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## NO UNIONS FOR SCHOOL “SUPERVISORY” EMPLOYEES, “CONFIDENTIAL ASSISTANTS”

**Senate Bill 663 as passed by the Senate  
First Analysis (10-21-99)**

**Sponsor: Sen. Loren Bennett  
House Committee: Employment Relations,  
Training, and Safety  
Senate Committee: Education**

### ***THE APPARENT PROBLEM:***

According to the Detroit Schools Chief Operating Officer David Adamany, appointed under the gubernatorial reform initiative, one of the problems facing attempts to reform the Detroit school district is that because most Detroit school principals and other administrators are unionized, getting rid of poor administrators is too slow and cumbersome a process. Legislation has been introduced to address this problem.

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

The bill would amend the Public Employment Relations Act (PERA), which governs public employees, to exclude from the definition of “public employee” – and thus from the act’s provisions – superintendents, assistant superintendents, chief business officials, principals, assistant principals, “confidential assistants” to public school administrators, “or other supervisory employees” of a school district, an intermediate school district, or a public school academy. In other words, the bill would ensure that the Michigan Employment Relations Commission (MERC) could not force any public school employer to bargain with these employees even if the employees did organize.

The bill also contains language stating that the exception applying to public school administrators or confidential assistants to public school administrators would not “prohibit a public school employer or its designee from having informal meetings with public school administrators or confidential assistants to discuss wages and working conditions.”

MCL 423.201

### ***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill as passed by the Senate would have no fiscal implications for state or local governments. (10-4-99)

### ***ARGUMENTS:***

#### ***For:***

Proponents of the bill argue that it is needed in order to speed reform in the Detroit school system by expediting the firing of bad administrators. They point out that only 43 out of over 18,000 Detroit school district employees are not represented by unions, and that Detroit, unlike most other schools districts in the state, is unusual in having its public school administrators – including principals and assistant principals – organized for collective bargaining. As a result, proponents argue, it is difficult, if not impossible, to fire bad administrators, and, in the case of the Detroit school district, this is a major obstacle in the reform of the Detroit school district. Should the bill be enacted, a reported 1,000 current employees of the Detroit school district that currently are unionized would fall under the proposed definition of “public school administrator,” so that the bill would help to level the playing field between labor and management. Administrators should be required to earn and keep their positions based on their success in providing an appropriate work and learning environment for teachers and students through their ability to manage their schools well. The bill would do this, so that good administrators would not have problems in obtaining appropriate contracts from their districts without collective bargaining, while poor administrators might find that they would have to improve their performance in order to get their contracts renewed.

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Furthermore, proponents argue that administrators, as management personnel, should not be allowed to unionize, that management needs to be unified and that administrators should not be on both sides of the collective bargaining process. Proponents also argue that the bill would bring the ratio of unionized to non-unionized employees into a ratio more closely approximating that of other local governments in the Detroit metro area, and that it would simply parallel the National Labor Relations Act, which prohibits certain supervisors from unionizing. Some proponents of the bill also reportedly argue that, in addition to allowing the expeditious removal of bad public school administrators, especially in Detroit, the bill also would facilitate the important goal of reducing the overall number of administrators in public schools in the state.

***Against:***

The bill, by itself, doesn't adequately address the problem raised. In order to really ensure that poor public school supervisors could be fired expeditiously, section 1229 of the school code (MCL 380.1229) needs to be repealed, as an earlier version of the bill would have done. Under this section of the school code, if a superintendent of a school district believes that a school administrator is not performing adequately, the superintendent can give the administrator 60 days' notice that his or her contract will be terminated at the end of the contract (reportedly, initially for a three-year period and then annually). Then, if the administrator believes that his or her contract termination was arbitrary or capricious, the administrator can appeal both to the school board and to the courts. This can be a burdensome and time-consuming process for the school district, and needs to be eliminated.

***Response:***

The burden of proof, if an administrator who is notified that he or she will be terminated at the end of his or her contract decides to appeal the decision, lies with the particular administrator to prove that the superintendent's decision is, in fact, arbitrary or capricious. In the particular case of Detroit, it seems highly unlikely that the newly-appointed school board would not support any such decision on the part of the superintendent of schools. And, reportedly, there has not been one case in Michigan where the courts have second-guessed a school board and overturned that board's decision to uphold its superintendent's decision to terminate an administrator. To eliminate this section of the school code would be to eliminate the due process protections currently available to such employees.

***Against:***

Opponents of the bill respond to the arguments offered for the bill as follows:

\*\* Current Michigan law already mirrors federal law (that is, the National Labor Relations Act) by prohibiting management-type employees who exercise independent discretion and judgment (such as in the areas of hiring, transferring, or firing) from organizing into collective bargaining units. The bill would go far beyond the NLRA by actually prohibiting the Michigan Employment Relations Commission from even making decisions concerning which management job titles do and do not exercise this kind of discretionary, independent decision making.

\*\* Since school districts already have the power, under the school code, to terminate poor administrators, the bill would not, in fact, address the purported problem, namely, an inability to get rid of poor administrators. However, what the bill would do would be to eliminate the right of a significant number of public school employees to collectively bargain for wages and working conditions. That is, the bill would diminish democracy in the workplace by eliminating the right of people who have voted to join an organization to represent them in collective bargaining in negotiations over wages and conditions of employment. In fact, many opponents of the bill conclude that since current law already provides for the dismissal of poor administrators and since the bill's effect would be to eliminate unions in 110 school districts across the state, the real intent of the bill is "union busting," and a first move towards making Michigan a "right to work" state.

\*\* The bill as passed by the Senate is much broader than as introduced and goes beyond the stated problem with school administrators. As introduced, the bill would have applied only to persons employed as executives (as defined by the MERC) and persons "whose primary responsibility [was] administering instructional programs of a school district, intermediate school district, or public school academy." However, the bill as passed by the Senate substitutes a definition of "public employee" that would exclude all "supervisory" employees, not just those whose primary responsibility was administering instructional programs. That is, as passed by the Senate, the bill would eliminate not just school superintendents and principals from being able to collectively bargain, it also would eliminate collective bargaining for such non-instructional school employees as food service

supervisors, transportation (such as bus driver) supervisors, and maintenance (janitorial) supervisors, all of whom currently are represented by a number of different unions in the collective bargaining process. In addition, by adding that "confidential assistants" to public

school administrators would not qualify under PERA as public employees, the bill would eliminate the ability of thousands of school secretaries in the state to join unions to represent them in collective bargaining (since virtually all school administrators' secretaries would fall under this category of "confidential assistant"). Again, by expanding the bill to include such employees and their unions, many opponents of the bill conclude that the bill's true intent is not to facilitate the firing of poor administrators but to begin the process of eliminating unions.

***Against:***

The bill contains unnecessary language that could be eliminated. The Senate amendment to the bill that added "confidential assistants" to public school administrators to the provision excluding public school administrators from PERA's provisions also specified that "This exception [would] not prohibit a public school employer or its designee from having informal meetings with public school administrators or confidential assistants to discuss wages and working conditions." But PERA already does not prohibit such "informal meetings," and this superfluous language should be eliminated for clarity.

***POSITIONS:***

The Michigan Chamber of Commerce supports the bill. (10-20-99)

The Detroit Regional Chamber of Commerce supports the bill. (10-20-99)

Representatives from the following groups indicated support of the bill (10-20-99):

\*\* The Michigan Association of School Administrators

\*\* The Society for Excellence in Schools

The Michigan State AFL-CIO opposes the bill. (10-20-99)

The Michigan Education Association opposes the bill. (10-20-99)

The Michigan-American Federation of School Administrators opposes the bill. (10-20-99)

The International Operating Engineers Union Local 547 opposes the bill. (10-20-99)

The Michigan Building and Construction Trades Council opposes the bill. (10-20-99)

The Michigan Counseling Association opposes the bill. (10-20-99)

Representative from the following groups indicated opposition to the bill (10-20-99):

\*\* The American Civil Liberties Union

\*\* The United Auto Workers – International Union

\*\* The Organization of School Administrators and Supervisors

\*\* The Michigan School Counselor Association

Analyst: S. Ekstrom

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.