

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 506

S. P. 193

In Senate, February 5, 1941.

Referred to Committee on Education and sent down for concurrence.
1000 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Bate of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

**AN ACT to Provide Higher Standards of Education by Securing to
Teachers Greater Permanency of Employment.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Definitions. (1) The word "teacher" as used hereafter in this act shall mean and include teachers, principals, supervisors, and superintendents who are holders of proper state certificates in full force and effect.

(2) The words "indefinite tenure" as used in this act shall be construed to mean the right to continuous employment within a municipality until the teacher resigns, elects to retire, or is retired pursuant to the law controlling retirement, or is dismissed, demoted, or suspended as provided by law.

(3) The word "notice" as used in this act shall be construed to mean the service of documents personally or the mailing of the documents by United States registered mail with postage thereon prepaid to the last known address of the person or public agency to be notified. Service of notice upon a public agency shall be sufficient when made upon a member or officer of the agency.

(4) The word "year" when used in this act for the purpose of determining the length of the probationary period shall be construed to mean

75% of the number of days the schools of the municipality in which such teacher is employed are actually open for instruction, unless a lesser number of days is considered sufficient by the school committee.

(5) The words "academic year" as used in this act shall be construed to mean the period between the time school opens in the municipality after the summer vacation and the beginning of the next succeeding summer vacation.

(6) The word "shall" as used in this act when denoting action shall be construed to be mandatory.

(7) The word "demote" as used in this act shall be construed to mean a transfer to a position carrying a lower salary or compensation without the consent of the teacher where such a lowering of salary or compensation does not apply to all teachers alike.

(8) The reference in this act to either sex shall be construed to mean a reference to both sexes.

(9) In the case of a union superintendent, reference in this act to "school committee" shall be construed to mean a reference to the joint superintending committee.

Sec. 2. Probationary period for inexperienced teachers. The probationary period for inexperienced teachers shall be 3 years.

Sec. 3. Probationary period for experienced teachers. Teachers who have served a total of at least 3 years in any municipality or municipalities of this state, upon election in another municipality, may be required to serve a probationary period of 3 years. However, the school committee may by a unanimous vote confer indefinite tenure on such teachers at any time.

Sec. 4. Notice to probationary teachers. The school committee shall notify probationary teachers of their contractual status for the ensuing year not later than May 15th of each academic year.

Sec. 5. Failure to accept contract. A probationary teacher shall notify the school committee of the acceptance of his contract within 20 days of the school committee's notification to him of his contractual status. His failure to do so shall be a rejection of the offer of contractual status.

Sec. 6. Failure to notify probationary teachers. The failure of the school committee to notify a school teacher of his contractual status before May 15 of any school year shall renew the teacher's contract for the next succeeding year.

Sec. 7. Consecutive service. Any teacher who has served 3 consecutive years within a municipality and receives a contract for the fourth year or serves the first 3 days of the 4th successive year shall be on indefinite tenure.

Sec. 8. Power to determine percentage on indefinite tenure. The commissioner of education shall have the power to determine the minimum percentage of teachers to be on indefinite tenure at a future date fixed at the commissioner's discretion where he feels such a determination is for the best interests of the public schools.

However, in municipalities employing more than 5 teachers, the commissioner may not prescribe a percentage in excess of 80%.

Sec. 9. Causes for dismissal, demotion, or suspension. No teacher serving on indefinite tenure shall be dismissed, demoted, or suspended except for any of the following causes:

1. Immoral character or conduct unbecoming a teacher.
2. Physical or mental disability.
3. Incompetency or inefficiency.
4. Neglect of duty.
5. Discontinuance of service due to economy, lack of pupils or funds.
6. Willful refusal to obey the school laws of this state or the reasonable and lawful rules of the school committee.

Sec. 10. Time of making charges. No charges, other than those contained in part 1 of section 9 shall be filed against a teacher on indefinite tenure except during the academic year.

Sec. 11. How charges are filed. All charges against a teacher on indefinite tenure shall be made in writing and signed, and shall be made by or filed with an officer of the school committee.

Sec. 12. Notice of dismissal, demotion, or suspension. (1) No teacher on indefinite tenure shall be dismissed, demoted, or suspended without written notice specifying in detail the charge or charges made against the teacher signed by an officer of the school committee.

(2) The notice shall designate a time and place where the teacher may appear before the school committee and answer such charges.

(3) The hearing shall not be set sooner than within 30 days of the service of the notice of the charges.

Sec. 13. Request for a hearing. (1) Unless a teacher shall demand a hearing within 20 days of the filing of notice that charges have been preferred against him, the school committee may demote, dismiss, or suspend him. The action of the school committee under this subsection shall be final.

(2) The teacher shall serve his demand for a hearing on the charges on an officer of the school committee.

Sec. 14. Rules for conduct at hearing. (1) The school committee shall make reasonable rules for conducting the hearing of charges against a teacher and shall serve a copy of the rules on the teacher being accused.

(2) Nothing in this section is to be construed to mean that the hearing shall be conducted with the formality of a court of law.

Sec. 15. School committee to issue subpoenas. The school committee shall issue such subpoenas under the signature of an officer of the school committee as shall be requested by the parties to the hearing or such additional subpoenas as the school committee deems necessary.

Sec. 16. Failure to answer subpoena. (1) Any person failing to comply with a subpoena of a school committee shall be subject to a fine or imprisonment or both for contempt.

(2) The fine, if any, shall be paid to the school committee and shall become a part of the general school fund.

Sec. 17. Type of hearing. The teacher shall have the option of having the hearing before the school committee either public or private.

Sec. 18. Presenting testimony. The teacher, the school committee, and the party filing charges shall have the right to be represented by counsel, present testimony and evidence, to call witnesses and cross-examine witnesses.

Sec. 19. Rules and evidence. (1) Each witness shall be required to take an oath or affirmation before an officer of the school committee.

(2) No evidence or testimony, other than regular school records, shall be introduced bearing on the innocence or guilt of a teacher if such charges relate to matters occurring more than 3 years prior to the date of the filing of the charges.

Sec. 20. Perjury. False swearing in any proceeding under this act shall constitute the crime of perjury.

Sec. 21. Record of trial. The school committee shall employ a competent stenographer who shall make a verbatim record of the proceedings of the hearing.

Sec. 22. Copies of record. (1) The stenographer who makes the record of the hearing shall within 5 days furnish the school committee and the accused teacher a certified copy of the record of the proceedings.

(2) The stenographer shall furnish as many other certified copies of the record of the hearing as may be demanded for the determination of the issues. Such copies shall be paid for by the person demanding them.

Sec. 23. Decision of the school committee. (1) The school committee shall render its decision within 10 days of the completion of the hearing.

(2) No school committee member shall be allowed to vote who has not been present during the entire hearing.

(3) The school committee may :

- (a) dismiss the teacher
- (b) demote the teacher
- (c) suspend the teacher
- (d) dismiss the charges against the teacher.

(4) The school committee shall serve a written notice of its decision on the teacher involved.

Sec. 24. Personnel of the tenure commission. It is a purpose of this act to create a tenure commission to consist of 3 members selected as follows: One appointed by the commissioner of education, one appointed by the Executive Committee of the Maine Teachers' Association, and one appointed by the Maine Congress of Parents and Teachers, Inc.

Sec. 25. Terms of office of members of tenure commission. (1) The term of office of all members of the tenure commission, except those appointed to the first tenure commission, shall be for a period of 3 years.

(2) The members first appointed to the tenure commission shall determine by lot which shall serve for a period of 1, 2 and 3 years, respectively.

(3) Any vacancy shall be filled for the unexpired term in the same manner as that used in the original appointment.

Sec. 26. Salaries of members of tenure commission. (1) Each member of the tenure commission shall be paid a sum fixed by the commissioner of education, a sum not exceeding \$10 per day of actual service.

(2) Each member of the tenure commission shall be paid his necessary expenses incurred in the discharge of his duties in accordance with the practice established by the commissioner of education.

(3) The tenure commission shall be paid from the state school fund.

Sec. 27. Appeal. (1) Any teacher on indefinite tenure may appeal from any determination of law or fact to the tenure commission from the decision of the school committee dismissing, suspending, or demoting him.

(2) The teacher on appeal shall submit 3 certified copies of the stenographer's record of the hearing before the school committee.

Sec. 28. Powers of the tenure commission. (1) The tenure commission may render its decision on the record submitted by the applicant.

(2) The tenure commission may take additional evidence at its discretion.

(3) If the tenure commission takes additional testimony, it shall set a date for taking such testimony not less than 10 days nor more than 30 days after the filing of the appeal.

(4) Where additional testimony is taken, the tenure commission shall have the same power and shall proceed in the same manner as that provided for the school committee in the original hearing.

(5) The tenure commission shall by a majority vote render its decision within 5 days of the final hearing of testimony.

(6) The tenure commission may sustain or modify or reverse the decision previously rendered.

(7) The decision of the tenure commission shall be final upon all questions within its jurisdiction.

(8) If a party to the cause feels that the tenure commission has exceeded its authority, acted arbitrarily or fraudulently, then he may within 30 days petition the supreme court for a writ of certiorari granting a summary hearing.

Sec. 29. School committee's decision final. The decision of a school committee based on charges filed against a teacher on indefinite tenure shall be final unless an appeal is taken by the teacher or the superintendent to the tenure commission within 10 days of the time of the rendering of the decision by the school committee.

Sec. 30. Time for appointment of commissions. Appointments shall be made within 30 days of the effective date of this act.

Sec. 31. Notice when charge is inefficiency or incompetence. When the charge against a teacher is incompetence or inefficiency, the teacher shall be given notice in writing that such charges are to be filed and shall be given reasonable opportunity to improve.

Sec. 32. Suspension. (1) Nothing in this act is to be construed to prevent a school committee from suspending a teacher pending the determination of charges filed against the teacher.

(2) When upon final determination of charges a teacher is reinstated, he shall be paid for the period of suspension the sum he would have received during that period had he not been suspended. If the teacher is dismissed, payment for the period of his suspension shall be at the discretion of the school committee. If the teacher is demoted, such teacher shall be entitled to salary for the period of suspension at the rate of salary fixed for the position to which such teacher is demoted.

Sec. 33. Service on tenure commission. No teacher's tenure rights shall be affected by his service on the tenure commission.

Sec. 34. Charges expunged. In all cases where upon the final decision the teacher is reinstated, the charge or charges shall be physically expunged from the record.

Sec. 35. Reduction in salary. No teacher on indefinite tenure shall have his salary reduced unless there is a general salary reduction by the school committee or the reduction is a result of charges brought before the school committee.

Sec. 36. Lack of pupils or funds. (1) No teacher having indefinite tenure shall be dismissed due to economic causes or a lack of pupils as long as there is a probationary teacher employed by the school committee whose position he is qualified by certificate to fill.

(2) If teachers having indefinite tenure are dismissed due to economic causes or a lack of pupils, they shall be dismissed in the inverse of the order in which they were employed.

(3) Teachers dismissed due to economic causes or a lack of pupils shall have the preferred right of reappointment in order of their original employment if the number of teachers be increased or the services re-established within a period of 2 years.

Sec. 37. Accepting employment. No teacher's indefinite tenure rights are to be affected if he accepts employment when his services are discontinued.

Sec. 38. Age limitation. (1) The tenure rights of a teacher on indefinite tenure shall lapse at the end of the academic year during which he reaches the age of 65 years.

(2) The tenure rights of a teacher on indefinite tenure shall lapse at the end of the academic year during which he reaches the age of 60 years if he is eligible for a pension under the pension and retirement laws.

Sec. 39. Discharge of probationary teachers. (1) After one full year of service a probationary teacher shall not be discharged during the academic year except for the causes related for the dismissal of indefinite tenure teachers.

(2) During the 2nd and 3rd academic years, the procedure for dismissing probationary teachers shall be the same as that for dismissing teachers on indefinite tenure except that the probationary teacher shall have no right of appeal.

(3) A probationary teacher may be dismissed at the end of any academic year at the discretion of the school committee, provided notice of such dismissal is given before May 15th of said academic year.

Sec. 40. Resignation. (1) The school committee shall accept the resignation of any teacher and fix the time when such resignation shall take effect. The effective date of a resignation shall not be set later than the end of the academic year during which the resignation is received.

(2) 10 days' notice shall be deemed sufficient notice of resignation where such resignation occurs between the close of the academic year and a date not less than 30 days before the opening of the next succeeding academic year.

Sec. 41. Failure to give proper notice of resignation. If a teacher leaves otherwise than in the manner provided in section 40, the commissioner of education shall have the power to suspend his certificate for a period of one year.

Sec. 42. Transfer. (1) Nothing in this act is to be construed to prohibit an administration from changing a teacher to any position which he is qualified to fill in order to place him in his best working position.

(2) The transfer of a teacher on tenure to a different position shall in no way affect the salary of the teacher so as to reduce it.

Sec. 43. Consolidation or other changes in municipalities. If a municipality or any part of a municipality becomes another municipality or

a part of another municipality by addition, consolidation, centralization, change in organization, or by any other means, all teachers in the newly created municipality shall have the same tenure rights as if all their services in the immediately prior municipality had been served continuously in the newly created municipality.

Sec. 44. Absence for illness or other just causes. A teacher on indefinite tenure who, by reason of illness or other just causes, is unable to continue in service and is absent from duty for a period of not more than 2 consecutive years shall retain the right of indefinite tenure.

Sec. 45. Status of teachers. (1) The school committee shall, prior to the closing of the academic year, prepare a list of probationary and indefinite tenure teachers for the next succeeding year. The list shall be filed in the school committee offices and shall be open to public inspection at all reasonable hours.

(2) The school committee shall keep the teacher status list up to date throughout the academic year.

Sec. 46. Application to present teachers. Any teacher who has served 3 years in his present municipality or whose present contract calls for additional service which together with past service in such municipality shall equal 3 years, shall be on indefinite tenure at the next regular election following the effective date of this act unless he is refused a contract upon the recommendation of the superintendent of schools and such recommendation is concurred in by at least a $\frac{2}{3}$ vote of the members of the school committee, or unless, regardless of the recommendation of the superintendent, the school committee refuses by unanimous vote to renew his contract at its expiration, except that in the case of a superintendent, he shall be on indefinite tenure unless he is refused a contract by at least a $\frac{2}{3}$ vote of the members of the school committee.

Sec. 47. Acts of school committee. Except as otherwise provided in this act, no action relating to the purposes of this act shall be taken by the school committee except upon a concurring vote of a majority number of the members of the committee.

Sec. 48. Repealing clause. All acts or parts of acts previously enacted and inconsistent with this act are hereby repealed, or amended to conform with the provisions hereof.

Sec. 49. Severing clause. The invalidity of any of the provisions of

this act shall not affect the validity of the other provisions hereof which can be given effect without such invalid provisions.

Sec. 50. Contractual right. All employment under this act is to be construed to confer a contractual right.

Sec. 51. Effective date of act. This act shall take effect on and after September 1st, 1941.