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Senate Bill 702 (S-3) as passed by the Senate
Sponsor: Sen. Phillip Pavlov
House Committee: Education Reform
Senate Committee: Education
Complete to 1-10-18

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

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.

Specifically, PA 98 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. SB 702 would further prohibit any deed restriction or 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 *Background*, below, 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MCL 123.1045 (amended) and MCL 380.1260 (repealed)

BACKGROUND:

PA 98 of 2017 and SB 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

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>

determine its effect on the DPCA/DPSCD situation. SB 702 is understood as an attempt to clarify the intent of PA 98.

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.

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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.