

# HOUSE BILL No. 5356

December 3, 1991, Introduced by Reps. Bandstra, Dalman, Munsell, Robertson, Walberg, Fitzgerald, Trim, Griffin, Horton, Jamian, Stopczynski, Nye and Hillegonds and referred to the Committee on Education.

A bill to amend section 1 of article VI and section 9 of article VII of Act No. 4 of the Public Acts of the Extra Session of 1937, entitled as amended

"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,"

being sections 38.121 and 38.139 of the Michigan Compiled Laws; and to add section 9a to article VII.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 1 of article VI and section 9 of article  
2 VII of Act No. 4 of the Public Acts of the Extra Session of 1937,  
3 being sections 38.121 and 38.139 of the Michigan Compiled Laws,  
4 are amended and section 9a is added to article VII to read as  
5 follows:

## ARTICLE VI

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2       Sec. 1. A teacher who has achieved tenure status may appeal  
3 any decision of a controlling board under this act TO THE STATE  
4 TENURE COMMISSION within 30 days from the date of ~~such~~ THE  
5 decision. ~~to a state tenure commission.~~ The state tenure com-  
6 mission shall ~~provide for a hearing to be held within~~ NOTIFY A  
7 CONTROLLING BOARD OF THE APPEAL AND THE CONTROLLING BOARD SHALL  
8 TRANSMIT TO THE STATE TENURE COMMISSION THE ORIGINAL OR A CERTI-  
9 FIED COPY OF THE RECORD OF THE HEARING BEFORE THE CONTROLLING  
10 BOARD NOT LATER THAN 60 days from the date of appeal. ~~Notice~~  
11 ~~and conduct of such hearing shall be the same as provided in~~  
12 ~~article 4, section 4 of this act, and in such other rules and~~  
13 ~~regulations as the tenure commission may adopt.~~ THE STATE TENURE  
14 COMMISSION MAY PERMIT SUBSEQUENT CORRECTIONS TO THE RECORD.

## ARTICLE VII

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16       Sec. 9. (1) The tenure commission shall act as a board of  
17 review for all cases appealed from the decision of a controlling  
18 board. All records shall be kept in the office of the superin-  
19 tendent of public instruction.

20       (2) THE REVIEW CONDUCTED BY THE STATE TENURE COMMISSION  
21 SHALL BE CONFINED TO THE RECORD. UPON REQUEST BY A PARTY, THE  
22 STATE TENURE COMMISSION SHALL HEAR ORAL ARGUMENTS AND RECEIVE  
23 WRITTEN BRIEFS.

24       (3) IF TIMELY APPLICATION IS MADE TO THE STATE TENURE COM-  
25 MISSION FOR PERMISSION TO PRESENT ADDITIONAL EVIDENCE, AND IT IS  
26 SHOWN TO THE SATISFACTION OF THE STATE TENURE COMMISSION THAT AN  
27 INADEQUATE RECORD WAS MADE AT THE HEARING BEFORE THE CONTROLLING

1 BOARD OR THAT THE ADDITIONAL EVIDENCE IS MATERIAL AND THAT THERE  
2 WERE GOOD REASONS FOR FAILING TO RECORD OR PRESENT IT IN THE PRO-  
3 CEEDING BEFORE THE CONTROLLING BOARD, THE STATE TENURE COMMISSION  
4 MAY ORDER THE TAKING OF ADDITIONAL EVIDENCE BEFORE THE CONTROL-  
5 LING BOARD ON SUCH CONDITIONS AS THE STATE TENURE COMMISSION CON-  
6 SIDERS PROPER. THE CONTROLLING BOARD MAY MODIFY ITS FINDINGS OR  
7 DECISION BECAUSE OF THE ADDITIONAL EVIDENCE AND SHALL FILE WITH  
8 THE STATE TENURE COMMISSION THE ADDITIONAL EVIDENCE AND ANY NEW  
9 FINDINGS OR DECISION, WHICH SHALL BECOME PART OF THE RECORD.

10 (4) THE STATE TENURE COMMISSION SHALL SET ASIDE A DECISION  
11 OF A CONTROLLING BOARD ONLY IF SUBSTANTIAL RIGHTS OF THE TEACHER  
12 HAVE BEEN PREJUDICED BECAUSE THE DECISION OR ORDER IS ANY OF THE  
13 FOLLOWING:

14 (A) IN VIOLATION OF LAW.

15 (B) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL PREJ-  
16 UDICE TO THE TEACHER.

17 (C) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL  
18 EVIDENCE ON THE WHOLE RECORD.

19 (D) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWAR-  
20 RANTED EXERCISE OF DISCRETION.

21 (E) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF  
22 LAW.

23 (5) THE STATE TENURE COMMISSION, AS APPROPRIATE, MAY AFFIRM,  
24 REVERSE, OR MODIFY THE DECISION OR REMAND THE CASE FOR FURTHER  
25 PROCEEDINGS.

26 (6) ~~-(2)-~~ A writing prepared, owned, used in the possession  
27 of, or retained by the commission in the performance of an

1 official function shall be made available to the public in  
2 compliance with THE FREEDOM OF INFORMATION ACT, Act No. 442 of  
3 the Public Acts of 1976, being sections 15.231 to 15.246 of the  
4 Michigan Compiled Laws.

5       SEC. 9A. A PARTY AGGRIEVED BY A FINAL DECISION OF THE STATE  
6 TENURE COMMISSION MAY APPEAL THE DECISION WITHIN 30 DAYS AFTER  
7 THE DATE OF THE DECISION IN ACCORDANCE WITH THE MICHIGAN COURT  
8 RULES. THE APPEAL SHALL BE TO THE COURT OF APPEALS, WHICH SHALL  
9 SET ASIDE A DECISION OF THE STATE TENURE COMMISSION ONLY FOR A  
10 BASIS DESCRIBED IN SECTION 9(4) OF THIS ARTICLE.