

Legislative Analysis



PROHIBITION OF DEED RESTRICTIONS REGARDING EDUCATIONAL PURPOSES

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Senate Bill 702 (S-3) as passed by the House
Sponsor: Sen. Philip Pavlov
House Committee: Education Reform
Senate Committee: Education
Complete to 1-12-18

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

(Enacted as Public Act 7 of 2018)

BRIEF SUMMARY: Senate Bill 702 would amend Public Act 98 of 2017¹—the Educational Instruction Access Act—which took effect July 13, 2017. The Act prohibits a school district or local government from refusing to sell property to a charter or public school or from taking other actions designed to keep those entities from using the property for a legitimate educational purpose. SB 702 is intended to expand upon that effort and to prohibit deed restrictions on school buildings more expressly than the initial Act.

FISCAL IMPACT: Senate Bill 702 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact of more explicitly prohibiting local units of government from including restrictions on educational use (in the negative and in the affirmative) when selling, leasing, or renting property would depend on the real estate market for comparable property. The bill could create additional enforcement costs for state and local prosecutors and litigation costs for local units of government that do not comply with the proposed statute.

THE APPARENT PROBLEM:

Public Act 98 of 2017 and Senate Bill 702 are understood to address an ongoing situation in Detroit. Detroit Prep Charter Academy agreed to purchase a school building formerly owned by the Detroit Public Schools (now the Detroit Public Schools Community District), with the closing to take place in October of 2017. Although DPS sold the school in June of 2014, it had placed a deed restriction on the property, specifying that it could only be developed for residential use until 2024, with any exceptions to be approved by DPS. PA 98 was enacted in July of 2017 to declare existing deed restrictions void, and a court case is proceeding to determine its effect on the DPCA/DPSCD situation. SB 702 is understood as an attempt to clarify the intent of PA 98.

THE CONTENT OF THE BILL:

Public Act 98 of 2017 prohibits local governments from imposing deed restrictions that prohibit property from being used for any lawful educational purpose by an educational institution or private school. Senate Bill 702 would further prohibit any deed restriction or

¹ House Fiscal Agency analysis of PA 98 of 2017 (SB 249) as enacted:
<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0249-8F0F91A8.pdf>

affirmative use deed restriction that affirmatively allows for only one or more specified uses or purposes that do not include an educational use or purpose.

(This is understood to address the situation described in *The Apparent Problem*, above, where the dispute is not over a negative covenant—which would prohibit the property’s use for certain activities—but an affirmative covenant—which states that the property may only be used for certain purposes, in this case residential.)

Additionally, PA 98 incorporated provisions found in Section 1260 of the Revised School Code into stand-alone legislation. The bill would repeal Section 1260.

MCL 123.1045 (amended) and MCL 380.1260 (repealed)

HOUSE COMMITTEE ACTION:

The House Education Reform Committee reported the Senate-passed version of SB 702 without amendment.

ARGUMENTS:

For:

Proponents of the bill argue that a school building initially funded by taxpayer dollars should be allowed to continue to serve the community as a home to a growing, thriving public charter school. As it is, the building has been abandoned for about 9 years, and is reportedly stripped of pipes and has holes in the roof. Surely a neighborhood school serves a better purpose. Moreover, proponents argued that additional taxpayer dollars are being wasted to extend a court fight over the future of the building. Why, they ask, when the legislature enacted PA 98 to declare deed restrictions void, would the Detroit Public Schools Community District continue to flout the law?

Supporters argue 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.

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 argue, 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 argue 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.

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 the legislature really put its thumb on the scale in favor of charter schools, as opponents say this legislation would do?

POSITIONS:

A representative of Detroit Prep Charter Academy testified in support of the bill. (1-11-18)

A representative of the Michigan Association of Public School Academies testified in support of the bill. (1-11-18)

The following organizations support the bill.

Michigan Association of Nonprofit Schools (1-11-18)

Michigan Catholic Conference (1-11-18)

Great Lakes Education Project (1-11-18)

Michigan Freedom Fund (1-11-18)

The following organizations oppose the bill

Michigan Association of School Boards (1-11-18)

Michigan Association of School Administrators (1-11-18)

Wayne RESA (1-11-18)

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