



HOUSE BILL No. 4209

February 10, 1993, Introduced by Reps. Bandstra and Dalman and referred to the Committee on Education.

A bill to amend section 4 of article I, sections 1, 2, 3, and 4 of article IV, 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 38.74, 38.101, 38.102, 38.103, 38.104, and 38.139 of the Michigan Compiled Laws; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 4 of article I, sections 1, 2, 3, and 4
2 of article IV, and section 9 of article VII of Act No. 4 of the
3 Public Acts of the Extra Session of 1937, being sections 38.74,

1 38.101, 38.102, 38.103, 38.104, and 38.139 of the Michigan
2 Compiled Laws, are amended to read as follows:

3

ARTICLE I

4 Sec. 4. The word "demote" ~~shall mean~~ MEANS to reduce com-
5 pensation FOR A PARTICULAR SCHOOL YEAR BY MORE THAN AN AMOUNT
6 EQUIVALENT TO 5 DAYS' COMPENSATION or to transfer to a position
7 carrying a lower salary.

8

ARTICLE IV

9 Sec. 1. Discharge or demotion of a teacher on continuing
10 tenure may be made only for reasonable and just cause ~~—~~ and
11 only ~~after such charges, notice, hearing, and determination~~
12 ~~thereof, as are hereinafter~~ AS provided IN THIS ACT. ~~Nothing~~
13 ~~in this act shall be construed as preventing~~ THIS ACT DOES NOT
14 PREVENT any controlling board from establishing a reasonable
15 policy for retirement to apply equally to all teachers who are
16 eligible for retirement under ~~Act No. 136 of the Public Acts of~~
17 ~~1945~~ THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF 1979, ACT
18 NO. 300 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS 38.1301 TO
19 38.1408 OF THE MICHIGAN COMPILED LAWS, or, having established a
20 reasonable retirement age policy, from temporarily continuing ON
21 A YEAR-TO-YEAR BASIS on criteria equally applied to all teachers
22 the contract ~~on a year to year basis~~ of any teacher whom the
23 controlling board might wish to retain beyond the established
24 retirement age for the benefit of the school system.

25 Sec. 2. All charges against a teacher shall be made in
26 writing, signed by the person making the ~~same~~ CHARGES, and
27 filed with the secretary, clerk, or other designated officer of

1 the controlling board, AND A COPY OF THE CHARGES SHALL BE
2 PROVIDED TO THE TEACHER. ~~Charges concerning the character of~~
3 ~~professional services shall be filed at least 60 days before the~~
4 ~~close of the school year.~~ THE CHARGES SHALL SPECIFY A PROPOSED
5 OUTCOME OF EITHER DISCHARGE OR A SPECIFIC DEMOTION OF THE
6 TEACHER. THE CONTROLLING BOARD SHALL DECIDE WHETHER OR NOT TO
7 PROCEED UPON THE CHARGES, OR MAY MODIFY THE CHARGES AND DECIDE TO
8 PROCEED UPON THE CHARGES AS MODIFIED, NOT LATER THAN 10 DAYS
9 AFTER THE CHARGES ARE FILED WITH THE CONTROLLING BOARD. A DECI-
10 SION TO PROCEED UPON THE CHARGES SHALL NOT BE MADE EXCEPT BY A
11 MAJORITY VOTE OF THE CONTROLLING BOARD AND SHALL BE REDUCED TO
12 WRITING. The controlling board, if it decides to proceed upon
13 ~~such~~ THE charges, shall furnish the teacher NOT LATER THAN 5
14 DAYS AFTER DECIDING TO PROCEED UPON THE CHARGES with THE WRITTEN
15 DECISION TO PROCEED UPON THE CHARGES, a written statement of the
16 charges ~~including~~ AND a statement of the teacher's rights under
17 this article. ~~, and shall, at the option of the teacher, provide~~
18 ~~for a hearing to take place not less than 30 nor more than 45~~
19 ~~days after the filing of such charges.~~

20 Sec. 3. (1) On the filing of charges in accordance with
21 this ~~section~~ ARTICLE, the controlling board may suspend the
22 accused teacher from active performance of duty until ~~a decision~~
23 ~~is rendered by the controlling board, but the teacher's salary~~
24 ~~shall continue during such suspension. Provided, That if the~~
25 ~~decision of the controlling board is appealed and the tenure com-~~
26 ~~mission reverses the decision of the controlling board, the~~

~~1 teacher shall be entitled to all salary lost as a result of such~~
~~2 suspension.~~ 1 OF THE FOLLOWING OCCURS:

3 (A) THE TEACHER FAILS TO CONTEST THE DECISION TO PROCEED
4 UPON THE CHARGES WITHIN THE TIME PERIOD SPECIFIED IN SECTION 4(1)
5 OF THIS ARTICLE.

6 (B) A PRELIMINARY DECISION AND ORDER DISCHARGING OR DEMOTING
7 THE TEACHER IS ISSUED BY THE ADMINISTRATIVE LAW JUDGE UNDER
8 SECTION 4(4)(I) OF THIS ARTICLE.

9 (C) IF THE PRELIMINARY DECISION AND ORDER IS TO REINSTATE
10 THE TEACHER, A FINAL DECISION AND ORDER REINSTATING THE TEACHER
11 IS RENDERED BY THE TENURE COMMISSION UNDER SECTION 4(4)(M) OF
12 THIS ARTICLE.

13 (2) IF A TEACHER IS SUSPENDED AS DESCRIBED IN
14 SUBSECTION (1), THE TEACHER'S SALARY SHALL CONTINUE DURING THE
15 SUSPENSION.

16 (3) IF A PRELIMINARY DECISION AND ORDER DISCHARGING A
17 TEACHER IS ISSUED BY THE ADMINISTRATIVE LAW JUDGE AND THE TENURE
18 COMMISSION SUBSEQUENTLY REVERSES THE PRELIMINARY DECISION AND
19 ORDER OF THE ADMINISTRATIVE LAW JUDGE, THE TENURE COMMISSION MAY
20 ORDER AN AWARD OF ALL SALARY LOST.

21 Sec. 4. (1) ~~The hearing shall be conducted in accordance~~
22 ~~with the following provisions:~~

23 ~~a. The hearing shall be public or private at the option of~~
24 ~~the teacher affected.~~

25 ~~b. No action shall be taken resulting in the demotion or~~
26 ~~dismissal of a teacher except by a majority vote of the members~~
27 ~~of the controlling board.~~

1 ~~c. Both the teacher and the person filing charges may be~~
2 ~~represented by counsel.~~

3 ~~d. Testimony at hearings shall be on oath or affirmation.~~

4 ~~e. The controlling board shall employ a stenographer who~~
5 ~~shall make a full record of the proceedings of such hearing and~~
6 ~~who shall, within 10 days after the conclusion thereof, furnish~~
7 ~~the controlling board and the teacher affected thereby with a~~
8 ~~copy of the transcript of such record, which shall be certified~~
9 ~~to be complete and correct.~~

10 ~~f. Any hearing held for the dismissal or demotion of a~~
11 ~~teacher, as provided in this act, must be concluded by a decision~~
12 ~~in writing, within 15 days after the termination of the hearing.~~
13 ~~A copy of such decision shall be furnished the teacher affected~~
14 ~~within 5 days after the decision is rendered.~~

15 ~~g. The controlling board shall have the power to subpoena~~
16 ~~witnesses and documentary evidence, and shall do so on its own~~
17 ~~motion or at the request of the teacher against whom charges have~~
18 ~~been made. If any person shall refuse to appear and testify in~~
19 ~~answer to any subpoena issued by the controlling board, such con-~~
20 ~~trolling board may petition the circuit court of the county set-~~
21 ~~ting forth the facts which court shall thereupon issue its sub-~~
22 ~~poena commanding such person to appear before the controlling~~
23 ~~board there to testify as to the matters being inquired into.~~
24 ~~Any failure to obey such order of the court may be punished by~~
25 ~~such court as contempt thereof.~~ A TEACHER ON CONTINUING TENURE
26 MAY CONTEST THE CONTROLLING BOARD'S DECISION TO PROCEED UPON THE
27 CHARGES AGAINST THE TEACHER BY FILING A CLAIM OF APPEAL WITH THE

1 TENURE COMMISSION AND SERVING A COPY OF THE CLAIM OF APPEAL ON
2 THE CONTROLLING BOARD NOT LATER THAN 20 DAYS AFTER RECEIPT OF THE
3 CONTROLLING BOARD'S DECISION. THE CONTROLLING BOARD SHALL FILE
4 ITS ANSWER WITH THE TENURE COMMISSION AND SERVE A COPY OF THE
5 ANSWER ON THE TEACHER NOT LATER THAN 10 DAYS AFTER SERVICE OF THE
6 CLAIM OF APPEAL. IF THE TEACHER DOES NOT CONTEST THE CONTROLLING
7 BOARD'S DECISION IN THE TIME AND MANNER SPECIFIED IN THIS SUBSEC-
8 TION, THE DISCHARGE OR DEMOTION SPECIFIED IN THE CHARGES TAKES
9 EFFECT AND THE TEACHER SHALL BE CONSIDERED TO HAVE WAIVED ANY
10 RIGHT TO CONTEST THE DISCHARGE OR DEMOTION UNDER THIS ACT.

11 (2) AN ADMINISTRATIVE LAW JUDGE DESCRIBED IN SUBSECTION (3)
12 SHALL FURNISH TO EACH PARTY WITHOUT UNDUE DELAY A NOTICE OF HEAR-
13 ING FIXING THE DATE AND PLACE OF THE HEARING. THE HEARING DATE
14 SHALL NOT BE LESS THAN 10 DAYS AFTER THE DATE THE NOTICE OF HEAR-
15 ING IS FURNISHED.

16 (3) THE HEARING SHALL BE CONDUCTED BY AN ADMINISTRATIVE LAW
17 JUDGE WHO IS AN ATTORNEY LICENSED TO PRACTICE LAW IN THIS STATE.
18 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE HEARING SHALL
19 BE CONDUCTED IN ACCORDANCE WITH CHAPTER 4 OF THE ADMINISTRATIVE
20 PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,
21 BEING SECTIONS 24.271 TO 24.287 OF THE MICHIGAN COMPILED LAWS,
22 AND IN ACCORDANCE WITH RULES PROMULGATED BY THE TENURE
23 COMMISSION.

24 (4) THE HEARING AND TENURE COMMISSION REVIEW SHALL BE CON-
25 DUCTED IN ACCORDANCE WITH THE FOLLOWING:

26 (A) THE HEARING SHALL BE PUBLIC OR PRIVATE AT THE OPTION OF
27 THE TEACHER.

1 (B) THE HEARING SHALL BE HELD AT A CONVENIENT PLACE IN THE
2 COUNTY IN WHICH ALL OR A PORTION OF THE SCHOOL DISTRICT IS
3 LOCATED OR, IF MUTUALLY AGREED BY THE PARTIES, AT THE TENURE COM-
4 MISSION OFFICES IN LANSING. THE ADMINISTRATIVE LAW JUDGE'S NEC-
5 ESSARY TRAVEL EXPENSES ASSOCIATED WITH CONDUCTING THE HEARING
6 OUTSIDE LANSING SHALL BE BORNE EQUALLY BY THE TENURE COMMISSION
7 AND THE CONTROLLING BOARD.

8 (C) BOTH THE TEACHER AND THE CONTROLLING BOARD MAY BE REPRE-
9 SENTED BY COUNSEL.

10 (D) TESTIMONY AT THE HEARING SHALL BE ON OATH OR
11 AFFIRMATION.

12 (E) A STENOGRAPHER SHALL MAKE A FULL RECORD OF THE PROCEED-
13 INGS OF THE HEARING. THE COST OF EMPLOYING THE STENOGRAPHER AND
14 OF PROVIDING THE RECORD SHALL BE BORNE EQUALLY BY THE TENURE COM-
15 MISSION 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
20 THE ADMINISTRATIVE LAW JUDGE, THE PARTY ON WHOSE BEHALF THE SUB-
21 POENA WAS ISSUED MAY FILE A PETITION IN THE CIRCUIT COURT FOR THE
22 COUNTY IN WHICH THE HEARING IS HELD FOR AN ORDER REQUIRING
23 COMPLIANCE. FAILURE TO OBEY SUCH AN ORDER OF THE COURT MAY BE
24 PUNISHED BY THE 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.

1 (H) THE ADMINISTRATIVE LAW JUDGE SHALL MAKE THE NECESSARY
2 ORDERS TO ENSURE THAT THE CASE IS SUBMITTED FOR DECISION NOT
3 LATER 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. THE PRELIMINARY DECISION AND
8 ORDER SHALL EITHER GRANT THE DISCHARGE OR DEMOTION SPECIFIED IN
9 THE CHARGES OR REINSTATE THE TEACHER.

10 (J) NOT LATER THAN 20 DAYS AFTER SERVICE OF THE PRELIMINARY
11 DECISION AND ORDER, A PARTY MAY FILE WITH THE TENURE COMMISSION A
12 STATEMENT OF EXCEPTIONS TO THE PRELIMINARY DECISION AND ORDER OR
13 TO ANY PART OF THE RECORD OR PROCEEDINGS, INCLUDING, BUT NOT
14 LIMITED TO, RULINGS ON MOTIONS OR OBJECTIONS, ALONG WITH A WRIT-
15 TEN BRIEF IN SUPPORT OF THE EXCEPTIONS. THE PARTY SHALL SERVE A
16 COPY OF THE STATEMENT OF EXCEPTIONS AND BRIEF UPON EACH OF THE
17 OTHER PARTIES WITHIN THE TIME LIMIT FOR FILING THE EXCEPTIONS AND
18 BRIEF. IF THERE ARE NO EXCEPTIONS TIMELY FILED, THE PRELIMINARY
19 DECISION AND ORDER BECOMES THE TENURE COMMISSION'S FINAL DECISION
20 AND ORDER.

21 (K) NOT LATER THAN 10 DAYS AFTER BEING SERVED WITH THE OTHER
22 PARTY'S EXCEPTIONS AND BRIEF, A PARTY MAY FILE A STATEMENT OF
23 CROSS-EXCEPTIONS RESPONDING TO THE OTHER PARTY'S EXCEPTIONS OR A
24 STATEMENT IN SUPPORT OF THE PRELIMINARY DECISION AND ORDER WITH
25 THE TENURE COMMISSION, ALONG WITH A WRITTEN BRIEF IN SUPPORT OF
26 THE CROSS-EXCEPTIONS OR OF THE PRELIMINARY DECISION AND ORDER.
27 THE PARTY SHALL SERVE A COPY OF THE STATEMENT OF CROSS-EXCEPTIONS

1 OR OF THE STATEMENT IN SUPPORT OF THE PRELIMINARY DECISION AND
2 ORDER AND A COPY OF THE BRIEF ON EACH OF THE OTHER PARTIES.

3 (L) A MATTER THAT IS NOT INCLUDED IN A STATEMENT OF EXCEP-
4 TIONS FILED UNDER SUBDIVISION (J) OR IN A STATEMENT OF
5 CROSS-EXCEPTIONS FILED UNDER SUBDIVISION (K) IS CONSIDERED WAIVED
6 AND CANNOT BE HEARD BEFORE THE TENURE COMMISSION OR ON APPEAL TO
7 THE COURT OF APPEALS.

8 (M) IF EXCEPTIONS ARE FILED, THE TENURE COMMISSION, AFTER
9 REVIEW OF THE RECORD AND THE EXCEPTIONS, MAY ADOPT, MODIFY, OR
10 REVERSE THE PRELIMINARY DECISION AND ORDER. THE TENURE COMMIS-
11 SION SHALL NOT HEAR ANY ADDITIONAL EVIDENCE AND ITS REVIEW SHALL
12 BE LIMITED TO CONSIDERATION OF THE ISSUES RAISED IN THE EXCEP-
13 TIONS BASED SOLELY ON THE EVIDENCE CONTAINED IN THE RECORD FROM
14 THE HEARING. THE TENURE COMMISSION SHALL ISSUE ITS FINAL DECI-
15 SION AND ORDER NOT LATER THAN 60 DAYS AFTER THE EXCEPTIONS ARE
16 FILED.

17 (5) AFTER GIVING THE TEACHER NOTICE AND AN OPPORTUNITY TO
18 COMPLY, THE TENURE COMMISSION MAY DISMISS AN APPEAL INITIATED BY
19 A TEACHER UNDER THIS ACT FOR LACK OF PROGRESS OR FOR REPEATED
20 FAILURE TO COMPLY WITH THE PROCEDURES SPECIFIED IN THIS SECTION
21 OR THE COMMISSION'S RULES.

22 (6) A PARTY AGGRIEVED BY A FINAL DECISION AND ORDER OF THE
23 TENURE COMMISSION MAY APPEAL THE DECISION AND ORDER TO THE COURT
24 OF APPEALS IN ACCORDANCE WITH THE MICHIGAN COURT RULES WITHIN 20
25 DAYS AFTER THE DATE OF THE DECISION AND ORDER.

ARTICLE VII

1

2 Sec. 9. (1) ~~The tenure commission shall act as a board of~~
3 ~~review for all cases appealed from the decision of a controlling~~
4 ~~board.~~ All records OF THE TENURE COMMISSION shall be kept in the
5 office of the superintendent of public instruction.

6 (2) A writing prepared, owned, used in the possession of, or
7 retained by the commission in the performance of an official
8 function shall be made available to the public in compliance with
9 THE FREEDOM OF INFORMATION ACT, Act No. 442 of the Public Acts of
10 1976, being sections 15.231 to 15.246 of the Michigan Compiled
11 Laws.

12 Section 2. Article VI of Act No. 4 of the Public Acts of
13 the Extra Session of 1937, being section 38.121 of the Michigan
14 Compiled Laws, is repealed.