

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **Substitute for HB 2410**, on page 121, following line 12, by inserting:

"Sec. 104. K.S.A. 2016 Supp. 72-5436 is hereby amended to read as follows: 72-5436. As used in this act K.S.A. 72-5436 and 72-5438 through 72-5446, and amendments thereto: (a) "Teacher" means any professional employee who is required to hold a certificate to teach in any school district and any teacher or instructor in any technical college, the institute of technology at Washburn university or community college. The term "teacher" does not include within its meaning any supervisors, principals, superintendents or any person employed under the authority of K.S.A. 72-8202b, and amendments thereto, or any persons employed in an administrative capacity by any technical college, the institute of technology at Washburn university or community college.

(b) "Board" means the board of education of any school district, the governing body of any technical college or the institute of technology at Washburn university, and the board of trustees of any community college.

Sec. 105. K.S.A. 2016 Supp. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as provided in K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include: (1) A statement of the reasons for the proposed nonrenewal or termination; and (2) a statement that the teacher may have the matter heard by a hearing officer upon written request filed with the clerk of the board of education or the board of control or the secretary of the board of trustees within 15 calendar days from the date of such notice of nonrenewal or termination.

(b) Within 10 calendar days after the filing of any written request of a teacher to be heard as provided in subsection (a), the board shall notify the commissioner of education that a list of qualified hearing officers is required. Such notice shall contain the mailing address of the teacher. Within 10 days after receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of five randomly selected, qualified hearing officers.

(c) Within five days after receiving the list from the commissioner, each party shall eliminate two names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher within five days after the teacher receives the list. The process of elimination shall be completed within five days thereafter.

(d) Either party may request that one new list be provided within five days after receiving the list. If such a request is made, the party making the request shall notify the commissioner and the other party, and the commissioner shall generate a new list and distribute it to the parties in the same manner as the original list.

(e) In lieu of using the process provided in subsections (b) and (c), if the parties agree, they may make a request to the American arbitration association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party in the notice required under subsection (a). If the parties agree to use this procedure, the parties shall make a joint request to the American arbitration association for a hearing officer within 10 days after the teacher files a request for a hearing. If the parties choose to use this procedure, the parties shall each pay one-half of the cost of the arbitrator and of the arbitrator's expenses.

(f) The commissioner of education shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the

qualifications of each hearing officer.

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the commissioner of education. The commissioner shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

(h) An attorney shall be eligible for appointment to the list if the attorney has: (1) Completed a minimum of 10 hours of continuing legal education credit in the area of education law, due process, administrative law or employment law within the past five years; or (2) previously served as the chairperson of a due process hearing committee prior to the effective date of this act. An attorney shall not be eligible for appointment to the list if the attorney has been employed to represent a board or a teacher in a due process hearing within the past five years.

Sec. 106. K.S.A. 2016 Supp. 72-5439 is hereby amended to read as follows: 72-5439. The hearing provided for under K.S.A. 72-5438, and amendments thereto, shall commence within 45 calendar days after the hearing officer is selected unless the hearing officer grants an extension of time. The hearing shall afford procedural due process, including the following:

(a) The right of each party to have counsel of such party's own choice present and to receive the advice of such counsel or other person whom such party may select;

(b) the right of each party or such party's counsel to cross-examine any person who provides information for the consideration of the hearing officer, except those persons whose testimony is presented by affidavit;

(c) the right of each party to present such party's own witnesses in person, or their testimony by affidavit or deposition, except that testimony of a witness by affidavit may be presented only if such witness lives more than 100 miles from the location of the unified school district office, the technical college, institute of technology at Washburn university or community college, or is absent from the state, or is unable to appear because of age, illness, infirmity or imprisonment. When testimony is

presented by affidavit the same shall be served upon the clerk of the board of education, the board of control, the secretary of the board of trustees or the agent of the board and upon the teacher in person or by first-class mail to the address of the teacher which is on file with the board not less than 10 calendar days prior to presentation to the hearing officer;

(d) the right of the teacher to testify in the teacher's own behalf and give reasons for the teacher's conduct, and the right of the board to present its testimony through such persons as the board may call to testify in its behalf and to give reasons for its actions, rulings or policies;

(e) the right of the parties to have an orderly hearing; and

(f) the right of the teacher to a fair and impartial decision based on substantial evidence.

Sec. 107. K.S.A. 2016 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) Except as otherwise provided in this section, the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to:

(1) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, the technical college, institute of technology at Washburn university or community college by which any such teacher is currently employed; and

(2) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, the technical college, institute of technology at Washburn university or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of paragraph (1) of this subsection in any school district, technical college, the institute of technology at Washburn university or community college in this state.

(b) Any board may waive, at any time, the years of employment requirements of subsection (a)(1) for any teacher employed by it.

(c) The provisions of this ~~subsection~~ section are subject to the provisions of K.S.A. 72-5446,

and amendments thereto.

(d) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been non-renewed or revoked by the state board of education because the teacher has:

(1) Been convicted of a felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009;

(2) been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or an act described in K.S.A. 21-3412, prior to its repeal, or K.S.A. 2016 Supp. 21-5413(a), or K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2016 Supp. 21-5414, and amendments thereto, if the victim is a minor or student;

(3) been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-6421, and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto, if the victim is a minor or student;

(4) been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto;

(5) been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2016 Supp. 21-6412(a)(6), and amendments thereto;

(6) been convicted of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection;

(7) been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, prior to their repeal, or K.S.A. 2016 Supp. 21-6401 or 21-6402, and amendments thereto;

(8) been convicted in another state or by the federal government of an act similar to any act described in this subsection; or

(9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.";

Also on page 121, in line 15, after the third comma by inserting "72-5436, 72-5438, 72-5439, 72-5445,";

And by renumbering sections accordingly;

On page 1, in the title, in line 7, after the second comma by inserting "72-5436, 72-5438, 72-5439, 72-5445,"

_____ District.