



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 702 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Phil Pavlov
Committee: Education

Date Completed: 1-11-18

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. In addition, the Educational Instruction Access Act imposes similar prohibitions on local governmental bodies, which include school districts. However, there is concern that these provisions do not apply to a deed restriction placed by an emergency manager or a deed restriction approved by the State Board of Education. Some believe that governmental bodies should be more explicitly barred from imposing deed restrictions.

CONTENT

The bill would amend 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 allowed for only one or more specified uses or purposes that did not include an educational use or purpose.

The bill also would repeal Section 1260 of the Revised School Code, which provides that, unless approved by the State Board of Education, a school board or intermediate school board may 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 prohibits 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 such deed restriction in effect on the Act's effective date (July 13, 2017) is void.

Under the bill, a local governmental body could not impose, enforce, or apply any deed restriction that expressly, or by its operation, prohibited 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 allowed for only one or more specified uses or purposes that did not include an educational use or purpose would be prohibited. Any such deed restriction or affirmative use deed restriction in effect on the bill's effective date that prohibited or did not permit property previously used for an educational purpose from being used for any future educational purpose would be void.

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 the new law, which took effect in July 2017, there appears to be a situation in Detroit where a deed restriction is preventing 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 requires 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) has 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 would ensure 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 would invalidate 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 would 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: 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.