

1 SB176  
2 116082-1  
3 By Senator Smitherman  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, certain acts between a  
9 minor student and a teacher at the school where the  
10 student attends may or may not be a crime depending  
11 on the capacity of the student to consent to the  
12 act.

13 This bill would make it a crime for a school  
14 employee to engage in a sex act or deviant sexual  
15 intercourse or have sexual contact with a student,  
16 male or female, under the age of 19 years.

17 This bill would allow the school employee to  
18 be placed on administrative leave with pay until  
19 the charge is adjudicated; and would allow for  
20 further disciplinary action after adjudication of  
21 the charge.

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of  
25 Alabama of 1901, as amended, prohibits a general  
26 law whose purpose or effect would be to require a  
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local  
2 governmental entity without enactment by a 2/3 vote  
3 unless: it comes within one of a number of  
4 specified exceptions; it is approved by the  
5 affected entity; or the Legislature appropriates  
6 funds, or provides a local source of revenue, to  
7 the entity for the purpose.

8 The purpose or effect of this bill would be  
9 to require a new or increased expenditure of local  
10 funds within the meaning of the amendment. However,  
11 the bill does not require approval of a local  
12 governmental entity or enactment by a 2/3 vote to  
13 become effective because it comes within one of the  
14 specified exceptions contained in the amendment.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 Relating to crimes and offenses; to provide for the  
21 crimes of a school employee engaging in a sex act or deviant  
22 sexual intercourse with a student and a school employee having  
23 sexual contact with a student; to provide penalties; and in  
24 connection therewith would have as its purpose or effect the  
25 requirement of a new or increased expenditure of local funds  
26 within the meaning of Amendment 621 of the Constitution of  
27 Alabama of 1901, now appearing as Section 111.05 of the

1 Official Recompilation of the Constitution of Alabama of 1901,  
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) A person commits the crime of a  
5 school employee engaging in a sex act or deviant sexual  
6 intercourse with a student under the age of 19 years if he or  
7 she is a school employee and engages in a sex act or deviant  
8 sexual intercourse with a student, regardless of whether the  
9 student is male or female. Consent is not a defense to a  
10 charge under this section.

11 (b) As used in this section, "sex act" means sexual  
12 intercourse with any penetration, however slight; emission is  
13 not required.

14 (c) As used in this section, "deviant sexual  
15 intercourse" means any act of sexual gratification between  
16 persons not married to each other involving the sex organs of  
17 one person and the mouth or anus of another.

18 (d) The crime of a school employee engaging in a sex  
19 act or deviant sexual intercourse with a student is a Class B  
20 felony.

21 Section 2. (a) A person commits the crime of a  
22 school employee having sexual contact with a student under the  
23 age of 19 years if he or she is a school employee and engaging  
24 in sexual contact with a student, regardless of whether the  
25 student is male or female. Consent is not a defense to a  
26 charge under this section.

1 (b) As used in this section, "sexual contact" means  
2 any touching of the sexual or other intimate parts of a  
3 student, done for the purpose of gratifying the sexual desire  
4 of either party. The term includes soliciting or harassing a  
5 student to perform a sex act.

6 (c) The crime of a school employee having sexual  
7 contact with a student is a Class A misdemeanor.

8 Section 3. A school employee charged with the crime  
9 of engaging in a sex act or deviant sexual intercourse with a  
10 student or the crime of having sexual contact with a student  
11 may be placed on paid administrative leave while the charge is  
12 adjudicated. Upon the adjudication of the charge, further  
13 disciplinary action may be taken in accordance with the  
14 Teacher Tenure Act, Section 16-24-1, et seq., the Teacher  
15 Accountability Act, Section 16-24B-1, et seq., or the Fair  
16 Dismissal Act, Section 36-26-100, et seq., whichever is  
17 applicable.

18 Section 4. For purposes of this act, "school  
19 employee" includes a teacher, school administrator, student  
20 teacher, safety or resource officer, coach, and other school  
21 employee.

22 Section 5. Although this bill would have as its  
23 purpose or effect the requirement of a new or increased  
24 expenditure of local funds, the bill is excluded from further  
25 requirements and application under Amendment 621, now  
26 appearing as Section 111.05 of the Official Recompilation of  
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 6. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.