

FIRST REGULAR SESSION

HOUSE BILL NO. 160

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BRAY (Sponsor), HARLAN, GREEN (73), BOUCHER,
REYNOLDS AND BARRY.

Pre-filed December 14, 2000, and 1000 copies ordered printed.

ANNE C. WALKER, Chief Clerk

0556L.011

AN ACT

To repeal sections 36.390, 106.010, 168.116 and 168.118, RSMo 2000, relating to public employee due process, and to enact in lieu thereof thirteen new sections relating to the same subject.

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Section A. Sections 36.390, 106.010, 168.116 and 168.118, RSMo 2000, are repealed
2 and thirteen new sections enacted in lieu thereof, to be known as sections 36.390, 105.1250,
3 105.1252, 105.1254, 105.1256, 105.1258, 105.1260, 105.1262, 105.1264, 105.1266, 106.010,
4 168.116 and 168.118, to read as follows:

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

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

8 3. Any applicant who has taken an examination and who feels that he or she has not been
9 dealt with fairly in any phase of the examination process may request that the director review his
10 or her case. Such request for review of any examination shall be filed in writing with the director
11 within thirty days after the date on which notification of the results of the examination was
12 mailed to the applicant. A candidate may appeal the decision of the director in writing to the

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

13 board. This appeal shall be filed with the board within thirty days after date on which
14 notification of the decision of the director was mailed to the applicant. The board's decision with
15 respect to any changes shall be final, and shall be entered in the minutes. A correction in the
16 rating shall not affect a certification or appointment which may have already been made from the
17 register.

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

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

38 (1) Order the reinstatement of the employee to the employee's former position and the
39 payment to the employee of part or all of such salary as has been lost by reason of such dismissal;

40 (2) Sustain the dismissal of such employee, unless the board finds that the dismissal was
41 based upon political, social, or religious reason, in which case it shall order the reinstatement of
42 the employee to the employee's former position and the payment to the employee of such salary
43 as has been lost by reason of such dismissal;

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

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

64 7. The provisions for appeals provided in subsection 5 of this section for dismissals of
65 regular merit employees may be adopted by nonmerit agencies of the state for any or all
66 employees of such agencies.

67 8. Agencies not adopting the provisions for appeals provided in subsection 5 of this
68 section shall adopt dismissal procedures substantially similar to those provided for merit
69 employees. However, these procedures need not apply to employees in policy-making positions,
70 or to members of military or law enforcement agencies.

71 9. The hearing shall be deemed to be a contested case and the procedures applicable to
72 the processing of such hearings and determinations shall be those established by chapter 536,
73 RSMo. Decisions of the personnel advisory board shall be final and binding subject to appeal
74 by either party. Final decisions of the personnel advisory board pursuant to this subsection shall
75 be subject to review on the record by the circuit court pursuant to chapter 536, RSMo.

76 **10. Employees who have a right to appeal a dismissal or demotion pursuant to this**
77 **section shall not have the right to appeal that dismissal or demotion pursuant to sections**
78 **105.1250 to 105.1266, RSMo.**

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

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

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

5 a school district;

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

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

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

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

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

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

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

12 hearing officer to schedule the hearing.

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

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

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

3 2. The employee and the public body shall have the right to be represented by
4 counsel or by representatives who are not attorneys. Each party shall have the right to call
5 and examine witnesses, to introduce exhibits, to cross-examine witnesses on any matter
6 relevant to the matters at issue in the hearing even if the matter was not the subject of
7 direct examination, to impeach any witness regardless of which party first called the
8 witness and to rebut the evidence against it.

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

16 4. The public body shall pay the cost of the transcript of the record, including the
17 copy for the hearing officer and the copy for the employee, and shall also pay the per diem
18 fees and expenses of the hearing officer. Except as otherwise provided in this section, each
19 party shall be responsible for its own expenses, including attorney fees, costs associated
20 with depositions and subpoenas, witness fees and other costs associated with the case.

21 5. The hearing officer shall:

22 (1) Administer oaths;

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

25 (3) Authorize depositions to be taken;

26 (4) Receive evidence, rule on objections and limit lines of questioning and testimony

27 **that are repetitive, cumulative or irrelevant;**

28 **(5) Regulate the course of the hearing and dispose of procedural requests, motions**
29 **and similar matters;**

30 **(6) Take any other action necessary to make the hearing accord with administrative**
31 **due process; and**

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

34 **6. The state board of mediation shall promulgate rules for the conduct of the**
35 **hearing and matters related directly to hearings conducted pursuant to sections 105.1250**
36 **to 105.1266.**

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

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

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

105.1264. No rule or portion of a rule promulgated pursuant to sections 105.1250
2 **to 105.1266 shall take effect unless it has been promulgated pursuant to chapter 536,**
3 **RSMo.**

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

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

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

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

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

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

25 4. On the filing of charges in accordance with this section **and with sections 105.1250**
26 **to 105.1266, RSMo,** the board of education may suspend the teacher from active performance
27 of duty until a decision is rendered by the board of education but the teacher's salary shall be
28 continued during such suspension. If a decision to terminate a teacher's employment by the
29 board of education is appealed, and the decision is reversed, the teacher shall be paid [his] **the**
30 **teacher's** salary lost during the pending of the appeal.

168.118. If a hearing is requested on the termination of an indefinite contract it shall be
2 conducted **pursuant to sections 105.1250 to 105.1266, RSMo, if the teacher requests a**
3 **hearing pursuant to sections 105.1250 to 105.1266, RSMo. If a teacher requests a hearing**

4 **before the board of education, then the hearing shall be conducted** by the board of education
5 in accordance with the following provisions:

6 (1) The hearing shall be public;

7 (2) Both the teacher and the person filing charges may be represented by counsel who
8 may cross-examine witnesses;

9 (3) Testimony at hearings shall be on oath or affirmation administered by the president
10 of the board of education, who for the purpose of hearings held [under] **pursuant to** sections
11 168.102 to 168.130 shall have the authority to administer oaths;

12 (4) The school board shall have the power to subpoena witnesses and documentary
13 evidence as provided in section 536.077, RSMo, and shall do so on its own motion or at the
14 request of the teacher against whom charges have been made. The school board shall hear
15 testimony of all witnesses named by the teacher; however, the school board may limit the
16 number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;

17 (5) The board of education shall employ a stenographer who shall make a full record of
18 the proceedings of the hearings and who shall, within ten days after the conclusion thereof,
19 furnish the board of education and the teacher, at no cost to the teacher, with a copy of the
20 transcript of the record, which shall be certified by the stenographer to be complete and correct.
21 The transcript shall not be open to public inspection, unless the hearing on the termination of the
22 contract was an open hearing or if an appeal from the decision of the board is taken by the
23 teacher;

24 (6) All costs of the hearing shall be paid by the school board except the cost of counsel
25 for the teacher;

26 (7) The decision of the board of education resulting in the demotion of a permanent
27 teacher or the termination of an indefinite contract shall be by a majority vote of the members
28 of the board of education and the decision shall be made within seven days after the transcript
29 is furnished them. A written copy of the decision shall be furnished the teacher within three days
30 thereafter.