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HOUSING INSPECTIONS

Senate Bill 487 (Substitute H-5)
Sponsor: Sen. Mat J. Dunaskiss

Senate Committee: Local, Urban and State Affairs
House Committee: Regulatory Affairs

First Analysis (12-9-97)

THE APPARENT PROBLEM:

Under the Housing Law of Michigan, 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 all 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. In an emergency, which is defined in 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 is not required unless the owner or occupant demands that an enforcing agency obtain a warrant. According to some, inspectors seek permission of the landlords to enter rental units to conduct the inspections but do not necessarily seek permission from the tenants. Some tenants feel strongly that the practice of conducting inspections without their approval is a violation of their privacy. Legislation has been proposed to address the concern of landlords and inspection teams entering rental units without the tenant's permission.

THE CONTENT OF THE BILL:

Currently, the Housing Law of Michigan requires the enforcing agency of local governments to periodically inspect multiple dwellings and rooming houses at intervals not to exceed two years. (The law applies to a city or organized village with a population of 10,000 or more. For cities or organized villages with populations of 100,000 or more, the law also applies to the territory immediately adjacent and contiguous to the city's boundaries for a two and one-half mile radius.) The bill

would amend the act to allow a local government, by ordinance, to schedule the required inspections up to three years apart if the most recent inspection of the premises had found no violations of the act. Further, under the law, an inspector, or team of inspectors, may request permission to enter all regulated premises at reasonable hours to undertake an inspection. The bill would instead require the inspector or team of inspectors to make such a request. The law also specifies that in an emergency, as defined by rules promulgated by the enforcing agency, the inspector has the right to enter at any time. The bill instead would specify that in case of an emergency, or upon the presentation of a warrant, the inspector or team of inspectors could enter at any time. The bill would also make the following additions to the law:

• "Leasehold" would be defined under the bill as 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 apartment was leased to the occupant under the terms of either an oral or written lease.

• Except for emergencies, the owner of the premises would have to request and obtain permission to enter the premises before doing so. Under an emergency, the owner could enter at any time.

• Notifying, and requesting and obtaining permission of, at least one of the lessees of a leasehold would satisfy the bill's requirement when there are multiple renters.

• The bill would prohibit the enforcing agency and the owner from discriminating against an occupant on the basis of whether or not the occupant requested, permitted, or refused entry to the leasehold.

• The enforcing agency would be prohibited from discriminating against an owner who had been unable to obtain permission from the occupants but had met the requirements adopted by ordinance.

• A local government would be permitted to adopt an ordinance to require owners to do one or more of the following:

--Provide the enforcing agency access to the leasehold if the lease provided the owner a right of entry.

--Provide access to areas other than a leasehold or areas open to public view, or both.

--Notify a tenant of the enforcing agency's request to inspect a leasehold, make a good faith effort to obtain permission for an inspection, and arrange for the inspection. Should a tenant vacate a leasehold after the agency had requested an inspection for the premises, the owner would have to notify the agency of that fact within 10 days after the premises were vacated.

--Provide access to the leasehold if a tenant had made a complaint to the enforcing agency.

Further, under current law, the enforcing agency is permitted to establish and charge a reasonable fee for the inspections conducted under the act. The bill would require that the fee not exceed the actual, reasonable cost of providing the inspection.

MCL 125.526

HOUSE COMMITTEE ACTION:

The Senate-passed version of the bill would have allowed local governments to provide for inspection every two to six years; the House committee version allows inspections to be done up to three years apart, provided the property had no previous violations. Further, the House substitute rewrote the provisions dealing with gaining a tenant's permission to enter the premises, and added provisions allowing local governments to make certain requirements of property owners.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local government. (11-25-97)

ARGUMENTS:

For:

For cities and villages with a population of 10,000 or more, the Housing Law of Michigan requires periodic

inspections of multi-dwelling rental units, such as apartments, duplexes, and rooming houses, to identify code violations and conditions that could pose a threat to a tenant's health or safety. These mandatory inspections are credited by tenant advocates as helping to stem the deterioration of rentals by slum landlords and to slow neighborhood blight. Poor maintenance of rental property is a particular problem for those needing low-income housing, such as the elderly, the poor, and the disabled. The inspections, which much be completed at least once every two years, are instrumental in revealing potential dangers or health threats such as faulty wiring, poor plumbing, lead-based paints, and structural problems. However, some property owners would like local governments to be able to conduct less frequent inspections. (The Senate-passed version of the bill would have eliminated mandatory biennial inspections, instead permitting local governments to inspect rental units at least every two to six years, if at all.)

The House committee version would strike a compromise by specifying that a local government could adopt an ordinance allowing up to three years between inspections for a rental property that had no violations cited at its previous inspection. The bill, therefore, would retain the requirement that multi-unit rental properties be inspected at least every two years (which helps to protect tenants and owners alike by identifying possible dangers), and yet would allow local governments to schedule some inspections every three years for those properties maintained at a high standard. This in turn provides landlords with an incentive for maintaining their rental properties in a safe condition, as having inspections every three years would result in having to pay fewer inspection fees. Further, the bill would prohibit the enforcing agency from charging more for an inspection fee than what an inspection costs to provide.

For:

Though most inspectors make it a practice to obtain permission from the tenants of a rental unit before entering to conduct an inspection, some people report that landlords allow inspectors entrance without the tenants' permission. Tenant advocacy groups report that most problems lie with landlords entering tenants' apartments when they are away without their permission or knowledge. This situation has left some renters feeling that their constitutional rights to privacy are being invaded. The bill would address these concerns by requiring an inspector or team of inspectors to request and receive permission to enter a rental unit, and requiring a landlord, with the exception of an emergency, to also request and obtain permission to enter the rental unit. In addition, the bill would allow local governments to adopt a more stringent policy regarding access for inspections, which could include requiring the landlord to

notify tenants of an upcoming inspection and to arrange the inspection. Further, the bill would grant tenants protection from discriminatory acts on the part of inspectors and landlords based on whether or not a tenant allows an inspector entry or requests an inspection to identify possible safety violations. In like manner, the bill would afford landlords protection from discriminatory actions on the part of the enforcing agency if the landlord had made a good faith effort to obtain permission from a tenant, but had been unable to do so.

Response:

The bill in large part really isn't needed. Though some renters may feel that their privacy rights are being violated, 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 established systematic programs for rental properties are constitutional. The court noted that "[t]here 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." Further, the court 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 inexpert 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, the Housing Law allows either an owner or an occupant to demand a warrant for a nonemergency inspection (MCL 125.527); the bill would not change this provision.

Further, under Michigan common law, tenants have the right to quiet and exclusive enjoyment of property when leasehold rights are granted. This means that landlords do not have the right to enter their rental properties without their tenants' permission. Perhaps better education for both landlords and tenants would suffice to stop landlords from intruding on their tenants.

Rebuttal:

Though it is true that many of the provisions of the bill are covered by common law, many owners and renters are not aware of them, despite the best efforts by landlord and tenant advocacy groups. The bill in essence, then, would largely codify current common law. In this way, the law would be clearer and easier to reference.

POSITIONS:

The Department of Consumer and Industry Services has no position on the bill. (12-3-97)

The Michigan Townships Association is neutral on the bill. (12-3-97)

The City of Grand Rapids is neutral on the bill. (12-3-97)

The Michigan Municipal League does not oppose the bill. (12-3-97)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.