

HOUSE BILL No. 4690

May 31, 2011, Introduced by Reps. Heise and Melton and referred to the Committee on Education.

A bill to amend 1937 (Ex Sess) PA 4, entitled

"An act relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act,"

by amending the title and section 2 of article II, sections 3 and 4 of article IV, and section 1 of article VI (MCL 38.82, 38.103, 38.104, and 38.121), section 2 of article II as amended by 1993 PA 59, section 3 of article IV as amended by 2005 PA 124, and section 4 of article IV and section 1 of article VI as amended by 1993 PA 60; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for

1 probationary periods; to regulate discharges or demotions; to
2 provide for resignations and leaves of absence; ~~to create a state~~
3 ~~tenure commission and to prescribe the~~ **CERTAIN** powers and duties
4 ~~thereof~~ **OF THE STATE BOARD OF EDUCATION**; and to prescribe penalties
5 for violation of the provisions of this act.

6 **ARTICLE II**

7 Sec. 2. A teacher shall not be required to serve more than 1
8 probationary period in any 1 school district or institution.

9 However, upon notice to the ~~tenure commission~~, **STATE BOARD OF**
10 **EDUCATION**, the controlling board may grant a third year of
11 probation to a teacher described in section 1(2) of this article.

12 **ARTICLE IV**

13 Sec. 3. (1) On the filing of charges in accordance with this
14 article, the controlling board may suspend the accused teacher from
15 active performance of duty until 1 of the following occurs:

16 (a) The teacher fails to contest the decision to proceed upon
17 the charges within the time period specified in section 4(1) of
18 this article.

19 (b) A preliminary decision and order discharging or demoting
20 the teacher is issued by the administrative law judge under section
21 4(5)(i) of this article.

22 (c) If the preliminary decision and order is to reinstate the
23 teacher, a final decision and order is rendered by the ~~tenure~~
24 ~~commission~~ **STATE BOARD OF EDUCATION** under section 4(5)(m) of this
25 article.

26 (2) If a teacher is suspended as described in subsection (1),
27 the teacher's salary shall continue during the suspension. However,

1 if the teacher is convicted of a felony that is not a listed
2 offense or of a misdemeanor that is a listed offense, the
3 controlling board may discontinue the teacher's salary effective
4 upon the date of the conviction. If the teacher is convicted of a
5 felony that is a listed offense, the controlling board shall
6 discontinue the teacher's salary effective upon the date of
7 conviction. As used in this subsection, "listed offense" means that
8 term as defined in section 2 of the sex offenders registration act,
9 1994 PA 295, MCL 28.722.

10 (3) If a preliminary decision and order discharging a teacher
11 is issued by the administrative law judge and the ~~tenure commission~~
12 **STATE BOARD OF EDUCATION** subsequently reverses the preliminary
13 decision and order of the administrative law judge, the ~~tenure~~
14 ~~commission~~ **STATE BOARD OF EDUCATION** may order back pay.

15 Sec. 4. (1) A teacher on continuing tenure may contest the
16 controlling board's decision to proceed upon the charges against
17 the teacher by filing a claim of appeal with the ~~tenure commission~~
18 **STATE BOARD OF EDUCATION** and serving a copy of the claim of appeal
19 on the controlling board not later than 20 days after receipt of
20 the controlling board's decision. The controlling board shall file
21 its answer with the ~~tenure commission~~ **STATE BOARD OF EDUCATION** and
22 serve a copy of the answer on the teacher not later than 10 days
23 after service of the claim of appeal. If the teacher does not
24 contest the controlling board's decision in the time and manner
25 specified in this subsection, the discharge or demotion specified
26 in the charges takes effect and the teacher shall be considered to
27 have waived any right to contest the discharge or demotion under

1 this act.

2 (2) An administrative law judge described in subsection (3)
3 shall furnish to each party without undue delay a notice of hearing
4 fixing the date and place of the hearing. The hearing date shall
5 not be less than 10 days after the date the notice of hearing is
6 furnished and shall not be more than 60 days after service of the
7 controlling board's answer unless the ~~tenure commission~~ **STATE BOARD**
8 **OF EDUCATION** grants a delay for good cause shown by the teacher or
9 controlling board.

10 (3) The hearing shall be conducted by an administrative law
11 judge who is an attorney licensed to practice law in this state and
12 is employed by the department of education. An administrative law
13 judge who conducts hearings under this section shall not advise the
14 ~~tenure commission~~ **STATE BOARD OF EDUCATION** or otherwise participate
15 in a ~~tenure commission~~ **STATE BOARD OF EDUCATION** review of an
16 administrative law judge's preliminary decision and order under
17 this section.

18 (4) Except as otherwise provided in this section, the hearing
19 shall be conducted in accordance with chapter 4 of the
20 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
21 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
22 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287,~~ and in accordance
23 with rules promulgated by the ~~tenure commission~~ **STATE BOARD OF**
24 **EDUCATION.**

25 (5) The hearing and ~~tenure commission~~ **STATE BOARD OF EDUCATION**
26 review shall be conducted in accordance with the following:

27 (a) The hearing shall be public or private at the option of

1 the teacher.

2 (b) The hearing shall be held at a convenient place in the
3 county in which all or a portion of the school district is located
4 or, if mutually agreed by the parties, at the ~~tenure-commission~~
5 **STATE BOARD OF EDUCATION** offices in Lansing. The administrative law
6 judge's necessary travel expenses associated with conducting the
7 hearing outside Lansing shall be borne equally by the ~~tenure~~
8 ~~commission-STATE BOARD OF EDUCATION~~ and the controlling board.

9 (c) Both the teacher and the controlling board may be
10 represented by legal counsel.

11 (d) Testimony at the hearing shall be on oath or affirmation.

12 (e) A stenographer shall make a full record of the proceedings
13 of the hearing. The cost of employing the stenographer and of
14 providing the record shall be borne equally by the ~~tenure~~
15 ~~commission-STATE BOARD OF EDUCATION~~ and the controlling board.

16 (f) The administrative law judge may subpoena witnesses and
17 documentary evidence on his or her own motion, and shall do so at
18 the request of the controlling board or the teacher. If a person
19 refuses to appear and testify in answer to a subpoena issued by the
20 administrative law judge, the party on whose behalf the subpoena
21 was issued may file a petition in the circuit court for the county
22 in which the hearing is held for an order requiring compliance.
23 Failure to obey such an order of the court may be punished by the
24 court as contempt.

25 (g) The hearing shall be concluded not later than 90 days
26 after the teacher's claim of appeal was filed with the ~~tenure~~
27 ~~commission-STATE BOARD OF EDUCATION~~.

1 (h) The administrative law judge shall make the necessary
2 orders to ensure that the case is submitted for decision not later
3 than 50 days after the hearing is concluded.

4 (i) Not later than 60 days after submission of the case for
5 decision, the administrative law judge shall serve a preliminary
6 decision and order in writing upon each party or the party's
7 attorney and the ~~tenure commission~~. **STATE BOARD OF EDUCATION**. The
8 preliminary decision and order shall grant, deny, or modify the
9 discharge or demotion specified in the charges.

10 (j) Not later than 20 days after service of the preliminary
11 decision and order, a party may file with the ~~tenure commission~~
12 **STATE BOARD OF EDUCATION** a statement of exceptions to the
13 preliminary decision and order or to any part of the record or
14 proceedings, including, but not limited to, rulings on motions or
15 objections, along with a written brief in support of the
16 exceptions. The party shall serve a copy of the statement of
17 exceptions and brief upon each of the other parties within the time
18 limit for filing the exceptions and brief. If there are no
19 exceptions timely filed, the preliminary decision and order becomes
20 the ~~tenure commission's~~ **STATE BOARD OF EDUCATION'S** final decision
21 and order.

22 (k) Not later than 10 days after being served with the other
23 party's exceptions and brief, a party may file a statement of
24 cross-exceptions responding to the other party's exceptions or a
25 statement in support of the preliminary decision and order with the
26 ~~tenure commission~~, **STATE BOARD OF EDUCATION**, along with a written
27 brief in support of the cross-exceptions or of the preliminary

1 decision and order. The party shall serve a copy of the statement
2 of cross-exceptions or of the statement in support of the
3 preliminary decision and order and a copy of the brief on each of
4 the other parties.

5 (l) A matter that is not included in a statement of exceptions
6 filed under subdivision (j) or in a statement of cross-exceptions
7 filed under subdivision (k) is considered waived and cannot be
8 heard before the ~~tenure commission~~ **STATE BOARD OF EDUCATION** or on
9 appeal to the court of appeals.

10 (m) If exceptions are filed, the ~~tenure commission~~, **STATE**
11 **BOARD OF EDUCATION**, after review of the record and the exceptions,
12 may adopt, modify, or reverse the preliminary decision and order.
13 The ~~tenure commission~~ **STATE BOARD OF EDUCATION** shall not hear any
14 additional evidence and its review shall be limited to
15 consideration of the issues raised in the exceptions based solely
16 on the evidence contained in the record from the hearing. The
17 ~~tenure commission~~ **STATE BOARD OF EDUCATION** shall issue its final
18 decision and order not later than 60 days after the exceptions are
19 filed.

20 (6) After giving the party notice and an opportunity to
21 comply, the administrative law judge or the ~~tenure commission~~ **STATE**
22 **BOARD OF EDUCATION** may dismiss an appeal or deny a discharge or
23 demotion for a party's lack of progress or for a party's repeated
24 failure to comply with the procedures specified in this section or
25 the ~~tenure commission's~~ **STATE BOARD OF EDUCATION'S** rules.

26 (7) A party aggrieved by a final decision and order of the
27 ~~tenure commission~~ **STATE BOARD OF EDUCATION** may appeal the decision

1 and order to the court of appeals in accordance with the Michigan
2 court rules within 20 days after the date of the decision and
3 order.

4 **ARTICLE VI**

5 Sec. 1. A teacher who has achieved continuing tenure status
6 may appeal to the ~~tenure commission~~**STATE BOARD OF EDUCATION** any
7 decision of a controlling board under this act, other than a
8 decision governed by article IV on discharge or demotion of a
9 teacher on continuing tenure, within 20 days from the date of the
10 decision. The ~~tenure commission~~**STATE BOARD OF EDUCATION** shall
11 provide for a hearing on the appeal. Notice and conduct of the
12 hearing shall be the same as provided in article IV and in rules
13 promulgated by the ~~tenure commission~~**STATE BOARD OF EDUCATION**.

14 Enacting section 1. Article VII of 1937 (Ex Sess) PA 4, MCL
15 38.131 to 38.140, is repealed.