

Legislative Analysis



EDUCATIONAL INSTRUCTION ACCESS ACT

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Senate Bill 249 (reported from House committee without amendment)

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

Sponsor: Sen. Mike Shirkey

House Committee: Education Reform

Senate Committee: Education

(Public Act 98 of 2017)

Complete to 6-12-17

BRIEF SUMMARY: Senate Bill 249 would prohibit local units of government from refusing to sell or lease property to an educational institution or private school or from using deed restrictions or ordinances or local policies to prevent such selling or leasing. It would mimic similar provisions for schools in the Revised School Code in a new "Educational Instruction Access Act" and would prescribe penalties for violation of the Act.

FISCAL IMPACT: Senate Bill 249 would have an indeterminate fiscal impact on the state and on 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.

THE CONTENT OF THE BILL:

Senate Bill 249 would create a new Educational Instruction Access Act, which would prohibit local governmental bodies, including school districts, 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

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.

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.

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

HOUSE COMMITTEE ACTION:

The members of the House Education Reform committee reported out the Senate-passed version of SB 249 without amendment.

ARGUMENTS:

For:

Proponents argued that facilities are often the biggest issue when opening new schools, and this bill could help ensure that obtaining property is not a barrier to opening a new charter school (or private school). If existing publicly owned facilities could accommodate a new school, local units of government should not be able to prohibit their sale to an educational entity, or tear them down, rather than selling or leasing them to the charter school. Currently, the Revised School Code prohibits a school board or intermediate school board from imposing these policies or deed restrictions; this legislation would also extend that prohibition to other local governmental bodies, so that communities are not able to effect an end run around selling or leasing to charter schools.

In the case of school buildings, these facilities were constructed and financed by taxpayers for educational purposes; this bill would allow them to continue to be used for that purpose. Traditional public schools and local governmental bodies may wish to restrict the sale to for-profit or nonprofit charter schools, as charters would compete for the students attending traditional schools. However, it is not for those entities to limit the educational opportunities and choices for students in the community.

Against:

Opponents of the bill argued, however, that because the properties in question were funded by taxpayer dollars, the local governmental body should seek to ensure that the taxpayers are made whole—to the extent possible—by the sale of the property. In some instances, charter schools are able to negotiate extremely low prices for the property, when it would make the most fiscal sense for the community to tear down the building or put it to more profitable use. After all, the local unit may be able to collect additional property taxes if the property is used for commercial or residential purposes, whereas charter schools are exempt from some property taxes.

Additionally, opponents argued that the bill is just another instance in which charter public schools receive the benefits of operating as public schools, without many of the difficulties faced by traditional public schools. The school boards of traditional public schools are chosen by the voters and held publicly accountable for their decisions; the boards of charter schools are chosen by the charter school authorizer, who has sole discretion to determine that board members are qualified and serving the best interests of the school and students.

While traditional and charter schools receive the same per pupil funding, traditional schools must stretch that funding to pay into the retirement system for their teachers; most charter schools do not offer retirement benefits. Whereas traditional public schools do not compete with one another over students, and must be geographically spread out in such a way as to accommodate all students, a charter school may start next door to a traditional school and begin siphoning off students. Should we give charter schools yet another advantage, as this legislation would do?

POSITIONS:

A representative of the Michigan Association of Public School Academies testified in support of the bill. (6-12-17)

The following organizations indicated support for the bill:

- Great Lakes Education Project (6-8-17)
- Michigan Catholic Conference (6-8-17)
- Michigan Association of Non-Public Schools (6-8-17)
- Michigan Council of Charter School Authorizers (6-8-17)

The following organizations indicated opposition to the bill:

- Michigan Townships Association (6-8-17)
- Michigan Association of School Boards (6-8-17)
- Michigan Association of School Administrators (6-8-17)

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