



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 702 (as enacted)  
Sponsor: Senator Phil Pavlov  
Senate Committee: Education  
House Committee: Education Reform

**PUBLIC ACT 7 OF 2018**

Date Completed: 3-5-19

**RATIONALE**

Previously, under the Revised School Code, a school board could 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 provided that if a school board offered property for lease or rent, the board could not refuse to lease or rent it to a person solely because the person intended to use it for a lawful educational purpose. In addition, the Educational Instruction Access Act imposed similar prohibitions on local governmental bodies, which included school districts. However, there was concern that these provisions did not apply to a deed restriction placed by an emergency manager or a deed restriction approved by the State Board of Education. Some believed that governmental bodies should be more explicitly barred from imposing those types of deed restrictions.

**CONTENT**

**The bill amended the Educational Instruction Access Act to prohibit any deed restriction or affirmative use deed restriction on property sold by a local governmental body that affirmatively allows for only one or more specified uses or purposes that do not include an educational use or purpose.**

The bill took effect January 26, 2018.

The bill repealed Section 1260 of the Revised School Code, which provided that, unless approved by the State Board of Education, a school board or intermediate school board could 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.

Under the Educational Instruction Access Act, 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 that educational institution or private school intends to use the property for a lawful educational purpose. The Act also prohibited a local governmental body from imposing a 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 deed restriction in effect on the Act's effective date (July 13, 2017) was void.

Under the bill, instead, a local governmental body may not impose, enforce, or apply any deed restriction that expressly, or by its operation, prohibits property sold, leased, or transferred by the local governmental body from being used for any lawful educational purpose by an educational institution or private school. Any deed restriction or affirmative use deed restriction that affirmatively allows for only one or more specified uses or purposes that does not include an educational use or purpose is prohibited. Any deed restriction or affirmative use deed restriction

in effect on January 26, 2018, the bill's effective date, that prohibits or does not permit property previously used for an educational purpose from being used for any future educational purpose is void.

MCL 123.1045

## **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**

Public Act 98 of 2017 enacted the Educational Instruction Access Act to limit the powers of local governmental bodies, including school districts, regarding the sale, transfer, lease, or rental of property for educational purposes. Despite that law, which took effect in July 2017, there appeared to be a situation in Detroit where a deed restriction prevented the sale of property to a public school academy, or charter school. When the Detroit Public Schools (DPS) sold a closed school building to a private real estate company in 2014, the deed apparently included a restriction that the property be used only for residential housing for the next 10 years. In August 2017, Detroit Prep, a charter school, attempted to purchase the property to use as a school, but required a clean title in order get a loan for the purchase. Evidently, however, the DPS Community District (to which the DPS was transferred in 2016) refused to remove the deed restriction from the title.

The Educational Instruction Access Act is designed to ban deed restrictions that prohibit school property from being used for educational purposes, regardless of who originated a deed restriction. The bill ensures that the ban on deed restrictions was properly put into effect, by prohibiting a deed restriction that allows only one or more uses that does not include an educational purpose. The bill also invalidates any existing deed restriction that prevents property formerly used for an educational purpose from being used for that purpose in the future.

Legislative Analyst: Nathan Leaman

## **FISCAL IMPACT**

The bill will have an indeterminate impact on local governments and educational institutions, which would vary based on local policies, the specific contents of affirmative restrictions in place or under consideration, characteristics of individual property, and the market for similar properties in the area.

Fiscal Analyst: Ryan Bergan

SASVA1718\s702ea

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.