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ARTICLES

Green Thumbs in the City: Incentivizing Urban Agriculture on Unoccupied Detroit Public School District Land

LYNN BARTKOWIAK SHOLANDER*

INTRODUCTION**

It is no secret that Detroit faces numerous socioeconomic obstacles that significantly affect the daily lives of its residents and the academic performance of its students.¹ After years of industrial decline and movement out of the city,² Detroit features miles of vacant land³ and thousands of abandoned buildings.⁴ Despite its potential for reuse, there is no doubt that much of the unoccupied land will remain vacant,

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** EDITOR'S NOTE: This Article was originally written between September 2012 and March 2013. Apart from a few limited revisions made by the author in January 2014, the content of this Article does not reflect the *numerous* changes that have occurred in the administration of the City of Detroit and DPS since early 2013. Nevertheless, given the vast amount of vacant or unoccupied properties that remain in DPS's possession at the time of publication, the proposal outlined in this Article still remains relevant and tenable.

1. Melanie J. Duda, *Growing in the D: Revising Current Laws to Promote a Model of Sustainable City Agriculture*, 89 U. DET. MERCY L. REV. 181, 185 (2012).

2. *Id.*

3. John Gallagher, *With So Much Space, So Few Options – Detroit's Vast Vacant Lots are a Burden*, DETROIT FREE PRESS (Apr. 1, 2012), available at <http://www.freep.com/article/20120401/NEWS01/204010467/With-so-much-space-so-few-options-Detroit-s-vast-vacant-lots-are-a-burden> (“There is so much empty land today within Detroit’s 139 square miles . . . [that] the city of Paris could fit inside.”). Research shows that almost one-third of Detroit consists of empty land. *Id.*

4. Alex P. Kellogg, *Detroit Shrinks Itself, Historic Homes and All*, WALL ST. J., (May 14, 2010), available at <http://online.wsj.com/articles/SB10001424052748703950804575242433435338728> (In 2010, Data Driven Detroit determined that the City of Detroit encompasses approximately “90,000 abandoned or vacant homes and residential lots.”).

unproductive, and untaxed for years—if not decades—due to the lack of market demand.⁵

Moreover, many portions of the city are “food deserts,” or areas with limited or no access to grocery providers or wholesome produce, due to a lack of retail outlets that offer nutritious foods at affordable prices.⁶ Given the high levels of poverty throughout the city, Detroit students face a high level of “food insecurity.” Eighty-three percent of Detroit Public Schools (DPS) students are eligible to receive free and reduced meals during the school year.⁷ Likewise, 16,000 DPS students qualify for a United States Department of Agriculture (USDA) Anti-Hunger Grant, which provides summer meals to especially impoverished students who depend on school-provided breakfasts and lunches during the school year.⁸

Within this landscape characterized by an abundance of vacant land and scarcity of fresh produce, urban agriculture has steadily increased in recent years.⁹ In 2011, urban farmers operated more than 400 farms and

5. *See id.*

6. *See, e.g.,* MARI GALLAGHER RESEARCH & CONSULTING GROUP, EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN DETROIT 2–3 (2007), available at http://www.marigallagher.com/site_media/dynamic/project_files/1_DetroitFoodDesertReport_Full.pdf [hereinafter MARI GALLAGHER]; Debbie Tropp, *Detroit's Eastern Market: A Food Hub in a Food Desert*, USDA BLOG (Dec. 17, 2010, 3:59 PM), available at <http://blogs.usda.gov/2010/12/17/detroit%E2%80%99s-eastern-market-a-food-hub-in-a-food-desert/>; *Detroit Grocery Stores, 'Food Desert' Myth Examined in Noah Stephens' Photography Survey*, HUFFPOST DETROIT (Oct. 22, 2012, 3:26 PM), available at http://www.huffingtonpost.com/2012/10/22/detroit-grocery-stores-food-desert-noah-stephens_n_2001896.html; Jonathan Oosting, *Data Driven Detroit Debunks Food Desert Myth, Highlights Food Distribution Issues*, MLIVE (Sept. 14, 2011, 8:30 AM), available at http://www.mlive.com/news/detroit/index.ssf/2011/09/data_driven_detroit_dispels_fo.html; *The Food Desert: Food Availability in Detroit*, PEOPLE OF DETROIT, <http://www.thepeopleofdetroit.com/search/label/The%20Food%20Desert%3A%20Food%20Availability%20in%20Detroit> (last visited Nov. 23, 2014).

7. *See Report: Childhood Poverty High in Detroit, but Teen Pregnancy Down*, CBS DETROIT (Jan. 24, 2013, 2:13 PM), available at <http://detroit.cbslocal.com/2013/01/24/report-childhood-poverty-high-in-detroit-but-teen-pregnancy-down/> (“Sixty percent of children in Detroit live in poverty, per the ‘State of Detroit’ report. This represents a 64.7 percent increase in child poverty in the city since 1999.”).

8. Press Release, Detroit Public Schools, Detroit Included in USDA Anti-Hunger Grant to Provide 16,000 Students Access to Summer Food (Mar. 5, 2013), available at <http://detroitk12.org/content/2013/03/05/detroit-included-in-usda-anti-hunger-grant-to-provide-16000-students-access-to-summer-food/>.

9. *See* John Gallagher, *With Their City Shrinking, Many Detroiters Use Empty Lots to Grow Gardens*, DETROIT FREE PRESS (Apr. 9, 2012), available at <http://www.freep.com/article/20120409/BUSINESS06/204090356/With-their-city-shrinking-many-Detroiters-use-empty-lots-to-grow-gardens>; *see also* Marti Benedetti, *The Urban Prairie: Detroit Farms Connect People, Food*, CRAIN'S DETROIT BUS (Aug. 11, 2008, 3:01 AM), available at <http://www.craindetroit.com/article/20080811/DM02/561420797/the-urban-prairie>.

community gardens within the city limits,¹⁰ and, undoubtedly, this number has grown.¹¹ Although legal complications have clouded the success of urban farming in Detroit due to Michigan's Right to Farm Act,¹² many have heralded the potential of urban farming to transform the landscape, including the former mayor of Detroit, Dave Bing.¹³

The current condition of DPS mirrors that of the city. After a chain of school closings due to plummeting enrollment and a related decrease in funding,¹⁴ DPS faced the question of what to do with more than 200 unoccupied properties.¹⁵ Former DPS Emergency Financial Manager Roy Roberts prioritized the sale of these vacant parcels over other uses,¹⁶ but,

10. Kristin Choo, *Plowing Over: Can Urban Farming Save Detroit and Other Declining Cities? Will the Law Allow It?*, A.B.A. J. 43, 49 (2011).

11. In April 2012, Detroit Public Schools commenced the Detroit School Garden Collaborative, which planned to establish 45 gardens on school property. See Press Release, Detroit Public Schools, DPS Kicks Off Initiative to Create 45 School Gardens to Teach Students About Nutrition, Composting, Sustainability and More, While Expanding Access to Fresh Fruits And Vegetables, (Apr. 23, 2012), available at <http://detroitk12.org/content/2012/04/23/dps-kicks-off-initiative-to-create-45-school-gardens-to-teach-students-about-nutrition-composting-sustainability-and-more-while-expanding-access-to-fresh-fruits-and-vegetables/> [hereinafter *DPS Kicks Off Initiative*]. Donald Carter, director of the DGCP, indicated that about twenty gardens were already constructed as of October 31, 2012. See Telephone Interview with Donald Carter, Garden Supervisor, Detroit Public Schools (Oct. 31, 2012) [hereinafter Interview with Donald Carter]. Forty-seven gardens had been installed in DPS schools by August 2013. See Chastity Pratt Dawsey, *DPS Using School Gardens to Promote Curiosity and Healthy Eating*, DETROIT FREE PRESS (Aug. 26, 2013), available at <http://www.freep.com/article/20130826/NEWS01/308260014/Detroit-Public-Schools-school-gardens-learn-eat-healthy>.

12. Gallagher, *supra* note 9; see also MICH. COMP. LAWS ANN. §§ 286.471–474 (West 2013).

13. John Gallagher, *Urban Farms, Gardens, Reforestation All Part of Detroit Works Vision for Remaking City*, DETROIT FREE PRESS (May 8, 2012), available at <http://www.freep.com/article/20120508/BUSINESS06/205080378/Bing-team-is-closing-in-on-Detroit-Works-plan>; see also Lynn Monson, *Garden Spot—Report Touts Ways that Detroit Can Benefit from 'Urban Ag,'* LEGALNEWS.COM (Sept. 27, 2010), available at <http://www.legalnews.com/oakland/698876>.

14. Courtney Williams, *Detroit Public Schools Enrollment Slide Continue: Budget Projects Less than 50,000 Students*, DETROIT FREE PRESS (June 20, 2012), reprinted in, District Administration Magazine, available at <http://www.districtadministration.com/news/detroit-public-schools-enrollment-slide-continues>.

15. See Michael Wayland, *Detroit Public Schools Selling 200 Vacant Buildings, Properties*, MLIVE (May 23, 2012, 4:48 PM), available at http://www.mlive.com/news/detroit/index.ssf/2012/05/vacant_to_valuable_detroit_dev.html.

16. *Id.* (On November 6, 2012, Michigan voters repealed Public Act 4 of 2011 (“the Emergency Financial Manager Law”), generating uncertainty regarding the control that Roy Roberts would retain over DPS policies.); see also Jonathan Oosting, *Michigan Emergency Manager Law: What's Next After Public Act 4 Repeal?*, MLIVE (Nov. 11, 2012 11:30 AM),

like other properties on the market throughout the city,¹⁷ this objective has been largely unsuccessful.¹⁸ In the meantime, this land has remained empty and unused, instead of being leveraged for the benefit of DPS students.

Like the surrounding city, DPS has experienced a surge of urban farming on occupied school properties.¹⁹ While a few schools have maintained gardens or farms on their properties for years,²⁰ DPS demonstrated that urban agricultural education is a priority of the district when it commenced the Detroit School Garden Collaborative (DSGC) in April 2012, pledging to establish gardens at forty-five schools.²¹ However, the supervisor of the program has already discovered that the same lack of funding that afflicts other DPS programs is a significant obstacle for the

available

at

http://www.mlive.com/politics/index.ssf/2012/11/michigan_emergency_manager_law.html
 However, Governor Snyder signed Public Act 436 of 2012, a new emergency financial manager law taking effect March 27, 2013, that appears to leave Roy Roberts' position and policy preferences intact. Paul Egan, *Snyder Signs Emergency Manager Bill; New Law Will Take Effect in Spring*, DETROIT FREE PRESS (Dec. 27, 2012), available at <http://www.freep.com/article/20121227/NEWS06/121227027/Snyder-signs-new-emergency-manager-bill-new-law-will-take-effect-in-spring>; see MICH. COMP. LAWS ANN. §§ 141.1541–1575 (West 2013). The author is not sure whether the new Emergency Financial Manager, Jack Martin, who was appointed in July 2013, holds similar policy preferences. See *Office of Emergency Manager*, DETROIT PUB. SCH., http://detroit12.org/admin/emergency_manager/ (last visited Jan. 6, 2014).

17. Gallagher, *supra* note 3 (Out of 12,356 tax-foreclosed properties offered at the annual sale in 2011, more than half (6,665) were not purchased, “even at the auction’s minimum price of \$500.”).

18. For example, DPS promoted twenty of its vacant properties to potential investors and developers through its “Old Schools, New Uses” event on May 23, 2012. See *Detroit Public Schools Real Estate Conference Looks to Sell Old Buildings, Encourage Redevelopment*, HUFFPOST DETROIT (May 23, 2012, 2:14 PM), available at http://www.huffingtonpost.com/2012/05/23/detroit-public-schools-real-estate_n_1537420.html [hereinafter *Real Estate Conference*]. As of November 11, 2012, 18 of the 20 buildings promoted in May were still listed for sale on the DPS Office of Real Estate website. See *Office of Real Estate*, DETROIT PUBLIC SCHOOLS, available at http://detroit12.org/admin/ppo/plant/real_estate/ (last visited Nov. 11, 2012). However, “[t]he sale and leasing of unused structures has served as a source of revenue for the financially struggling district.” *Real Estate Conference*. Nevertheless, a year and a half after the conference, the market for unoccupied or vacant DPS properties still has not improved significantly: as of January 4, 2013, fifteen of the twenty properties promoted in May 2012 were still available for lease or sale, and total of 112 properties were listed for sale or lease on the DPS Office of Real Estate website. See *Office of Real Estate*, DETROIT PUBLIC SCHOOLS, http://detroit12.org/admin/operations/real_estate/ (last visited January 4, 2013).

19. *DPS Kicks Off Initiative*, *supra* note 11.

20. See, e.g., Michele Owens, *Gardening to Save Detroit*, OPRAH.COM (Apr. 2008), available at <http://www.oprah.com/world/Gardening-in-the-City-Changing-Detroits-Landscape>.

21. *DPS Kicks Off Initiative*, *supra* note 11.

DSGC.²² Nevertheless, gardening programs were established at forty-seven schools by August 2013,²³ demonstrating the ongoing and increasing priority placed on urban farming within DPS.

In light of the pervasive food insecurity that characterizes Detroit and the inability of DPS to sell a significant number of its unused properties, this Article argues that the State of Michigan should utilize its funding powers to provide incentives for DPS to utilize unoccupied land for urban agricultural education in order to provide educational, entrepreneurial, and nutritional benefits to DPS students. Part II of this Article explores the existing agricultural education programs throughout the state and nation, the development of the law underlying urban agriculture in Detroit, and the sources of DPS funding. Part III of this Article focuses on the benefits and liabilities of an agricultural education program and the legal means through which the state may incentivize such a program.²⁴ Finally, Part IV underscores the imperative and practicality of such a program in light of the current condition of the city.

I. BACKGROUND

A. Existing Agricultural Education Programs

There are numerous agricultural education programs throughout the nation. As mentioned above, DPS has commenced or augmented multiple gardening programs through the DSGC.²⁵ Staff volunteers oversee the gardens due to the limited funding available to the program.²⁶ Students are not “paid” for their labor, but the program may fulfill academic credit, service learning, or volunteer requirements.²⁷ The schools utilize the gardens for a variety of purposes, such as supplementing the science curriculum, teaching students how to be entrepreneurs or agriculturalists, encouraging students to grow their own food, introducing students to balanced nutrition, and increasing the amount of fresh produce available to students through the DPS food service.²⁸ The program is funded through a

22. Interview with Donald Carter, *supra* note 11.

23. Dawsey, *supra* note 11.

24. As such, this Article does not focus on the developmental and administrative details of such a program.

25. *DPS Kicks Off Initiative*, *supra* note 11; *see also* Dawsey, *supra* note 11.

26. Interview with Donald Carter, *supra* note 11. The staffing arrangements may have changed since October 2012 (when the author spoke with the garden coordinator).

27. *Id.* (DPS high school students are required to complete a certain number of community development hours as part of the curriculum. However, a few DPS schools are “paying” at-risk kids for attendance, but this is not the norm. Students are paid for the summer program, however.)

28. *Id.*; *see also, e.g.*, David Sands, *Garden Collaborative Program To Offer Hands-On Agricultural Learning at 45 Detroit Public Schools*, HUFFPOST DETROIT (Apr. 4, 2013,

federal grant under the Healthy Hunger-Free Kids Act of 2010²⁹ and “fringe funding” provided by local community groups, but this funding is not sufficient.³⁰

Other agricultural education programs differ in size and scope.³¹ For example, Detroit’s Catherine Ferguson Academy operates a substantial farm, which includes growing produce and raising animals.³² The program utilizes some outside volunteers but limits their involvement during the school day in order to comply with legal restrictions.³³ Alternatively, Texas and California have organized statewide agricultural programs, providing a strong foundation of resources for school gardens.³⁴ For example, California dedicates an entire portion of its School Garden Network website to funding opportunities and resourceful ways in which a school may secure a garden coordinator.³⁵ Texas, on the other hand, provides up to \$2,500 in grants for urban agricultural education programs in qualifying districts that meet specific standards.³⁶ Unlike other

8:09 AM), available at http://www.huffingtonpost.com/2012/04/24/detroit-public-schools-garden-collaborative-program_n_1447181.html; Dawsey, *supra* note 11; *Detroit Garden Collaborative: Farm to School Initiative – Update*, VIMEO (June 5, 2013), available at <http://vimeo.com/67754175> (video produced by the Detroit Public Schools Office of School Nutrition regarding the DSGC).

29. See Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (2010), available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ296/pdf/PLAW-111publ296.pdf>.

30. See Sands, *supra* note 28; see also Interview with Donald Carter, *supra* note 11. Assumedly, unless there has been a significant change since the author’s conversation with Donald Carter in October 2012, the funding remains insufficient without additional resources contributed by the teachers or staff.

31. In the interest of brevity, only a few examples are listed below—many different kinds of programs exist throughout the United States.

32. Owens, *supra* note 20.

33. Email from Dana Applebaum, Farm Educator, Catherine Ferguson Academy, to author (Sept. 18, 2012, 7:58 EST) (on file with author).

34. See *infra* notes 35–36 and accompanying text.

35. *Funding School Gardens*, CAL. SCH. GARDEN NETWORK, <http://www.csgn.org/funding-school-gardens> (last visited Apr. 1, 2013); see also, e.g., *Applying and Fees*, FARM SCH. NYC, <http://www.justfood.org/farm-school-nyc/applying-fees-0> (last visited Apr. 1, 2013) (Farm School NYC represents a completely different programming option that offers individual courses and a certification program to all NYC residents based on a “sliding scale fee schedule.”); *About Us*, FARM SCH. NYC, <http://www.justfood.org/about-us> (last visited Apr. 1, 2013). This program does not take place during the school day, and it appears to target adults, not school-aged children. *Id.*

36. *Urban Schools Agricultural Grant Program*, TEX. DEP’T OF AGRIC., <https://texasagriculture.gov/GrantsServices/TradeandBusinessDevelopment/UrbanSchoolsAgriculturalGrantProgram.aspx> (last visited Apr. 1, 2013). The grant program also provides ideas to educators and a series of online resources for agricultural education. See *Urban Schools Grant Program Ideas*, TEX. DEP’T OF AGRIC., <http://www.texasagriculture.gov/GrantsServices/TradeandBusinessDevelopment/UrbanSchoolsAgriculturalGrantProgram/UrbanSchoolsGrantProgramIdeas.aspx> (last visited Apr. 1,

educational programs, DPS is in a unique position to significantly expand its program onto unoccupied DPS land and launch agricultural initiatives that require more acreage than that available on occupied schoolyards. However, a series of legal complexities could apply to such an expansion.

B. *Recent Shifts in Michigan Law Regarding Urban Agriculture*

Until recently, urban farming in Detroit was wrought with uncertainty due to contradictions and complications in the law. Although urban farmers have faced many challenges due to these obstacles and ambiguities, shifts in the political climate suggest improvement in the future.³⁷

1. *Detroit's Urban Farming Ordinance and the Exemption of Schools from Local Zoning Ordinances*

In spite of Detroit's avowed interest in utilizing urban farming as a strategy for revitalization,³⁸ the city was previously unwilling to recognize and sanction urban farming, forcing farmers to operate "under the radar" and resulting in an array of conflicts.³⁹ In 2013, however, Detroit's City Planning Commission promulgated an ordinance that legalizes and regulates urban farming.⁴⁰ The Detroit City Council approved the ordinance on March 12, 2013, with an effective date of April 15, 2013.⁴¹

2013); *Agriculture Education Online Resources*, TEX. DEP'T OF AGRIC., <http://www.texasagriculture.gov/GrantsServices/TradeandBusinessDevelopment/UrbanSchoolsAgriculturalGrantProgram/AgricultureEducationOnlineResources.aspx> (last visited Apr. 1, 2013).

37. If there are any additional unforeseen legal barriers to farming on DPS land besides those described, the argument outlined in this Article assumes that it is possible to further amend the RTFA, GAAMPs, local zoning ordinance, or Michigan School Code to accommodate such a use.

38. See, e.g., Gallagher, *supra* note 13; Monson, *supra* note 13; John Gallagher, *Large-Scale Farming Projects in Detroit Might Be Under Way by Next Spring*, DETROIT FREE PRESS (Oct. 8, 2012), available at <http://www.freep.com/article/20121008/BUSINESS06/310080076/Large-scale-farming-projects-in-Detroit-might-be-under-way-by-next-spring>.

39. Interview with Kami Pothukuchi, Assoc. Professor, Wayne State Univ. Dep't of Urban Studies & Planning; Dir., SEED Wayne and Detroit FRESH, in Detroit, Mich. (Sep. 19, 2012).

40. See, e.g., CITY OF DETROIT, CITY PLANNING COMMISSION, DRAFT URBAN AGRICULTURE ORDINANCE (Sept. 12, 2012), available at http://www.detroitmi.gov/portals/0/docs/legislative/cpc/pdf/urban_ag_draft_ordinance_12sept12.pdf; CITY OF DETROIT URBAN AGRICULTURE ORDINANCE ABRIDGED (Apr. 2013), available at http://www.detroitmi.gov/Portals/0/docs/legislative/cpc/pdf/Urban%20Ag%20Ordinance%20Abridged_Apr2013.pdf [hereinafter *Urban Agriculture Ordinance*]; *Detroit's Urban Agriculture Plans Move Forward*, HUFFPOST DETROIT (Feb. 06, 2013, 5:12 AM), available at http://www.huffingtonpost.com/2012/12/07/detroits-urban-agricultur_n_2257796.html.

41. Telephone Interview with Kathryn Lynch Underwood, City Planner, Detroit City Planning Comm'n (Apr. 1, 2013).

Experts hope that the ordinance will abrogate many of the previous obstacles to urban farming in the city, but the enforceability of the local ordinance is uncertain in light of conflicting state law.⁴²

Nevertheless, the proposed ordinance probably will not affect urban agriculture on unoccupied DPS land for two reasons. First, school land is exempt from local zoning ordinances, but the extent of this exemption is murky.⁴³ Under section 380.1263(3) of the Revised School Code, the “[state] superintendent of public instruction has . . . exclusive jurisdiction over the review and approval of plans and specifications” regarding the construction or modification of school buildings and “*site plans* for those school buildings.”⁴⁴ The statute does not define “site plan,” but the Michigan Supreme Court interpreted subsection (3) in *Charter Township of Northville v. Northville Public Schools*.⁴⁵

In *Northville Public Schools*, the court held that school districts are immune from local zoning ordinances affecting “school district construction and site plans” since section 380.1263(3) gives the state superintendent exclusive authority over those determinations.⁴⁶ The court identified the following definition of “site plan”: “with no qualifying modifiers, [it] is the plan for *everything* on the property, i.e., the entire project.”⁴⁷ The court underscored the clear legislative intent of the statutory language, concluding that anything approved by the state superintendent is exempt from local zoning ordinances.⁴⁸ Conversely, the

42. See, e.g., Email from Kami Pothukuchi, Assoc. Professor, Wayne State Univ. Dep’t of Urban Studies & Planning; Dir., SEED Wayne and Detroit FRESH, to author (Nov. 6, 2012, 10:39 EST) (on file with author) [hereinafter Email from Kami Pothukuchi]; *supra* notes 52–64 and accompanying text.

43. See Email from Laura Buhl, AICP, City Planner, Detroit City Planning Comm’n, to author (Nov. 21, 2012, 15:58 EST) (on file with author) [hereinafter Email from Laura Buhl] (Ms. Buhl indicated that “the law on this exemption is murky,” as “[t]here is legislation and also a slew of conflicting court cases.” Notwithstanding the complicated legal basis, the Building, Safety Engineering and Environmental Department has worked out the necessary permits with DPS.).

44. MICH. COMP. LAWS ANN. § 380.1263(3) (2012) (emphasis added) (Subsection (3) is subject to subsection (4), but subsection (4) *only* applies if the site is *not* “located within a city or village.” MICH. COMP. LAWS § 380.1263(4). Thus, subsection (4) does not apply to DPS, as all DPS schools are located within the city.).

45. *Charter Twp. of Northville v. Northville Pub. Sch.*, 666 N.W.2d 213, 216 (Mich. 2003).

46. *Id.* at 215.

47. *Id.* at 217 (emphasis added).

48. *Id.* at 216. However, the immunity applies only when the school superintendent approves site plans related to *school uses*. See *Charter Twp. of Bloomfield v. Birmingham Pub. Sch.*, No. 230996, 2003 WL 231358, at *1 (Mich. Ct. App. Jan. 31, 2003), *appeal denied*, 674 N.W.2d 382 (Mich. 2004) (“We conclude that [Birmingham Public Schools] is subject to the local zoning ordinances because sole and exclusive jurisdiction vests in the superintendent of public instruction only for those buildings and projects that are designed

court's determination insinuated that anything *not* approved by the state superintendent is subject to local zoning ordinances.⁴⁹ Thus, in light of *Northville Public Schools*, Detroit's urban agriculture ordinance probably has no effect on the state's ability to incentivize urban farming on unoccupied DPS land.⁵⁰

Second, regardless of this state immunity, the zoning ordinance probably does not affect farming activities on DPS land because the ordinance only regulates land *principally* used for farming or gardening and related accessory uses.⁵¹ Because a court would likely consider urban farming on DPS land to be an *accessory* use,⁵² the ordinance would not regulate that use.⁵³ However, it is unclear whether urban agriculture on *unoccupied* DPS property would still constitute an accessory use, since the buildings—or vacant lots—are no longer used for classes or school functions. Nevertheless, because DPS staff and students would conduct the program proposed in this Article for overwhelmingly educational purposes, the land would be used primarily for education and, therefore, it probably would not be subject to the urban agriculture ordinance.⁵⁴

2. *Conflicting Michigan Law: The Right to Farm Act*

In 1981, the Michigan Legislature adopted the Right to Farm Act (RTFA) with the intent of shielding new and existing farms from suburban development.⁵⁵ In short, the RTFA protects farmers from private or public

for “school purposes.”) (The issue before the court was “whether the Birmingham Public Schools [District], as a governmental unit, is exempt from local zoning ordinances when it plans to construct on public school grounds wireless communications towers that are to be predominantly used for commercial purposes.”).

49. See *Northville Pub. Sch.*, 666 N.W.2d at 216.

50. This is assuming that the state superintendent approves such an *educational* use. See *Birmingham Pub. Sch.*, 2003 WL 231358, at *1.

51. Email from Laura Buhl, *supra* note 43 (“The urban agriculture ordinance regulates various principal agricultural uses (and their accessory uses). If a garden is accessory to a school (or your house) then it wouldn’t be regulated under the urban agriculture ordinance”); see also generally Urban Agriculture Ordinance, *supra* note 40.

52. See Sanjay Jeer, *Treatment of Accessory Uses in Land-Based Classification Standards*, LBCS WORKING PAPER, Dec. 13, 1997, at 1–2 (Land Based Classification Standards, 1997), available at <http://www.planning.org/lbcs/background/pdf/accessoryuses.pdf> (“In planning and zoning, we normally define accessory uses as those activities and land uses incidental to a primary use. They function as secondary or subordinate to a primary or major use and are identified as such in plans, maps, and zoning ordinances.”).

53. Email from Laura Buhl, *supra* note 43.

54. See *id.* (This is the author’s argument; others could draw a different conclusion.).

55. John E. Mogk, Sarah Kwiatkowski & Mary J. Weindorf, *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1557–58 (2010) (citing MICHIGAN FISCAL AGENCY,

nuisance suits as long as the farm follows generally accepted agricultural and management practices (GAAMPs).⁵⁶ Further, the RTFA shields farms that existed before changes in the use or occupancy of the properties surrounding the farmland and farms that shifted their operations in accordance with acceptable changes delineated in the statute.⁵⁷

Despite its good intentions, the RTFA has proven to be a significant impediment to the use of vacant and underdeveloped land in Detroit for urban farming.⁵⁸ The RTFA explicitly preempts any local law or ordinance that conflicts with the RTFA or the GAAMPs.⁵⁹ As a result, the RTFA technically bars the city from directly regulating urban farming without clashing with the Act.⁶⁰ In January 2012, the Michigan Commission of Agriculture and Rural Development amended the preface to the GAAMPs, resolving that the standards no longer apply to cities with more than 100,000 or more residents if the local government enacts an agricultural zoning ordinance.⁶¹ This resolution seemingly created an exemption from the RTFA, and Detroit passed its ordinance in response to that exemption.⁶²

However, if a grower or resident challenged the requirements of Detroit's agriculture ordinance, there is a risk that a court would find the exemption and ordinance unenforceable. Section 286.474(7) of the RTFA provides specific requirements with which a local unit of government must comply in order to obtain an exemption through the passage of a local ordinance, but the process described in the GAAMPs and followed by the

SECOND ANALYSIS, S. 534 (1988); MICHIGAN LEGISLATIVE SERVICE BUREAU, RESEARCH SERVICES DIVISION, LEGISLATIVE BRIEF, VOL. 3, ISSUE 11 (2006); MICHIGAN HOUSE LEGISLATIVE ANALYSIS SECTION, THIRD ANALYSIS, H.R. 4054 (1981); MICHIGAN HOUSE LEGISLATIVE ANALYSIS SECTION, RIGHT TO FARM PROTECTIONS, SECOND ANALYSIS, H.R. 4299, H.R. 4300, H.R. 4301 (1995); MICHIGAN SENATE FISCAL AGENCY, S. 205 (2000); Mark B. Lapping & Nels R. Leutwiler, *Agriculture in Conflict: Right to Farm Laws and the Peri-Urban Milieu for Farming*, SUSTAINING AGRICULTURE NEAR CITIES 209–18, available at http://www.farmlandinfo.org/sites/default/files/AGRICULTURE_IN_CONFLICT_1.pdf (“The Act was intended to protect existing farms from urban sprawl consuming farmland on their boundaries and not to protect new farms located within existing developed urban communities.”).

56. MICH. COMP. LAWS ANN. § 286.473(1) (West 2014).

57. *Id.* §§ 286.473(2)–(3).

58. Dawson Bell, *Bill Would Create Right to Farm Act Exemption for Detroit*, DETROIT FREE PRESS (Nov. 28, 2011), available at <http://archive.freep.com/article/20111128/NEWS06/111280346/Bill-would-create-Right-Farm-Act-exemption-Detroit>.

59. MICH. COMP. LAWS ANN. § 286.474(6) (West 2012); see also, e.g., MICHIGAN COMM’N OF AGRIC. & RURAL DEV., *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* iii (2012), (on file with the Michigan Department of Agriculture and Rural Development).

60. MICH. COMP. LAWS ANN. § 286.474(6) (West 2012), *supra* note 59.

61. MICHIGAN COMM’N OF AGRIC. & RURAL DEV., *supra* note 59, at iii.

62. See Email from Laura Buhl, *supra* note 43.

City of Detroit is inconsistent with that procedure.⁶³ Thus, some experts in the field are unsure whether the state will enforce the RTFA in the future despite the amendment to the GAAMPs and assurances of non-enforcement from the State of Michigan.⁶⁴

Additionally, it is unclear whether future enforcement of the RTFA could affect urban agriculture on DPS land despite the exemption of school land from zoning ordinances.⁶⁵ While some experts believe that the RTFA

63. Compare MICHIGAN COMM'N OF AGRIC. & RURAL DEV., *supra* note 59, at iii (containing a condition that a valid ordinance must “designate[] existing agricultural operations present prior to the ordinance’s adoption as legal non-conforming uses as identified by the Right to Farm Act for purposes of scale and type of agricultural use”), with MICH. COMP. LAWS ANN. § 286.474(7) (containing a condition that a proposed ordinance can only contain different standards than those promulgated in the GAAMPS “if adverse effects on the environment or public health will exist within the local unit of government”). Subsection (7) states:

A local unit of government may submit to the director [of the Michigan Department of Agriculture and Rural Development] a proposed ordinance prescribing standards different from those contained in generally accepted agricultural and management practices if adverse effects on the environment or public health will exist within the local unit of government. A proposed ordinance under this subsection shall not conflict with existing state laws or federal laws. At least 45 days prior to enactment of the proposed ordinance, the local unit of government shall submit a copy of the proposed ordinance to the director. Upon receipt of the proposed ordinance, the director shall hold a public meeting in that local unit of government to review the proposed ordinance. In conducting its review, the director shall consult with the departments of environmental quality and community health and shall consider any recommendations of the county health department of the county where the adverse effects on the environment or public health will allegedly exist. Within 30 days after the public meeting, the director shall make a recommendation to the commission on whether the ordinance should be approved. An ordinance enacted under this subsection shall not be enforced by a local unit of government until approved by the commission of agriculture.

MICH. COMP. LAWS ANN. § 286.474(7) (emphasis added). While the passage of Detroit’s ordinance did not comply with subsection (7) of the RTFA, it did comply with the “grandfathering” requirement that legalizes farms in existence prior to the passage of the ordinance as “legal non-conforming uses.” Compare MICHIGAN COMM'N OF AGRIC. & RURAL DEV., *supra* note 59, at iii, with Urban Agriculture Ordinance, *supra* note 40, at 72–73.

64. See Email from Kami Pothukuchi, *supra* note 42; *Detroit City Council Legalizes Urban Farming*, WDET (Mar. 19, 2013), available at <http://www.wdet.org/shows/craig-fahle-show/episode/detroit-city-council-legalizes-urban-farming/> (replaying a conversation between Laura Weber-Davis and Kami Pothukuchi that discussed an administrative agreement between the state and the city and acknowledged the possibility that someone could challenge the ordinance).

65. Email from Kami Pothukuchi, *supra* note 42; see also *supra* notes 43–54 and accompanying text.

could still affect public school property despite the ordinance,⁶⁶ Laura Buhl of the City Planning Commission indicated otherwise.⁶⁷ She explained that the exemption under the GAAMPs applies to an *entire* city if the municipality adopts a qualifying ordinance (without creating an exception to the exemption for school property).⁶⁸ Thus, the exemption from the RTFA under the GAAMPs would likely apply to DPS property despite the exemption of school land from local zoning ordinances.⁶⁹

Even if the citywide exemption did not apply to DPS property, it still appears that the RTFA would not affect urban farming on school land⁷⁰ because the RTFA only protects *commercial* operations.⁷¹ However, if the food was sold through local farmers markets or used in school cafeterias for profit,⁷² there is a possibility that the proposed ordinance could affect DPS farming if such a use constituted a commercial operation and, consequently, was subject to local zoning ordinances.⁷³

C. Michigan's Current Role in DPS Funding

Due to a shortage of local resources,⁷⁴ the state is the primary source of funding for DPS.⁷⁵ The Michigan Constitution establishes the state's

66. See Email from Kami Pothukuchi, *supra* note 42 (discussing the general sentiment in the Detroit area).

67. Email from Laura Buhl, *supra* note 43.

68. *Id.*; see also, e.g., MICHIGAN COMM'N OF AGRIC. & RURAL DEV., *supra* note 59, at iii. This is assuming the exemption is valid. See *supra* notes 61–62 and accompanying text.

69. Email from Laura Buhl, *supra* note 43.

70. *Id.* (Ms. Buhl indicated that the outcome could be different if, for example, DPS rented land to someone farming for income, but that is an open question.).

71. *Id.*; see also MICH. COMP. LAWS ANN. §§ 286.472(a)–(b) (West 2003) (Inconveniently, the Legislature neglected to define “commercial farming” in the statute.); Email from Laura Buhl, *supra* note 43.

72. The DSGC currently utilizes the food grown on DPS property in the school cafeterias. See *DPS Kicks Off Initiative*, *supra* note 11; see also Dawsey, *supra* note 11. Thus, it is foreseeable that an expansion of the program onto unoccupied DPS land would include similar uses, but it does not appear that this constitutes as commercial operation for profit.

73. See *Birmingham Pub. Sch.*, 2003 WL 231358 at *1; see also Email from Laura Buhl, *supra* note 43 (“If DP[S] were to lease an empty lot to a farmer for the purpose of obtaining income, I don’t know what legal implication that would have That is an open question.”).

74. Higgins, *supra* note 14; Williams, *supra* note 14 (Even though the DPS deficit has decreased by \$253 million since Roy Roberts became the Emergency Financial Manager, DPS still faced a \$74 million dollar deficit during the 2012-2013 school year.); Higgins, *supra* note 14 (Extra money, without other cuts, is unavailable.); Chastity Pratt Dawsey, *DPS Emergency Manager's Gamble: Cuts Will Make Detroit Schools Better*, DETROIT FREE PRESS (June 28, 2012), available at <http://www.freep.com/article/20120628/NEWS01/206280541/DPS-emergency-manager-s-gamble-Cuts-will-make-Detroit-schools-better>.

responsibility to provide funding for public schools through a variety of taxes and other revenues, specifying a baseline level under which annual funding must not fall.⁷⁶ State legislation delineates the types and requirements of school funding in Article 1 of the State School Aid Act of 1979,⁷⁷ dividing the funds into three categories: Unrestricted, Other Unrestricted, and Categorical.⁷⁸

Unrestricted funds include the Prop A Obligation⁷⁹ and a Discretionary Payment.⁸⁰ In short, Prop A funding consists of money received by the district to meet minimum funding levels mandated by state law.⁸¹ The purpose of Prop A funding is to offset the disparity of local resources available to school districts depending on the socioeconomic status of the districts' territory.⁸² As the name suggests, the Discretionary Payment is restricted by a series of prerequisites that a district must fulfill to receive the funding.⁸³ The districts are then "*encouraged* to use" the funds as specified by the legislature.⁸⁴

Other Unrestricted funds include the Headlee Obligation for Data Collection, Renaissance Zone funding, Best Practices Incentive, and Michigan Public School Employees Retirement System (MPERS) Reimbursement.⁸⁵ The Headlee Obligation provides funding for state-

75. DETROIT PUB. SCH., ADOPTED FISCAL YEAR 2013 OPERATING BUDGET 14 (2012), available at http://detroitk12.org/data/finance/docs/FY2013_Adopted_Budget.pdf (The DPS Adopted Annual Budget for the 2013 fiscal year anticipates \$372 million in state funding, compared to \$233.5 million in federal funding and \$150.3 million in local revenue.). The 2012-2013 State Aid Financial Status Report includes slightly different values. See STATE OF MICHIGAN, 2012-2013 STATE AID FINANCIAL STATUS REPORT 1114 (Nov. 20, 2012), available at <http://mdoe.state.mi.us/SAMSStatusReports/statusreports/archive/ALL1312.pdf> (The total year allowance for state aid is listed as \$359,627,806.63.).

76. MICH. CONST. art. IX, § 11.

77. MICH. COMP. LAWS ANN. § 388.1611a (West 2014).

78. DETROIT PUB. SCH., *supra* note 75, at 14.

79. *Id.*; see also MICH. COMP. LAWS ANN. § 388.1622a (West 2014).

80. DETROIT PUB. SCH., *supra* note 75, at 14; see also MICH. COMP. LAWS ANN. § 388.1622b (West 2014).

81. *Id.*

82. *Id.*; see also *Proposal A—Background Information*, MICHIGAN EDUC. POLICY FELLOWSHIP PROGRAM, <http://www.educ.msu.edu/epfp/meet/01-26-04propa.htm> (last visited Dec. 29, 2014); Michael Van Beek, *How School Funding Works: Myths About Michigan's Foundation Allowance*, MACKINAC CTR. FOR PUB. POLICY (May 12, 2010), available at <http://www.mackinac.org/12615>.

83. MICH. COMP. LAWS ANN. § 388.1622b(3) (West 2014).

84. *Id.* at § 388.1622b(4) (emphasis added) ("Districts are encouraged to use funds allocated under this section for the purchase and support of payroll, human resources, and other business function software that is compatible with that of the intermediate district in which the district is located and with other districts located within that intermediate district.").

85. DETROIT PUB. SCH., *supra* note 75, at 14.

mandated testing and other data collection.⁸⁶ Through Renaissance Zone funding, the state reimburses districts for all revenues lost due to the exemption of land within “renaissance zones” from property taxes.⁸⁷ Under the Best Practices Incentive, school districts must implement a minimum number of “best practices” from a series of categories to receive additional per pupil funding.⁸⁸ MPSERS Reimbursement funding compensates districts for a percentage of the retirement contributions it owes to employees participating in MPSERS.⁸⁹

Lastly, Categorical Revenue consists of a series of grants dedicated to specific programs,⁹⁰ including At Risk districts,⁹¹ Great Start Readiness (early childhood education),⁹² and special education.⁹³ Additional grants⁹⁴ include reimbursement for the school lunch programs,⁹⁵ added cost funds for vocational education,⁹⁶ funds for “activities and programs for math and science centers,”⁹⁷ and funds for adult education programs.⁹⁸ The rest of DPS’s funding is provided by assorted federal grants and local sources, including property taxes, funds from the special education millage, funds from Medicaid reimbursement, and funds from the Education Achievement Authority.⁹⁹

Despite these sources of revenue, DPS funding is limited.¹⁰⁰ Further, virtually no one has public plans to purchase or utilize the unoccupied DPS land.¹⁰¹ Given DPS’s current dependence on state funding, it is unlikely that DPS will be able or willing to pursue the use of unoccupied land for urban farming without state incentives despite the numerous benefits such a program would provide the students.¹⁰² Thus, through the legal authority provided by section 380.1263(3) of the Revised School Code, the state superintendent should approve the use of unoccupied DPS land for urban

86. MICH. COMP. LAWS ANN. § 388.1752a (West 2014).

87. *Id.* at §§ 388.1626a, 125.2692. The feasibility of reimbursing *all* lost tax revenues is limited by an appropriation by the Legislature. *See id.* at § 125.2692(6).

88. *Id.* at § 388.1622f(2).

89. *Id.* at § 388.1747a.

90. DETROIT PUB. SCH., *supra* note 75, at 14.

91. *See* MICH. COMP. LAWS ANN. § 388.1631a (West 2014).

92. *See id.* at § 388.1632d.

93. *See id.* at § 388.1651c.

94. STATE OF MICHIGAN, *supra* note 75.

95. *See* MICH. COMP. LAWS ANN. § 388.1631d (West 2014).

96. *See id.* at § 388.1661a(1).

97. *See id.* at § 388.1699(1).

98. STATE OF MICHIGAN, *supra* note 75; *see also* MICH. COMP. LAWS ANN. § 388.1707(1) (West 2014).

99. DETROIT PUB. SCH., *supra* note 75, at 15–16.

100. Williams, *supra* note 14.

101. *See supra* note 18 and accompanying text.

102. *See infra* notes 109–118 and accompanying text.

agriculture,¹⁰³ and the state legislature should promulgate modified or novel means of state aid funding to incentivize such a use.¹⁰⁴

II. ANALYSIS

A. *Why Urban Farming Should be Incentivized on Vacant DPS Land*

The State of Michigan should incentivize an expansion of the current DSGC onto unoccupied DPS land in order to provide enhanced agricultural education opportunities to DPS students. The public policy goals of the state and DPS,¹⁰⁵ in conjunction with the clear benefits of agricultural education,¹⁰⁶ compel such a use of the land. Furthermore, an expansion of the program would further increase the ability of DPS to serve fresh produce to its students¹⁰⁷ and to combat malnutrition among inner city families often plagued by food insecurity.¹⁰⁸

1. *Student Benefits from Agricultural Education are Consistent with the Public Policy Interests of the State*

Although DPS has already recognized the benefits of urban agriculture for its students through its implementation of the DSGC,¹⁰⁹ many schools across the nation have also identified numerous benefits that urban farming provides to students.¹¹⁰ Researchers have identified agricultural education

103. This is assuming that it is necessary for the State Superintendent to approve such a use for the school property to be exempt from local zoning ordinances. See *supra* notes 45–50 and accompanying text.

104. See discussion *infra* Part II.C.

105. See *infra* notes 120–127 and accompanying text.

106. See *infra* notes 109–118 and accompanying text.

107. *DPS Kicks Off Initiative*, *supra* note 11; see also Email from Betti Wiggins, Exec. Dir., Detroit Pub. Sch. Office of Sch. Nutrition, to author (Oct. 24, 2012, 14:21 EST) (on file with author).

108. See Duda, *supra* note 1, at 185–86. This is assuming that DPS students will apply the agricultural skills that they acquire through urban agriculture classes or volunteer work at home or within their communities.

109. See *DPS Kicks Off Initiative*, *supra* note 11; see also Dawsey, *supra* note 11.

110. See, e.g., Halle Tecco, *School Gardens Across the Nation, and a Resource List for Starting Your Own*, HUFFPOST HEALTHY LIVING (Mar. 24, 2010, 5:12 AM), available at http://www.huffingtonpost.com/halle-tecco/school-gardens-across-the_b_431130.html; *NEXT Steps Youth Entrepreneur Program*, KIDS GARDENING.ORG, <http://www.kidsgardening.org/node/78622> (last visited Jan. 21, 2013); *Local Organization Develops Breakthrough Program – A Path Out of Poverty: First Program of its Kind to Benefit Rochester’s Inner City Youth*, ROCHESTER ROOTS (July 18, 2012), available at http://www.rochesterroots.org/news_urban-farm-share-program.php; *About the ESYNOLA*, THE EDIBLE SCHOOLYARD NEW ORLEANS, <http://esynola.org/about-esynola.html> (last visited Dec. 29, 2014); *Youth Agriculture & Entrepreneurship Program*, EARTH’S KEEPERS, <http://www.earthskeepers.org/youth-agriculture-and-entrepreneur-program.html> (last visited Dec. 29, 2014).

as a means of promoting entrepreneurship and economic development among students.¹¹¹ The California Department of Education compiled an extensive body of research demonstrating that school agriculture programs benefited educational achievement and raised test scores when used as an integrated learning tool.¹¹² Urban agriculture programs are also known to combat nutritional deficiencies that are common within a “food desert” like Detroit¹¹³ by providing fresh foods for school cafeterias¹¹⁴ and teaching children how to grow their own produce.¹¹⁵ Studies have shown that improved nutrition leads to increased school attendance, heightened preparation and motivation to learn, and increased academic achievement.¹¹⁶

These benefits provide lifelong learning and empowerment opportunities¹¹⁷ consistent with public policy goals identified by the

111. See *supra* note 110 and accompanying text. Likewise, a number of schools involved in the DSGC plan to use the food grown through the program to teach inner city students how to be entrepreneurs. See Interview with Donald Carter, *supra* note 11.

112. *School Garden Program Overview*, CAL. DEP’T OF EDUC., <http://www.cde.ca.gov/ls/nu/he/farintoschool.asp> (last visited Jan. 17, 2015) (California places such a high value on the “educational and health benefits” of agriculture in schools that it enacted a “Garden in Every School” initiative, which included \$15 million in grants provided through the California Department of Education for the development, promotion, and longevity of school gardens.).

113. Choo, *supra* note 10, at 43, 49; see also, e.g., Duda, *supra* note 1, at 182–83; Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 955 (2010).

114. See, e.g., Interview with Donald Carter, *supra* note 11; *Betti Wiggins Knows It Takes More than Books for Detroit Public Schools Students to Learn*, SCH. FOOD FOCUS (Mar. 7, 2011), available at <http://www.schoolfoodfocus.org/?p=1143>.

115. *About Our Foundation*, CAL. SCH. GARDEN NETWORK, <http://www.csgn.org/about-us> (last visited Nov. 17, 2014).

116. *School Gardens Increase Access to Healthy Food*, GET HEALTHY SAN MATEO COUNTY, <http://gethealthysmc.org/SchoolGardensResearch> (last visited Feb. 14, 2015).

117. See Adrienne C. Crow, *Developing Community Gardens: Removing Barriers to Improve Our Society*, 2 Ky. J. Equine, Agric. & Nat. Resources L. 219, 221–23 (2010); see also *Integrating Food, Ag into Curriculum Offers Many Opportunities*, MICH. GOOD FOOD (Apr. 2012), available at http://www.michiganfood.org/uploads/files/Agenda_Briefs_Priority11_Curriculum.pdf. The following excerpt underscores the particular value of agricultural education to Michigan:

Helping young people become more aware of their food choices, and engaging them in addressing the many social, economic, and environmental factors involved, is a fundamental step toward empowering them today and in the future Yet most school systems do not integrate curriculum about food production, preparation, culture, and business into their everyday work In its school system, Michigan has an ideal venue for introducing young children to good food concepts and building skills in age-appropriate ways. *Integrating these concepts through all grade levels could result in high school seniors graduating with exposure to a vast array of currently little-known career opportunities.* Even

Michigan Department of Education and utilized by the legislature and governor for budgetary decision-making:¹¹⁸ to grow the economy through education, “the most reliable path to state economic prosperity”;¹¹⁹ to equalize economic opportunity;¹²⁰ to elevate student achievement;¹²¹ to advance individual opportunities;¹²² and to promote lifelong learning.¹²³

Michigan’s public policy goals are explicitly and implicitly consistent with the stated mission of DPS: to “educat[e] students to perform at high academic levels.”¹²⁴ Accordingly, DPS is establishing “Centers of Excellence,” or environments that cultivate elevated student achievement, in every school through renovations, innovative programs, parent engagement initiatives, increased safety, and other means.¹²⁵ Thus, DPS’s mission is linked to the state’s policy goals by a common theme of elevated academic achievement that instigates individual growth and collective economic development.

those not interested in pursuing agri-food-related careers, would gain the knowledge that they can help shape communities so local, healthy food is accessible for everyone and farming is a respected and rewarding vocation. *Id.* (emphasis added).

See also Adrienne C. Crow, *Developing Community Gardens: Removing Barriers to Improve Our Society*, 2 Ky. J. Equine, Agric. & Nat. Resources L. 219, 221–23 (2010).

118. The list is not exhaustive; the Michigan State Board of Education’s (MSBE) recommendations list many other priorities. See generally Mich. State Bd. of Educ., *Recommendations to Better Support Michigan’s Education System: Reforms, Restructuring and Revenues*, MICHIGAN DEPARTMENT OF EDUCATION (May 11, 2010), available at http://www.michigan.gov/documents/mde/5_11_Approved_Recommendations_to_Better_Support_Michigans_Education_System_320774_7.pdf [hereinafter *Recommendations to Better Support*]. These recommendations fulfill MSBE’s responsibility, under the state constitution, “to provide recommendations to the Legislature and the Governor regarding the funding needs of education.” Mich. State Bd. of Educ., *Budget Priority Recommendations*, MICHIGAN DEPARTMENT OF EDUCATION 1 (Dec. 6, 2011), available at http://www.michigan.gov/documents/mde/sbe_budget_rec_370865_7.pdf [hereinafter *Budget Priority Recommendations*]; see also MICH. CONST. art. VIII, § 3.

119. *Recommendations to Better Support*, *supra* note 116, at 1.

120. *Id.*

121. *About Detroit Public Schools*, DETROIT PUB. SCH., <http://detroitk12.org/data/> (last visited Nov. 15, 2014).

122. *Id.*

123. *Recommendations to Better Support*, *supra* note 116, at 2.

124. *About Detroit Public Schools*, DETROIT PUB. SCH., <http://detroitk12.org/data/> (last visited Jan. 17, 2015).

125. *Id.*; *DPS Unveils \$500.5 Million Construction Projects, Create Centers of Excellence*, DETROIT PUB. SCH. (Sep. 14, 2009), available at <http://detroitk12.org/media/media/view/95>; *Cranbrook Institute of Science and Detroit Public Schools Forge Groundbreaking Educational Partnership Program*, CRANBROOK, available at <http://www.cranbrook.edu/about/news/default.asp?items=11&newsid=610929>.

These common goals—which, arguably, should serve as the primary motives for changes in education law or district programming—are consistent with the results of agricultural education programs across the nation.¹²⁶ The connection between farming programs and entrepreneurial and economic development¹²⁷ is especially timely given the recent and anticipated growth of urban agriculture in Detroit.¹²⁸ In sum, the benefits of agricultural education to DPS students and, consequently, the greater Detroit area and the state, should prompt an expansion of the DSGC onto unoccupied DPS land.

2. *Why DPS Should Use the Unoccupied Land*

There are many DPS properties currently unused and wasted as they wait on the market to be sold¹²⁹ instead of being utilized for the benefit of DPS students either permanently or in the interim. Using this land for agricultural education is *much* more beneficial to the city and state than letting it sit, with no purpose, on a generally depressed market.¹³⁰

It is financially sensible to utilize land that DPS already possesses for the benefit of DPS students than renting or purchasing additional land for such a purpose. It is also possible that selling *all* of the unoccupied DPS properties may prove to be an appealing short-run solution but imprudent

126. See *supra* notes 109–118 and accompanying text.

127. See *supra* note 111 and accompanying text.

128. See Gallagher, *supra* note 9; see also, e.g., Benedetti, *supra* note 9; MICH. GOOD FOOD, *supra* note 119, at 2 (“[F]urthermore, from farmers to school food service directors to agri-business managers, many food system sectors are suffering from a shortage of young people entering the field. By failing to expose young people to the food system and its associated careers in school, Michigan misses out on opportunities to create pathways to these important roles, which will be critical for our regional food systems in the future.”).

129. Michael Wayland, *Detroit Public Schools Selling 200 Vacant Buildings, Properties*, MLIVE (May 23, 2012, 4:48 PM), available at http://www.mlive.com/news/detroit/index.ssf/2012/05/vacant_to_valuable_detroit_dev.html (citing *Office of Real Estate*, DETROIT PUB. SCH., http://detroit12.org/admin/operations/real_estate/ (last visited Nov. 15, 2014)).

130. Although DPS could expand the current DSGC program outlined in this note onto additional parcels on or adjacent to occupied school property, utilizing the unoccupied land would provide a series of benefits to the students and surrounding community while preserving occupied school land for outdoor school-related activities. While there is a possibility that utilizing the unoccupied land *temporarily* for gardening may deter potential buyers or lessees of the property, DPS could partition the land so that a new occupant utilizes an unoccupied building while students farm on adjacent land. Likewise, a new buyer or lessee may be attracted to the potential safety benefits of outdoor activity in the area. See *supra* notes 139–41 and accompanying text. DPS could also utilize raised garden boxes, which are rather portable and do not affect the land beneath the garden. See also *Raised Bed Gardening: Crops Grow Better in the Deep, Loose, Fertile Soil of Raised Beds*, ORGANIC GARDENING, <http://www.organicgardening.com/learn-and-grow/raised-bed-gardening> (last visited Oct. 26, 2014).

long-run decision.¹³¹ Paul Abramson, an education industry analyst and consultant, identified two school districts that sold off closed schools while their populations were declining.¹³² Later, those districts needed the forfeited properties when their student populations increased, as they found it difficult to acquire land suitable for new schools.¹³³ Although the current population trend of Detroit is bleak,¹³⁴ DPS would benefit from taking advantage of the properties it already owns in light of the district's limited ability to sell the unused land¹³⁵ and the possibility that DPS may need the properties in the future if the city's trajectory is reversed, as urban planners hope.¹³⁶

Incentivizing the use of unoccupied land, as opposed to fields adjacent to *occupied* school properties, also encompasses a variety of benefits. Fields on occupied school properties are often used by schoolchildren for games during recess or other outdoor activities. Consequently, establishing significant agricultural operations on occupied school land would impede the traditional use of the property by students during the school day—rows of garden boxes are no place for playing sports or other games. Likewise, using occupied land limits the size and scope of the gardening programs, as it is necessary for schools to conserve significant portions of land for other outdoor activities. Since the unoccupied land is sitting wasted and purposeless, it is more appropriate to use that land for student farming than the occupied school property.

More importantly, utilizing unoccupied DPS land for urban agriculture may offset many of the negative effects that often follow school closings, especially in disadvantaged neighborhoods. A study performed on school closings in large, struggling districts—including Detroit—found that closed schools became breeding grounds for vandalism and illicit activities that affect the surrounding neighborhoods.¹³⁷ As the author concluded, “[i]f a school building is closed, something needs to be done. It does not take 200 closed buildings to bring blight to a neighborhood.”¹³⁸ Accordingly, agriculture on unoccupied DPS property would produce outdoor activity and visible productivity while deterring crime through informal

131. Paul Abramson, *Closing Schools*, SCH. PLAN. AND MGMT. (June 1, 2012), available at <http://www.webspm.com/articles/2012/06/01/closing-schools.aspx>.

132. *Id.*

133. *Id.*

134. *See supra* note 14.

135. *See supra* note 18 and accompanying text.

136. *See* Joann Muller, *Detroit's Innovative Survival Plan Is A Model For The World - But Will It Work?*, FORBES (Jan. 9, 2013, 12:48 PM), available at <http://www.forbes.com/sites/joannmuller/2013/01/09/detroits-innovative-survival-plan-is-a-model-for-the-world-but-will-it-work/>.

137. Abramson, *supra* note 133.

138. *Id.* (emphasis added).

surveillance in dilapidated neighborhoods, benefitting not only the students but also the surrounding communities.¹³⁹

B. *Potential Liabilities and Costs of Urban Agriculture on Unoccupied Land*

There are a variety of safety and liability concerns that may result from an expansion of the DSGC onto unoccupied DPS land. However, the legal framework and potential solutions surrounding these apprehensions suggest that the benefits of such a program still outweigh the concerns. Nevertheless, to ensure compliance with important safety measures and legal requirements while buttressing the success of the program, the state could require DPS to follow the courses of action described below in order to receive incentive funding.

1. *Safety and Security*

A significant concern of DPS is the safety of its students.¹⁴⁰ Likewise, ensuring the safety of its students during participation in school-related activities is a general power of the district.¹⁴¹ However, consistent with its constricted budget,¹⁴² DPS is also concerned about potential losses

139. H. PATRICIA HYNES AND GENEVIEVE HOWE, URBAN HORTICULTURE IN THE CONTEMPORARY UNITED STATES: PERSONAL AND COMMUNITY BENEFITS 10 (2002), available at <http://www.nchh.org/Portals/0/Contents/Article0820.pdf> (“Nearby greenspace, including trees and open space play areas, increases social cohesion through attracting adults and children into common greenspace areas where they socialize, build a sense of neighborhood, and carry out an informal surveillance that creates greater security and deters crime.”); see also ANNE C. BELLOWS ET AL., HEALTH BENEFITS OF URBAN AGRICULTURE 5–6 (2003), available at http://www.co.fresno.ca.us/uploadedFiles/Departments/Behavioral_Health/MHSA/Health%20Benefits%20of%20Urban%20Agriculture%20%281-8%29.pdf (“The presence of vegetable gardens in inner-city neighborhood is positively correlated with decreases in crime, trash dumping, juvenile delinquency, fires, violent deaths, and mental illness.”); *Vandals Target Old School*, WYXZ DETROIT2020 (June 7, 2012), available at <http://detroit2020.com/2012/06/07/vandals-target-old-school/> (providing an example of vandalism affecting a recently closed DPS school).

140. *Detroit Public Schools Police Department (DPSPD)*, DETROIT PUB. SCH., <http://detroitk12.org/admin/dpspd/> (last visited Oct. 26, 2014).

141. MICH. COMP. LAWS ANN. § 380.11a(3)(b) (West 2014).

142. See *Detroit Public Schools Enrollment Slide Continues*, *supra* note 14 and accompanying text.

associated with legal liability.¹⁴³ Expanding the DSGC onto unoccupied land would require a balancing of these concerns.¹⁴⁴

Overall, school districts and personnel are largely protected from liability for negligent action or inaction.¹⁴⁵ The Governmental Immunity Act provides that governmental agencies, including school districts,¹⁴⁶ are immune from most forms of tort liability related to their governmental functions.¹⁴⁷ Because the primary purpose of urban farming on unoccupied land would be the education of the students, DPS would be immune from tort actions arising from activities associated with this school-related function. However, even if the district was not immune from tort liability, the school system could limit its responsibility through a permission slip like that currently used for off-site field trips, which contains an extensive waiver of liability.¹⁴⁸

Despite these protections from liability, it is imperative that DPS take reasonable precautions to protect the safety of the students¹⁴⁹ for public policy reasons. As a government entity, DPS must promote student safety¹⁵⁰ and foster the support and confidence of parents and students.¹⁵¹

143. See *Office of Risk Management*, DETROIT PUB. SCH., <http://detroitk12.org/admin/finance/risk/> (last visited Oct. 26, 2014) (“The Office of Risk Management will strive to protect the valued assets and resources of the Detroit Public Schools from financial and physical losses due to potential occurrences known and unexpected.”).

144. See *Gardening Health and Safety Tips*, CTNS. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/family/gardening/> (last updated Apr. 22, 2014) (describing potential safety concerns).

145. MICH. COMP. LAWS ANN. § 691.1407(1)–(2) (West 2014).

146. *Sayers v. Sch. Dist. No. 1*, 114 N.W.2d 191, 192 (Mich. 1962) (“Under our decisions the school district as an agency of the State has been clothed with the State’s immunity from liability.”).

147. MICH. COMP. LAWS ANN. § 691.1407(1) (West 2014). Governmental function is defined as “an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.” *Id.* at § 691.1401(b).

148. See *Release and Parent Permission Slip – Field Trips*, DETROIT PUB. SCH. (Dec. 2004), *available at* http://detroitk12.org/admin/finance/risk/Revised_12_04_DPS_Release_and_Parent_Permission_Slip_Field_Trips.pdf.

149. For example, DPS would need to ensure that its students travel safely to and from the unoccupied land, whether they travel by bus, car, or “walking school bus” if the unoccupied property is close enough to the occupied school. See, e.g., OR. DEP’T OF TRANSP., A GUIDE TO SCHOOL SAFETY 24 (2009), *available at* http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/docs/pdf/guide_to_school_area_safety.pdf (An example of a “walking school bus” is as follows: “The children walk to school in a group along a set route with adult supervision. Each ‘bus’ (group of students) walks along a set route with at least one adult ‘driver’ in front and an adult ‘conductor’ bringing up the rear.”). Furthermore, it would be necessary for the unoccupied land to be secured and/or monitored and free from debris.

150. *Detroit Public Schools Police Department*, *supra* note 142.

DPS has many systems already in place to provide for the safety of the students, which it could utilize or expand through incentive funding.¹⁵² For example, DPS has an in-house police department (DPSPD) that uses a recently constructed “Command Center” and advanced surveillance system to constantly monitor school properties.¹⁵³ Since DPS is already in the process of installing additional surveillance equipment on the interior and exterior of its schools,¹⁵⁴ the district could install similar technology on unoccupied properties using incentive funds to safeguard the safety of teachers and students farming on the land. With additional funding, DPS could also secure agricultural areas with fencing or take other precautions to prevent unauthorized individuals from entering the premises.

2. Food Growth and Consumption

Agricultural educators must adhere to relevant legal standards concerning the growth and consumption of produce to ensure the safety of students and consumers.¹⁵⁵ Urban farming is subject to the same legal framework as traditional farming,¹⁵⁶ but many laws and regulations are based on whether the food is produced for sale.¹⁵⁷ Delineating all of the relevant considerations is beyond the scope of this Note, so the discussion below focuses on a few prominent considerations.

151. See *Office of Parent and Community Engagement*, DETROIT PUB. SCH., http://detroitk12.org/admin/communications/parent_and_community_engagement/ (last visited Jan. 18, 2015).

152. See, e.g., *Office of Risk Management*, *supra* note 145 (“We are further committed to providing a safer workplace for its employees and safer premises/operations [sic] or its students and visitors. We will deliver these services in the most efficient and professional manner possible at all times.”); cf. *Serious Incidents Down, Parental Involvement Up in Detroit Public Schools*, DETROIT PUB. SCH. (Aug. 13, 2012), available at <http://detroitk12.org/content/2012/08/13/serious-incidents-down-parental-involvement-up-in-detroit-public-schools/> (stating that there were still 1,087 on-campus incidents during the 2011-2012 school year despite overall improvements in safety and listing the following incidents that occurred on DPS property: breaking and entering, arson, felonious assault, concealed weapon possession, robbery, and criminal sexual conduct).

153. *Detroit Public Schools Police Department (DPSPD)*, *supra* note 142.

154. *Id.*

155. Interview with Donald Carter, *supra* note 11.

156. Email from Ashley Atkinson, Urban Agric. and Open Space Dir., The Greening of Detroit, to author (Nov. 6, 2012, 2:37 PM) (on file with author); see also generally HEATHER WOOTEN & AMY ACKERMAN, CHANGE LAB SOLUTIONS, SEEDING THE CITY: LAND USE POLICIES TO PROMOTE URBAN AGRICULTURE 12–15 (Oct. 2011), available at http://chagelabsolutions.org/sites/default/files/urban_Ag_SeedingTheCity_FINAL_%28CLS_20120530%29_20111102_0.pdf.

157. MICH. DEP’T OF AGRIC. & RURAL DEV., GROWING MICHIGAN’S FUTURE: A GUIDE TO MARKETING YOUR MICHIGAN FOOD AND AGRICULTURE PRODUCTS § 5.2 (Nov. 2012), available at http://michigan.gov/documents/mda/MDA_guide_335948_7.pdf.

At the state level, the Michigan Department of Agriculture and Rural Development (MDARD) is the primary agency that regulates food production and marketing.¹⁵⁸ The state does not require a license to sell raw and uncut produce at a farm or farmers market.¹⁵⁹ However, a license may be required for distribution to a school cafeteria.¹⁶⁰ Since the produce currently grown by the DSGC is utilized in school cafeterias throughout the district¹⁶¹ and, presumably, food grown in an expansion of the program onto unoccupied DPS land would be used in the same manner, it would be imperative that DPS administrators obtain a license if one is required by the State of Michigan. Nevertheless, growers are *always required* to “take reasonable care to avoid contamination of their produce with disease organisms.”¹⁶²

Accordingly, the state recommends that all food growers, regardless of size, adhere to the Good Agricultural Practices (GAP) and Good Handling Practices (GHP) promulgated by the USDA in order to minimize the risk of food-related illnesses.¹⁶³ While the USDA offers a voluntary audit and certification program to ensure that growers are following GAP and GHP practices,¹⁶⁴ Michigan also offers a voluntary Safe Food Risk Assessment

158. *Id.*

159. *Id.* at § 5.13; see also *MDARD Licenses Listed Alphabetically by License Name*, DEP’T OF AGRIC. & RURAL DEV., <http://www.michigan.gov/mdard/0,4610,7-125-1569-161481--,00.html> (last visited Oct. 26, 2014) (providing a list of required MDARD licenses).

160. MICH. DEP’T OF AGRIC. & RURAL DEV., *supra* note 159, at § 5.13 (The guide offered the following suggestion: “Please check with your MDARD inspector to determine if a license is required for your specific operation.”).

161. Dawsey, *supra* note 11.

162. MICH. DEP’T OF AGRIC. & RURAL DEV., *supra* note 159, at § 5.4.

163. MICH. DEP’T OF AGRIC. & RURAL DEV. & MICH. STATE UNIV. EXTENSION, MICHIGAN’S SAFE FOOD RISK ASSESSMENT: FOR SMALL, DIRECT-MARKET FRUIT AND VEGETABLE PRODUCERS (May 2013), *available at* http://www.michigan.gov/documents/mdard/SafeFoodAssessment1128_382013_7.pdf. For guidance promulgated by the FDA regarding GAP and GHP, see U.S. DEP’T OF HEALTH AND HUMAN SERVS., FOOD AND DRUG ADMIN. & CENTER FOR FOOD SAFETY AND APPLIED NUTRITION (CFSAN), GUIDANCE FOR INDUSTRY: GUIDE TO MINIMIZE MICROBIAL FOOD SAFETY HAZARDS FOR FRESH FRUITS AND VEGETABLES 39 (Oct. 1998), *available at* <http://www.fda.gov/downloads/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ProduceandPlanProducts/UCM169112.pdf>.

164. *Grading, Certification and Verification*, U.S. DEP’T OF AGRIC. AGRIC. MARKETING SERV., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&navID=AuditServices:GAPandGHP&rightNav1=AuditServices:GAPandGHP&topNav=&leftNav=GradingCertificationandVerification&page=GAPGHPAuditVerificationProgram&resultType=&acct=freshgrdcert> (last updated Sept. 9, 2014).

designed for smaller growers that is not as rigorous as the USDA program.¹⁶⁵

Additional concerns include the use of pesticides and lead contamination of the soil.¹⁶⁶ The DSGC has addressed the safety of students and food consumers by avoiding the use of *all* pesticides and chemical fertilizers and exclusively using raised garden boxes to minimize risk of soil contamination.¹⁶⁷ However, if educators decided to utilize pesticides or use untreated soil on unoccupied properties, DPS or state administrators must require that the educators adhere to the relevant pesticide and lead contamination recommendations and regulations, such as those promulgated by the MDARD and the U.S. Environmental Protection Agency, in order to protect the safety of the students.¹⁶⁸

3. *Child Labor*

The current DSGC, like the program proposed in this Article, is premised on the *educational* benefits of urban agricultural education.¹⁶⁹ As such, the DSGC does not “compensate” its students for their work with anything other than academic credit, as the program is viewed as a hands-on learning opportunity and/or service-learning program.¹⁷⁰ Although a similar structure seems appropriate for an expansion of the program onto unoccupied DPS land, especially given the shortage of funds in the district,¹⁷¹ academic credit is not the only option. In fact, other forms of compensation may attract or increase student involvement in light of the moderate success of “paying” students to attend school in other states.¹⁷²

165. MICH. DEP’T OF AGRIC. & RURAL DEV. & MICH. ST. U. EXTENSION, *supra* note 165.

166. See Anne C. Bellows, *Urban Food, Health, and the Environment: The Case of Upper Silesia, Poland*, in *FOR HUNGER-PROOF CITIES: SUSTAINABLE URBAN FOOD SYSTEMS* (Mustafa Koc et al. eds., 2000), available at http://web.idrc.ca/openebooks/882-1/#page_131.

167. See, e.g., Interview with Donald Carter, *supra* note 11; Dawsey, *supra* note 11.

168. See, e.g., MICH. ADMIN. CODE r. 285.637.15 (2012), available at http://www7.dleg.state.mi.us/ort/AdminCode.aspx?AdminCode=Number&Admin_Num=28200001&RngHigh=29103101; *Summary of the Federal Food, Drug, and Cosmetic Act: 21 U.S.C. §301 et seq.* (2002), U.S. ENVTL. PROT. AGENCY, <http://www2.epa.gov/laws-regulations/summary-federal-food-drug-and-cosmetic-act/> (last updated Nov. 12, 2014); *Pesticides: Regulating Pesticides: Laws and Regulations*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/pesticides/regulating/laws.htm> (last updated Oct. 17, 2014); *Hazard Standards for Lead in Paint, Dust and Soil (TSCA Section 403)*, U.S. ENVTL. PROT. AGENCY, <http://www2.epa.gov/lead/hazard-standards-lead-paint-dust-and-soil-tsca-section-403/> (last updated Aug. 26, 2014).

169. See, e.g., Interview with Donald Carter, *supra* note 11; Dawsey, *supra* note 11.

170. See, e.g., Interview with Donald Carter, *supra* note 11; Dawsey, *supra* note 11.

171. Williams, *supra* note 14; see also Higgins, *supra* note 74.

172. See, e.g., *Cincinnati High School Paying Students To Come To School*, CBS CLEVELAND (Feb. 13, 2012, 2:06 PM), available at

However, DPS must follow federal and state child labor laws if the students receive anything other than academic or community service credit for their farming.¹⁷³ A school or school district qualifies as an “employer” under M.C.L.A. section 409.102(b) because it is “an agency or instrumentality of the state[.]”¹⁷⁴ As such, DPS students under the age of fourteen could not receive wages for their labor under M.C.L.A. section 409.103(2)(a); urban farming on DPS land would not trigger the agriculture exception under M.C.L.A. section 409.104(3)(a), which allows students to receive wages for their agricultural labor when school is not in session, since the students would work during school year.¹⁷⁵

Nevertheless, given the educational focus of the program, it may not be appropriate for students over the age of fourteen to receive compensation for their *learning* during school. Additionally, it is illegal for fourteen- and fifteen-year-olds to work during schools hours.¹⁷⁶ Thus, even if DPS thought monetary compensation was appropriate, high school students under the age of sixteen could only receive compensation for work performed *after* school in accordance with the state Youth Employment Standards Act and the federal Fair Labor Standards Act.¹⁷⁷ Conversely, DPS could compensate the students with wages if the state and federal legislatures amended the statutes to allow all high school-aged children—not only those who are sixteen years of age or older—to work during school hours, but such an amendment is extremely unlikely.¹⁷⁸

Without monetary compensation, and in light of the strained racial history of the United States, a public outcry may result if members of the community misinterpreted the educational focus of the program and believed that DPS was exploiting the child labor of an overwhelmingly

<http://cleveland.cbslocal.com/2012/02/13/cincinnati-high-school-paying-students-to-come-to-school/>; *School Pays Students to Attend Class*, USA TODAY (Feb. 14, 2012), available at <http://usatoday30.usatoday.com/video/school-pays-students-to-attend-class/1452692531001>; Lisa Gartner, *D.C. Students Being Paid for Summer School*, WASH. EXAMINER (July 29, 2012, 12:00 AM), available at <http://washingtonexaminer.com/d.c.-students-being-paid-for-summer-school/article/2503405#.UP4PWegeZGW>.

173. See MICH. COMP. LAWS ANN. §§ 409.101–124 (West 2014); see also 29 U.S.C. § 213(c)(2) (2012) (Student farming would not fall under the agriculture exemption for family-related farming pursuant to the federal Fair Labor Standards Act, so federal child labor laws would apply.).

174. MICH. COMP. LAWS ANN. § 409.102(b) (West 2014).

175. MICH. COMP. LAWS ANN. §§ 409.103(2)a, 104(3)(a) (West 2014).

176. 29 C.F.R. § 570.119 (2014) (Arguably, work performed under an urban agricultural educational program could qualify as “a work experience and career exploration program” under 29 C.F.R. § 570.36 (2014).).

177. See MICH. COMP. LAWS ANN. §§ 409.101–124 (West 2014); see also 29 U.S.C. § 213(c)(1) (2012).

178. Presumably, such an amendment would undermine the general public policy that prohibits fourteen and fifteen-year-olds from working during school hours so that they will attend school. See MICH. COMP. LAWS ANN. § 409.119(2) (West 2014).

African-American student body¹⁷⁹ for agricultural purposes in a manner reminiscent of slavery.¹⁸⁰ If such a situation did arise, it would be advantageous for the government to amend the relevant child labor statutes to allow monetary compensation for labor performed during school hours.

C. State Incentivization and Program Model

The State of Michigan already provides funding to DPS through a variety of sources.¹⁸¹ In light of the social and economic struggles that plague the City of Detroit,¹⁸² the state should expand its influence in this area of education law, working within the established framework or utilizing new methods to incentivize urban agriculture on unoccupied DPS land.

1. Option A: Shift Grant Requirements and/or Create New Grants

Most simply, the legislature, with the approval of the governor, could enact a new grant in its yearly budget dedicated to urban farming on unoccupied school district land, like that offered in Texas.¹⁸³ Such a grant would fit under the “State Aid Categorical Revenue” portion of the DPS budget, which consists of a series of grants dedicated to specific purposes.¹⁸⁴ By limiting the grant to a particular activity, the state would compel DPS to utilize the money for farming on unoccupied land or lose it. The state could also restrict the grant to schools that comply with certain

179. See DETROIT PUB. SCH., DETROIT CITY SCHOOL DISTRICT (DISTRICT REPORT) 4 (2009), available at http://detroitk12.org/schools/reports/profiles/district_profile.pdf (reporting that in November 2009 approximately eighty-eight percent of the DPS student body was African-American).

180. Cf. Margaret Kimberley, *Prison Slave Labor*, BLACK AGENDA REP. (July 23, 2011), available at <https://www.commondreams.org/view/2011/07/23-2> (“The prison and jail system is perfecting its methods of extracting free labor. Perhaps the system ought to be called the new slavery.”); Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, HIST. IS A WEAPON, <http://www.historyisaweapon.com/defcon1/davisprison.html> (last visited Jan. 18, 2015) (explaining that the use of prison labor is “highly profitable for the private companies that use it” due to the negligible compensation received by the prisoners). But see Katie Kerwin McCrimmon, *Healthy Food a New Civil Rights Frontier*, HEALTH NEWS COLO. (Aug. 3, 2011), available <http://www.healthnewscolorado.org/2011/08/03/healthy-food-a-new-civil-rights-frontier/>.

181. MICH. CONST. art. IX, § 14; MICH. COMP. LAWS ANN. § 388 (West 2014); see also DETROIT PUB. SCH., *supra* note 75, at 14.

182. See *supra* notes 1–6.

183. See *Budget Process*, STATE OF MICHIGAN STATE BUDGET OFFICE, <http://www.michigan.gov/budget/0,4538,7-157-11462-34950--,00.html> (last visited Nov. 15, 2014) (discussing the process of passing the yearly budget, which includes educational appropriations); see also *supra* note 36 and accompanying text.

184. See DETROIT PUB. SCH., *supra* note 75.

procedures or standards in order to limit liability and ensure the safety of the students.¹⁸⁵

Given the gradual economic recovery in Michigan, it appears that the state may have “additional funds to invest in certain programs” under future budgets.¹⁸⁶ Thus, the state may be willing to establish such a grant for DPS in the education portion of its budget if the recovery continues.¹⁸⁷ However, in light of the recent state deficit, the legislature may be hesitant to increase expenditures.¹⁸⁸ If so, the state could direct some of the funds allotted for “activities and programs for math and science centers” to urban farming programs,¹⁸⁹ since urban farming is beneficial to science education.¹⁹⁰

2. *Option B: Encourage and Facilitate Partnerships Between DPS, Private Organizations, and the Federal Government*

Through its own taxing and spending power, the state could foster “partnerships” between DPS, the federal government, and private companies or organizations. Already, the DSGC works with local urban farming and civic-minded organizations for grant and sponsorship identification.¹⁹¹ However, despite private assistance, funding is still limited,¹⁹² so state facilitation and incentivization is necessary to expand the program.

The legislature could establish a statutory grant-matching program under which the state would match all or a portion of private grants received by DPS for farming on unoccupied land. The state already provides a database of private grants available to many organizations,

185. See discussion *supra* Part II.B.

186. Paul Egan & Kathleen Gray, *Michigan Budget Director: Economic Recovery Means No Forced Cuts in 2014*, DETROIT FREE PRESS (Jan. 11, 2013), available at <http://www.freep.com/article/20130111/NEWS15/130111032/Michigan-budget-director-Economic-recovery-means-no-forced-cuts-2014>.

187. The education budget increased by three percent between the 2011-2012 and the 2012-2013 school years. See *Michigan Budget Passes with \$14.3 Billion for Education Funding*, HUFFPOST DETROIT (June 6, 2012, 11:53 PM), available at http://www.huffingtonpost.com/2012/06/06/michigan-education-budget-approved-by-state-senate_n_1573794.html. But see Karen Bouffard, *Despite Surplus, Michigan May Need to Cut School Spending in 2013*, DETROIT NEWS (Jan. 3, 2013), available at <http://www.detroitnews.com/article/20130103/POLITICS02/301030448>.

188. *Michigan Faces 2013 Budget Deficit*, *supra* note 188.

189. See MICH. COMP. LAWS ANN. § 388.1699(1) (West 2014).

190. See Tecco, *supra* note 110; see also, e.g., Interview with Donald Carter, *supra* note 11; Dawsey, *supra* note 11.

191. See *DPS Kicks Off Initiative*, *supra* note 11.

192. Interview with Donald Carter, *supra* note 11.

including schools,¹⁹³ so it would be fairly straightforward for the state to incentivize the use of those grants listed in the database or elsewhere. The state could also list and match funds received by individual schools through relevant federal programs, such as the competitive Farm-to-School grant program administrated by the USDA.¹⁹⁴

Another alternative is an explicit incentive arrangement analogous to the Michigan Service Station Matching Grant Program (MSSMGP)¹⁹⁵ or the federal Historic Preservation Fund (HPF).¹⁹⁶ Through the MSSMGP, the state legislature explicitly “provide[s] incentives to owners and operators of service stations” to supply nontraditional fuel options by offering grant money to cover a certain percentage of infrastructure construction or conversion costs, subject to numerous limitations.¹⁹⁷ The state could use similar statutory language to offer funding to DPS for a certain cost percentage of the urban farming costs each year. To promote efficiency, the state could also include language that would require DPS to divert funds from less successful or duplicative school programs to urban agricultural education in order to receive the grant.

At the federal level, the HPF establishes a “60-40 matching grant-in-aid program,” requiring the recipient to match federal funds allocated for specific purposes with qualifying sources of funding, services, or materials.¹⁹⁸ The state could use a similar arrangement to incentivize DPS

193. See, e.g., *Welcome to the MiGAL search page!*, MICHIGAN.GOV, <http://megs.mde.state.mi.us/megsweb/grantsavailable.aspx> (last visited Nov. 15, 2014).

194. However, this program is currently subject to a number of conditions, and it is primarily focused on nutrition and access to local food through school cafeterias as opposed to agricultural education. See *Farm to School Grant Program*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV., http://www.fns.usda.gov/cnd/f2s/f2_2013_grant_program.htm (last modified Mar. 21, 2013); U.S. DEP’T OF AGRIC. FOOD AND NUTRITION, SPECIAL NUTRITION PROGRAMS: FARM TO SCHOOL GRANT PROGRAM REQUEST FOR APPLICATIONS 4–7, http://www.fns.usda.gov/cnd/f2s/pdf/F2S_Grant_RFA_2014.pdf (last visited Nov. 15, 2014); Press Release, U.S. Dep’t of Agric., USDA Announces Additional Support to Help Schools Buy Local (Dec. 16, 2013), available at <http://www.fns.usda.gov/pressrelease/2013/021813>. Despite this emphasis, many schools discussed gardening programs in their grant proposals, although agriculture itself was rarely the main focus of their programs. See *USDA Farm to School FY 2013 Grant Awards*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION (Nov. 14, 2012), available at http://www.fns.usda.gov/sites/default/files/F2S_Grants-FY2013.pdf.

195. MICH. COMP. LAWS ANN. § 125.2078 (West 2014).

196. *Introduction to the Historical Preservation Grant Program*, MICH. STATE HOUS. DEV. AUTH., http://www.michigan.gov/mshda/0,4641,7-141-54317_19320_61958-54145--,00.html (last visited Jan. 17, 2015).

197. MICH. COMP. LAWS ANN. § 125.2078 (West 2014) (emphasis added).

198. *Introduction to the Historical Preservation Grant Program*, *supra* note 198 (“The federal funds provided through the grant must be matched by the grant recipient with private funds, local government funds, in-kind services, state funds, certain federal funds (limitations apply), donated services and/or donated equipment or material.”).

to seek out sources of funding other than grants to receive the support offered by the state.

From a taxation perspective, the state could provide tax credits for private contributions specifically dedicated to the DPS program. For example, before they were repealed, M.C.L.A. sections 208.1421 and 208.1422¹⁹⁹ offered an income tax credit to taxpayers who made charitable contributions to certain types of organizations in accordance with statutory restrictions.²⁰⁰²⁰¹ The legislature could, given the recent turnaround in Michigan's economic forecast, adopt a similar statute under which individual taxpayers or businesses could receive a tax credit for contributions specifically made to school districts utilizing previously unoccupied land for urban agriculture.

199. H.R. 4362, 2011 Leg., Reg. Sess. (Mich. 2011) (enacted), *available at* <http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2011-PA-0039.pdf> (“Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed.”).

200. MICH. COMP. LAWS ANN. §§ 208.1421, .1422 (West 2014) (repealed 2011).

201. See Kristin Longley, *Michigan Income Tax Credits for Donating to Charities End Next Year*, MLIVE (June 13, 2011, 11:56 AM), *available at* http://www.mlive.com/news/index.ssf/2011/06/michigan_income_tax_credits_fo.html; Elaine S. Povich, *Charitable Giving Tied to State Tax Deduction Decisions*, STATELINE — THE PEW CHARITABLE TRUSTS (Sept. 24, 2013), *available at* <http://www.pewstates.org/projects/stateline/headlines/charitable-giving-tied-to-state-tax-deduction-decisions-85899506837>.

3. *Most Viable Program Model*²⁰²

The state is in the best position to induce an expansion of the DSGC onto unoccupied DPS land in light of its current role in DPS funding and the availability of funds outside of DPS for agricultural education. Consistent with traditional notions of American federalism, the state plays a greater role in school funding than the federal government.²⁰³ Further, given the legal structures already in place, the state is strategically situated to provide incentives to DPS, especially considering the emphasis placed on the success of Detroit in the state's agenda;²⁰⁴ the state's deep investment in the operations of DPS (as evidenced by the appointment of an Emergency Financial Manager);²⁰⁵ and the recent political turmoil associated with the federal budget deficit.²⁰⁶ Through its unique position,

202. Given the legal focus of this Article, the author has chosen not to discuss the daily logistics of an urban farming program on unoccupied DPS land. However, there are a variety of logistical considerations that DPS must address during the implementation of such a program. The following serve as examples of relevant considerations: whether DPS students should travel to the unoccupied land by bus, car, or "walking school bus"; whether parents or community volunteers would be permitted to assist the students during school hours and, if so, under what conditions; whether other individuals, groups, or businesses would be able to legally use other areas of the land or lease buildings located on the land while students are farming; and whether the district should use existing buildings or construct temporary or permanent structures for storage of the tools and materials, bathroom facilities, or severe weather shelters.

The current DSGC program employs a variety of procedures that protect the safety of the students. In light of potential lead contamination and other concerns associated with the safety of the land, each school utilizes "high raised beds" that are twenty inches off the ground. See Interview with Donald Carter, *supra* note 11. To avoid liability associated with the use of pesticides or chemicals by students, the DSGC grows the food using methods at a "certified organic" level, although it has no intention of pursuing any organic certifications. *Id.* The DSGC does not even use fertilizer; it uses post-consumer compost made from garden material, none of which has been touched or partially eaten by a human. *Id.* Additionally, the DSGC follows the standards promulgated by the USDA for the safety of students and others who consume the produce. *Id.*

203. See *supra* note 75.

204. See Cheryl Chodun, *Governor Snyder Sends a Message to Detroit Leaders That Included Praise and Continued Concern*, WXYZ.COM (Jan. 10, 2013), available at <http://www.wxyz.com/dpp/news/region/detroit/governor-snyder-sends-a-message-to-detroit-leaders-that-included-praise-and-continued-concern> (see corresponding video).

205. See *Office of the Emergency Financial Manager*, DETROIT PUB. SCH., available at http://detroitk12.org/admin/emergency_manager/ (last visited Nov. 15, 2014) (demonstrating the series of reports that the district must file regarding its condition and progress during the school year).

206. See, e.g., John Carney, *Why Debt Ceiling Is Far Scarier Than the 'Fiscal Cliff'*, CNBC (Jan. 15, 2013, 1:55 PM), available at <http://www.cnn.com/id/100381526>; Michele Nash-Hoff, *Congress Hasn't Averted the Real Fiscal Cliff*, HUFFPOST BUSINESS (Jan. 20, 2013, 8:32 PM), available at https://web.archive.org/web/2014082107342/http://www.huffingtonpost.com/Michele-nashhoff/congress-hasnt-averted-th_b_2483839.html; Dave Jamieson, *Federal Workers*

the state could utilize state resources while facilitating the use of or tapping into private funds and federal resources, like the USDA grant program.²⁰⁷

Of the possibilities described above,²⁰⁸ categorical grants specifically dedicated to urban farming on unoccupied school land would be the most dependable given DPS's struggle to garner local funding. However, facilitating grant-matching or public/private partnerships would minimize the burden on the state's budget while promoting the awareness of and investment in a valuable DPS program by the private sector. Ultimately, a hybrid approach—which could consist of a categorical grant specifically dedicated to the program *and* a discretionary grant conditioned on the acquisition of private or additional federal financial support of the program—would be the most effective means of incentivizing DPS to invest the time, money, and resources necessary to grow a robust agricultural education program on its presently unoccupied land.

III. CONCLUSION

DPS has faced extensive financial hardship in recent years, generating a series of school closings; an abundance of unoccupied, district-owned properties; and a significant level of food insecurity. In light of the promise of urban farming in Detroit and the analogous focus of DPS on agricultural education, the State of Michigan should induce DPS to leverage its unique opportunity to utilize unoccupied properties for urban agricultural education. The legal framework required for the state to incentivize such a use is already in place; what is lacking is the political recognition of the vast benefits that such a program would provide to DPS students at the state level and the subsequent implementation of an incentive plan under the state budget.

At this point, expanding the DSGC, even temporarily, is *much* more advantageous to the current and future well-being of DPS students and the district itself than simply waiting for someone to purchase the currently-wasted DPS properties. In the words of Harry S. Truman, "Progress occurs when courageous, skillful leaders seize the opportunity to change things for the better."²⁰⁹ It is time for the State of Michigan to seize the opportunity

Facing Furloughs Have 'Already Contributed More Than Their Share,' Says Union President, HUFFPOST POLITICS (Mar. 5, 2013, 6:36 PM), available at http://www.huffingtonpost.com/2013/03/05/federal-worker-furloughs_n_2814246.html.

207. Carney, *supra* note 206; Nash-Hoff, *supra* note 206; Dave Jamieson, *Federal Workers Facing Furloughs Have 'Already Contributed More than Their Share,' Says Union President*, HUFFPOST POLITICS (Mar. 5, 2013, 6:36 PM), available at http://www.huffingtonpost.com/2013/03/05/federal-worker-furloughs_n_2814246.html.

208. Presumably, there are other options available.

209. *Harry S. Truman Quotes*, BRAINYQUOTE, <http://www.brainyquote.com/quotes/quotes/h/harrystru130667.html> (last visited Oct. 15, 2014).

and use its legal power to incentivize urban agricultural education on unoccupied DPS land.