Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1158 (Substitute S-1 as reported)
Senate Bill 1159 (Substitute S-1 as reported)
Senate Bill 1160 (Substitute S-2 as reported)
Senate Bill 1161 (Substitute S-2 as reported)
Senate Bill 1162 (Substitute S-2 as reported)
Sponsor: Senator George A. McManus, Jr.
Committee: Agriculture and Forestry

Date Completed: 11-26-96

RATIONALE

In October 1993, the Michigan Court of Appeals decided a case involving an agricultural employer's provision of rent-free housing to migrant farmworkers (*De Bruyn Produce Company* v *Romero*, 202 Mich App 92). The issue before the Court pertained to the nature of the parties' relationship and the extent of the defendant-farmworkers' rights concerning the housing. The Court held that the relationship was strictly one of employer-employee, and that there was no landlord-tenant relationship between the parties. Therefore, the Truth in Renting Act, the landlord-tenant Act, and the Michigan Consumer Protection Act did not apply, and the notice provisions for holdover tenants under the summary proceedings law were not applicable. In October 1994, the Michigan Supreme Court denied the defendants' application for leave to appeal. Although the decision in this case is final, it has been suggested that statutory law also should address situations in which employers provide rent-free housing as a benefit of employment. (A more detailed description of the *De Bruyn* decision is contained in BACKGROUND, below.)

CONTENT

Senate Bill 1158 (S-1) and Senate Bill 1159 (S-1) would amend the Truth in Renting Act and the landlord-tenant Act, respectively, to provide that the Acts would not apply to an employer's provision of rent-free housing to an employee as a benefit or condition of his or her employment. "Rent-free housing" would include premises for which a reasonable fee for use of utilities was charged, if no other fee were charged. (The Acts regulate residential rental agreements and the relationship between landlords and tenants relative to those agreements.)

Senate Bill 1160 (S-2) would amend the Revised Judicature Act (RJA) to permit an employer who provided temporary rent-free housing to recover possession of the premises by notice or summary proceedings; provide that a person who failed to vacate the premises within two days would be liable for treble damages; and establish liability of three times the actual damages or $200, whichever was greater, for certain conduct on the property of another.

Senate Bill 1161 (S-2) would amend Chapter 66 of the Revised Statutes of 1846 (which contains "general provisions concerning real estate") to provide that a notice to quit would not be required for the termination of an employee's occupancy of housing in accordance with Senate Bill 1160. Senate Bill 1161 (S-2) is tie-barred to Senate Bill 1160.

Senate Bill 1162 (S-1) would amend the Michigan Consumer Protection Act to provide that the term "trade or commerce" would not include an employer's provision of rent-free housing to an employee as a benefit or condition of employment. (The Act provides that, "Unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce are unlawful...".) "Rent-free housing" would include premises for which a reasonable fee for use of utilities was charged, if no other fee were charged.

A more detailed description of Senate Bills 1160 (S-2) and 1161 (S-2) follows.

Senate Bill 1160 (S-2)

An employer who provided a temporary employee with temporary residential premises solely as a condition or benefit of employment and who did not charge rent for the employee's temporary occupancy of the premises (other than a reasonable fee for utilities) could recover possession within two days after giving the employee written notice that his or her temporary employment was terminated. ("Temporary employee" would mean an individual hired for less than nine consecutive months. "Employer" would include the owner or operator of housing licensed under Part 124 of the Public Health Code. Part 124 provides for the licensure of an "agricultural labor camp", which means "a tract of land and all tents, vehicles, buildings, or other structures pertaining thereto, part of which is established, occupied, or used as living quarters for 5 or more migratory laborers engaged in agricultural services".)

The employer also could submit an ex parte petition to a court having jurisdiction over summary proceedings. The petition would have to include an affidavit verifying all of the following:

-- That the employer owned or had a legal right to possess the temporary residential premises.
-- That the occupant had been served on a specified date and time with written notice terminating his or her employment.
-- That the occupant did not pay rent for that occupancy, and was provided possession solely as a condition or benefit of employment.

At least two business days after the notice of employment termination was served, the court could enter a judgment for possession and issue a writ authorizing the sheriff, or any other officer authorized to serve process, to act to restore full possession of the premises to the employer.

The bill also provides that a person would be liable for three times the actual damages, plus reasonable actual attorney fees, if he or she did either of the following:

-- Refused to vacate premises within two days after receiving written demand from an employer that he or she vacate the premises, if the premises were originally provided pursuant to an employment relationship or as a benefit or condition of employment.
-- Refused to vacate premises licensed under Part 124 of the Public Health Code within two days after receiving written demand from the owner or operator to surrender possession.

Currently, a person is liable for treble damages if he or she does certain things (e.g., cuts wood, digs up sand or gravel, or takes grain), without permission, on land owned by another or on public land. Under the bill, the person would be liable for three times the actual damages or $200, whichever was greater.

Senate Bill 1161 (S-2)

Chapter 66 of the Revised Statutes of 1846 requires a notice to quit of 30 days, seven days, or one year, depending on the nature of a tenancy. The bill provides that a notice to quit would not be required as a precondition for either of the following:

-- The termination of an employee's occupancy of housing in accordance with Section 5758 of the RJA (which Senate Bill 1160 (S-2) would add), if the housing were provided by an employer pursuant to an employment relationship or as a benefit or condition of employment.
-- The termination of an individual's occupancy of housing licensed under Part 124 of the Public Health Code, in accordance with Section 5758 of the RJA.

MCL 554.640 (S.B. 1158)
554.616 (S.B. 1159)
600.2919 et al. (S.B. 1160)
554.134 (S.B. 1161)
445.902 (S.B. 1162)

BACKGROUND

The plaintiff in *De Bruyn Produce Company* v *Romero* was involved in vegetable growing, harvesting, packing, and shipping, with operations in Michigan and elsewhere in the country. The defendants were migrant workers from Texas who worked for the plaintiff during the 1987 season. Before the defendants came to Michigan, the parties had executed various documents that described the conditions of employment, including housing. The dispute arose after the defendants

were asked to move to a different housing unit, and the parties were unable to agree on the nature of the defendants' rights with respect to the housing provided on the farm. The plaintiff brought an action for declaratory judgment in the Ottawa County Circuit Court, which determined that a landlord-tenant relationship did not exist and that the only legal relationship between the parties was one of employer-employee.

On appeal, the Court of Appeals first addressed the applicability to the case of the Migrant and Seasonal Agricultural Worker Protection Act. That Federal law regulates the relationship between migrant workers and agricultural employers, but it does not occupy the entire field of regulation, according to the Court. Therefore, the Court also considered State common law and statutory law in deciding the case.

The Court held that the documents executed by the parties did not constitute a lease or create a landlord-tenant relationship between them. The Court stated, "...defendants' right to occupy the premises owned by plaintiff was dependent on the continuation of the employment relationship with plaintiff and not on any separate rights of tenancy." Since the defendants were not tenants, the plaintiff was not required to comply with the notice-to-quit requirements of the summary proceedings law, although the plaintiff was entitled to recover possession by summary proceedings when defendants refused to leave peaceably after the employment relationship ended. The plaintiff also could seek other forms of relief, such as statutory and common-law equitable relief, including an injunction.

The Court of Appeals also held that the defendants were not tenants within the meaning of the landlord-tenant Act; that the Truth in Renting Act had no application to the case; and that the Michigan Consumer Protection Act was not relevant to the relationship between the parties.

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

By codifying the Court of Appeals decision in *De Bruyn*, the bills would avert future litigation and protect the interests of employers and employees. Michigan had led the way in supporting good quality housing for migrant workers, through statutory licensing requirements as well as a construction grant program. This not only benefits the laborers, but also gives farmers an advantage over competitors in other states. Good housing attracts better workers and avoids disasters. These bills would bolster an existing policy that assures agricultural employers that their housing investment will benefit their business.

The bills also would create a clear legal framework, involving the court system, in which employers could regain possession of their premises. Rather than simply stating that landlord-tenant law does not apply, Senate Bill 1160 (S-2) would establish a specific procedure for an employer to demand that a temporary employee vacate premises, and to obtain a judgment for possession within days after giving notice of employment termination. These provisions should help prevent confrontations between employers and workers.

Moreover, the application of landlord-tenant law to employer-provided housing would be unfair and inappropriate. Landlords are in the housing business for its own sake and collect rent as compensation. Employers, on the other hand, provide housing to assure a stable, knowledgeable workforce. If housing is occupied by nonemployees, then employers are denied this benefit while they must continue to pay the bills. In the harvest context, 48 hours can be a long time for an employer to be deprived of needed labor. Furthermore, landlord-tenant law and migrant housing law create different obligations. These bills propose a practical way to deal with potential conflicts.

Although the *De Bruyn* case involved an agricultural employer, these bills would address more than the farm labor situation. Many other employers, such as resorts, provide temporary housing to their workers, and would benefit from the provisions of the bills.

Opposing Argument

These bills would do far more than merely codify the *De Bruyn* decision: They would in effect overturn the interpretation of resident-employee rights handed down by the Michigan Supreme Court in *Grant* v *Detroit Association of Women's Clubs* (443 Mich 596 (1993)). In that opinion, the Supreme Court stated, "...the fact that a landlord wears two hats, landlord and employer, does not excuse the landlord from compliance with both housing and employment laws. The landlord's dual status does not create an automatic

exception to the applicable laws." The Court concluded that, "…where the essential characteristics of a landlord-tenant relationship are present, an employment contract may create a tenancy." In other words, this decision requires a determination of the parties' relationship based on the facts of each case. In *Grant*, the use and occupancy of an apartment were "the sole and full compensation for the services rendered"; that is, the services rendered amounted to the payment of rent. In *De Bruyn,* the defendants' wages were the same as those paid to other workers who were not provided with housing, and there was nothing to indicate that the defendants' services were to be considered rent. Although the bills would apply only to situations in which an employer charged nothing (beyond a utility fee) for the premises, the proposed eviction procedure would deny an employee the opportunity to show that his or her services did, in fact, amount to rent. These bills, in effect, would create an automatic exception to the State's tenant protection laws for many categories of workers who live in employer-provided housing, including resident advisors, on-site managers, caretakers, and tourism employees, as well as seasonal farmworker families.

Response: The Michigan Supreme Court denied leave to appeal in the *De Bruyn* case over a year after its decision in *Grant*.

Opposing Argument

Senate Bill 1160 (S-2) would allow a property owner to obtain a court order in only two days, without requiring a trial or even notice of the proceedings to the defendant. This represents a dangerous denial of due process that would carry grave human risks. Farmworker households often include young children, pregnant women, and elderly family members, who may have migrated thousands of miles from their permanent home in reliance on the housing provided as a benefit of employment. If the employment is abruptly terminated, the family's financial means for obtaining alternative housing will be drastically impaired.

In addition, substitute housing may be extremely scarce during the harvest season in Michigan. According to the Michigan Migrant Legal Assistance Project, law enforcement agencies report instances of farmworker families temporarily living in their vehicles in unsuitable locations, such as highway rest stops and summer camping areas. To make matters worse, unemployment of farmworkers often occurs at the beginning or end of the harvest season, when weather conditions in Michigan can be quite inclement. Since many migrants do not have friends or relatives close by, they must turn to overtaxed public and private agencies for emergency food and shelter in the event of sudden homelessness.

Michigan law already provides an expedited court proceeding to recover possession of premises after the right of occupancy has been lawfully terminated. The summary proceedings process is quick, inexpensive, and easy to use without the assistance of an attorney. In addition, as the Court of Appeals in *De Bruyn* noted, employers also may seek other forms of relief, such as an injunction. These procedures protect the interests of the employer while giving the employee-occupant adequate notice and an opportunity to be heard regarding any hardship that would befall the employee and his or her family from an abrupt eviction.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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