

## EDUCATIONAL INSTRUCTION ACCESS ACT

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**Senate Bill 249 (passed by the Senate as S-1)**

**Sponsor: Sen. Mike Shirkey**

**House Committee: Education Reform**

**Senate Committee: Education**

**Complete to 6-6-17**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

Senate Bill 249 would create a new Educational Instruction Access Act, which would prohibit local governmental bodies from:

- Adopting, enforcing, or administering **an ordinance, local policy, or local resolution** that prohibits property sold, leased, or transferred by a local body from being used for any lawful educational purpose by an educational institution or private school. (However, this would not apply to a zoning ordinance adopted under the Michigan Zoning Enabling Act or the administrative review of a site plan as provided in Section 1263(4) of the Revised School Code.)
- Imposing a **deed restriction** that prohibits property being sold, leased, or transferred by the local body from being used for any lawful educational purpose by an educational institution or private school. Any such deed restriction in effective on the effective date of the bill would be void.
- **Refusing to sell, lease, or rent** the property to an educational institution or private school solely because the entity intends to use the property for an educational purpose, as long as the purpose would be lawful.

The bill would provide penalties for violation of the Act.

The bill also specifies that a local governmental body is not required to sell, lease, or rent the property to an educational institution or school solely because the institution or school intends to use the property for an educational purpose. Further, a local body is not required to provide special notice of property offers to an educational institution or school and is not required to provide a right of first refusal to an educational institutional or school.

While this bill would create a new dedicated act, the prohibitions contained in the bill are largely included in the Revised School Code at present. MCL 380.1260 provides the following:

- (1) Unless approved by the state board, a school board or intermediate school board **shall not impose any deed restriction prohibiting, or otherwise prohibit**, property sold or transferred by the school board or intermediate school board from

being used for any lawful public education purpose. Any deed restriction or other prohibition in effect as of the effective date of this subsection is void.

(2) If a school board or intermediate school board offers property of the school board or intermediate school board for lease or rent, the school board or intermediate school board **shall not refuse to lease or rent the property to a person solely because the person intends to use the property for an educational purpose**, if the intent of the person is to use the property for a lawful educational purpose.

However, the bill would add an **enforcement mechanism** to these rules, by instituting relief, as well as penalties, in the case of a violation.

If a local governmental body is allegedly not complying with the Act, the Attorney General, prosecuting attorney of the county in which the local governmental body serves, or educational institution or private school aggrieved by the local body may provide written notice of noncompliance to the local body. Then, if the local body fails to cure the noncompliance within 30 days after receiving the written notice, the attorney general, county prosecuting attorney, or aggrieved educational institution or school could begin a civil action to compel compliance or enjoin further noncompliance with the Act.

This action for injunctive relief may be commenced in the circuit court in any county in which the local body serves. (The educational institution or private school need not post security—typically surety bond or cash—as a condition for obtaining a preliminary injunction or a temporary restraining order).

If the educational institution or private school is successful in obtaining relief, the entity may recover court costs and reasonable attorney fees for the action.

### **Definitions**

***Educational institution*** means any of the following:

- A school district, intermediate school district (ISD), or a public school academy (PSA, or charter school), as defined in the Revised School Code.
- A community college established under the Community College Act of 1966.

***Local governmental body*** means any local government or its subdivision, including, but not limited to, a city, village, township, county, or educational institution; a local public authority, agency, board, commission, or other local governmental, quasi-governmental, or quasi-public body; or a public body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivision.

***Private school*** means a private, denominational, or parochial school.

## **FISCAL IMPACT:**

Senate Bill 249 would have an indeterminate fiscal impact on the State and local units of government.

The fiscal impact of prohibiting local units of government from including restrictions on educational use when selling, leasing, or renting property would depend on the real estate market for comparable property. The bill could create enforcement costs for state and local prosecutors and litigation costs for local units of government that do not comply with the proposed statute.

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