

FIRST REGULAR SESSION

# SENATE BILL NO. 441

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1985S.011

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## AN ACT

To repeal sections 168.104, 168.114, 168.116, 168.118, 168.120, and 168.221, RSMo, and to enact in lieu thereof six new sections relating to public school teachers.

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

Section A. Sections 168.104, 168.114, 168.116, 168.118, 168.120, and  
2 168.221, RSMo, are repealed and six new sections enacted in lieu thereof, to be  
3 known as sections 168.104, 168.114, 168.116, 168.117, 168.118, and 168.120, to  
4 read as follows:

168.104. The following words and phrases when used in sections 168.102  
2 to 168.130, except in those instances where the context indicates otherwise, mean:

3 (1) "Board of education", the school board or board of directors of a school  
4 district[, except a metropolitan school district,] having general control of the  
5 affairs of the district;

6 (2) "Demotion", any reduction in salary or transfer to a position carrying  
7 a lower salary, except on request of a teacher, other than any change in salary  
8 applicable to all teachers or all teachers in a classification;

9 (3) "Indefinite contract", every contract heretofore or hereafter entered  
10 into between a school district and a permanent teacher;

11 (4) "Permanent teacher", any teacher who has been employed or who is  
12 hereafter employed as a teacher in the same school district for five successive  
13 years and who has continued or who thereafter continues to be employed as a  
14 teacher by the school district or any supervisor of teachers who was employed as  
15 a teacher in the same school district for at least five successive years prior to  
16 becoming a supervisor of teachers and who continues thereafter to be employed  
17 as a certificated employee by the school district; except that, when a permanent

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

18 teacher resigns or is permanently separated from employment by a school district,  
19 and is afterwards reemployed by the same school district, reemployment for the  
20 first school year does not constitute an indefinite contract but if he is employed  
21 for the succeeding year, the employment constitutes an indefinite contract; and  
22 except that any teacher employed under a part-time contract by a school district  
23 shall accrue credit toward permanent status on a prorated basis. Any permanent  
24 teacher who is promoted with his consent to a supervisory position including  
25 principal or assistant principal, or is first employed by a district in a supervisory  
26 position including principal or assistant principal, shall not have permanent  
27 status in such position but shall retain tenure in the position previously held  
28 within the district, or, after serving two years as principal or assistant principal,  
29 shall have tenure as a permanent teacher of that system;

30 (5) "Probationary teacher", any teacher as herein defined who has been  
31 employed in the same school district for five successive years or less. In the case  
32 of any probationary teacher who has been employed in any other school system  
33 as a teacher for two or more years, the board of education shall waive one year  
34 of his probationary period;

35 (6) "School district", every school district in this state[, except  
36 metropolitan school district as defined in section 162.571, RSMo];

37 (7) "Teacher", any employee of a school district[, except a metropolitan  
38 school district,] regularly required to be certified under laws relating to the  
39 certification of teachers, except superintendents and assistant superintendents  
40 but including certified teachers who teach at the prekindergarten level in a  
41 nonmetropolitan public school within a prekindergarten program in which no fees  
42 are charged to parents or guardians.

168.114. 1. An indefinite contract with a permanent teacher shall not be  
2 terminated by the board of education of a school district except for one or more  
3 of the following causes:

4 (1) Physical or mental condition [unfitting him] **making such teacher**  
5 **unfit** to instruct or associate with children;

6 (2) Immoral conduct;

7 (3) Incompetency, inefficiency or insubordination in line of duty;

8 (4) Willful or persistent violation of, or failure to obey, the school laws of  
9 the state or the published regulations of the board of education of the school  
10 district employing [him] **such teacher**;

11 (5) Excessive or unreasonable absence from performance of duties; or

12 (6) Conviction of a felony or a crime involving moral turpitude.

13 2. In determining the professional competency of or efficiency of a  
14 permanent teacher, consideration should be given to regular and special  
15 evaluation reports prepared in accordance with the policy of the employing school  
16 district and to any written standards of performance which may have been  
17 adopted by the school board.

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 option of the teacher to request**  
5 **a preliminary hearing before an impartial hearing officer under section**  
6 **168.117**, notice of a hearing **before the board of education** on charges [and]  
7 **under section 168.118**, a hearing by the board of education on charges if  
8 requested by the teacher, **and a final decision by the board of education**.

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

16 3. Notice of **the right to request a preliminary** hearing upon charges  
17 **before an impartial hearing officer under section 168.117 or a hearing**  
18 **upon the charges before the board of education**, together with a copy of  
19 charges, shall be served on the permanent teacher at least twenty days prior to  
20 the **proposed** date of the hearing. The notice and copy of the charges may be  
21 served upon the teacher by certified mail with personal delivery addressed to  
22 **[him] the teacher** at [his] **the teacher's** last known address. If the teacher or  
23 **[his] the teacher's** agent does not within ten days after receipt of the notice  
24 request a **preliminary hearing before an impartial hearing officer or a**  
25 **hearing before the board of education** on the charges, the board of education  
26 **of the school district** may, by a majority vote, order the contract of the teacher  
27 terminated. If a **preliminary** hearing is requested by either the teacher or the  
28 board of education, [it shall take place not less than twenty nor more than thirty  
29 days after notice of a hearing has been furnished the permanent teacher] **the**  
30 **superintendent shall forward a copy of the notice to the labor and**

31 industrial relations commission. Within five days after receiving this  
32 notice of hearing, the labor and industrial relations commission shall  
33 provide a list of five prospective, impartial hearing officers. Each  
34 person on the list shall be accredited by a national arbitration  
35 organization. No one on the list shall be a resident of the school  
36 district. Within seven days of receipt of the list, the board of education  
37 of the school district and the teacher, or their legal representatives,  
38 shall alternately strike one name from the list until only one name  
39 remains. The board of education of the school district shall proceed  
40 first with the striking. The labor and industrial relations commission  
41 shall promulgate uniform standards and rules of procedure for such  
42 hearings. Such rules and regulations shall, at a minimum, provide for:

43 (1) Discovery of names and addresses of persons who may be  
44 called as expert witnesses at the hearing. The omission of any such  
45 name shall result in a preclusion of the testimony of such witness in the  
46 absence of the showing of good cause and the express permission of the  
47 hearing officer;

48 (2) Written interrogatories; and

49 (3) The production of relevant documents.

50 4. Costs of the hearing shall include the reasonable and  
51 customary per diem allowance for the hearing officer and the  
52 reasonable and necessary expenses of the hearing officer.

53 [4.] 5. On the filing of charges in accordance with this section, the board  
54 of education of the school district may suspend the teacher from active  
55 performance of duty until a final decision is rendered by the board of education  
56 but the teacher's salary and benefits shall be continued during such suspension,  
57 provided that the teacher's salary and benefits may be suspended  
58 following the board's receipt of an advisory opinion from the impartial  
59 hearing officer finding in favor of dismissal of the teacher. If [a] an  
60 advisory opinion to terminate a teacher's employment is reversed by  
61 the board of education or a final decision to terminate a teacher's  
62 employment by the board of education is appealed, and the decision is reversed,  
63 the teacher shall be paid [his] the teacher's salary and benefits lost during  
64 the pending of the [appeal] suspension of salary.

65 6. Any rule or portion of a rule, as that term is defined in section  
66 536.010, RSMo, that is created under the authority delegated in this  
67 section shall become effective only if it complies with and is subject to

68 all of the provisions of chapter 536, RSMo, and, if applicable, section  
69 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
70 and if any of the powers vested with the general assembly pursuant to  
71 chapter 536, RSMo, to review, to delay the effective date, or to  
72 disapprove and annul a rule are subsequently held unconstitutional,  
73 then the grant of rulemaking authority and any rule proposed or  
74 adopted after August 28, 2009, shall be invalid and void.

168.117. If a preliminary hearing is requested on the termination  
2 of an indefinite contract by either the teacher or the board of  
3 education, it shall be conducted by the hearing officer in accordance  
4 with the following provisions:

5 (1) The hearing shall be public unless closed at the request of the  
6 teacher and shall be scheduled not less than thirty nor more than forty-  
7 five days from the date of selection of the hearing officer, unless the  
8 period is shortened or extended by mutual agreement of the teacher  
9 and the board of education of the school district;

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

12 (3) Testimony at hearings shall be on oath or affirmation  
13 administered by the hearing officer, who for the purpose of hearings  
14 held pursuant to this section shall have the authority to administer  
15 oaths;

16 (4) The hearing officer shall have the power to subpoena  
17 witnesses and documentary evidence as provided in section 536.077,  
18 RSMo, and shall do so on the motion or at the request of the board of  
19 education or the teacher against whom charges have been made. The  
20 hearing officer shall hear testimony of all witnesses named by the  
21 board of education and the teacher; however, the hearing officer may  
22 limit the number of witnesses to be subpoenaed on behalf of the board  
23 of education or the teacher to not more than ten;

24 (5) The board of education of the school district shall employ a  
25 stenographer who shall make a full record of the proceedings of the  
26 hearings and who shall, within ten days after the conclusion thereof,  
27 furnish the hearing officer, the board of education of the school  
28 district, and the teacher, at no cost to the hearing officer or the  
29 teacher, with a copy of the transcript of the record, which shall be  
30 certified by the stenographer to be complete and correct. The

31 transcript shall not be open to public inspection, unless the hearing on  
32 the termination of the contract was an open hearing or if an appeal  
33 from the advisory opinion of the hearing officer is taken by the teacher;

34 (6) All costs of the hearing shall be paid by the board of  
35 education of the school district except the cost of counsel for the  
36 teacher, except that if the teacher requests the preliminary hearing  
37 without the concurrence of the board of education, and the hearing  
38 officer's opinion recommends immediate dismissal of the teacher, then  
39 the teacher shall pay the reasonable and necessary costs of the hearing  
40 other than the cost of counsel for the board of education;

41 (7) No later than thirty days after the conclusion of the hearing,  
42 the hearing officer shall provide an advisory opinion as to whether or  
43 not the teacher shall be dismissed and shall deliver copies of the  
44 decision to both the teacher and the board of education of the school  
45 district. The hearing officer shall also have the authority to make an  
46 advisory opinion that a teacher be given appropriate discipline, but not  
47 be dismissed. In the case of a charge of incompetency, inefficiency, or  
48 insubordination in the line of duty, the hearing officer shall also have  
49 the option of recommending an extension of the period in which the  
50 superintendent and the teacher shall meet and confer in an effort to  
51 resolve the matter as provided in subsection 2 of section 168.116.

168.118. 1. The board of education shall, in the same manner as  
2 provided in section 168.116 and within thirty days of receipt of any  
3 advisory opinion or recommendation from a hearing officer pursuant  
4 to section 168.117, provide notice to the teacher of the board of  
5 education's intention to accept or reject each relevant provision of such  
6 advisory opinion or recommendation and of the opportunity for the  
7 teacher to request and receive a hearing thereon before the board of  
8 education before a final decision is made by the board of education.

9 2. If a board of education hearing is requested on the termination of  
10 an indefinite contract it shall be conducted by the board of education and shall  
11 be conducted in accordance with the following provisions:

12 (1) The hearing shall be public unless closed at the request of the  
13 teacher, and shall be scheduled not less than thirty nor more than  
14 forty-five days from the date the teacher requests a board of education  
15 hearing, unless the period is shortened or extended by mutual  
16 agreement of the teacher and the board of education of the school

17 **district;**

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

20 (3) Testimony at hearings shall be on oath or affirmation administered by  
21 the president of the board of education, who for the purpose of hearings held  
22 under sections 168.102 to 168.130 shall have the authority to administer oaths;

23 (4) The [school] board **of education** shall have the power to subpoena  
24 witnesses and documentary evidence as provided in section 536.077, RSMo, and  
25 shall do so on its own motion or at the request of the teacher against whom  
26 charges have been made. **The complete record of the preliminary hearing**  
27 **and advisory opinion or recommendation of the hearing officer, if a**  
28 **preliminary hearing was conducted, shall be a part of the record of the**  
29 **board of education hearing.** The [school] board **of education** shall hear  
30 testimony of all witnesses named by the teacher; however, the school board may  
31 limit the number of witnesses to be subpoenaed on behalf of the teacher to not  
32 more than ten;

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

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

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

168.120. 1. The teacher shall have the right to appeal from the **final**  
2 decision of the board of education to the circuit court of the county **or the circuit**  
3 **court of a city not within a county** where the employing school district is  
4 located. The appeal shall be taken within fifteen days after service of a copy of  
5 the **final** decision of the board of education upon the teacher, and if an appeal is

6 not taken within the time, then the **final** decision of the board of education shall  
7 become final.

8         2. The appeal may be taken by filing notice of appeal with the board of  
9 education, whereupon the board of education, under its certificate, shall forward  
10 to the court all documents and papers on file in the matter, together with a  
11 transcript of the evidence, the findings and the **final** decision of the board of  
12 education, which shall thereupon become the record of the cause. Such appeal  
13 shall be heard as provided in chapter 536, RSMo.

14         3. Appeals from the circuit court shall be allowed in the same manner as  
15 in civil actions, except that the original transcript prepared and filed in the  
16 circuit court by the board of education, together with a transcript of the  
17 proceedings had in the circuit court, shall constitute the transcript on appeal in  
18 the appellate court. The board of education shall make available, to the parties,  
19 copies of any transcript prepared and filed by it in the circuit court and upon  
20 final determination of the cause in the appellate court the original record of the  
21 board of education filed as a part of the transcript on appeal shall be certified  
22 back to the board of education by the appellate court. In all appeals from the  
23 board of education or circuit court the costs thereof shall be assessed against the  
24 losing party as provided by law in civil cases. All appeals to the circuit court and  
25 appellate courts shall have precedence over all cases except election contests.

26         4. If the circuit court finds for the teacher, **[he] the teacher** shall be  
27 restored to permanent teacher status and shall receive compensation for the  
28 period during which **[he] the teacher** may have been suspended from work, and  
29 such other relief as may be granted by the court.

[168.221. 1. The first five years of employment of all  
2 teachers entering the employment of the metropolitan school  
3 district shall be deemed a period of probation during which period  
4 all appointments of teachers shall expire at the end of each school  
5 year. During the probationary period any probationary teacher  
6 whose work is unsatisfactory shall be furnished by the  
7 superintendent of schools with a written statement setting forth  
8 the nature of his incompetency. If improvement satisfactory to the  
9 superintendent is not made within one semester after the receipt  
10 of the statement, the probationary teacher shall be dismissed. The  
11 semester granted the probationary teacher in which to improve  
12 shall not in any case be a means of prolonging the probationary



period beyond five years and six months from the date on which the teacher entered the employ of the board of education. The superintendent of schools on or before the fifteenth day of April in each year shall notify probationary teachers who will not be retained by the school district of the termination of their services. Any probationary teacher who is not so notified shall be deemed to have been appointed for the next school year. Any principal who prior to becoming a principal had attained permanent employee status as a teacher shall upon ceasing to be a principal have a right to resume his or her permanent teacher position with the time served as a principal being treated as if such time had been served as a teacher for the purpose of calculating seniority and pay scale. The rights and duties and remuneration of a teacher who was formerly a principal shall be the same as any other teacher with the same level of qualifications and time of service.

2. After completion of satisfactory probationary services, appointments of teachers shall become permanent, subject to removal for any one or more causes herein described and to the right of the board to terminate the services of all who attain the age of compulsory retirement fixed by the retirement system. In determining the duration of the probationary period of employment in this section specified, the time of service rendered as a substitute teacher shall not be included.

3. No teacher whose appointment has become permanent may be removed except for one or more of the following causes: immorality, inefficiency in line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state, or physical or mental condition which incapacitates him for instructing or associating with children, and then only by a vote of not less than a majority of all the members of the board, upon written charges presented by the superintendent of schools, to be heard by the board after thirty days' notice, with copy of the charges served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making

defense thereto. Notifications received by an employee during a vacation period shall be considered as received on the first day of the school term following. At the request of any person so charged the hearing shall be public. The action and decision of the board upon the charges shall be final. Pending the hearing of the charges, the person charged may be suspended if the rules of the board so prescribe, but in the event the board does not by a majority vote of all the members remove the teacher upon charges presented by the superintendent, the person shall not suffer any loss of salary by reason of the suspension. Inefficiency in line of duty is cause for dismissal only after the teacher has been notified in writing at least one semester prior to the presentment of charges against him by the superintendent. The notification shall specify the nature of the inefficiency with such particularity as to enable the teacher to be informed of the nature of his inefficiency.

4. No teacher whose appointment has become permanent shall be demoted nor shall his salary be reduced unless the same procedure is followed as herein stated for the removal of the teacher because of inefficiency in line of duty, and any teacher whose salary is reduced or who is demoted may waive the presentment of charges against him by the superintendent and a hearing thereon by the board. The foregoing provision shall apply only to permanent teachers prior to the compulsory retirement age under the retirement system. Nothing herein contained shall in any way restrict or limit the power of the board of education to make reductions in the number of teachers or principals, or both, because of insufficient funds, decrease in pupil enrollment, or abolition of particular subjects or courses of instruction, except that the abolition of particular subjects or courses of instruction shall not cause those teachers who have been teaching the subjects or giving the courses of instruction to be placed on leave of absence as herein provided who are qualified to teach other subjects or courses of instruction, if positions are available for the teachers in the other subjects or courses of instruction.

5. Whenever it is necessary to decrease the number of teachers because of insufficient funds or a substantial decrease of

pupil population within the school district, the board of education upon recommendation of the superintendent of schools may cause the necessary number of teachers beginning with those serving probationary periods to be placed on leave of absence without pay, but only in the inverse order of their appointment. Nothing herein stated shall prevent a readjustment by the board of education of existing salary schedules. No teacher placed on a leave of absence shall be precluded from securing other employment during the period of the leave of absence. Each teacher placed on leave of absence shall be reinstated in inverse order of his placement on leave of absence. Such reemployment shall not result in a loss of status or credit for previous years of service. No new appointments shall be made while there are available teachers on leave of absence who are seventy years of age or less and who are adequately qualified to fill the vacancy unless the teachers fail to advise the superintendent of schools within thirty days from the date of notification by the superintendent of schools that positions are available to them that they will return to employment and will assume the duties of the position to which appointed not later than the beginning of the school year next following the date of the notice by the superintendent of schools.

6. If any regulation which deals with the promotion of either teachers is amended by increasing the qualifications necessary to be met before a teacher is eligible for promotion, the amendment shall fix an effective date which shall allow a reasonable length of time within which teachers may become qualified for promotion under the regulations.]

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