

1 SB7
2 170819-1
3 By Senator Pittman
4 RFD: Finance and Taxation Education
5 First Read: 13-JUL-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
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1 Relating to the State Merit System; to amend Section
2 36-26-27, Code of Alabama 1975, to revise the procedures for
3 review of the dismissal of classified employees by an
4 appointing authority; to specify when the State Personnel
5 Board may reverse or modify the dismissal; and to provide for
6 the venue of judicial review of action by the State Personnel
7 Board.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 "§36-26-27.

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

1 ~~a reinstatement with forfeiture of back wages and benefits~~
2 ~~between the date of termination and the date of the board's~~
3 ~~order reinstating the employee, or a suspension up to and~~
4 ~~including 30 days. The agency decision is taken as prima~~
5 ~~facie, just, and reasonable, and the board may not substitute~~
6 ~~its judgment for that of the agency as to the weight of the~~
7 ~~evidence on questions of fact, except where otherwise~~
8 ~~authorized by law. The board may reverse or modify the~~
9 ~~decision or grant other appropriate relief from the agency~~
10 ~~action if the board finds that the action of the appointing~~
11 ~~authority is any one or more of the following:~~

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

13 "(2) In excess of the authority of the agency as
14 provided by law.

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

16 "(4) Made upon unlawful procedure.

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

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

20 "(7) Arbitrary or capricious or characterized by an
21 abuse of discretion or a clearly unwarranted exercise of
22 discretion.

23 "(b) 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

1 pursuant to the Alabama Administrative Procedure Act, Chapter
2 22, Title 41, must be filed, commenced, and maintained in the
3 Alabama Court of Civil Appeals.

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

7 ~~Charges~~ With the exception of persons currently serving time
8 in prison or jail, charges may be filed by any officer,
9 citizen, or taxpayer of the state with the director who ~~shall,~~
10 within five days, shall cause a copy to be served upon the
11 person complained against and shall set a day not less than 10
12 nor more than 20 days after ~~such~~ charges have been served on
13 ~~such~~ the employee for a public hearing of ~~such~~ the charges.

14 This hearing may be before the director, a special agent
15 appointed for the purpose by the director, or the board
16 itself. If before the director or a special agent, the
17 director or special agent shall take testimony offered in
18 support and denial of ~~such~~ the charges and from the same
19 submit to the board, within five days, a finding of facts and
20 law involved and a recommended decision. The board at its next
21 regular or special meeting shall consider ~~said~~ the report and
22 modify, alter, set aside, or affirm ~~said~~ the report and
23 certify its findings to the appointing authority who shall
24 ~~forthwith~~ put the same into effect. If the board hears ~~said~~
25 the charges directly or requires the transcribing and
26 submission of the testimony taken before the director or

1 special agent, it shall make up and file its own findings and
2 decision. The decision of the board based upon its records and
3 the testimony shall be final.

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

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