



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**EXCLUSIVE BAND SUPPLIES**

**House Bill 4731 with committee  
amendments  
First Analysis (6-16-93)**

**Sponsor: Rep. Harold S. Voorhees  
Committee: Education**

***THE APPARENT PROBLEM:***

Reportedly, some school districts enter into contracts with a single music store which allows the business the exclusive right to market its products to students and parents in the schools in return for certain kinds of support of the school instrumental program by the business. The support could include helping to promote and publicize the music programs, helping fit students to instruments, or repairing and servicing instruments. Such arrangements can be mutually beneficial. Schools are able to extract valuable services from experienced, competent people. Instrument providers find providing such services worthwhile if they can gain a marketing advantage. Such arrangements also can result in increasing participation in band and orchestra programs, because it makes shopping for an appropriate instrument easier. The difficulty, it is said, is that school districts that enter into such arrangements sometimes face lawsuits (or the threat of lawsuits) from other music businesses who want to be able to market their products and services in the schools as well. This could be avoided if the law clearly permitted school districts to have exclusive contracts with music businesses.

***THE CONTENT OF THE BILL:***

The bill would amend the School Code to permit a school board to enter into an agreement with one or more musical instrument providers giving the provider(s) exclusive rights to market instruments and non-instructional services in school buildings in exchange for providing non-instructional support services for the instrumental music program. The agreement could not, however, prohibit a student from buying an instrument from a vendor of his or her choice or from using the instrument in school activities if the instrument was approved by the school's instrumental music staff or was substantially the same in function and performance as other approved instruments.

The School Code prohibits certain school officials and teachers from acting as agents for authors, publishers, booksellers, or sellers of other school equipment or materials and from receiving gifts or rewards for exercising influence in recommending the purchase or use of schoolbooks, apparatus, or furniture. The bill would specify that someone who entered into a contract with a musical instrument provider as described above would not as a result be considered an agent of the instrument provider.

MCL 380.1805

***FISCAL IMPLICATIONS:***

There is no information at present.

***ARGUMENTS:***

***For:***

There can be significant advantages to a school district and its music programs from entering an exclusive contract with a music business. By allowing that business to market its products and services in the schools, a district can get discounts in return, as well as many useful support services, from public relations to instrument repair. Further, parents and students are saved the trouble of seeking out the instruments themselves, perhaps buying inadequate or non-standard ones. Buying or renting through a provider at the school allows for the proper selection and fitting of instruments. This bill would protect exclusive arrangements from the threat of lawsuits. Such threats, with the prospect of school district legal fees, just make it more likely music programs could be cut further. At the same time, the bill would allow parents and students to obtain an instrument anywhere provided it met the standards of the music program. (It should be noted that it simply permits school boards to enter such agreements; it does not require them. A

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district also could enter into agreements with more than one instrument vendor.)

***Against:***

The bill could be described as anti-competitive as it would permit a school board to grant a particular provider of instruments with an exclusive right to market instruments in the schools, which would give that business a substantial marketing advantage over competitors. No standards are provided for making such selections or for determining whether an instrument bought elsewhere would be acceptable. If there are numerous competent instrument providers in a school district, perhaps parents and students should be informed. In some very large districts, moreover, decisions of this kind might be better made at the regional or building level.

***POSITIONS:***

A representative of the Michigan School Band and Orchestra Association testified in support of the bill before the House Education Committee. (6-15-93)

A representative of the Michigan Education Association indicated support for the bill to the House Education Committee. (6-15-93)