

1 SB430  
2 116393-2  
3 By Senator Sanders  
4 RFD: Finance and Taxation Education  
5 First Read: 16-FEB-10

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8 SYNOPSIS: This bill would authorize the immediate  
9 cancellation of the employment contract of any  
10 teacher on continuing service status convicted of a  
11 felony or of a sex offense involving a child, would  
12 provide for a precancellation hearing before the  
13 local board of education, and would restrict the  
14 use of testimony offered in contract cancellation  
15 hearings in related criminal proceedings.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT

20  
21 Relating to public K-12 education; to amend Sections  
22 16-24-8, 16-24-9, 16-24-10, and 16-24-20, Code of Alabama  
23 1975, relating to the teacher tenure law; to authorize the  
24 immediate cancellation of the employment contract of any  
25 teacher on continuing service status convicted of a felony or  
26 of a sex offense involving a child; to provide for a  
27 precancellation hearing before the local board of education;

1 and to restrict the use of testimony offered in contract  
2 cancellation hearings in related criminal proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 16-24-8, 16-24-9, 16-24-10, and  
5 16-24-20 of the Code of Alabama 1975, are amended to read as  
6 follows:

7 "§16-24-8.

8 "(a) Cancellation of an employment contract with a  
9 teacher on continuing service status may be made for  
10 incompetency, insubordination, neglect of duty, immorality,  
11 failure to perform duties in a satisfactory manner,  
12 justifiable decrease in the number of teaching positions, or  
13 other good and just cause, but cancellation may not be made  
14 for political or personal reasons.

15 "(b) The employment contract of a teacher, whether  
16 or not the teacher is on continuing service status, may be  
17 cancelled by majority vote of the local board of education  
18 upon conviction of the teacher of a felony or upon entry of a  
19 plea of guilty or nolo contendere by the teacher in any court  
20 to a felony charge under federal or state law if the felony  
21 constitutes a crime of moral turpitude, or upon conviction of  
22 the teacher or upon entry of a plea of guilty of the teacher  
23 to any of the following charges:

24 "(1) Rape in the first or second degree, pursuant to  
25 Section 13A-6-61 or 13A-6-62.

26 "(2) Sodomy in the first or second degree, pursuant  
27 to Section 13A-6-63 or 13A-6-64.

- 1           "(3) Sexual torture, pursuant to Section 13A-6-65.1.
- 2           "(4) Sexual abuse in the first or second degree,  
3 pursuant to Section 13A-6-66 or 13A-6-67.
- 4           "(5) Enticing a child to enter a vehicle, room,  
5 house, office, or other place for immoral purposes, pursuant  
6 to Section 13A-6-69.
- 7           "(6) Promoting prostitution in the first or second  
8 degree, pursuant to Section 13A-12-111 or 13A-12-112.
- 9           "(7) Violation of the Alabama Child Pornography Act  
10 pursuant to Section 13A-12-191, 13A-12-192, 13A-12-196, or  
11 13A-12-197.
- 12           "(8) Kidnapping a minor, except by a parent, in the  
13 first or second degree, pursuant to Section 13A-6-43 or  
14 13A-6-44.
- 15           "(9) Incest, pursuant to Section 13A-13-3, when the  
16 offender is an adult and the victim is a minor.
- 17           "(10) Transmitting obscene material to a child by  
18 computer, pursuant to Section 13A-6-111.
- 19           "(11) Facilitating solicitation of unlawful sexual  
20 conduct with a child, pursuant to Section 13A-6-121.
- 21           "(12) Electronic solicitation of a child or  
22 facilitating the online solicitation of a child, pursuant to  
23 Section 13A-6-122 or 13A-6-123.
- 24           "(13) Traveling to meet a child for an unlawful sex  
25 act or facilitating the travel of a child for an unlawful sex  
26 act, pursuant to Section 13A-6-124 or 13A-6-125.

1           "(14) Any solicitation, attempt, or conspiracy to  
2 commit any of the offenses listed in subdivisions (1) to (13),  
3 inclusive.

4           "(15) Any crime committed in any state or a federal,  
5 military, or foreign jurisdiction which, if committed in this  
6 state under the law existing at the time of the offense, would  
7 constitute an offense listed in subdivisions (1) to (13),  
8 inclusive.

9           "(16) Any criminal sex offense in which the victim  
10 is a child under the age of 12 or any offense involving child  
11 pornography.

12           "(17) Any crime committed in any jurisdiction which,  
13 regardless of the specific description or statutory elements,  
14 may be characterized or known as rape, sodomy, sexual assault,  
15 sexual battery, sexual abuse, sexual torture, solicitation of  
16 a child, enticing or luring a child, child pornography, lewd  
17 and lascivious conduct, taking indecent liberties with a  
18 child, or molestation of a child.

19           "(18) Any crime not listed in this subsection  
20 involving endangerment to the health, safety, or welfare of a  
21 child that may be created on or after the effective date of  
22 the act adding this subdivision.

23           "§16-24-9.

24           "(a) ~~An~~ Except as provided in subsection (b) of  
25 Section 16-24-8, an employment contract with a teacher on  
26 continuing service status may be cancelled only in the  
27 following manner: The superintendent shall give written notice

1 to the employing board and the teacher of the superintendent's  
2 intention to recommend a cancellation as provided in  
3 subsection (a) of Section 16-24-8. Such notice shall state the  
4 reasons for the proposed cancellation, ~~and~~ and shall contain a  
5 short and plain statement of the facts showing that the  
6 cancellation is taken for one or more of the reasons listed in  
7 subsection (a) of Section 16-24-8, ~~and~~. The notice shall state  
8 the time and place ~~for~~ of the board's ~~meeting~~ hearing on the  
9 proposed cancellation, which ~~meeting~~ hearing shall be held no  
10 less than 20 days and no more than 30 days after the receipt  
11 of such notice by the teacher. The notice shall also inform  
12 the teacher that in order to ~~request a conference with the~~  
13 ~~board~~ preserve the right to a board hearing on the proposed  
14 cancellation, the teacher shall file a written request with  
15 the superintendent ~~within 15~~ no later than five days ~~after the~~  
16 ~~receipt of such notice~~ before the date of the hearing. Failure  
17 of the teacher to timely request a hearing or other waiver of  
18 the right to a hearing before the board does not prejudice the  
19 right of the teacher to appeal the decision of the board  
20 pursuant to Section 16-24-10. At ~~such conference~~ the board  
21 hearing, which ~~shall~~ may be public or private at the  
22 discretion of the teacher, the teacher, or his or her  
23 representative, shall be afforded the opportunity to ~~speak to~~  
24 ~~the board on matters relevant to such cancellation~~ respond  
25 orally or in writing to the charges on which the proposed  
26 cancellation is based and to offer evidence and reasons as to  
27 why the proposed action should not be taken. The teacher shall

1 have the right to counsel, at the expense of the teacher, and  
2 either party may ~~and to~~ have a court reporter record his or  
3 her statement, both at the expense of the teacher. Thereafter  
4 and transcribe the proceedings before the board, at the  
5 expense of the State Department of Education. Unless the  
6 teacher chooses a public hearing, expressly waives his or her  
7 right to testify, or offers the hearing transcript or record,  
8 or any part thereof, into evidence in a criminal proceeding,  
9 no testimony or statement offered by the teacher during or in  
10 connection with the board hearing shall constitute a waiver of  
11 the right of the teacher not to testify in a criminal  
12 proceeding and no part of the transcript or record of the  
13 contract cancellation hearing that memorializes or evidences  
14 any statement or testimony by the teacher before the board  
15 shall be admissible in any criminal proceeding in which the  
16 teacher is a defendant and which arises out of or relates to  
17 the facts and circumstances on which the proposed contract  
18 cancellation is based. Nothing in this subsection shall  
19 preclude the proffer or consideration of the transcript or  
20 record of the contract cancellation hearing, or the decision  
21 of the board, in any appeal brought pursuant to Section  
22 16-24-10. Following the hearing, the board shall determine, by  
23 majority vote, whether ~~such cancellation shall be effectuated~~  
24 to cancel the employment contract of the teacher. The decision  
25 of the board shall be accorded a presumption of correctness in  
26 the event the teacher appeals the decision of the board  
27 pursuant to Section 16-24-10.

1           " (b) ~~Regardless of whether~~ Whether or not the  
2 ~~employee teacher~~ elects to have a ~~conference~~ hearing with the  
3 employing board, if the board votes to cancel the teacher's  
4 contract, the superintendent shall give notice to the teacher  
5 of the board's action by providing notice by personal service,  
6 by United States Postal Service registered or certified mail  
7 with postage paid thereon to the teacher's last known address,  
8 or by private mail carrier for overnight delivery, signature  
9 required, with postage paid thereon to the teacher's last  
10 known address within 10 days of the board's action. Such  
11 notice shall be in writing and shall inform the teacher of the  
12 right to contest the board's decision by filing with the  
13 superintendent a written notice of contest of the action  
14 within 15 days of the receipt of the notice. Such contest  
15 shall be taken by filing a written notice of contest with the  
16 superintendent within 15 days after receipt of the notice of  
17 the decision of the employing board. If the contest is not  
18 timely taken, the board's decision shall be final. ~~No~~  
19 ~~cancellation shall be effected until the time for filing~~  
20 ~~notice of contest has expired and, if notice of contest is~~  
21 ~~filed, not until the hearing officer has issued an opinion.~~

22           "§16-24-10.

23           "(a) If notice of contest is filed pursuant to  
24 Section 16-24-9, the hearing officer shall be selected as  
25 provided in subsection (b) of Section 16-24-20. Upon  
26 selection, the hearing officer shall immediately cause notice  
27 to be given to the parties of the date and time for a hearing,



1 which date shall be no less than 30 days and no more than 60  
2 days following the appointment of the hearing officer. The  
3 parties shall agree as to the location of the hearing and, if  
4 the parties are unable to agree, the hearing officer shall  
5 determine the location within the jurisdiction of the  
6 employing board. No less than 30 days before such date, the  
7 parties shall submit to the hearing officer, with a copy to  
8 the opposing party, documents supportive of, or in  
9 contravention to, the action, as well as a list of witnesses  
10 to be called at such hearing. The witness list and documentary  
11 submissions may be amended at any time prior to five days  
12 before such hearing. The hearing may be public or private at  
13 the discretion of the teacher. The State Department of  
14 Education shall bear the expense of having a court reporter  
15 present at such hearing. The hearing officer shall have power  
16 to administer oaths, and issue subpoenas to compel the  
17 attendance of witnesses and production of papers necessary as  
18 evidence and/or information in connection with the dispute or  
19 claim. If requested, the hearing officer shall issue subpoenas  
20 for witnesses to testify at the hearing, under oath, either in  
21 support of the charges or on behalf of the teacher. In case a  
22 person refuses to obey such subpoena, the board, or its  
23 authorized representative, may invoke the aid of the circuit  
24 court in order that the testimony, evidence, or information be  
25 produced. Upon proper showing, such court shall issue a  
26 subpoena or order requiring such person to appear before the  
27 board or its representative and produce evidence ~~and/or~~ or

1 information, or both, and give testimony relating to the  
2 matter at issue. Unless waived by the teacher, the terms,  
3 conditions, and prohibitions provided in Section 16-24-9,  
4 pertaining to the use of the hearing transcript in criminal  
5 proceedings, shall apply in the same manner to hearings and  
6 related proceedings conducted by the hearing officer pursuant  
7 to this section. The teacher shall have the burden of proving  
8 that the decision of the board should be set aside. To  
9 determine whether the teacher has met his or her burden, the  
10 ~~The~~ hearing officer shall conduct a de novo review hearing and  
11 ~~shall render a decision,~~ based on the record of proceedings  
12 before the board and the evidence ~~and/or~~ or information, or  
13 both, submitted to the hearing officer. ~~The hearing officer~~  
14 shall determine which of the following actions should be taken  
15 relative to the ~~employee~~ teacher: Cancellation of the  
16 employment contract, a suspension of the ~~employee~~ teacher,  
17 with or without pay, a reprimand, other disciplinary action,  
18 or no action against the ~~employee~~ teacher. The hearing officer  
19 shall render a written decision, with findings of fact and  
20 conclusions of law, within 30 days after its hearing. Expenses  
21 of the hearing officer shall be paid by the State Department  
22 of Education. Should a hearing officer set aside the  
23 cancellation of a teacher's contract, the teacher shall be  
24 entitled to restitution of any unpaid compensation.

25 "(b) All appeals of a final decision of the hearing  
26 officer shall lie with the Alabama Court of Civil Appeals. An  
27 appeal by either party shall be perfected by filing a written

1 notice of appeal with the Clerk of the Court of Civil Appeals  
2 within 21 days after the receipt of the final written decision  
3 of the hearing officer. Failure to file a timely notice of  
4 appeal shall render the decision of the hearing officer final,  
5 in which case the employing board shall take possession of the  
6 record of the hearing and shall maintain such record for a  
7 period of three years. The Court of Civil Appeals shall have  
8 discretion to refuse to hear appeals of final decisions of a  
9 hearing officer pursuant to this article. Review by the Court  
10 of Civil Appeals pursuant to this article is not a matter of  
11 right, but of judicial discretion, and an appeal may be  
12 granted only when the court determines there are special and  
13 important reasons for granting the appeal. Within 30 days  
14 after an appeal is granted, the hearing officer shall transmit  
15 the record to the clerk, with the appealing party bearing the  
16 costs associated with the preparation and transmission of the  
17 record and transcript of the hearing. The decision of the  
18 hearing officer shall be affirmed on appeal unless the Court  
19 of Civil Appeals finds the decision arbitrary and capricious,  
20 in which case the court may order that the parties conduct  
21 another hearing consistent with the procedures of this  
22 article.

23 "§16-24-20.

24 "(a) Notices which are required to be given to the  
25 teacher shall be served by personal service, by United States  
26 registered or certified mail with postage prepaid thereon to  
27 the teacher's last known address, or by private mail carrier

1 for overnight delivery, signature required, with postage  
2 prepaid thereon to the teacher's last known address.

3 "(b) If a teacher should timely file a contest from  
4 a decision as provided in this article, the employing board  
5 and the teacher shall, within seven days of such filing,  
6 either (1) mutually agree upon a person to hear the teacher's  
7 contest, or (2) submit a joint request for a panel of  
8 arbitrators to the Federal Mediation and Conciliation  
9 Services' Office of Arbitration Services (FMCS). The joint  
10 request shall specify that the parties prefer a hearing  
11 officer who is experienced in employment law. Thereafter, FMCS  
12 shall submit to each party an identical list of names of  
13 persons chosen to serve as a hearing officer in such matter.  
14 Each party shall have 10 days from the date of receipt of the  
15 list to strike any name to which it objects, number the  
16 remaining names in the order of preference, and return the  
17 list to FMCS. If a party does not return the list within the  
18 time specified, all persons named therein shall be deemed  
19 acceptable. From among the persons who have been approved on  
20 both lists, and in accordance with the designated order of  
21 mutual preference, FMCS shall invite the acceptance of a  
22 hearing officer to serve. If the parties fail to agree upon  
23 any of the persons named, if those named decline, or if for  
24 any other reason the appointment cannot be made from the  
25 submitted lists, FMCS shall make the appointment from among  
26 other members of the panel. FMCS will formally appoint the

1 hearing officer, who shall be known for purposes of this  
2 article as the "hearing officer."

3 "(c) During all hearings conducted before a hearing  
4 officer pursuant to this article, the hearing officer may  
5 consider the employment history of the teacher, including, but  
6 not limited to, matters occurring in previous years. Testimony  
7 and exhibits shall be admitted into evidence at the discretion  
8 of the hearing officer. The hearing officer shall also have  
9 the authority and discretion to exclude or limit unnecessary  
10 or cumulative evidence. Unless the teacher chooses a public  
11 hearing, expressly waives his or her right to testify, or  
12 offers the hearing transcript or record, or any part thereof,  
13 into evidence in a criminal proceeding, no testimony or  
14 statement offered by the teacher during or in connection with  
15 the board hearing or hearing before the hearing officer shall  
16 constitute a waiver of the right of the teacher not to testify  
17 in a criminal proceeding and no part of the transcript or  
18 record of the proceedings that memorializes or evidences any  
19 statement or testimony by the teacher before the board or the  
20 hearing officer shall be admissible in any criminal proceeding  
21 in which the teacher is a defendant and which arises out of or  
22 relates to the facts and circumstances on which the proposed  
23 action is based. Nothing in this subsection shall preclude the  
24 proffer or consideration of the transcript or the decision of  
25 the board in any appeal brought pursuant to Section 16-24-10.

1                   "(d) No action shall lie for the recovery of damages  
2                   for the breach of any employment contract of a teacher in the  
3                   public schools."

4                   Section 2. This act shall become effective  
5                   immediately following its passage and approval by the  
6                   Governor, or its otherwise becoming law.