

HOUSE BILL No. 4625

May 10, 2011, Introduced by Rep. Rogers and referred to the Committee on Education.

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, 2, and 3 of article III, and section 4 of article IV (MCL 38.81, 38.82, 38.83, 38.83a, 38.91, 38.92, 38.93, and 38.104), sections 1 and 2 of article II and section 2 of article III 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 3b and 3c to article II and section 1a to article III; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE II

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

5 (2) A teacher under contract but not on continuing tenure as
6 of the effective date of the ~~amendatory act that added this~~
7 ~~subsection-2011 AMENDATORY ACT THAT AMENDED THIS SUBSECTION~~ is in a
8 probationary period during his or her first ~~2-4~~ full school years
9 of employment.

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

15 Sec. 2. ~~A-EXCEPT AS OTHERWISE PROVIDED IN SECTION 1A OF~~
16 **ARTICLE III, A** teacher shall not be required to serve more than 1
17 probationary period in any 1 school district or institution.
18 However, upon notice to the tenure commission, the controlling
19 board may grant a third year of probation to a teacher described in
20 section 1(2) of this article.

21 Sec. 3. (1) ~~At least 60 days before-BEFORE~~ the ~~close-END~~ of
22 each school year, the controlling board shall provide the
23 probationary teacher with a definite written statement as to
24 whether or not his **OR HER** work has been satisfactory. ~~Failure to~~
25 ~~submit a written statement shall be considered as conclusive~~
26 ~~evidence that the teacher's work is satisfactory. Any-SUBJECT TO~~

1 **SUBSECTION (2),** A probationary teacher or teacher not on continuing
2 contract shall be employed for the ensuing year unless notified in
3 writing ~~at least 60 days before the close of the school year that~~
4 his OR HER services will be discontinued.

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

7 (3) IF A TEACHER WHO IS IN A PROBATIONARY PERIOD IS RATED AS
8 INEFFECTIVE ON 2 PERFORMANCE EVALUATIONS DURING THE SAME SCHOOL
9 YEAR UNDER SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA 451,
10 MCL 380.1249, THE CONTROLLING BOARD SHALL DISMISS THE TEACHER FROM
11 HIS OR HER EMPLOYMENT.

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~~

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
10 OBSERVATIONS. A PERFORMANCE EVALUATION SHALL BE CONDUCTED IN
11 ACCORDANCE WITH SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA
12 451, 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. A TEACHER SHALL NOT BE CONSIDERED TO HAVE
18 SUCCESSFULLY COMPLETED THE PROBATIONARY PERIOD UNLESS THE TEACHER
19 HAS BEEN RATED AS EFFECTIVE OR BETTER ON HIS OR HER 3 MOST RECENT
20 PERFORMANCE EVALUATIONS UNDER SECTION 1249 OF THE REVISED SCHOOL
21 CODE, 1976 PA 451, MCL 380.1249.

22 SEC. 3C. FOR A TEACHER WHO HAD CONTINUING TENURE AND WAS
23 PLACED IN AN ADDITIONAL PROBATIONARY PERIOD UNDER SECTION 1A OF
24 ARTICLE III, ALL OF THE FOLLOWING APPLY:

25 (A) THE TEACHER SHALL NOT BE CONSIDERED TO HAVE SUCCESSFULLY
26 COMPLETED THE ADDITIONAL PROBATIONARY PERIOD UNLESS THE TEACHER HAS
27 BEEN RATED AS EFFECTIVE OR BETTER ON HIS OR HER 2 MOST RECENT

1 PERFORMANCE EVALUATIONS UNDER SECTION 1249 OF THE REVISED SCHOOL
2 CODE, 1976 PA 451, MCL 380.1249.

3 (B) IF THE TEACHER FAILS TO ACHIEVE A RATING AS EFFECTIVE OR
4 BETTER ON 2 CONSECUTIVE PERFORMANCE EVALUATIONS UNDER SECTION 1249
5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249, DURING HIS
6 OR HER ADDITIONAL PROBATIONARY PERIOD, THE CONTROLLING BOARD SHALL
7 DISMISS THE TEACHER FROM HIS OR HER EMPLOYMENT.

8 (C) THE TEACHER'S ADDITIONAL PROBATIONARY PERIOD SHALL NOT
9 EXCEED 5 FULL SCHOOL YEARS OF EMPLOYMENT. IF A TEACHER DOES NOT
10 SUCCESSFULLY COMPLETE THE NEW PROBATIONARY PERIOD BY THE END OF
11 THIS 5-FULL-SCHOOL-YEAR PERIOD, THE CONTROLLING BOARD SHALL DISMISS
12 THE TEACHER FROM HIS OR HER EMPLOYMENT.

13 (D) A CONTROLLING BOARD SHALL NOT PLACE THE TEACHER IN AN
14 ADDITIONAL PROBATIONARY PERIOD MORE THAN 2 TIMES.

15 ARTICLE III

16 Sec. 1. (1) After the satisfactory completion of the
17 probationary period, a teacher IS CONSIDERED TO BE ON CONTINUING
18 TENURE UNDER THIS ACT. SUBJECT TO SECTION 1A OF THIS ARTICLE, A
19 TEACHER ON CONTINUING TENURE shall be employed continuously by the
20 controlling board under which the probationary period has been
21 completed ~~—~~and shall not be dismissed or demoted except as
22 specified in this act. CONTINUING TENURE IS HELD ONLY IN ACCORDANCE
23 WITH THIS ACT.

24 (2) If a teacher employed in a program operated by a
25 consortium of school districts was previously on continuing tenure
26 in a school district that participates in the consortium, the
27 teacher shall be considered to be on continuing tenure only in that

1 school district.

2 (3) If a teacher employed in a program operated by a
3 consortium of school districts was not previously on continuing
4 tenure in a school district that participates in the consortium and
5 satisfactorily completes the probationary period, the teacher shall
6 be considered to be on continuing tenure only in the school
7 district that is the fiscal agent for the consortium. However, if
8 there is a written agreement between the teacher and another
9 participating school district that provides that the teacher will
10 have continuing tenure in that school district, the teacher shall
11 be considered to be on continuing tenure only in that school
12 district and shall not be considered to be on continuing tenure in
13 the school district that is the fiscal agent for the consortium.

14 (4) If a teacher employed in a public school academy
15 established under the revised school code, ~~Act No. 451 of the~~
16 ~~Public Acts of 1976, being sections 380.1 to 380.1852 of the~~
17 ~~Michigan Compiled Laws 1976 PA 451, MCL 380.1 TO 380.1852~~, is on
18 leave of absence from a school district and was on continuing
19 tenure in the school district at the time he or she began the leave
20 of absence, the teacher retains continuing tenure in that school
21 district during the period he or she is employed in the public
22 school academy.

23 (5) If a teacher satisfactorily completes the probationary
24 period as an adult education teacher, the teacher shall be
25 considered to be on continuing tenure in the school district only
26 for adult education and shall not by virtue of completing the
27 probationary period as an adult education teacher be considered to

1 be on continuing tenure in the school district for elementary and
2 secondary education.

3 (6) If a teacher satisfactorily completes the probationary
4 period as an elementary or secondary education teacher, the teacher
5 shall be considered to be on continuing tenure in the school
6 district only for elementary and secondary education and shall not
7 by virtue of completing the probationary period as an elementary or
8 secondary education teacher be considered to be on continuing
9 tenure in the school district for adult education.

10 (7) If the controlling board provides in a contract of
11 employment of a teacher employed other than as a classroom teacher,
12 including but not limited to, a superintendent, assistant
13 superintendent, principal, department head or director of
14 curriculum, made with the teacher after the completion of the
15 probationary period, that the teacher shall not be considered to be
16 granted continuing tenure in that other capacity by virtue of the
17 contract of employment, then the teacher shall not be granted
18 tenure in that other capacity, but shall be considered to have been
19 granted continuing tenure as an active classroom teacher in the
20 school district. Upon the termination of such a contract of
21 employment, if the controlling board does not reemploy the teacher
22 under contract in the capacity covered by the contract, the teacher
23 shall be continuously employed by the controlling board as an
24 active classroom teacher. Failure of a controlling board to
25 reemploy a teacher in any such capacity upon the termination of any
26 such contract of employment described in this subsection shall not
27 be considered to be a demotion under this act. The salary in the

1 position to which the teacher is assigned shall be the same as if
2 the teacher had been continuously employed ~~in the newly assigned~~
3 ~~position. Failure of a controlling board to so provide in any such~~
4 ~~contract of employment of a teacher in a capacity other than a~~
5 ~~classroom teacher shall be considered to constitute the employment~~
6 ~~of the teacher on continuing contract in the other capacity and~~
7 ~~subject to this act.~~ **AS AN ACTIVE CLASSROOM TEACHER.**

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

10 **SEC. 1A. (1) IF A TEACHER WHO IS ON CONTINUING TENURE IS RATED**
11 **AS INEFFECTIVE ON A PERFORMANCE EVALUATION UNDER SECTION 1249 OF**
12 **THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249, THEN THE**
13 **CONTROLLING BOARD SHALL REQUIRE THE TEACHER TO SERVE AN ADDITIONAL**
14 **PROBATIONARY PERIOD UNDER ARTICLE II.**

15 (2) IF A TEACHER WHO IS ON CONTINUING TENURE IS RATED AS
16 MINIMALLY EFFECTIVE ON A PERFORMANCE EVALUATION UNDER SECTION 1249
17 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249, THEN THE
18 CONTROLLING BOARD MAY REQUIRE THE TEACHER TO SERVE AN ADDITIONAL
19 PROBATIONARY PERIOD UNDER ARTICLE II.

20 (3) A TEACHER WHO IS PLACED IN AN ADDITIONAL PROBATIONARY
21 PERIOD UNDER SUBSECTION (1) OR (2) IS A PROBATIONARY TEACHER DURING
22 THAT ADDITIONAL PROBATIONARY PERIOD FOR ALL PURPOSES UNDER THIS ACT
23 AND SHALL NOT BE CONSIDERED TO BE ON CONTINUING TENURE DURING THAT
24 ADDITIONAL PROBATIONARY PERIOD FOR ANY PURPOSE UNDER THIS ACT.

25 (4) A CONTROLLING BOARD SHALL NOT PLACE A TEACHER IN AN
26 ADDITIONAL PROBATIONARY PERIOD UNDER THIS SECTION MORE THAN 2
27 TIMES. IF A TEACHER MEETS THE STANDARD FOR BEING PLACED IN AN

1 ADDITIONAL PROBATIONARY PERIOD UNDER THIS SECTION MORE THAN 2
2 TIMES, THE CONTROLLING BOARD SHALL DISMISS THE TEACHER FROM HIS OR
3 HER EMPLOYMENT.

4 Sec. 2. ~~If~~ EXCEPT IF THE TEACHER IS PLACED IN AN ADDITIONAL
5 PROBATIONARY PERIOD UNDER SECTION 1A OF THIS ARTICLE, IF a teacher
6 on continuing tenure is employed by another controlling board, the
7 teacher is not subject to another probationary period of more than
8 2 years beginning with the date of employment ~~and~~ and may at the
9 option of the controlling board be placed immediately on continuing
10 tenure. A notice provided under section 3 of article 2-II shall be
11 given not later than 60 days before the completion of the
12 probationary period. If a teacher on continuing tenure becomes an
13 employee of another controlling board as a result of school
14 district annexation, consolidation or other form of school district
15 reorganization, the teacher shall be placed on continuing tenure
16 within 30 days unless the controlling board, by a 2/3 vote on an
17 individual basis, places the teacher on not more than 2 years'
18 probation. However, if such a teacher is under contract but not on
19 continuing tenure with the employing board as of ~~the effective date~~
20 ~~of the amendatory act that added this sentence~~ JUNE 11, 1993, the
21 teacher is not subject to another probationary period of more than
22 1 year beginning with the date of employment.

23 Sec. 3. ~~(1)~~ The controlling board of the school district
24 employing a teacher on continuing tenure shall ensure that the
25 teacher is provided with ~~a~~ AN ANNUAL performance evaluation ~~at~~
26 ~~least once every 3 years and, if~~ IN ACCORDANCE WITH SECTION 1249 OF
27 THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249. IF the teacher

1 has received a ~~less than satisfactory~~ **A RATING OF INEFFECTIVE ON**
2 **THE** performance evaluation, the school district shall provide the
3 teacher with an individualized development plan developed by
4 appropriate administrative personnel in consultation with the
5 individual teacher. **THE INDIVIDUALIZED DEVELOPMENT PLAN SHALL**
6 **REQUIRE THE TEACHER TO MAKE PROGRESS TOWARD INDIVIDUAL DEVELOPMENT**
7 **GOALS WITHIN A SPECIFIED TIME PERIOD, NOT TO EXCEED 180 DAYS.** The
8 performance evaluation shall be based on ~~, but is not limited to,~~
9 ~~at least 2~~ **MULTIPLE** classroom observations conducted during the
10 period covered by the evaluation and ~~, if the teacher has an~~
11 ~~individualized development plan,~~ shall include, **IN ADDITION TO THE**
12 **FACTORS REQUIRED UNDER SECTION 1249 OF THE REVISED SCHOOL CODE,**
13 **1976 PA 451, MCL 380.1249,** at least an assessment of the teacher's
14 progress in meeting the goals of his or her individualized
15 development plan. **THE CONTROLLING BOARD SHALL DETERMINE THE FORMAT**
16 **AND NUMBER OF THE CLASSROOM OBSERVATIONS IN CONSULTATION WITH**
17 **TEACHERS AND SCHOOL ADMINISTRATORS.** This section does not prevent a
18 collective bargaining agreement between the controlling board and
19 the teacher's bargaining representative under ~~Act No. 336 of the~~
20 ~~Public Acts of 1947, being sections 423.201 to 423.216 of the~~
21 ~~Michigan Compiled Laws 1947 PA 336, MCL 423.201 TO 423.217,~~ from
22 providing for more performance evaluations or classroom
23 observations in addition to those required under this section.
24 ~~Except as specifically stated in this subsection, this section does~~
25 ~~not require a particular method for conducting a performance~~
26 ~~evaluation or classroom observation or for providing an~~
27 ~~individualized development plan.~~

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

5 ARTICLE IV

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

19 (2) An administrative law judge described in subsection (3)
20 shall furnish to each party without undue delay a notice of hearing
21 fixing the date and place of the hearing. The hearing date shall
22 not be less than 10 days after the date the notice of hearing is
23 furnished and shall not be more than 60 days after service of the
24 controlling board's answer unless the tenure commission grants a
25 delay for good cause shown by the teacher or controlling board.

26 (3) The hearing shall be conducted by an administrative law
27 judge who is an attorney licensed to practice law in this state and

1 is employed by the department of education. An administrative law
2 judge who conducts hearings under this section shall not advise the
3 tenure commission or otherwise participate in a tenure commission
4 review of an administrative law judge's preliminary decision and
5 order under this section.

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

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

14 (a) The hearing shall be public or private at the option of
15 the teacher. **ADMINISTRATIVE LAW JUDGE.**

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

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

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

26 (e) A stenographer shall make a full record of the proceedings
27 of the hearing. The cost of employing the stenographer and of

1 providing the record shall be borne equally by the tenure
2 commission and the controlling board.

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

12 (g) The hearing shall be concluded not later than ~~90~~60 days
13 after the teacher's claim of appeal was filed with the tenure
14 commission.

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

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

24 (j) Not later than 20 days after service of the preliminary
25 decision and order, a party may file with the tenure commission a
26 statement of exceptions to the preliminary decision and order or to
27 any part of the record or proceedings, including, but not limited

1 to, rulings on motions or objections, along with a written brief in
2 support of the exceptions. The party shall serve a copy of the
3 statement of exceptions and brief upon each of the other parties
4 within the time limit for filing the exceptions and brief. If there
5 are no exceptions timely filed, the preliminary decision and order
6 becomes the tenure commission's final decision and order.

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

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

21 (m) If exceptions are filed, the tenure commission, after
22 review of the record and the exceptions, may adopt ~~, modify,~~ or
23 reverse the preliminary decision and order. The tenure commission
24 shall not hear any additional evidence and its review shall be
25 limited to consideration of the issues raised in the exceptions
26 based solely on the evidence contained in the record from the
27 hearing. The tenure commission shall issue its final decision and

1 order not later than 60 days after the exceptions are filed.

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

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

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

14 Enacting section 2. This amendatory act shall not take effect
15 unless all of the following bills of the 96th Legislature are
16 enacted into law:

17 (a) Senate Bill No. ____ or House Bill No. 4626 (request no.
18 02019'11 ***).

19 (b) Senate Bill No. ____ or House Bill No. 4627 (request no.
20 02178'11).

21 (c) Senate Bill No. ____ or House Bill No. 4628 (request no.
22 02178'11 a).