



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

BILL



ANALYSIS

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

Senate Bill 653 (Substitute S-6 as passed by the Senate)  
Sponsor: Senator Dave Honigman  
Committee: Local, Urban and State Affairs

Date Completed: 8-13-96

### **RATIONALE**

Under the Housing Law, local governments that adopt the Law may assign a local officer or agency to enforce it. At least every two years, the local enforcing agency must inspect the multiple dwellings and rooming houses regulated by the Law. Inspections may be made on an area basis, in which regulated premises within a geographical area are inspected simultaneously or within a short period of time; on a complaint basis, in which complaints of violations are inspected within a reasonable time; and, on a recurrent violation basis, in which premises found to have a high incidence of recurrent or uncorrected violations are inspected more frequently. An inspector or team of inspectors may request permission to enter all premises at reasonable hours to undertake an inspection. If there is an emergency, as defined by rules promulgated by the enforcing agency, an inspector or inspection team has the right to enter at any time. A warrant to inspect the premises, however, is not required unless the owner or occupant demands an enforcing agency to obtain a warrant. For routine inspections, local inspectors apparently seek permission of the landlords, but not necessarily of the tenants, to enter these dwellings. Some tenants contend that the practice of conducting inspections without their approval violates their right to privacy. They believe that inspectors should have to ask for and receive a tenant's consent before entering his or her dwelling.

### **CONTENT**

**The bill would amend the Housing Law to delete current provisions requiring an enforcing agency to inspect at least biennially multiple dwellings and rooming houses regulated by the Law; allowing an enforcing agency to inspect all other regulated dwellings**

**at reasonable intervals; allowing inspections to be conducted on an area basis, a complaint basis, or a recurrent violation basis; and, permitting an inspector to enter all regulated premises at reasonable hours to undertake an inspection or, upon an emergency, to enter at any time. Instead, the bill would require the inspection of a "leasehold" at least once every six years; and would prohibit an inspector from inspecting a leasehold unless the occupant gave written consent, the enforcing agency obtained a warrant, or an emergency existed.**

Under the bill, an enforcing agency would have to conduct inspections in the manner best calculated to secure compliance with the Law and appropriate to the needs of the community.

An inspector, or team of inspectors, could not conduct an inspection of a leasehold unless the inspector or team first requested the consent of the occupant and the requirements of one of the following were met:

- The occupant gave signed written consent for the inspection and a copy of the consent was provided to the owner. The written consent would have to be in a form reading substantially as provided in the bill.
- The agency had obtained a warrant to inspect the leasehold.
- An emergency existed.

("Leasehold" would mean a private dwelling or separately occupied apartment, suite, or group of rooms in a two-family dwelling or in a multiple dwelling if the private dwelling or separately occupied apartment, suite, or group of rooms were leased to the occupant.)

The enforcing agency could not request the owner to request the consent of the occupant on behalf of the enforcing agency. The owner, however, would have to provide the enforcing agency with the name, address, and, if available, telephone number of the occupant of a leasehold not more than 10 days after receiving a request for this information from the enforcing agency.

Subject to the bill's provisions requiring consent, an inspection of a leasehold would have to be conducted at least once every six years. An inspector, or team of inspectors, could conduct an inspection of those portions of a two-family dwelling or multiple dwelling that were not part of the leaseholds. Unless an emergency existed, an inspection would have to be conducted at a reasonable hour.

Currently, the enforcing agency may establish and charge a fee for inspections conducted under the Law. Under the bill, the fee could not exceed actual costs, including reasonable overhead.

MCL 125.526

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Some persons who rent their residences believe that their constitutional rights to privacy are violated during inspections of these dwellings because the inspections often are conducted only with the permission of a landlord. In fact, a group of tenants of two apartment complexes in Kalamazoo has sued the city, contending that it violated their right to privacy during apartment inspections. These tenants and others claim that renters are treated as second-class citizens because inspectors may enter their residences without the tenants' permission. Local inspectors, however, may not enter a single-family home or condominium without the owner's consent, unless they obtain a search warrant. The bill would revise the procedures for conducting inspections of leased dwellings, such as apartments, by either requiring the written consent of the occupant or requiring an enforcing agency to obtain a warrant.

### **Supporting Argument**

Under the Law, multiple unit dwellings must be inspected at least every two years. Some owners of rental properties contend that some local

governments require that inspections be conducted more frequently, whether or not there is a need for an inspection. The Law also permits an enforcing agency to establish and charge a reasonable fee for inspections. A number of rental property owners believe that many local inspectors conduct frequent inspections as one way of generating revenues for their local governments. These owners would prefer that inspections be conducted only upon a tenant's request and not at intervals specified in the Law. The bill would increase from two to six years the maximum interval between required inspections. While the bill would not eliminate the requirement that inspections be conducted, it would establish a more reasonable time period during which an inspection must be conducted. Furthermore, the bill would prohibit an inspection fee from exceeding actual costs, including reasonable overhead.

### **Opposing Argument**

Although some renters might feel that housing inspections invade their privacy, this does not mean that Michigan's Housing Law is unconstitutional. In 1967, the U.S. Supreme Court ruled in *Camara v Municipal Court of the City and County of San Francisco* (387 US 523) that housing inspection ordinances that establish systematic programs for rental properties are constitutional. "There is unanimous agreement among the most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures," the Court noted. The Supreme Court also held that inspection programs were of vital importance to cities. "...[W]e think that a number of persuasive factors combine to support the reasonableness of area code-enforcement inspections. First, such programs have a long history of judicial and public acceptance... Second, the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions--faulty wiring is an obvious example--are not observable from outside the building and indeed may not be apparent to the inexperienced occupant himself. Finally, because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." Furthermore, under the Housing Law, an owner or occupant may demand a warrant for a nonemergency inspection (MCL 125.527); the bill would not change this provision.

### **Opposing Argument**

Michigan's current Housing Law provides localities with the flexibility they need to respond to community concerns. The bill would deprive municipalities of their ability to respond to local needs for housing inspections. The bill also would establish a complaint-driven system to replace the current area-based inspection system. In some cities, systematic inspection methods have proven successful. In Minneapolis, for example, the city's systematic approach to inspections reportedly resulted in two-thirds of the target rental units coming into full compliance with that city's housing law. A complaint-driven system would not work because many tenants do not complain about their housing conditions for a variety of reasons, including fear of retaliation from the landlord, fear of being evicted, or lack of understanding about a tenant's legal rights.

### **Opposing Argument**

Systematic inspections of multiple dwellings have helped many local officials preserve affordable housing for low and medium income persons in their communities. Supporters of the bill seem to presume that all landlords will properly maintain their properties and that all tenants are educated in the law and their rights as tenants. Unfortunately, many landlords, especially absentee landlords, do not maintain their properties. Periodic inspections help protect tenants by pointing out obvious problems in dwellings, such as broken windows, as well as unseen problems, such as improper electrical wiring. Without an inspection system as provided in the Housing Law in place, unscrupulous landlords would have greater opportunities to operate substandard dwellings and continue to devastate affordable housing stock in many communities.

Legislative Analyst: L. Arasim

### **FISCAL IMPACT**

The bill would have no fiscal impact on State government. The fiscal impact on local governments would vary between municipalities. The local fiscal impact would depend on the number of inspections, the cost of the inspections, the number of owners charged an inspection fee, and the degree to which the inspection fee offset the cost of the inspection.

Municipalities that have been inspecting multiple dwellings and rooming houses, and charging for the inspection an amount over the actual cost of the inspection, would lose this revenue source.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.