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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB64  
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8 SYNOPSIS:           The Constitution of Alabama of 1901 affords  
9 immunity to the state itself and to state officials  
10 and employees acting in their official capacity.  
11 Qualified immunity is afforded to state officers,  
12 agents, and employees for liability associated with  
13 certain discretionary duties.

14           This bill would specify in statute that an  
15 education employee or an officer, employee, or  
16 agent of the state, in his or her official  
17 capacity, is immune from liability in any suit  
18 pursuant to the Constitution of Alabama of 1901.

19           This bill would also specify in statute that  
20 an education employee or an officer, employee, or  
21 agent of the state is not personally liable under  
22 certain conditions.

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24                           A BILL  
25                           TO BE ENTITLED  
26                           AN ACT

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2           Relating to sovereign immunity, to specify in  
3 statute that an education employee or an officer, employee, or  
4 agent of the state, in his or her official capacity, is immune  
5 from liability in any suit pursuant to the Constitution of  
6 Alabama of 1901; and to specify that these persons are not  
7 personally liable under certain conditions.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9           Section 1. (a) For the purposes of this section,  
10 "education employee" means a certified or noncertified  
11 employee of the State Board of Education or any local board of  
12 education and an employee of the Alabama Institute for Deaf  
13 and Blind or the Alabama School of Mathematics and Science.

14           (b) An education employee or an officer, employee,  
15 or agent of the state acting in his or her official capacity  
16 is immune from civil liability in any suit pursuant to Article  
17 I, Section 14, of the Constitution of Alabama of 1901.

18           (c) An education employee or an officer, employee,  
19 or agent of the state is immune from civil liability in his or  
20 her personal capacity when the conduct made the basis of the  
21 claim is based upon the agent's:

22           (1) Formulating plans, policies, or designs;

23           (2) Exercising his or her judgment in the  
24 administration of a department or agency of government,  
25 including, but not limited to, examples such as:

26           a. Making administrative adjudications;

1                   b. Allocating resources;  
2                   c. Negotiating contracts; or  
3                   d. Hiring, firing, transferring, assigning, or  
4 supervising personnel;

5                   (3) Discharging duties imposed on a department or  
6 agency by statute, rule, or regulation, insofar as the  
7 statute, rule, or regulation prescribes the manner for  
8 performing the duties and the state agent performs the duties  
9 in that manner;

10                   (4) Exercising judgment in the enforcement of the  
11 criminal laws of the state, including, but not limited to, law  
12 enforcement officers' arresting or attempting to arrest  
13 persons; or

14                   (5) Exercising judgment in the discharge of duties  
15 imposed by statute, rule, or regulation in releasing  
16 prisoners, counseling or releasing persons of unsound mind, or  
17 educating students.

18                   (d) Notwithstanding subsection (c), an education  
19 employee, officer, employee, or agent of the state is not  
20 immune from civil liability in his or her personal capacity  
21 if:

22                   (1) The Constitution or laws of the United States,  
23 or the Constitution of this state, or laws, rules, or  
24 regulations of this state enacted or promulgated for the  
25 purpose of regulating the activities of a governmental agency  
26 require otherwise; or

1                   (2) The education employee, officer, employee, or  
2 agent acts willfully, maliciously, fraudulently, in bad faith,  
3 beyond his or her authority, or under a mistaken  
4 interpretation of the law.

5                   (e) This act shall not be construed to eliminate,  
6 alter, or otherwise modify any other immunity regarding  
7 officers, employees, or agents of the state established under  
8 the constitution and laws of this state.

9                   Section 2. This act shall become effective  
10 immediately following its passage and approval by the  
11 Governor, or its otherwise becoming law.