

HOUSE BILL No. 4142

January 26, 2011, Introduced by Rep. Melton 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 1 of article IV (MCL 38.81, 38.82, 38.83, 38.83a, 38.91, 38.92, 38.93, and 38.101), 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 1 of article IV as amended by 2005 PA 136, and by adding

section 1a to article III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE II

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

(2) A teacher under contract but not on continuing tenure as of ~~the effective date of the amendatory act that added this subsection~~ **JUNE 11, 1993** is in a probationary period during his or her first 2 full school years of employment.

(3) A teacher on continuing tenure as of ~~the effective date of the amendatory act that added this subsection~~ **JUNE 11, 1993** continues to be on continuing tenure even if the teacher has not served for at least 4 full school years of employment.

Sec. 2. ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 1A OF ARTICLE III**, 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. 3. (1) ~~At~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)**, **AT** least 60 days before the close of each school year the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his work has been satisfactory. ~~Failure~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), FAILURE** to submit a written statement shall be considered as conclusive evidence that the teacher's work is satisfactory. ~~Any~~

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

6 (2) SUBSECTION (1) DOES NOT APPLY TO A TEACHER WHO IS IN THE
7 FINAL YEAR OF HIS OR HER PROBATIONARY PERIOD. FOR A TEACHER
8 DESCRIBED IN THIS SUBSECTION, ALL OF THE FOLLOWING APPLY:

9 (A) THE TEACHER SHALL NOT BE CONSIDERED TO HAVE SUCCESSFULLY
10 COMPLETED THE PROBATIONARY PERIOD UNLESS THE TEACHER IS RATED AS
11 EFFECTIVE, BASED ON THE PERFORMANCE EVALUATION UNDER SECTION 1249
12 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.

13 (B) FAILURE OF THE CONTROLLING BOARD TO SUBMIT THE WRITTEN
14 STATEMENT UNDER SUBSECTION (1) IS NOT CONSIDERED AS CONCLUSIVE
15 EVIDENCE THAT THE TEACHER'S WORK IS SATISFACTORY. FAILURE OF THE
16 CONTROLLING BOARD TO PROVIDE THE TEACHER WITH A PERFORMANCE
17 EVALUATION UNDER SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA
18 451, MCL 380.1249, IN A PARTICULAR SCHOOL YEAR IS NOT CONSIDERED TO
19 BE CONCLUSIVE EVIDENCE THAT THE TEACHER'S PERFORMANCE FOR THAT
20 SCHOOL YEAR WAS SATISFACTORY, AND THE TEACHER SHALL NOT BE
21 CONSIDERED TO BE RATED AS EFFECTIVE SOLELY BECAUSE OF THE FAILURE
22 OF THE CONTROLLING BOARD TO PROVIDE THE PERFORMANCE EVALUATION.

23 (C) REGARDLESS OF WHETHER OR NOT THE TEACHER IS NOTIFIED IN
24 WRITING AT LEAST 60 DAYS BEFORE THE CLOSE OF THE SCHOOL YEAR THAT
25 HIS OR HER SERVICES WILL BE DISCONTINUED, THE TEACHER SHALL NOT BE
26 EMPLOYED FOR THE ENSUING YEAR UNLESS THE TEACHER IS RATED AS
27 EFFECTIVE, BASED ON THE PERFORMANCE EVALUATION UNDER SECTION 1249

1 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.

2 Sec. 3a. ~~(1)~~—If a probationary teacher is employed by a school
3 district for at least 1 full school year, the controlling board of
4 the probationary teacher's employing school district shall ensure
5 that the teacher is provided with an individualized development
6 plan developed by appropriate administrative personnel in
7 consultation with the individual teacher and that the teacher is
8 provided with at least an annual year-end performance evaluation
9 each year during the teacher's probationary period. The annual
10 year-end performance evaluation shall be based on, but is not
11 limited to, at least 2 classroom observations held at least 60 days
12 apart, unless a shorter interval between the 2 classroom
13 observations is mutually agreed upon by the teacher and the
14 administration, ~~and~~ shall include at least an assessment of the
15 teacher's progress in meeting the goals of his or her
16 individualized development plan, **AND SHALL MEET THE REQUIREMENTS OF**
17 **SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.**
18 This subsection does not prevent a collective bargaining agreement
19 between the controlling board and the teacher's bargaining
20 representative under ~~Act No. 336 of the Public Acts of 1947, being~~
21 ~~sections 423.201 to 423.216 of the Michigan Compiled Laws 1947 PA~~
22 **336, MCL 423.201 TO 423.217**, from providing for more performance
23 evaluations or classroom observations in addition to those required
24 under this subsection. Except as specifically stated in this
25 subsection, this section does not require a particular method for
26 conducting a performance evaluation or classroom observation or for
27 providing an 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 school year~~
~~3 is conclusive evidence that the teacher's performance for that~~
~~4 school year was satisfactory.~~

ARTICLE III

6 Sec. 1. (1) After the satisfactory completion of the
7 probationary period **AND BEING RATED AS EFFECTIVE, AS DESCRIBED IN**
8 **SECTION 3(2) OF ARTICLE II,** a teacher **IS CONSIDERED TO BE ON**
9 **CONTINUING TENURE UNDER THIS ACT. SUBJECT TO SECTION 1A OF THIS**
10 **ARTICLE, A TEACHER ON CONTINUING TENURE** shall be employed
11 continuously by the controlling board under which the probationary
12 period has been completed, and shall not be dismissed or demoted
13 except as specified in this act.

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

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

1 be considered to be on continuing tenure only in that school
2 district and shall not be considered to be on continuing tenure in
3 the school district that is the fiscal agent for the consortium.

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

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

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

27 (7) If the controlling board provides in a contract of

1 employment of a teacher employed other than as a classroom teacher,
2 including but not limited to, a superintendent, assistant
3 superintendent, principal, department head or director of
4 curriculum, made with the teacher after the completion of the
5 probationary period, that the teacher shall not be considered to be
6 granted continuing tenure in that other capacity by virtue of the
7 contract of employment, then the teacher shall not be granted
8 tenure in that other capacity, but shall be considered to have been
9 granted continuing tenure as an active classroom teacher in the
10 school district. Upon the termination of such a contract of
11 employment, if the controlling board does not reemploy the teacher
12 under contract in the capacity covered by the contract, the teacher
13 shall be continuously employed by the controlling board as an
14 active classroom teacher. Failure of a controlling board to
15 reemploy a teacher in any such capacity upon the termination of any
16 such contract of employment described in this subsection shall not
17 be considered to be a demotion under this act. The salary in the
18 position to which the teacher is assigned shall be the same as if
19 the teacher had been continuously employed in the newly assigned
20 position. Failure of a controlling board to so provide in any such
21 contract of employment of a teacher in a capacity other than a
22 classroom teacher shall be considered to constitute the employment
23 of the teacher on continuing contract in the other capacity and
24 subject to this act.

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

27 **SEC. 1A. (1) IF A TEACHER WHO IS ON CONTINUING TENURE IS RATED**

1 AS INEFFECTIVE FOR 2 CONSECUTIVE SCHOOL YEARS ON THE PERFORMANCE
 2 EVALUATION UNDER SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA
 3 451, MCL 380.1249, THEN THE CONTROLLING BOARD MAY REQUIRE THE
 4 TEACHER TO SERVE ANOTHER 4-YEAR PROBATIONARY PERIOD UNDER ARTICLE
 5 II.

6 (2) A TEACHER WHO IS PLACED IN A PROBATIONARY PERIOD UNDER
 7 SUBSECTION (1) IS A PROBATIONARY TEACHER DURING THAT TIME FOR ALL
 8 PURPOSES UNDER THIS ACT AND SHALL NOT BE CONSIDERED TO BE ON
 9 CONTINUING TENURE DURING THAT PROBATIONARY PERIOD FOR ANY PURPOSE
 10 UNDER THIS ACT.

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

1 teacher is not subject to another probationary period of more than
2 1 year beginning with the date of employment.

3 Sec. 3. ~~(1)~~The controlling board of the school district
4 employing a teacher on continuing tenure shall ensure that the
5 teacher is provided with a performance evaluation at least ~~once~~
6 ~~every 3 years~~ **ANNUALLY**, and, if the teacher has received a less
7 than satisfactory performance evaluation, the school district shall
8 provide the teacher with an individualized development plan
9 developed by appropriate administrative personnel in consultation
10 with the individual teacher. The performance evaluation shall be
11 based on, but is not limited to, at least 2 classroom observations
12 conducted during the period covered by the evaluation, ~~and, if the~~
13 ~~teacher has an individualized development plan,~~ shall include at
14 least an assessment of the teacher's progress in meeting the goals
15 of his or her individualized development plan **IF THE TEACHER HAS AN**
16 **INDIVIDUALIZED DEVELOPMENT PLAN, AND SHALL MEET THE REQUIREMENTS OF**
17 **SECTION 1249 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1249.**
18 This section does not prevent a collective bargaining agreement
19 between the controlling board and the teacher's bargaining
20 representative under ~~Act No. 336 of the Public Acts of 1947, being~~
21 ~~sections 423.201 to 423.216 of the Michigan Compiled Laws~~ **1947 PA**
22 **336, MCL 423.201 TO 423.217**, from providing for more performance
23 evaluations or classroom observations in addition to those required
24 under this section. Except as specifically stated in this
25 subsection, this section does not require a particular method for
26 conducting a performance evaluation or classroom observation or for
27 providing an 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. 1. Except as otherwise provided in **SECTION 1A OF ARTICLE**
7 **III AND** section 1a of this article, discharge or demotion of a
8 teacher on continuing tenure may be made only for reasonable and
9 just cause and only as provided in this act. This act does not
10 prevent any controlling board from establishing a reasonable policy
11 for retirement to apply equally to all teachers who are eligible
12 for retirement under the public school employees retirement act of
13 1979, 1980 PA 300, MCL 38.1301 to ~~38.1408~~ **38.1437**, or, having
14 established a reasonable retirement age policy, from temporarily
15 continuing on a year-to-year basis on criteria equally applied to
16 all teachers the contract of any teacher whom the controlling board
17 might wish to retain beyond the established retirement age for the
18 benefit of the school system.