



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 249 (as enacted)
Sponsor: Senator Mike Shirkey
Senate Committee: Education
House Committee: Education Reform

PUBLIC ACT 98 of 2017

Date Completed: 12-8-17

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 could 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 could 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 was 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 created 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 is prohibited from refusing to sell, lease, or rent that property to an educational institution or private school solely because it intends to use the property for a lawful educational purpose.

The Act also prohibits a local governmental body from adopting, enforcing, or administering an ordinance, local policy, or local resolution, or imposing any deed restriction, that prohibits 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 is void.

The prohibition regarding an ordinance, policy, or resolution does 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.

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

If a local governmental body allegedly is not complying with the Act, the Attorney General, the prosecuting attorney of the county in which the local governmental body serves, or the educational

institution or private school aggrieved by the local governmental body may provide it with written notice of noncompliance. If the local governmental body fails to cure the noncompliance within 30 days after receiving the notice, the Attorney General, prosecuting attorney, or educational institution or private school may commence a civil action to compel compliance or enjoin further noncompliance. The civil action must be commenced in the circuit court, and venue is proper in any county in which the local governmental body serves. An educational institution or private school commencing an action is not 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 may recover court costs and reasonable attorney fees.

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

"Local governmental body" means 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" means a private, denominational, or parochial school.

The Act took effect on July 13, 2017.

MCL 123.1041-123.1047

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.¹ 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 considerably 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.²

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 protects 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 does not preclude

¹ CREDO, "Charter School Performance in Michigan", 2013.

² O'Keefe, Bonnie; Pennington, Kaitlin; Mead, Sara, "Michigan Education Policy Fact Base", 1-30-2017.

the sale of school facilities to commercial entities, it does prevent local units from prohibiting the sale or lease of property for educational use.

Response: Local taxpayers already direct the decisions about the use of facilities bought with public funds through their local governments. The bill removes 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 represented a solution in search of a problem. School districts were 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 will 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 creates 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 creates an unfair burden on local governmental units and local taxpayers. The bill allows an educational institution or private school that succeeds in obtaining relief in an action against a local government unit to recover court costs and reasonable attorney fees for the action. This will not be in the best interest of the taxpayers, who will be ultimately responsible for these costs and fees.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill will have an unknown fiscal impact on local government. Similar language 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 Educational Instruction Access Act, the bill eliminates 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 are now subject to a prohibition on deed restrictions that would limit educational use. The fiscal impact of the bill will 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 violates the law may 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.