

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4625

A bill to amend 1937 (Ex Sess) PA 4, entitled

"An act relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act,"

by amending sections 1, 2, 3, and 3a of article II, sections 1 and 3 of article III, and section 4 of article IV (MCL 38.81, 38.82, 38.83, 38.83a, 38.91, 38.93, and 38.104), sections 1 and 2 of article II as amended and section 3a of article II and section 3 of article III as added by 1993 PA 59, section 1 of article III as amended by 1996 PA 282, and section 4 of article IV as amended by 1993 PA 60, and by adding sections 2a and 3b to article II; and to repeal acts and parts of acts.

House Bill No. 4625 as amended June 30, 2011

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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ARTICLE II

Sec. 1. (1) Subject to subsections (2) and (3) **AND SECTION**
<<3B>> OF THIS ARTICLE, a teacher is in a probationary period during
his or her first ~~4-5~~ full school years of employment.

(2) ~~A-SUBJECT TO SECTION <<3B>> OF THIS ARTICLE, A~~ teacher
under contract but not on continuing tenure as of the effective
date of the ~~amendatory act that added this subsection-2011~~
AMENDATORY ACT THAT AMENDED THIS SUBSECTION is in a probationary
period during his or her first ~~2-4~~ full school years of employment.

(3) A teacher on continuing tenure as of the effective date of
the ~~amendatory act that added this subsection-2011~~ **AMENDATORY ACT**
THAT AMENDED THIS SUBSECTION continues to be on continuing tenure
even if the teacher has not served for at least ~~4-5~~ full school
years of employment.

Sec. 2. A teacher shall not be required to serve more than 1
probationary period in any 1 school district or institution.
~~However, upon notice to the tenure commission, the controlling~~
~~board may grant a third year of probation to a teacher described in~~
~~section 1(2) of this article.~~

SEC. 2A. A PROBATIONARY TEACHER WHO IS RATED AS EFFECTIVE OR
HIGHLY EFFECTIVE ON HIS OR HER MOST RECENT ANNUAL YEAR-END
PERFORMANCE EVALUATION UNDER SECTION 1249 OF THE REVISED SCHOOL
CODE, 1976 PA 451, MCL 380.1249, IS NOT SUBJECT TO BEING DISPLACED
BY A TEACHER ON CONTINUING TENURE SOLELY BECAUSE THE OTHER TEACHER
HAS CONTINUING TENURE.

Sec. 3. (1) ~~At least 60 days before~~ **BEFORE** the ~~close~~ **END** of

1 each school year, the controlling board shall provide the
2 probationary teacher with a definite written statement as to
3 whether or not his OR HER work has been ~~satisfactory. Failure to~~
4 ~~submit a written statement shall be considered as conclusive~~
5 ~~evidence that the teacher's work is satisfactory. Any~~ **EFFECTIVE.**
6 **SUBJECT TO SUBSECTION (2),** A probationary teacher or teacher not on
7 continuing contract shall be employed for the ensuing year unless
8 notified in writing at least ~~60~~ **15** days before the ~~close~~ **END** of the
9 school year that his OR HER services will be discontinued.

10 **(2) A TEACHER WHO IS IN A PROBATIONARY PERIOD MAY BE DISMISSED**
11 **FROM HIS OR HER EMPLOYMENT BY THE CONTROLLING BOARD AT ANY TIME.**

12 Sec. 3a. ~~(1) If a probationary teacher is employed by a school~~
13 ~~district for at least 1 full school year, the~~ **THE** controlling board
14 of ~~the~~ **A** probationary teacher's employing school district shall
15 ensure that the teacher is provided with an individualized
16 development plan developed by appropriate administrative personnel
17 in consultation with the individual teacher and that the teacher is
18 provided with at least an annual year-end performance evaluation
19 each year during the teacher's probationary period. The annual
20 year-end performance evaluation shall be based on ~~, but is not~~
21 ~~limited to, at least 2 classroom observations held at least 60 days~~
22 ~~apart, unless a shorter interval between the 2 classroom~~
23 ~~observations is mutually agreed upon by the teacher and the~~
24 ~~administration,~~ and shall include at least an assessment of the
25 teacher's progress in meeting the goals of his or her
26 individualized development plan. ~~This subsection does not prevent a~~
27 ~~collective bargaining agreement between the controlling board and~~

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1 ~~the teacher's bargaining representative under Act No. 336 of the~~
 2 ~~Public Acts of 1947, being sections 423.201 to 423.216 of the~~
 3 ~~Michigan Compiled Laws, from providing for more performance~~
 4 ~~evaluations or classroom observations in addition to those required~~
 5 ~~under this subsection. Except as specifically stated in this~~
 6 ~~subsection, this section does not require a particular method for~~
 7 ~~conducting a performance evaluation or classroom observation or for~~
 8 ~~providing an individualized development plan.~~ **THE CONTROLLING BOARD**
 9 **SHALL DETERMINE THE FORMAT AND NUMBER OF THE CLASSROOM OBSERVATIONS**
 10 **IN CONSULTATION WITH TEACHERS AND SCHOOL ADMINISTRATORS. A**
 11 **PERFORMANCE EVALUATION SHALL BE CONDUCTED IN ACCORDANCE WITH**
 12 **SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.**
 13 ~~—— (2) Failure of a school district to comply with subsection (1)~~
 14 ~~with respect to an individual teacher in a particular school year~~
 15 ~~is conclusive evidence that the teacher's performance for that~~
 16 ~~school year was satisfactory.~~

17 **SEC. 3B. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), A**
 18 **TEACHER SHALL NOT BE CONSIDERED TO HAVE SUCCESSFULLY COMPLETED THE**
 19 **PROBATIONARY PERIOD UNLESS THE TEACHER HAS BEEN RATED AS EFFECTIVE**
 20 **OR HIGHLY EFFECTIVE ON HIS OR HER 3 MOST RECENT ANNUAL YEAR-END**
 21 **PERFORMANCE EVALUATIONS UNDER SECTION 1249 OF THE REVISED SCHOOL**
 22 **CODE, 1976 PA 451, MCL 380.1249, AND HAS COMPLETED <AT LEAST>**
 23 **5 FULL SCHOOL**

24 **(2) IF A TEACHER HAS BEEN RATED AS HIGHLY EFFECTIVE ON 3**
 25 **CONSECUTIVE ANNUAL YEAR-END PERFORMANCE EVALUATIONS UNDER SECTION**
 26 **1249 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249, AND HAS**
 27 **COMPLETED AT LEAST 4 FULL SCHOOL YEARS OF EMPLOYMENT IN A**

1 **PROBATIONARY PERIOD, THE TEACHER SHALL BE CONSIDERED TO HAVE**
2 **SUCCESSFULLY COMPLETED THE PROBATIONARY PERIOD.**

3 **ARTICLE III**

4 Sec. 1. (1) After the satisfactory completion of the
5 probationary period, a teacher **IS CONSIDERED TO BE ON CONTINUING**
6 **TENURE UNDER THIS ACT. A TEACHER ON CONTINUING TENURE** shall be
7 employed continuously by the controlling board under which the
8 probationary period has been completed ~~—~~and shall not be dismissed
9 or demoted except as specified in this act. **CONTINUING TENURE IS**
10 **HELD ONLY IN ACCORDANCE WITH THIS ACT.**

11 (2) If a teacher employed in a program operated by a
12 consortium of school districts was previously on continuing tenure
13 in a school district that participates in the consortium, the
14 teacher shall be considered to be on continuing tenure only in that
15 school district.

16 (3) If a teacher employed in a program operated by a
17 consortium of school districts was not previously on continuing
18 tenure in a school district that participates in the consortium and
19 satisfactorily completes the probationary period, the teacher shall
20 be considered to be on continuing tenure only in the school
21 district that is the fiscal agent for the consortium. However, if
22 there is a written agreement between the teacher and another
23 participating school district that provides that the teacher will
24 have continuing tenure in that school district, the teacher shall
25 be considered to be on continuing tenure only in that school
26 district and shall not be considered to be on continuing tenure in
27 the school district that is the fiscal agent for the consortium.

1 (4) If a teacher employed in a public school academy
2 established under the revised school code, ~~Act No. 451 of the~~
3 ~~Public Acts of 1976, being sections 380.1 to 380.1852 of the~~
4 ~~Michigan Compiled Laws 1976 PA 451, MCL 380.1 TO 380.1852~~, is on
5 leave of absence from a school district and was on continuing
6 tenure in the school district at the time he or she began the leave
7 of absence, the teacher retains continuing tenure in that school
8 district during the period he or she is employed in the public
9 school academy.

10 (5) If a teacher satisfactorily completes the probationary
11 period as an adult education teacher, the teacher shall be
12 considered to be on continuing tenure in the school district only
13 for adult education and shall not by virtue of completing the
14 probationary period as an adult education teacher be considered to
15 be on continuing tenure in the school district for elementary and
16 secondary education.

17 (6) If a teacher satisfactorily completes the probationary
18 period as an elementary or secondary education teacher, the teacher
19 shall be considered to be on continuing tenure in the school
20 district only for elementary and secondary education and shall not
21 by virtue of completing the probationary period as an elementary or
22 secondary education teacher be considered to be on continuing
23 tenure in the school district for adult education.

24 ~~(7) If the controlling board provides in a contract of~~
25 ~~employment of~~ **FOR** a teacher employed **IN A CAPACITY** other than as a
26 classroom teacher, including but not limited to, a superintendent,
27 assistant superintendent, principal, department head or director of

1 curriculum, **UNDER A CONTRACT OF EMPLOYMENT** made with the teacher
 2 after the completion of the probationary period, **A CONTROLLING**
 3 **BOARD SHALL NOT PROVIDE IN THE CONTRACT OF EMPLOYMENT** that the
 4 teacher ~~shall not be~~ **WILL BE** considered to be granted continuing
 5 tenure in that other capacity by virtue of the contract of
 6 employment. ~~, then the teacher shall not be granted tenure in that~~
 7 ~~other capacity, but~~ **SUCH A TEACHER** shall be considered to have been
 8 granted continuing tenure **ONLY** as an active classroom teacher in
 9 the school district. Upon the termination of such a contract of
 10 employment, if the controlling board does not reemploy the teacher
 11 under contract in the capacity covered by the contract, the teacher
 12 shall be continuously employed by the controlling board as an
 13 active classroom teacher. Failure of a controlling board to
 14 reemploy a teacher in any such capacity upon the termination of any
 15 such contract of employment described in this subsection shall not
 16 be considered to be a demotion under this act. The salary in the
 17 position to which the teacher is assigned shall be the same as if
 18 the teacher had been continuously employed ~~in the newly assigned~~
 19 ~~position. Failure of a controlling board to so provide in any such~~
 20 ~~contract of employment of a teacher in a capacity other than a~~
 21 ~~classroom teacher shall be considered to constitute the employment~~
 22 ~~of the teacher on continuing contract in the other capacity and~~
 23 ~~subject to this act.~~ **AS AN ACTIVE CLASSROOM TEACHER.**

24 (8) Continuing tenure does not apply to an annual assignment
 25 of extra duty for extra pay.

26 Sec. 3. ~~(1)~~ The controlling board of the school district
 27 employing a teacher on continuing tenure shall ensure that the

1 teacher is provided with a ~~AN ANNUAL YEAR-END~~ performance
2 evaluation ~~at least once every 3 years and, if~~ **IN ACCORDANCE WITH**
3 **SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.**
4 **IF** the teacher has received a ~~less than satisfactory~~ **A RATING OF**
5 **INEFFECTIVE OR MINIMALLY EFFECTIVE ON AN ANNUAL YEAR-END**
6 performance evaluation, the school district shall provide the
7 teacher with an individualized development plan developed by
8 appropriate administrative personnel in consultation with the
9 individual teacher. **THE INDIVIDUALIZED DEVELOPMENT PLAN SHALL**
10 **REQUIRE THE TEACHER TO MAKE PROGRESS TOWARD INDIVIDUAL DEVELOPMENT**
11 **GOALS WITHIN A SPECIFIED TIME PERIOD, NOT TO EXCEED 180 DAYS.** The
12 **ANNUAL YEAR-END** performance evaluation shall be based on ~~, but is~~
13 ~~not limited to, at least 2~~ **MULTIPLE** classroom observations
14 conducted during the period covered by the evaluation and ~~, if the~~
15 ~~teacher has an individualized development plan,~~ shall include, **IN**
16 **ADDITION TO THE FACTORS REQUIRED UNDER SECTION 1249 OF THE REVISED**
17 **SCHOOL CODE, 1976 PA 451, MCL 380.1249,** at least an assessment of
18 the teacher's progress in meeting the goals of his or her
19 individualized development plan. ~~This section does not prevent a~~
20 ~~collective bargaining agreement between the controlling board and~~
21 ~~the teacher's bargaining representative under Act No. 336 of the~~
22 ~~Public Acts of 1947, being sections 423.201 to 423.216 of the~~
23 ~~Michigan Compiled Laws, from providing for more performance~~
24 ~~evaluations or classroom observations in addition to those required~~
25 ~~under this section. Except as specifically stated in this~~
26 ~~subsection, this section does not require a particular method for~~
27 ~~conducting a performance evaluation or classroom observation or for~~

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1 ~~providing an individualized development plan.~~ THE CONTROLLING BOARD
 2 SHALL DETERMINE THE FORMAT AND NUMBER OF THE CLASSROOM OBSERVATIONS
 3 IN CONSULTATION WITH TEACHERS AND SCHOOL ADMINISTRATORS.

4 ~~—— (2) Failure of a school district to comply with subsection (1)~~
 5 ~~with respect to an individual teacher in a particular 3 year period~~
 6 ~~is conclusive evidence that the teacher's performance for that~~
 7 ~~period was satisfactory.~~

8 ARTICLE IV

9 Sec. 4. (1) A teacher on continuing tenure may contest the
 10 controlling board's decision to proceed upon the charges against
 11 the teacher by filing a claim of appeal with the tenure commission
 12 and serving a copy of the claim of appeal on the controlling board
 13 not later than 20 days after receipt of the controlling board's
 14 decision. The controlling board shall file its answer with the
 15 tenure commission and serve a copy of the answer on the teacher not
 16 later than 10 days after service of the claim of appeal. If the
 17 teacher does not contest the controlling board's decision in the
 18 time and manner specified in this subsection, the discharge or
 19 demotion specified in the charges takes effect and the teacher
 20 shall be considered to have waived any right to contest the
 21 discharge or demotion under this act.

22 (2) An administrative law judge described in subsection (3)
 23 shall furnish to each party without undue delay a notice of hearing
 24 fixing the date and place of the hearing. The hearing date shall
 25 not be less than 10 days after the date the notice of hearing is
 26 furnished and shall not be more than <<60 45>> days after service of the
 27 controlling board's answer unless the tenure commission grants a

1 delay for good cause shown by the teacher or controlling board.

2 (3) The hearing shall be conducted by an administrative law
3 judge who is an attorney licensed to practice law in this state and
4 is employed by the department of education. An administrative law
5 judge who conducts hearings under this section shall not advise the
6 tenure commission or otherwise participate in a tenure commission
7 review of an administrative law judge's preliminary decision and
8 order under this section.

9 (4) Except as otherwise provided in this section, the hearing
10 shall be conducted in accordance with chapter 4 of the
11 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
12 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
13 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287,~~ and in accordance
14 with rules promulgated by the tenure commission.

15 (5) The hearing and tenure commission review shall be
16 conducted in accordance with the following:

17 (a) The hearing shall be public or private at the option of
18 the teacher.

19 (b) The hearing shall be held at a convenient place in the
20 county in which all or a portion of the school district is located
21 or, if mutually agreed by the parties, at the tenure commission
22 offices in Lansing. The administrative law judge's necessary travel
23 expenses associated with conducting the hearing outside Lansing
24 shall be borne equally by the tenure commission and the controlling
25 board.

26 (c) Both the teacher and the controlling board may be
27 represented by legal counsel.

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1 (d) Testimony at the hearing shall be on oath or affirmation.

2 (e) A stenographer shall make a full record of the proceedings
3 of the hearing. The cost of employing the stenographer and of
4 providing the record shall be borne equally by the tenure
5 commission and the controlling board.

6 (f) The administrative law judge may subpoena witnesses and
7 documentary evidence on his or her own motion, and shall do so at
8 the request of the controlling board or the teacher. If a person
9 refuses to appear and testify in answer to a subpoena issued by the
10 administrative law judge, the party on whose behalf the subpoena
11 was issued may file a petition in the circuit court for the county
12 in which the hearing is held for an order requiring compliance.
13 Failure to obey such an order of the court may be punished by the
14 court as contempt.

15 (g) The hearing shall be concluded not later than ~~<<90-75>>~~ days
16 after the teacher's claim of appeal was filed with the tenure
17 commission.

18 (h) The administrative law judge shall make the necessary
19 orders to ensure that the case is submitted for decision not later
20 than 50 days after the hearing is concluded.

21 (i) Not later than 60 days after submission of the case for
22 decision, the administrative law judge shall serve a preliminary
23 decision and order in writing upon each party or the party's
24 attorney and the tenure commission. The preliminary decision and
25 order shall grant, deny, or modify the discharge or demotion
26 specified in the charges.

27 (j) Not later than 20 days after service of the preliminary

1 decision and order, a party may file with the tenure commission a
2 statement of exceptions to the preliminary decision and order or to
3 any part of the record or proceedings, including, but not limited
4 to, rulings on motions or objections, along with a written brief in
5 support of the exceptions. The party shall serve a copy of the
6 statement of exceptions and brief upon each of the other parties
7 within the time limit for filing the exceptions and brief. If there
8 are no exceptions timely filed, the preliminary decision and order
9 becomes the tenure commission's final decision and order.

10 (k) Not later than 10 days after being served with the other
11 party's exceptions and brief, a party may file a statement of
12 cross-exceptions responding to the other party's exceptions or a
13 statement in support of the preliminary decision and order with the
14 tenure commission, along with a written brief in support of the
15 cross-exceptions or of the preliminary decision and order. The
16 party shall serve a copy of the statement of cross-exceptions or of
17 the statement in support of the preliminary decision and order and
18 a copy of the brief on each of the other parties.

19 (l) A matter that is not included in a statement of exceptions
20 filed under subdivision (j) or in a statement of cross-exceptions
21 filed under subdivision (k) is considered waived and cannot be
22 heard before the tenure commission or on appeal to the court of
23 appeals.

24 (m) If exceptions are filed, the tenure commission, after
25 review of the record and the exceptions, may adopt, modify, or
26 reverse the preliminary decision and order. The tenure commission
27 shall not hear any additional evidence and its review shall be

1 limited to consideration of the issues raised in the exceptions
2 based solely on the evidence contained in the record from the
3 hearing. The tenure commission shall issue its final decision and
4 order not later than 60 days after the exceptions are filed.

5 (6) After giving the party notice and an opportunity to
6 comply, the administrative law judge or the tenure commission may
7 dismiss an appeal or deny a discharge or demotion for a party's
8 lack of progress or for a party's repeated failure to comply with
9 the procedures specified in this section or the tenure commission's
10 rules.

11 (7) A party aggrieved by a final decision and order of the
12 tenure commission may appeal the decision and order to the court of
13 appeals in accordance with the Michigan court rules within 20 days
14 after the date of the decision and order.

15 Enacting section 1. Section 5 of article IV of 1937 (Ex Sess)
16 PA 4, MCL 38.105, is repealed.

17 Enacting section 2. This amendatory act does not take effect
18 unless all of the following bills of the 96th Legislature are
19 enacted into law:

20 (a) House Bill No. 4626.

21 (b) House Bill No. 4627.

22 (c) House Bill No. 4628.