

1 SB415  
2 167866-1  
3 By Senators Pittman, Marsh, Sanford, Allen, Livingston,  
4 Melson, Stutts, Whatley and Shelnut  
5 RFD: Finance and Taxation Education  
6 First Read: 23-APR-15

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8 SYNOPSIS: Under existing law, a classified employee  
9 under the State Merit System may demand a public  
10 hearing by the State Personnel Board if he or she  
11 is dismissed from employment by an appointing  
12 authority.

13 This bill would revise the procedures for  
14 review of the dismissal and would specify when the  
15 board may reverse or modify the dismissal.

16 This bill would also provide that any action  
17 commenced for the purpose of seeking judicial  
18 review of the administrative decisions of the State  
19 Personnel Board must be filed in the Alabama Court  
20 of Civil Appeals.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 Relating to the State Merit System; to amend Section  
27 36-26-27, Code of Alabama 1975, to revise the procedures for

1 review of the dismissal of classified employees by an  
2 appointing authority; to specify when the State Personnel  
3 Board may reverse or modify the dismissal; and to provide for  
4 the venue of judicial review of action by the State Personnel  
5 Board.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 36-26-27, Code of Alabama 1975,  
8 is amended to read as follows:

9 "§36-26-27.

10 "(a) An appointing authority may dismiss a  
11 classified employee whenever he considers the good of the  
12 service will be served thereby, for reasons which shall be  
13 stated in writing, served on the affected employee and a copy  
14 furnished to the director, which action shall become a public  
15 record. The dismissed employee may, within 10 days after  
16 notice, appeal from the action of the appointing authority by  
17 filing with the board and the appointing authority a written  
18 answer to the charges. The board shall, if demand is made in  
19 writing by the dismissed employee within 10 days after notice  
20 of discharge, order a public hearing ~~and, if the charges are~~  
21 ~~proved unwarranted, order the reinstatement of the employee~~  
22 ~~under such conditions as the board may determine. Upon a~~  
23 ~~majority vote of the board, the board may impose a punishment~~  
24 ~~other than termination including but not limited to a~~  
25 ~~reinstatement with forfeiture of back wages and benefits~~  
26 ~~between the date of termination and the date of the board's~~  
27 ~~order reinstating the employee, or a suspension up to and~~

1 including 30 days. The agency decision is taken as prima  
2 facie, just, and reasonable, and the board may not substitute  
3 its judgment for that of the agency as to the weight of the  
4 evidence on questions of fact, except where otherwise  
5 authorized by law. The board may reverse or modify the  
6 decision or grant other appropriate relief from the agency  
7 action if the board finds that the action of the appointing  
8 authority is any one or more of the following:

9 "(1) In violation of constitutional or other law.

10 "(2) In excess of the authority of the agency as  
11 provided by law.

12 "(3) In violation of any pertinent agency rule.

13 "(4) Made upon unlawful procedure.

14 "(5) Affected by other error of law.

15 "(6) Clearly erroneous in view of the reliable,  
16 probative, and substantial evidence on the whole record.

17 "(7) Arbitrary or capricious or characterized by an  
18 abuse of discretion or a clearly unwarranted exercise of  
19 discretion.

20 "(b) If the board finds that the agency action is  
21 due to be affirmed, it may order the forfeiture of any accrued  
22 and unused annual leave of the employee.

23 "(c) Notwithstanding any other provision of law to  
24 the contrary, any action commenced for the purpose of seeking  
25 judicial review of the administrative decisions of the State  
26 Personnel Board, including writ of mandamus or judicial review  
27 pursuant to the Alabama Administrative Procedure Act, Chapter

1 22, Title 41, must be filed, commenced, and maintained in the  
2 Alabama Court of Civil Appeals.

3 ~~"(b)~~ (d) In addition to removal by an appointing  
4 authority, persons in the classified service may be removed or  
5 disciplined in the manner described in this subsection.

6 ~~Charges~~ With the exception of persons currently serving time  
7 in prison or jail, charges may be filed by any officer,  
8 citizen or taxpayer of the state with the director who shall,  
9 within five days, cause a copy to be served upon the person  
10 complained against and shall set a day not less than 10 nor  
11 more than 20 days after such charges have been served on such  
12 employee for a public hearing of such charges. This hearing  
13 may be before the director, a special agent appointed for the  
14 purpose by the director or the board itself. If before the  
15 director or a special agent, the director or special agent  
16 shall take testimony offered in support and denial of such  
17 charges and from the same submit to the board, within five  
18 days, a finding of facts and law involved and a recommended  
19 decision. The board at its next regular or special meeting  
20 shall consider ~~said~~ the report and modify, alter, set aside or  
21 affirm ~~said~~ the report and certify its findings to the  
22 appointing authority who shall forthwith put the same into  
23 effect. If the board hears ~~said~~ the charges directly or  
24 requires the transcribing and submission of the testimony  
25 taken before the director or special agent, it shall make up  
26 and file its own findings and decision. The decision of the  
27 board based upon its records and the testimony shall be final.

1           "~~(c)~~ (e) In proceedings under this section it shall  
2 be no defense or excuse for a forbidden act or for an omission  
3 to observe the laws or rules that such act or omission was  
4 directed by a superior, unless a written direction or order  
5 from such superior to that effect is proved. If any employee  
6 in the state service shall willfully refuse or fail to appear  
7 before any court or judge, any legislative committee or any  
8 officer, board or body authorized to conduct any hearing or  
9 inquiry or, having appeared, shall refuse to testify or answer  
10 any question relating to the affairs or government of the  
11 state or the conduct of any state officer or employee on the  
12 ground that his testimony or answers would tend to incriminate  
13 him or shall refuse to waive immunity from prosecution on  
14 account of any matter about which he may be asked to testify  
15 at any such hearing or inquiry, such conduct shall be cause  
16 for removal."

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