

Act No. 101  
Public Acts of 2011  
Approved by the Governor  
July 19, 2011  
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July 19, 2011  
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**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2011**

Introduced by Rep. Rogers

# **ENROLLED HOUSE BILL No. 4625**

AN ACT to amend 1937 (Ex Sess) PA 4, entitled "An act relative to continuing tenure of office of certified 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 4 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 U; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

## 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 5 full school years of employment.

(2) Subject to section 3b of this article, a teacher under contract but not on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection is in a probationary period during his or her first 4 full school years of employment.

(3) A teacher on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection continues to be on continuing tenure even if the teacher has not served for at least 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.

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) Before the end of each school year, the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his or her work has been effective. Subject to subsection (2), a probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified in writing at least 15 days before the end of the school year that his or her services will be discontinued.

(2) A teacher who is in a probationary period may be dismissed from his or her employment by the controlling board at any time.

Sec. 3a. The controlling board of a probationary teacher's employing school district shall ensure that the teacher is provided with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher and that the teacher is provided with at least an annual year-end performance evaluation each year during the teacher's probationary period. The annual year-end performance evaluation shall be based on classroom observations and shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators. A performance evaluation shall be conducted in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249.

Sec. 3b. (1) Except as otherwise provided in subsection (2), a teacher shall not be considered to have successfully completed the probationary period unless the teacher has been rated as effective or highly effective on his or her 3 most recent annual year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 5 full school years of employment in a probationary period.

(2) If a teacher has been rated as highly effective on 3 consecutive annual year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 4 full school years of employment in a probationary period, the teacher shall be considered to have successfully completed the probationary period.

### ARTICLE III

Sec. 1. (1) After the satisfactory completion of the probationary period, a teacher is considered to be on continuing tenure under this act. A teacher on continuing tenure shall be employed continuously by the controlling board under which the probationary period has been completed and shall not be dismissed or demoted except as specified in this act. Continuing tenure is held only in accordance with this act.

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

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

(4) If a teacher employed in a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is on leave of absence from a school district and was on continuing tenure in the school district at the time he or she began the leave of absence, the teacher retains continuing tenure in that school district during the period he or she is employed in the public school academy.

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

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

(7) For a teacher employed in a capacity other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, under a contract of employment made with the teacher after the completion of the probationary period, a controlling board shall not provide in the contract of employment that the teacher will be considered to be granted continuing tenure in that other capacity by virtue of the contract of employment. Such a teacher shall be considered to have been granted continuing tenure only as an active classroom teacher in the school district. Upon the termination of such a contract of employment, if the controlling board does not reemploy the teacher under contract in the capacity covered by the contract, the teacher shall be continuously employed by the controlling board as an active classroom teacher. Failure of a controlling board to reemploy a teacher in any such capacity upon the termination of any such contract of employment described in this subsection shall not be considered to be a demotion under this act. The salary in the position to which the teacher is assigned shall be the same as if the teacher had been continuously employed as an active classroom teacher.

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

Sec. 3. The controlling board of the school district employing a teacher on continuing tenure shall ensure that the teacher is provided with an annual year-end performance evaluation in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249. If the teacher has received a rating of ineffective or minimally effective on an annual year-end performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The individualized development plan shall require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days. The annual year-end performance evaluation shall be based on multiple classroom observations conducted during the period covered by the evaluation and shall include, in addition to the factors required under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators.

#### ARTICLE IV

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

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 45 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

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

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedure act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with rules promulgated by the tenure commission.

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

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

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

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

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

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

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

(g) The hearing shall be concluded not later than 75 days after the teacher's claim of appeal was filed with the tenure commission.

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

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

(j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, filings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of the other parties within the time

limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.

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

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

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

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

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

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

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

- (a) House Bill No. 4626.
- (b) House Bill No. 4627.
- (c) House Bill No. 4628.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives

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Secretary of the Senate

Approved .....

Governor