

1 HB638
2 131567-1
3 By Representative Long
4 RFD: State Government
5 First Read: 24-MAY-11

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8 SYNOPSIS: Under existing law, a classified employee
9 suspended by an appointing authority may appeal the
10 suspension by following certain procedures. The
11 appointing authority has discretion of whether to
12 stay the suspension pending the disposition of the
13 appeal or proceed with the suspension and provide
14 the employee with a post-suspension review.

15 Also under existing law, a panel or a
16 designated hearing officer may be appointed to
17 review the suspension and to recommend whether the
18 suspension should be revoked or upheld. This
19 process does not apply to any department or agency
20 with fewer than 25 employees or any department that
21 uses a pre-disciplinary hearing before an
22 independent hearing officer or an appeal hearing
23 before an in-house hearing officer independent of
24 the division or area in which the employee works.

25 This bill would eliminate the requirement
26 that a copy of the written charges establishing the

1 reasons for the suspension be provided to the State
2 Personnel Director.

3 This bill would revise the
4 suspension-challenge process for classified
5 employees by requiring the use of an independent
6 hearing officer to hear evidence and make a
7 recommendation regarding a suspension if an
8 employee requests a suspension hearing.

9 This bill would eliminate an appointing
10 authority's discretion whether to stay the
11 suspension pending the challenge or provide the
12 employee with post-suspension review.

13 This bill would provide that an independent
14 hearing officer would be appointed from a list of
15 eligible hearing officers to be maintained by the
16 State Personnel Department or the Governmental
17 Hearing Officer register.

18 This bill would provide an employee with a
19 process to challenge the appointment of a
20 particular independent hearing officer.

21 This bill would also apply the
22 suspension-challenge process to all state
23 departments and agencies regardless of size or use
24 of a pre-disciplinary hearing or an appeal hearing
25 before an in-house hearing officer.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§36-26-28.

19 "(a) An appointing authority may, from time to time,
20 peremptorily suspend any employee without pay or other
21 compensation as punishment for improper behavior, but the
22 suspension or total suspension by the appointing authority of
23 the person shall not exceed 30 days in any year of service.
24 The suspension with loss of pay may be effected only by
25 service upon the employee by the appointing authority of
26 written charges setting out clearly the ~~delinquency~~ reasons
27 for which the suspension was made, ~~a copy of which must at the~~

1 ~~same time be mailed or delivered to the State Personnel~~
2 ~~Director, and a written notice of the right to appeal the~~
3 ~~suspension as provided in subsection (b). The suspended~~
4 ~~employee shall have the right to file with the appointing~~
5 ~~authority a written answer or explanation of the charges. is~~
6 ~~being considered. Within 10 days, the employee must accept the~~
7 ~~suspension or request a suspension hearing. If the employee~~
8 ~~requests a suspension hearing, the appointing authority shall~~
9 ~~appoint an independent hearing officer to receive evidence and~~
10 ~~issue a recommendation on the proposed suspension. The~~
11 ~~appointing authority may accept or reject the recommendation~~
12 ~~of the hearing officer. If the appointing authority rejects~~
13 ~~the recommendation, written justification for the rejection~~
14 ~~must be provided to the employee.~~

15 " (b) (1) ~~The suspended employee may within 10 days~~
16 ~~after notice pursuant to this section file a written notice of~~
17 ~~appeal from the suspension. If the suspended employee gives~~
18 ~~notice of appeal from the suspension, the appointing authority~~
19 ~~shall have the discretion of whether to stay the suspension~~
20 ~~pending the disposition of the appeal or proceed with the~~
21 ~~suspension and provide the employee with a post-suspension~~
22 ~~review subject to the time frames prescribed herein.~~

23 "(2) ~~If a timely notice of appeal is filed, the~~
24 ~~appointing authority shall elect between one of the following~~
25 ~~methods of reviewing the claim. The appointing authority~~
26 ~~shall, within 10 days after receipt of the appeal, do one of~~
27 ~~the following:~~

1 ~~"a. Appoint a panel as provided for in subsection~~
2 ~~(c) to decide questions of fact, conclusions of law, and make~~
3 ~~recommendations to the appointing authority.~~

4 ~~"b. Appoint a designated hearing officer as provided~~
5 ~~for in subsection (d) who will decide questions of fact,~~
6 ~~conclusions of law, and make recommendations to the appointing~~
7 ~~authority.~~

8 ~~"(3) This subsection shall apply only to a~~
9 ~~department or agency of the state that has 25 or more~~
10 ~~employees for each working day during each of 20 or more~~
11 ~~calendar weeks in the current or preceding calendar year. The~~
12 ~~appointing authority shall appoint an independent hearing~~
13 ~~officer from a list of eligible hearing officers which shall~~
14 ~~be maintained by the State Personnel Department. The appointed~~
15 ~~hearing officer may be employed by the appointing authority,~~
16 ~~but shall be independent of the division or area in which the~~
17 ~~employee works. Any challenge as to the appointment of the~~
18 ~~independent hearing officer shall be made to the State~~
19 ~~Personnel Director within five days of notification of the~~
20 ~~appointment. For the purposes of this section, a hearing~~
21 ~~officer shall be any person or persons approved by the State~~
22 ~~Personnel Department to hear a suspension case. If it is the~~
23 ~~preference of the appointing authority, a hearing officer may~~
24 ~~be appointed from the Governmental Hearing Officer register,~~
25 ~~which is compiled and maintained by the State Personnel~~
26 ~~Department.~~

1 ~~"(c) In instances where the appointing authority~~
2 ~~elects to appoint a panel, the panel shall consist of three~~
3 ~~individuals, two of whom shall be in the same or equivalent~~
4 ~~classification as the suspended employee. The panel may, by~~
5 ~~majority vote, recommend to the appointing authority, after a~~
6 ~~hearing, either of the following:~~

7 ~~"(1) That the charges are unwarranted and that the~~
8 ~~suspension be revoked.~~

9 ~~"(2) That the charges are warranted and that the~~
10 ~~suspension be upheld.~~

11 ~~"(d) (c) In instances where an appointing authority~~
12 ~~elects to appoint a hearing officer, the hearing officer shall~~
13 ~~be selected from a jointly approved list of individuals who~~
14 ~~shall be agreed upon by the Alabama State Employees~~
15 ~~Association and the respective department or agency. This~~
16 ~~process shall be repeated annually. Nothing in this section~~
17 ~~limits an appointing authority's power to provide additional~~
18 ~~due process safeguards to employees.~~

19 ~~"(e) Irrespective of which method the appointing~~
20 ~~authority selects for adjudicating suspension appeal hearings,~~
21 ~~all hearings shall be conducted in accordance with notions of~~
22 ~~due process.~~

23 ~~"(f) (d) The burden of proof shall lie with the~~
24 ~~appointing authority to prove the charges forming the basis of~~
25 ~~the suspension.~~

26 ~~"(g) (e) Those departments or agencies currently~~
27 ~~having an existing process for suspension hearings may~~

1 continue to use the existing process, provided that they
2 observe tenents of due process including that the burden of
3 proof shall lie with the appointing authority.

4 ~~"(h) Further, this section shall not apply to any~~
5 ~~department which currently employs and continues to employ as~~
6 ~~a standard practice in such cases a pre-disciplinary hearing~~
7 ~~before an independent hearing officer who makes a~~
8 ~~recommendation for disciplinary action to the appointing~~
9 ~~authority based upon a fair hearing of the matter.~~

10 ~~"(i) Further, this section shall not apply to any~~
11 ~~department which currently employs and continues to employ as~~
12 ~~a standard practice in such cases an appeal hearing before an~~
13 ~~in-house hearing officer independent of the division or area~~
14 ~~in which the employee works. Said hearing officer shall be~~
15 ~~selected from an approved list of individuals who shall be~~
16 ~~jointly agreed upon by the Alabama State Employees Association~~
17 ~~and the respective department or agency. This process shall be~~
18 ~~repeated annually."~~

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