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BILL ANALYSIS



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Senate Bill 249 (Substitute S-1 as reported)  
Sponsor: Senator Mike Shirkey  
Committee: Education

Date Completed: 5-18-17

### **RATIONALE**

Under the Revised School Code, a school board may not prohibit, or impose any deed restriction prohibiting, property sold or transferred by the board from being used for any lawful public education purpose, except with approval of the State Board of Education. The Code also provides that if a school board offers property for lease or rent, the board may not refuse to lease or rent the property to a person solely because the person intends to use it for a lawful educational purpose. However, public schools can transfer property or buildings to another local unit of government and that local unit can refuse to sell, lease, or rent the property to another entity on the grounds that the prospective owner would use it for educational purposes. This can prevent charter schools and private schools from acquiring property and using facilities constructed to meet the specific needs of an educational organization. Some people believe that it is inappropriate to prevent property designed with taxpayer money for use as educational facilities from being used for educational purposes. To address this concern, it has been suggested that when a local unit of government or school offers property for sale or lease, it should be subject to the same types of restrictions as the School Code imposes on school boards.

### **CONTENT**

**The bill would create the "Educational Instruction Access Act" to limit the powers of local government bodies regarding the sale, transfer, lease, or rental of property for educational purposes.**

Specifically, a local governmental body offering property for sale, lease, or rent would be prohibited from refusing to sell, lease, or rent that property to an educational institution or private school solely because it intended to use the property for a lawful educational purpose.

A local government body offering property for sale, lease, or rent would not be required to sell, lease, or rent the property to an educational institution or private school solely because it intended to use the property for a lawful educational purpose. A local governmental body would not be required to provide an educational institution or private school with special notice of property offers or a right of first refusal.

The proposed Act also would prohibit a local governmental body from adopting, enforcing, or administering an ordinance, local policy, or local resolution, or imposing any deed restriction, that would prohibit property sold, leased, or transferred by that local governmental body from being used for a lawful educational purpose by an educational institution or private school. Any such deed restriction in effect on the effective date of the Act would be void.

The prohibition regarding an ordinance, policy, or resolution would not apply to a zoning ordinance adopted by the local government body under the Michigan Zoning Enabling Act, or to the administrative review of a site plan as provided in the Revised School Code.

If a local governmental body did not comply with the proposed Act, a civil action could be brought against it to compel compliance or to enjoin further noncompliance. The action could be commenced by the Attorney General, the prosecuting attorney of the county in which the local governmental body served, or the educational institution or private school aggrieved by the local governmental body. The action would have to be commenced in the circuit court, and venue would be proper in any county in which the local governmental body served. An educational institution or private school commencing an action would not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order. If successful in obtaining relief in the action, the educational institution or private school could recover court costs and reasonable attorney fees.

As used in the proposed Act, "educational institution" would mean a school district, an intermediate school district, a public school academy, or a community college.

"Local governmental body" would mean any local government or its subdivision, including 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" would mean a private, denominational, or parochial school.

## **BACKGROUND**

According to the Center for Research on Education Outcomes (CREDO), an independent program and policy analysis group at Stanford University, charter schools are growing and expanding across the nation.<sup>1</sup> Bellwether Education Partners, a national nonpartisan education consulting firm, has observed that Michigan policies have aggressively expanded school choice options over the past 25 years and that Michigan has one of the nation's largest charter sectors: about 10% of Michigan students attend public charter schools. This is the sixth largest enrollment in charter schools in the country. The number of Michigan charter students has grown dramatically and in recent years has been growing at 5% annually. More students attend charter schools than public school districts in Detroit and Flint. Michigan also has a higher percentage of charter schools run by for-profit entities than any other state.<sup>2</sup>

In 2014, the Detroit Public School (DPS) district transferred 77 vacant school buildings and lots to the City of Detroit to erase \$11.6 million in debt. The Detroit City Resolution that executed this transfer specifies that for five years after the approval the resolution, the City of Detroit may not sell any of the properties to a public school academy (charter school) that directly competes with a DPS school located within one mile of the respective property that the City wishes to sell.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would protect the original purpose for which tax dollars have been spent. Many public facilities were designed and constructed, at taxpayer expense, with infrastructure to meet the specific needs of schools. Obstructing an educational organization from using these facilities as they were designed to be used disregards the original wishes of the taxpayers. While the bill would not preclude the sale of school facilities to commercial entities, it would prevent local units from prohibiting the sale or lease of property for educational use.

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<sup>1</sup> CREDO, "Charter School Performance in Michigan", <http://credo.stanford.edu>, 2013.

<sup>2</sup> O'Keefe, Bonnie; Pennington, Kaitlin; Mead, Sara, "Michigan Education Policy Fact Base", <http://bellwethereducation.org>, 1-30-2017.

**Response:** Local taxpayers already direct the decisions about the use of facilities bought with public funds through their local governments. The bill would remove the ability of local governments, school districts, and municipalities to make decisions for their communities.

### **Supporting Argument**

Some local governments that have acquired facilities that were originally meant to be used as schools have refused to sell the property to commercial entities because those entities would compete with the local school district. One big obstacle for charter schools is finding access to facilities and buildings with the proper space and infrastructure to accommodate a school in a location that can serve a particular community. There are many existing school buildings that meet these criteria but are not being used. Denying charter schools access to these structures impairs their ability to compete with public school districts.

### **Opposing Argument**

The bill represents a solution in search of a problem. School districts are all already prohibited from placing deed restrictions on property that would prohibit it from being used for a lawful educational purpose, or refusing to sell or lease property that will be used for that purpose. If a school is attempting to right-size its facilities, and decides to close a building, the bill would allow a competing school to open up right next door. If charter schools in Michigan are supposed to promote innovation through competition, then the law should allow a school district to remain competitive and free to decide what to do with a building it owns based on how the district and the community will be affected. The bill would create an unnecessary regulation, hindering districts' ability to make competitive decisions and giving charter schools an unfair advantage over local school districts.

### **Opposing Argument**

The bill would create an unfair burden on local governmental units and local taxpayers. The bill includes no limit on the amount of time after a local government or school sold property that an aggrieved educational institution or private school would have to bring an action against the local government or school. Such an action could be brought years after property had been sold. A local government unit has a fiduciary duty to the taxpayers to perform a thorough but timely appraisal process and must be free to act under a time frame that allows it to adhere to that duty. The bill also would allow an educational institution or private school that succeeded in obtaining relief in an action against a local government unit to recover court costs and reasonable attorney fees for the action. This would not be in the best interest of the taxpayers, who would be ultimately responsible for these costs and fees.

Legislative Analyst: Nathan Leaman

### **FISCAL IMPACT**

The bill would have an unknown fiscal impact on local government. Similar language already in the Revised School Code prohibits a local school district or intermediate school district (ISD) from applying deed restrictions that would prevent property sold by the district from being used for a lawful educational purpose, unless a district obtains permission from the State Board of Education. By including local and intermediate school districts in the proposed Educational Instruction Access Act, the bill would eliminate the option for a local school district or ISD to seek approval from the State Board of Education for a deed restriction that limits educational use. In addition, other types of local governments would become subject to a prohibition on deed restrictions that would limit educational use. The fiscal impact of the bill would depend on local policies, the specific characteristics of property that might be for sale, and the market for similar property for sale in an area. A local government that violated the proposed law could incur increased costs for legal fees and court costs.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.