenure under the Teacher Tenure Law
19 or nonprobationary status under the Fair Dismissal Act shall
20 be credited toward the attainment of nonprobationary status in
21 the 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
26 were in effect on the date the action or proceeding was
27 commenced.

