

SECOND REGULAR SESSION

SENATE BILL NO. 734

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3641S.011

AN ACT

To repeal sections 36.390, 106.010, 168.116, and 168.118, RSMo, and to enact in lieu thereof thirteen new sections relating to public employee due process.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 36.390, 106.010, 168.116, and 168.118, RSMo, are
2 repealed and thirteen new sections enacted in lieu thereof, to be known as
3 sections 36.390, 105.1250, 105.1252, 105.1254, 105.1256, 105.1258, 105.1260,
4 105.1262, 105.1264, 105.1266, 106.010, 168.116, and 168.118, to read as follows:

36.390. 1. An applicant whose request for admission to any examination
2 has been rejected by the director may appeal to the board in writing within
3 fifteen days of the mailing of the notice of rejection by the director, and in any
4 event before the holding of the examination. The board's decision on all matters
5 of fact shall be final.

6 2. Applicants may be admitted to an examination pending a consideration
7 of the appeal, but such admission shall not constitute the assurance of a passing
8 grade in education and experience.

9 3. Any applicant who has taken an examination and who feels that he or
10 she has not been dealt with fairly in any phase of the examination process may
11 request that the director review his or her case. Such request for review of any
12 examination shall be filed in writing with the director within thirty days after the
13 date on which notification of the results of the examination was mailed to the
14 applicant. A candidate may appeal the decision of the director in writing to the
15 board. This appeal shall be filed with the board within thirty days after date on
16 which notification of the decision of the director was mailed to the applicant. The
17 board's decision with respect to any changes shall be final, and shall be entered

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 in the minutes. A correction in the rating shall not affect a certification or
19 appointment which may have already been made from the register.

20 4. An eligible whose name has been removed from a register for any of the
21 reasons specified in section 36.180 or in section 36.240 may appeal to the board
22 for reconsideration. Such appeal shall be filed in writing at the office of the
23 director within thirty days after the date on which notification was mailed to the
24 board. The board, after investigation, shall make its decision which shall be
25 recorded in the minutes and the eligible shall be notified accordingly by the
26 director.

27 5. Any regular employee who is dismissed or involuntarily demoted for
28 cause or suspended for more than five working days may appeal in writing to the
29 board within thirty days after the effective date thereof, setting forth in substance
30 the employee's reasons for claiming that the dismissal, suspension or demotion
31 was for political, religious, or racial reasons, or not for the good of the
32 service. Upon such appeal, both the appealing employee and the appointing
33 authority whose action is reviewed shall have the right to be heard and to present
34 evidence at a hearing which, at the request of the appealing employee, shall be
35 public. At the hearing of such appeals, technical rules of evidence shall not
36 apply. After the hearing and consideration of the evidence for and against a
37 suspension, demotion, or dismissal, the board shall approve or disapprove such
38 action and may make any one of the following appropriate orders:

39 (1) Order the reinstatement of the employee to the employee's former
40 position;

41 (2) Sustain the dismissal of such employee;

42 (3) Except as provided in subdivisions (1) and (2) of this subsection, the
43 board may sustain the dismissal, but may order the director to recognize
44 reemployment rights for the dismissed employee pursuant to section 36.240, in
45 an appropriate class or classes, or may take steps to effect the transfer of such
46 employee to an appropriate position in the same or another division of service.

47 6. Any order by the board under subsection 5 of this section shall be a
48 final decision on the merits and may be appealed as provided in chapter 536,
49 RSMo.

50 7. After an order of reinstatement has been issued and all parties have
51 let the time for appeal lapse or have filed an appeal and that appeal process has
52 become final and the order of reinstatement has been affirmed, the board shall
53 commence a separate action to determine the date of reinstatement and the

54 amount of back pay owed to the employee. This action may be done by hearing,
55 or by affidavit, depositions, or stipulations, or by agreement on the amount of
56 back pay owed. If the parties cannot reach an agreement as to how the parties
57 shall be heard on this separate action, then the board shall decide on the method
58 through its hearing officer. No hearing will be public unless requested to be
59 public by the employee.

60 8. The board shall establish such rules as may be necessary to give effect
61 to the provisions of this section. The rules may provide that the board or the
62 chairman of the board may delegate responsibility for the conduct of
63 investigations and the hearing of appeals provided pursuant to any section of this
64 chapter to a member of the board or to a hearing officer designated by the
65 board. Such hearing officer shall have the power to administer oaths, subpoena
66 witnesses, compel the production of records pertinent to any hearing, and take
67 any action in connection with such hearing which the board itself is authorized
68 to take by law other than making the final decision and appropriate order. When
69 the hearing has been completed, the individual board member or the hearing
70 officer who conducted the hearing shall prepare a summary thereof and
71 recommend a findings of fact, conclusions of law, decision and appropriate order
72 for approval of the board. The board may adopt such recommendations in whole
73 or in part, require the production of additional testimony, reassign the case for
74 rehearing, or may itself conduct such new or additional hearing as is deemed
75 necessary prior to rendering a final decision. The board may also establish rules
76 which provide for alternative means of resolving one or more of the types of
77 appeals outlined in this section.

78 9. The provisions for appeals provided in subsection 5 of this section for
79 dismissals of regular merit employees may be adopted by nonmerit agencies of the
80 state for any or all employees of such agencies.

81 10. Agencies not adopting the provisions for appeals provided in
82 subsection 5 of this section shall adopt dismissal procedures substantially similar
83 to those provided for merit employees. However, these procedures need not apply
84 to employees in policy-making positions, or to members of military or law
85 enforcement agencies.

86 11. Hearings under this section shall be deemed to be a contested case
87 and the procedures applicable to the processing of such hearings and
88 determinations shall be those established by chapter 536, RSMo. Decisions of the
89 personnel advisory board shall be final and binding subject to appeal by either

90 party. Final decisions of the personnel advisory board pursuant to this
91 subsection shall be subject to review on the record by the circuit court pursuant
92 to chapter 536, RSMo.

93 **12. Employees who have a right to appeal a dismissal or**
94 **demotion pursuant to this section, and those employees in**
95 **policymaking positions who do not have a right to appeal under this**
96 **section, shall not have the right to appeal that dismissal or demotion**
97 **pursuant to sections 105.1250 to 105.1266, RSMo.**

105.1250. Sections 105.1250 to 105.1266 may be cited as the
2 **"Public Employee Due Process Act".**

105.1252. For purposes of sections 105.1250 to 105.1266, the
2 **following words and phrases mean:**

3 **(1) "Employee", a person employed by the public body for a**
4 **period of at least ninety consecutive calendar days, who is not a**
5 **supervisor, manager, or superintendent of a school district;**

6 **(2) "Hearing officer", a person who has the experience and**
7 **qualifications required by the state board of mediation to be on the list**
8 **of hearing officers maintained by the board, and whose fee shall not**
9 **exceed five hundred dollars per day, plus reimbursement for any**
10 **transportation and other expenses related to the hearing;**

11 **(3) "Public body", the state of Missouri, or any officer, agency,**
12 **department, bureau, division, board or commission of the state, or any**
13 **other political subdivision of or within the state.**

105.1254. 1. When a public body intends to terminate, discipline,
2 **or demote an employee, including when it intends to terminate an**
3 **employment contract, it shall serve written charges upon the employee**
4 **that shall specify with particularity the grounds for the proposed**
5 **action. The written charges shall include notice to the employee that**
6 **the matter may be heard by a hearing officer if requested by the**
7 **employee. The written charges and notice of the right to request a**
8 **hearing shall be served in person on the employee, or by certified mail**
9 **addressed to the employee at the employee's last known address.**

10 **2. If a hearing is requested by the employee or scheduled by the**
11 **public body, the hearing shall take place not less than sixty days after**
12 **the charges and notice have been served on the employee, or at a time**
13 **mutually agreed to by the employee and the public body.**

14 **3. Any other provision of the law to the contrary**

15 notwithstanding, a public body shall not charge an employee subject to
16 sections 105.1250 to 105.1266 with incompetence, inefficiency, or
17 insubordination in the line of duty, except after the public body has
18 provided the employee with a written remediation plan of at least four
19 months duration stating specifically the causes that, if not removed,
20 may result in termination, discipline, or demotion.

105.1256. 1. The party seeking the hearing shall submit a written
2 request to the state board of mediation for a list of seven names from
3 the list of hearing officers maintained by the board. A copy of the
4 request shall be served on the other party. The board shall furnish a
5 copy of the list of seven names to each party, including a resume of
6 qualifications for each name on the list. No person on the list of seven
7 names shall be an employee of the public body nor reside in its
8 jurisdiction, except when the jurisdiction is the state.

9 2. Within seven days of the receipt of the list of seven names, the
10 parties shall select a hearing officer from the list by alternately
11 striking a name from the list until one name remains. The public body
12 shall strike a name from the list first. The parties shall notify the
13 board of the name of the hearing officer selected. The parties shall
14 contact the selected hearing officer to schedule the hearing.

105.1258. 1. Prior to the hearing, each party shall provide the
2 other with the name, address, and telephone number of each witness it
3 intends to call at the hearing. The public body shall provide to the
4 employee, prior to the hearing, copies of all statements, memorandums,
5 recordings, videotapes, computer files, affidavits, and other documents
6 upon which it based its charges. The hearing officer shall issue
7 subpoenas for the taking of depositions prior to the hearing for the
8 purpose of discovery or the preservation of testimony.

9 2. The state board of mediation shall adopt rules for discovery
10 by the parties, which shall include the provisions of subsection 1 of this
11 section.

105.1260. 1. The hearing shall be open to the public unless closed
2 at the request of the employee.

3 2. The employee and the public body shall have the right to be
4 represented by counsel or by representatives who are not
5 attorneys. Each party shall have the right to call and examine
6 witnesses, to introduce exhibits, to cross-examine witnesses on any

7 matter relevant to the matters at issue in the hearing even if the matter
8 was not the subject of direct examination, to impeach any witness
9 regardless of which party first called the witness, and to rebut the
10 evidence against it.

11 3. A stenographer or court reporter shall be present at the
12 hearing and shall make a full record of the proceedings of the hearing
13 and shall, within ten days after the conclusion of the hearing or such
14 other time mutually agreed to by the parties, furnish the hearing
15 officer and each party with a copy of the transcript of the record,
16 which shall be certified by the stenographer or court reporter to be
17 complete and correct. The transcript shall not be open to public
18 inspection unless the hearing was open to the public, or unless an
19 appeal of the decision of the hearing officer is taken by the employee
20 or the public body.

21 4. The public body shall pay the cost of the transcript of the
22 record, including the copy for the hearing officer and the copy for the
23 employee, and shall also pay the per diem fees and expenses of the
24 hearing officer. Except as otherwise provided in this section, each
25 party shall be responsible for its own expenses, including attorney fees,
26 costs associated with depositions and subpoenas, witness fees, and
27 other costs associated with the case.

28 5. The hearing officer shall:

29 (1) Administer oaths;

30 (2) Issue subpoenas for the attendance and testimony of
31 witnesses and the production of books, papers, and documents relating
32 to any matter under investigation;

33 (3) Authorize depositions to be taken;

34 (4) Receive evidence, rule on objections and limit lines of
35 questioning and testimony that are repetitive, cumulative, or
36 irrelevant;

37 (5) Regulate the course of the hearing and dispose of procedural
38 requests, motions, and similar matters;

39 (6) Take any other action necessary to make the hearing accord
40 with administrative due process; and

41 (7) Authorize the filing of posthearing briefs or proposed
42 findings of fact and conclusions of law by each party.

43 6. The state board of mediation shall promulgate rules for the

44 **conduct of the hearing and matters related directly to hearings**
45 **conducted pursuant to sections 105.1250 to 105.1266.**

105.1262. 1. **The hearing officer shall issue a decision, including**
2 **findings of fact and conclusions of law, within thirty days after the**
3 **filing of posthearing briefs or proposed findings of fact and conclusions**
4 **of law by the parties. The hearing officer shall send a copy of the**
5 **decision to each of the parties.**

6 2. **The decision of the hearing officer shall be based on the**
7 **doctrine of just cause, and the public body shall have the burden of**
8 **proving that there is just cause to terminate, discipline, or demote the**
9 **employee or to terminate the employment contract of the employee.**

10 3. **The decision of the hearing officer shall be final, unless one**
11 **of the parties seeks a review of the decision, which shall be conducted**
12 **pursuant to sections 536.100 to 536.140, RSMo.**

105.1264. **Any rule or portion of a rule, as that term is defined in**
2 **section 536.010, RSMo, that is created under the authority delegated in**
3 **this section shall become effective only if it complies with and is**
4 **subject to all of the provisions of chapter 536, RSMo, and, if applicable,**
5 **section 536.028, RSMo. This section and chapter 536, RSMo, are**
6 **nonseverable and if any of the powers vested with the general assembly**
7 **pursuant to chapter 536, RSMo, to review, to delay the effective date,**
8 **or to disapprove and annul a rule are subsequently held**
9 **unconstitutional, then the grant of rulemaking authority and any rule**
10 **proposed or adopted after August 28, 2006, shall be invalid and void.**

105.1266. **To the extent of any conflict between the provisions of**
2 **sections 105.1250 to 105.1266 and any other law, the particular**
3 **provisions of sections 105.1250 to 105.1266 in conflict which cannot be**
4 **harmonized with any other law shall prevail over general provisions in**
5 **any other law, and where those particular provisions of sections**
6 **105.1250 to 105.1266 are in conflict with the particular provisions in any**
7 **other law, the law later enacted shall prevail.**

106.010. 1. **The governor [shall have power and he is hereby authorized**
2 **to] may remove from office, without assigning any other reason therefor, any**
3 **appointive state official required by law to be appointed by the governor,**
4 **whenever in his opinion such removal is necessary for the betterment of the**
5 **public service, but the governor may, at his or her discretion, in any order of**
6 **removal which [he] the governor may make under [authority of] this section,**

7 assign additional and more specific reasons for such removal.

8 **2. Appointive state officials required by law to be appointed by**
9 **the governor shall not have the right to appeal their removal from**
10 **office pursuant to sections 105.1250 to 105.1266, RSMo.**

168.116. 1. The indefinite contract of a permanent teacher may not be
2 terminated by the board of education until after service upon the teacher of
3 written charges specifying with particularity the grounds alleged to exist for
4 termination of such contract, notice of **the teacher's right to** a hearing on
5 charges **as provided in this section and in sections 168.118 and 168.120,**
6 **and of the teacher's right to request a hearing pursuant to sections**
7 **105.1250 to 105.1266, RSMo,** and a hearing by the board of education on
8 charges if requested by the teacher **or a hearing pursuant to sections**
9 **105.1250 to 105.1266, RSMo, if requested by the teacher.**

10 2. At least thirty days before service of notice of charges of incompetency,
11 inefficiency, or insubordination in line of duty, the teacher shall be given by the
12 school board or the superintendent of schools warning in writing, stating
13 specifically the causes which, if not removed, may result in charges. Thereafter,
14 both the superintendent, or **[his] the superintendent's** designated
15 representative, and the teacher shall meet and confer in an effort to resolve the
16 matter.

17 3. Notice of **the teacher's right to** a hearing upon charges, together
18 with a copy of charges, shall be served on the permanent teacher at least twenty
19 days prior to the date **[of] set by the board of education for** the hearing,
20 **except when the teacher elects to request a hearing pursuant to**
21 **sections 105.1250 to 105.1266, RSMo, in which case the provisions of**
22 **sections 105.1250 to 105.1266 shall apply.** The notice and copy of the charges
23 may be served upon the teacher by certified mail with personal delivery
24 addressed to **[him] the teacher** at **[his] the teacher's** last known address. If
25 the teacher or **[his] the teacher's** agent does not within ten days after receipt
26 of the notice request a hearing on the charges, the board of education may, by a
27 majority vote, order the contract of the teacher terminated. If a hearing is
28 requested by either the teacher or the board of education, it shall take place not
29 less than twenty nor more than thirty days after notice of a hearing has been
30 furnished the permanent teacher.

31 4. On the filing of charges in accordance with this section **and with**
32 **sections 105.1250 to 105.1266, RSMo,** the board of education may suspend the

33 teacher from active performance of duty until a decision is rendered by the board
34 of education but the teacher's salary shall be continued during such suspension.
35 If a decision to terminate a teacher's employment by the board of education is
36 appealed, and the decision is reversed, the teacher shall be paid [his] **the**
37 **teacher's** salary lost during the pending of the appeal.

168.118. If a hearing is requested on the termination of an indefinite
2 contract it shall be conducted **pursuant to sections 105.1250 to 105.1266,**
3 **RSMo, if the teacher requests a hearing pursuant to sections 105.1250**
4 **to 105.1266, RSMo. If a teacher requests a hearing before the board of**
5 **education, then the hearing shall be conducted** by the board of education
6 in accordance with the following provisions:

- 7 (1) The hearing shall be public;
- 8 (2) Both the teacher and the person filing charges may be represented by
9 counsel who may cross-examine witnesses;
- 10 (3) Testimony at hearings shall be on oath or affirmation administered by
11 the president of the board of education, who for the purpose of hearings held
12 under sections 168.102 to 168.130 shall have the authority to administer oaths;
- 13 (4) The school board shall have the power to subpoena witnesses and
14 documentary evidence as provided in section 536.077, RSMo, and shall do so on
15 its own motion or at the request of the teacher against whom charges have been
16 made. The school board shall hear testimony of all witnesses named by the
17 teacher; however, the school board may limit the number of witnesses to be
18 subpoenaed on behalf of the teacher to not more than ten;
- 19 (5) The board of education shall employ a stenographer who shall make
20 a full record of the proceedings of the hearings and who shall, within ten days
21 after the conclusion thereof, furnish the board of education and the teacher, at no
22 cost to the teacher, with a copy of the transcript of the record, which shall be
23 certified by the stenographer to be complete and correct. The transcript shall not
24 be open to public inspection, unless the hearing on the termination of the contract
25 was an open hearing or if an appeal from the decision of the board is taken by the
26 teacher;
- 27 (6) All costs of the hearing shall be paid by the school board except the
28 cost of counsel for the teacher;
- 29 (7) The decision of the board of education resulting in the demotion of a
30 permanent teacher or the termination of an indefinite contract shall be by a
31 majority vote of the members of the board of education and the decision shall be

32 made within seven days after the transcript is furnished them. A written copy
33 of the decision shall be furnished the teacher within three days thereafter.

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