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Indicates New Matter

COMMITTEE REPORT

April 23, 2015

**H. 3560**

Introduced by Reps. Limehouse, Sottile, McCoy and Spires

S. Printed 4/23/15--H.

Read the first time February 11, 2015.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 3560) to amend Section 59‑25‑460, Code of Laws of South Carolina, 1976, relating to the required notice and hearings for dismissal of a teacher, so as to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 59‑25‑410 of the 1976 Code is amended to read:

“Section 59‑25‑410. (A) ~~On or before April fifteenth of each year,~~ The boards of trustees of the several school districts annually before May first shall decide and notify, in writing, ~~the teachers~~ a teacher, as defined in Section 59‑1‑130, ~~in their employ~~ whom the district employs concerning ~~their employment~~ his reemployment for the ensuing year. If the ~~board, or the person designated by it,~~ superintendent fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher ~~shall be deemed~~ is considered to be reemployed for the ensuing year and the board shall issue a contract to ~~such teacher~~ him as though the board had reemployed ~~such teacher~~ him in the usual manner. ~~Notices~~ Notice of ~~intent~~ the superintendent’s recommendation not to renew an employment contract ~~shall~~ must be given in writing ~~no later than April fifteenth of each year~~ before May first.

(B) On or before August fifteenth, the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

(C) This section ~~shall~~ does not apply to ~~any~~ a teacher whose contract of employment or dismissal is under appeal under Section 59‑25‑450.

(D) For purposes of this article, ‘teacher’ means ~~all employees~~ an employee possessing a professional certificate issued by the State Department of Education, except ~~those employees~~ an employee working pursuant to ~~multi‑year contracts~~ a multiyear contract.”

SECTION 2. Section 59‑25‑420 of the 1976 Code is amended to read:

“Section 59‑25‑420. (A) ~~Any~~ A teacher who is reemployed by written notification pursuant to Section 59‑25‑410 shall ~~by April twenty‑fifth first~~ before May eleventh notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit ~~shall be~~ is conclusive evidence of the teacher’s rejection of the contract.

(B) ~~Any~~ A teacher, receiving a notice that he will not be reemployed for the ensuing year, ~~shall have~~ has the same notice and opportunity for a hearing provided in ~~subsequent sections for teachers~~ this article for a teacher dismissed for cause during the school year.”

SECTION 3. Section 59‑25‑460 of the 1976 Code is amended to read:

“Section 59‑25‑460. (A) ~~No~~ A teacher ~~shall~~ may not be dismissed unless written notice specifying the cause of dismissal ~~is~~ first is given the teacher by the ~~District Board of Trustees~~ superintendent and the teacher is given an opportunity for ~~a~~ an evidentiary hearing ~~has been afforded the teacher~~. The superintendent or his designee may meet with the teacher before issuing a notice of dismissal to discuss alternative resolutions. The parties attending this meeting must have the option of having a representative present. ~~Such~~ This written notice ~~shall~~ must include the fact that a hearing before the board or its designee is available to the teacher upon request ~~provided, such~~ if the request is made in writing within fifteen days as ~~prescribed by~~ provided in Section 59‑25‑470. Any such hearing ~~shall~~ must be public unless the teacher requests in writing that it be private. A board that chooses to delegate the evidentiary hearing to one or more designees, as provided in this section, shall indicate in board policy that it engages in this practice. The hearing process becomes effective when the board adopts the policy, and must be communicated to all affected employees within fifteen days. A subsequent change only may be made pursuant to the board policy revision process.

(B)(1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:

(a) an attorney licensed to practice law in this State;

(b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and

(c) designated by the board to hear all evidentiary hearings in the district for the school year, except when:

(i) both parties consent to use an alternate hearing officer; or

(ii) the district uses more than one designee, in which case the parties may by mutual consent select one of these designees for their hearing or, if they fail to reach such an agreement, the board randomly shall select one of its designees for the hearing.

(2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision‑making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

(C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.

(D) The board shall determine if the evidence shows good and just cause for the notice of suspension or dismissal, and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal.

(E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at ~~any~~ the hearing and, at the request of the teacher against whom a charge is made, shall issue ~~such~~ these subpoenas, but it may limit the number of these witnesses to ~~be subpoenaed in behalf of the teacher to not more than~~ ten. ~~All~~ Testimony at ~~any~~ a hearing ~~shall~~ must be taken under oath. ~~Any~~ A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all ~~of the~~ testimony.

(F) If the board’s decision is favorable to the teacher, the board shall pay the cost of the reporter’s attendance and services at the hearing. If the decision is unfavorable to the teacher, one‑half of the cost of the reporter’s attendance and services ~~shall~~ must be borne by the teacher. ~~Either~~ A party desiring a transcript of the hearing ~~shall~~ must pay for the costs ~~thereof~~ of obtaining the transcript.”

SECTION 4. Section 59‑25‑470 of the 1976 Code is amended to read:

“Section 59‑25‑470. (A) Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board, or its designee.

(B) If the teacher fails to make such a request, or after a hearing as ~~herein~~ provided ~~for~~ in this article, the ~~District~~ board ~~of Trustees~~ shall take ~~such~~ action and shall enter ~~such~~ an order as it ~~deems~~ considers lawful and appropriate.

(C) The hearing ~~shall~~ must be held by the board ~~not less than ten nor more than fifteen~~, or its designee, within forty‑five days after the request is served~~, and~~. A notice of the time and place of the hearing ~~shall~~ must be given the teacher not less than five days ~~prior to~~ before the date of the hearing.

(D) The teacher ~~has the privilege of being~~ may be present ~~at the hearing~~ with counsel ~~and of cross‑examining~~ at the hearing, and may cross‑examine witnesses ~~and~~, may offer evidence and witnesses, and present ~~any and all~~ defenses to the charges. Hearsay otherwise inadmissible under the South Carolina Rules of Evidence only may be considered if corroborated and found reliable by the board or its designee; provided, however, that no factual finding may be based solely on hearsay. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59‑25‑460. The ~~complainants~~ superintendent shall initiate the introduction of evidence in substantiation of the charges. ~~Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.~~”

SECTION 5. Section 59‑25‑480 of the 1976 Code is amended to read:

“Section 59‑25‑480. (A) The decision of the district board of trustees ~~shall be~~ is final, unless within thirty days ~~thereafter~~ afterward an appeal is made to the ~~court of common pleas of any county in which the major portion of such district lies~~ Administrative Law Court (ALC).

(B) ~~Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court.~~ An appeal to the ALC must be taken in accordance with Section 1‑23‑600(D) and the appellate rules of procedure for the ALC. ~~Any~~ An appeal from the order of the ~~circuit court shall~~ ALC must be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, ~~on a motion of either party~~ the ~~trial court~~ ALC shall order reinstatement and ~~shall~~ determine the amount for which the board ~~shall be~~ is liable for actual damages and court costs if either party moves for this relief. ~~In no event shall any~~ Liability may not extend beyond two years ~~from~~ after the effective date of dismissal. ~~Amounts~~ An amount earned or ~~amounts~~ earnable with reasonable diligence by the person wrongfully suspended ~~shall~~ must be deducted from any back pay.”

SECTION 6. Section 59‑25‑490 of the 1976 Code is amended to read:

“Section 59‑25‑490. ~~Any~~ A party to ~~such proceedings may cause to be taken the depositions of witnesses~~ a proceeding conducted pursuant to this chapter may depose a witness within or without the State and either by commission or de bene esse. ~~Such depositions shall~~ The deposition must be taken ~~in accordance with~~ pursuant and subject to the same provisions, conditions, and restrictions ~~as~~ that apply to ~~the~~ taking of ~~like~~ similar depositions in ~~civil~~ actions ~~at law~~ brought in the court of common pleas~~; and~~. The same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification ~~thereof~~ of them and matters of practice relating ~~thereto shall~~ to them apply.”

SECTION 7. Section 59‑25‑520 of the 1976 Code is amended to read:

“Section 59‑25‑520. The ~~court of common pleas~~ ALC shall, on application of the district board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records ~~and shall have the power to punish as for contempt of court, by a fine or imprisonment or both,~~. The unexcused failure or refusal to attend and give testimony or produce books, papers, and records as ~~may have been~~ required ~~in any~~ by subpoena issued by the district board must be considered contempt of court by the ALC, punishable by a fine, imprisonment, or both, by the court. The district board may issue to the sheriff of the county in which ~~any~~ a hearing is held a warrant requiring him to produce at the hearing any witness who ~~shall have~~ has ignored or failed to comply with ~~any~~ a subpoena issued by the district board and duly served upon ~~such~~ the witness. ~~Such a~~ This warrant ~~shall~~ must authorize the sheriff to arrest the witness and produce at the hearing ~~such witness~~, and it ~~shall be his~~ is the duty of the sheriff to do so~~; but~~. The failure of a witness ~~so~~ to appear in response to ~~any such~~ a subpoena may be excused on the same grounds as provided by law in the courts of this State ~~as to~~ regarding the attendance of witnesses and jurors.”

SECTION 8. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**A** **BILL**

TO AMEND SECTION 59‑25‑460, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIRED NOTICE AND HEARINGS FOR DISMISSAL OF A TEACHER, SO AS TO PROVIDE THAT THE BOARD MAY DESIGNATE A HEARING OFFICER TO CONDUCT A DISMISSAL HEARING AND ISSUE A REPORT WITH RECOMMENDATIONS, TO PROVIDE RELATED REQUIREMENTS OF A HEARING OFFICER, TO PROVIDE A HEARING MUST BE PRIVATE UNLESS THE TEACHER REQUESTS IN WRITING THAT THE HEARING BE PUBLIC, TO PROVIDE THAT A NOTICE OF DISMISSAL MUST BE GIVEN BY THE SUPERINTENDENT OR HIS DESIGNEE INSTEAD OF THE SCHOOL BOARD, TO SPECIFY USE OF A COURT REPORTER TO RECORD THE PROCEEDINGS, AND TO PROVIDE AN APPEALS PROCESS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 59-25-460 of the 1976 Code is amended to read:

“Section 59-25-460. (A) ~~No~~ A teacher ~~shall~~ may not be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the ~~District Board of Trustees~~ superintendent or his designee and an opportunity for a hearing has been afforded the teacher. ~~Such~~ The written notice ~~shall~~ must include the fact that a hearing before the board or its designee is available to the teacher upon request ~~provided, such~~ if the request is made in writing within fifteen days ~~as prescribed by~~ pursuant to Section 59‑25‑470.

(B) The board may authorize a hearing officer to conduct a hearing on the matter and make a report of its recommendations to the board. A hearing officer may not be a member of the board or an employee of the district. ~~Any such~~ A hearing ~~shall~~ must be ~~public~~ private unless the teacher requests in writing that it be ~~private~~ public. The ~~District Board of Trustees~~ board may issue subpoenas requiring the attendance of witnesses at ~~any~~ a hearing and, at the request of the teacher ~~against whom a charge is made~~, shall issue ~~such~~ the subpoenas, but it may limit the number of witnesses to be subpoenaed ~~in~~ on behalf of the teacher to not more than ten. ~~All~~ Testimony taken at ~~any~~ a hearing ~~shall~~ must be ~~taken~~ given under oath. ~~Any member of the board may administer oaths to witnesses. The board shall cause a~~ A record of the proceedings ~~to~~ must be kept, and the board shall employ a competent court reporter to ~~take stenographic or stenotype notes~~ make a verbatim record of all ~~of the~~ testimony.

(C) If the board designates a hearing officer, the report and recommendations of the hearing officer must be presented to the board in the form of a written order. In considering the report and recommendations, the board must have available to it the exhibits presented at the hearing and shall permit limited oral argument on behalf of the district and the teacher, allowing each party thirty minutes to present its respective argument.

(D) The board shall uphold the decision of the hearing officer if the evidence shows good and just cause for dismissal. The decision of the board may be appealed to the circuit court pursuant to Section 59-25-480. If the board’s decision is favorable to the teacher, the board shall pay the cost of the court reporter’s attendance and services at the hearing. If the decision is unfavorable to the teacher, one‑half of the cost of the court reporter’s attendance and services ~~shall~~ must be borne by the teacher. ~~Either~~ A party desiring a transcript of the hearing shall pay for the costs ~~thereof~~ of the transcript.”

SECTION 2. This act takes effect upon approval by the Governor.

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