

SENATE BILL No. 503

June 21, 2011, Introduced by Senator KAHN 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 sections 3, 4, 4a, and 5 of article IV, section 1 of article VI, and section 7 of article VII (MCL 38.103, 38.104, 38.104a, 38.105, 38.121, and 38.137), section 3 of article IV as amended by 2005 PA 124, section 4 of article IV and section 1 of article VI as amended by 1993 PA 60, section 4a of article IV as amended by 1998 PA 326, and section 5 of article IV as amended by 1993 PA 59; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE IV

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

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

7 (b) A ~~preliminary~~ decision and order discharging or demoting
8 the teacher is issued by the ~~administrative law judge~~ **ARBITRATOR**
9 under section ~~4(5)(i)~~ **4** of this article.

10 ~~—— (c) If the preliminary decision and order is to reinstate the~~
11 ~~teacher, a final decision and order is rendered by the tenure~~
12 ~~commission under section 4(5)(m) of this article.~~

13 (2) If a teacher is suspended as described in subsection (1),
14 the teacher's salary shall continue during the suspension. However,
15 if the teacher is convicted of a felony that is not a listed
16 offense or of a misdemeanor that is a listed offense, the
17 controlling board may discontinue the teacher's salary effective
18 upon the date of the conviction. If the teacher is convicted of a
19 felony that is a listed offense, the controlling board shall
20 discontinue the teacher's salary effective upon the date of
21 conviction. As used in this subsection, "listed offense" means that
22 term as defined in section 2 of the sex offenders registration act,
23 1994 PA 295, MCL 28.722.

24 ~~—— (3) If a preliminary decision and order discharging a teacher~~
25 ~~is issued by the administrative law judge and the tenure commission~~
26 ~~subsequently reverses the preliminary decision and order of the~~
27 ~~administrative law judge, the tenure commission may order back pay.~~

1 Sec. 4. (1) A teacher on continuing tenure may contest the
2 controlling board's decision to proceed upon the charges against
3 the teacher by filing a ~~claim of appeal with the tenure commission~~

4 **DEMAND FOR ARBITRATION WITH THE MICHIGAN EMPLOYMENT RELATIONS**

5 **COMMISSION** and serving a copy of the ~~claim of appeal~~ **DEMAND FOR**

6 **ARBITRATION** on the controlling board not later than 20 days after

7 receipt of the controlling board's decision. ~~The controlling board~~

8 ~~shall file its answer with the tenure commission and serve a copy~~

9 ~~of the answer on the teacher not later than 10 days after service~~

10 ~~of the claim of appeal.~~ **THE MICHIGAN EMPLOYMENT RELATIONS**

11 **COMMISSION SHALL SELECT AN ARBITRATOR FOR THE ARBITRATION USING ITS**

12 **PROCEDURE FOR THE SELECTION OF AN ARBITRATOR FOR A GRIEVANCE**

13 **ARBITRATION.** If the teacher does not contest the controlling

14 board's decision in the time and manner specified in this

15 subsection, the discharge or demotion specified in the charges

16 takes effect and the teacher shall be considered to have waived any

17 right to contest the discharge or demotion under this act.

18 ~~(2) An administrative law judge described in subsection (3)~~

19 **THE ARBITRATOR** shall furnish to each party without undue delay a

20 notice of hearing fixing the date and place of the hearing. The

21 hearing date shall not be less than 10 days after the date the

22 notice of hearing is furnished and shall not be more than ~~60~~ **90**

23 days after ~~service of the controlling board's answer~~ **THE SELECTION**

24 **OF THE ARBITRATOR** unless the ~~tenure commission~~ **MICHIGAN EMPLOYMENT**

25 **RELATIONS COMMISSION** grants a delay for good cause shown by the

26 teacher or controlling board.

27 ~~(3) The hearing shall be conducted by an administrative law~~

~~judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.~~

(3) ~~(4)~~ Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287,~~ and in accordance with rules promulgated by the ~~tenure commission.~~ **MICHIGAN EMPLOYMENT RELATIONS COMMISSION.**

(4) ~~(5)~~ The hearing ~~and tenure commission review~~ shall be conducted in accordance with the following:

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

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the ~~tenure commission~~ **MICHIGAN EMPLOYMENT RELATIONS COMMISSION** offices in Lansing. The ~~administrative law judge's~~ **ARBITRATOR'S FEES AND** necessary travel expenses associated with conducting the hearing ~~outside Lansing AND~~ **RENDERING A DECISION** shall be borne equally by the ~~tenure commission~~ **MICHIGAN EMPLOYMENT RELATIONS COMMISSION** and the controlling board.

(c) Both the teacher and the controlling board may be

1 represented by legal counsel.

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

3 (e) ~~A~~ **AT THE REQUEST OF EITHER THE TEACHER OR THE CONTROLLING**
4 **BOARD, A** stenographer shall make a full record of the proceedings
5 of the hearing. The cost of employing the stenographer and of
6 providing the record shall be borne ~~equally by the tenure~~
7 ~~commission and the controlling board.~~ **BY THE PARTY REQUESTING THE**
8 **STENOGRAPHER. THE PARTY THAT DID NOT REQUEST THE STENOGRAPHER MAY**
9 **PURCHASE A COPY OF THE TRANSCRIPT FROM THE STENOGRAPHER.**

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

19 (g) The hearing shall be concluded not later than ~~90~~ **120** days
20 after the ~~teacher's claim of appeal~~ **DEMAND FOR ARBITRATION** was
21 filed with the ~~tenure commission.~~ **MICHIGAN EMPLOYMENT RELATIONS**
22 **COMMISSION.**

23 (h) The ~~administrative law judge~~ **ARBITRATOR** shall make the
24 necessary orders to ensure that the case is submitted for decision
25 not later than ~~50~~ **30** days after the hearing is concluded.

26 (i) Not later than ~~60~~ **35** days after submission of the case for
27 decision, the ~~administrative law judge~~ **ARBITRATOR** shall serve a

1 preliminary decision and order in writing upon each party or the
2 party's attorney and the ~~tenure commission~~. **MICHIGAN EMPLOYMENT**
3 **RELATIONS COMMISSION**. The ~~preliminary decision and order~~ shall
4 grant, deny, or modify the discharge or demotion specified in the
5 charges.

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

16 ~~—— (k) Not later than 10 days after being served with the other~~
17 ~~party's exceptions and brief, a party may file a statement of~~
18 ~~cross exceptions responding to the other party's exceptions or a~~
19 ~~statement in support of the preliminary decision and order with the~~
20 ~~tenure commission, along with a written brief in support of the~~
21 ~~cross exceptions or of the preliminary decision and order. The~~
22 ~~party shall serve a copy of the statement of cross exceptions or of~~
23 ~~the statement in support of the preliminary decision and order and~~
24 ~~a copy of the brief on each of the other parties.~~

25 ~~—— (l) A matter that is not included in a statement of exceptions~~
26 ~~filed under subdivision (j) or in a statement of cross exceptions~~
27 ~~filed under subdivision (k) is considered waived and cannot be~~

~~heard before the tenure commission or on appeal to the court of appeals.~~

~~—— (m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.~~

(5) ~~(6)~~ After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission **ARBITRATOR** may dismiss an appeal **A DEMAND FOR ARBITRATION** or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's **MICHIGAN EMPLOYMENT RELATIONS COMMISSION** rules.

(6) ~~(7)~~ A party aggrieved by a final decision and order of the tenure commission may appeal **ARBITRATOR MAY SEEK TO VACATE** the decision and order ~~to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.~~ **OF THE ARBITRATOR BY FILING AN ACTION TO VACATE THE DECISION AND ORDER IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM WITHIN 20 DAYS AFTER THE DATE OF THE DECISION AND ORDER OF THE ARBITRATOR. A PARTY MAY SEEK VACATION OF THE DECISION AND ORDER ONLY FOR A REASON THAT AN ARBITRATOR'S AWARD IN A GRIEVANCE ARBITRATION MAY BE VACATED UNDER LAW. IF THE COURT DENIES THE**

1 REQUEST TO VACATE THE DECISION AND ORDER, THE COURT SHALL ORDER
2 ENFORCEMENT OF THE ARBITRATOR'S ORDER. AFTER THE TIME FOR FILING AN
3 ACTION TO VACATE THE DECISION AND ORDER HAS EXPIRED WITHOUT THE
4 FILING OF SUCH AN ACTION, A PARTY MAY FILE AN ACTION IN THE CIRCUIT
5 COURT FOR THE COUNTY OF INGHAM TO ENFORCE THE ORDER OF THE
6 ARBITRATOR. IN AN ACTION TO ENFORCE THE ORDER OF THE ARBITRATOR,
7 UPON FINDING THAT THE PERIOD FOR SEEKING VACATION OF THE ORDER HAS
8 EXPIRED WITHOUT AN ACTION TO VACATE HAVING BEEN FILED, THE COURT
9 PROMPTLY SHALL ISSUE AN ORDER OF ENFORCEMENT.

10 Sec. 4a. (1) As used in this section:

11 (a) "Developmental disability" means that term as defined in
12 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a
13 except that, for the purposes of implementing this section,
14 developmental disability includes only a condition that is
15 attributable to a mental impairment or to a combination of mental
16 and physical impairments, and does not include a condition
17 attributable to a physical impairment unaccompanied by a mental
18 impairment.

19 (b) "Witness" means an alleged victim under subsection (2) who
20 is either of the following:

21 (i) A person under 16 years of age.

22 (ii) A person 16 years of age or older with a developmental
23 disability.

24 (2) This section only applies to a hearing held under this
25 article in which a witness testifies as an alleged victim of
26 sexual, physical, or psychological abuse. As used in this
27 subsection, "psychological abuse" means an injury to the witness's

1 mental condition or welfare that is not necessarily permanent but
2 results in substantial and protracted, visibly demonstrable
3 manifestations of mental distress.

4 (3) If pertinent, the witness shall be permitted the use of
5 dolls or mannequins, including, but not limited to, anatomically
6 correct dolls or mannequins, to assist the witness in testifying on
7 direct and cross-examination.

8 (4) A witness who is called upon to testify shall be permitted
9 to have a support person sit with, accompany, or be in close
10 proximity to the witness during his or her testimony. A notice of
11 intent to use a support person shall name the support person,
12 identify the relationship the support person has with the witness,
13 and give notice to all parties to the proceeding that the witness
14 may request that the named support person sit with the witness when
15 the witness is called upon to testify during any stage of the
16 proceeding. The notice of intent to use a named support person
17 shall be served upon all parties to the proceeding. The ~~controlling~~
18 ~~board~~ **ARBITRATOR** shall rule on any objection to the use of a named
19 support person prior to the date at which the witness desires to
20 use the support person.

21 (5) In a hearing under this section, all persons not necessary
22 to the proceeding shall be excluded during the witness's testimony.

23 (6) This section is in addition to other protections or
24 procedures afforded to a witness by law or court rule.

25 Sec. 5. For a period of 3 years after the effective date of
26 the termination of the teacher's services, a teacher on continuing
27 tenure whose services are terminated because of a necessary

1 reduction in personnel shall be appointed to the first vacancy in
 2 the school district for which the teacher is certificated and
 3 qualified. ~~However, for a teacher on continuing tenure in a school~~
 4 ~~district whose services were terminated before the effective date~~
 5 ~~of the amendatory act that added this sentence, the teacher's right~~
 6 ~~under this section to be appointed to the first vacancy in the~~
 7 ~~school district for which the teacher is certificated and qualified~~
 8 ~~shall continue for a period of 3 years after the effective date of~~
 9 ~~the amendatory act that added this sentence.~~ This section does not
 10 prevent a school district from reemploying after the 3-year period
 11 specified in this section a teacher described in this section who
 12 was previously employed in that school district.

13 ARTICLE VI

14 Sec. 1. A teacher who has achieved continuing tenure status
 15 may appeal to ~~the tenure commission~~ **ARBITRATION** any decision of a
 16 controlling board under this act, other than a decision governed by
 17 article IV on discharge or demotion of a teacher on continuing
 18 tenure, within 20 days from the date of the decision **OR WITHIN 20**
 19 **DAYS OF RECEIVING FROM THE CONTROLLING BOARD NOTICE OF THE RIGHT TO**
 20 **APPEAL THAT DECISION UNDER THIS ACT, WHICHEVER IS LATER, BY FILING**
 21 **A DEMAND FOR ARBITRATION WITH THE MICHIGAN EMPLOYMENT RELATIONS**
 22 **COMMISSION AND SERVING A COPY ON THE CONTROLLING BOARD.** The ~~tenure~~
 23 ~~commission shall provide for a hearing on the appeal.~~ **MICHIGAN**
 24 **EMPLOYMENT RELATIONS COMMISSION SHALL SELECT AN ARBITRATOR FOR THE**
 25 **ARBITRATION USING THE SAME PROCEDURE AS UNDER SECTION 4 OF ARTICLE**
 26 **IV.** Notice and conduct of the hearing shall be the same as provided
 27 in article IV and in rules promulgated by the ~~tenure~~

1 ~~commission.~~**MICHIGAN EMPLOYMENT RELATIONS COMMISSION.**

2 ARTICLE VII

3 Sec. 7. The ~~tenure commission is hereby~~**MICHIGAN EMPLOYMENT**
 4 **RELATIONS COMMISSION IS** vested with ~~such~~**THE** powers as ~~THAT~~ are
 5 necessary to carry out and enforce the provisions of this act.

6 Enacting section 1. Sections 1, 2, 3, 4, 5, 6, 8, 9, and 10 of
 7 article VII of 1937 (Ex Sess) PA 4, MCL 38.131, 38.132, 38.133,
 8 38.134, 38.135, 38.136, 38.138, 38.139, and 38.140, are repealed.