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

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 487 (as enrolled) **PUBLIC ACT 200 of 1997**
Sponsor: Senator Mat J. Dunaskiss
Senate Committee: Local, Urban and State Affairs
House Committee: Regulatory Affairs

Date Completed: 4-24-98

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. Previously, the Law permitted an inspector or team of inspectors to request permission to enter all premises at reasonable hours to undertake an inspection. In an emergency, as defined by rules promulgated by the enforcing agency, an inspector or inspection team had the right to enter at any time. A warrant to inspect the premises, however, was not required unless the owner or occupant demanded an enforcing agency to obtain a warrant. For routine inspections, local inspectors apparently sought permission of the landlords, but not necessarily of the tenants, to enter these dwellings. Some tenants contended that the practice of conducting inspections without their approval violated their right to privacy, and that inspectors should have to ask for and receive a tenant's consent before entering his or her dwelling.

CONTENT

The bill amended the Housing Law to do the following:

- **Permit a local government to provide by ordinance that the maximum period between inspections of a multiple dwelling or rooming house is not more than three years, if a recent inspection found no violations.**
- **Require an inspector to request and receive permission to enter a leasehold to undertake an inspection.**
- **Require a leasehold owner to request and obtain permission to enter the property, except in an emergency.**
- **Permit an enforcing agency to require a leasehold owner to provide an inspector access to premises under certain circumstances, and to notify a tenant of the agency's request to inspect the leasehold and make a good faith effort to obtain permission for an inspection.**
- **Prohibit an enforcing agency or owner from discriminating against an occupant who requests, permits, or refuses entry to the leasehold.**
- **Prohibit an enforcing agency from charging an inspection fee that exceeds actual costs.**

Inspection Period

The Housing Law requires an enforcing agency to inspect, on a periodic basis, multiple dwellings and rooming houses, but prohibits the period between inspections from being longer than two years. Under the bill, a local governmental unit may provide by ordinance for a maximum period between inspections of a multiple dwelling or rooming house that is not longer than three years, if the most recent inspection of the premises found no violation of the Law.

Permission to Enter

Previously under the Law, an inspector, or team of inspectors, could request permission to enter all regulated premises at reasonable hours to

undertake an inspection. In an emergency, as defined under rules promulgated by the enforcing agency, the inspector had the right to enter at any time. Under the bill, an inspector or inspection team must request and receive permission to enter before entering a leasehold at reasonable hours to do an inspection. An inspector may enter at any time upon presentation of a warrant or in the case of an emergency. (The bill defines "leasehold" 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 separately occupied apartment, suite, or group of rooms is leased to the occupant under the terms of either an oral or written lease.)

The bill also provides that, except in an emergency, a leasehold owner, before entering a leasehold regulated by the Law, must request and obtain permission to enter the leasehold. In the case of an emergency, including but not limited to, fire, flood, or other threat of serious injury or death, the owner may enter at any time.

Access

Under the bill, the enforcing agency may require the owner of a leasehold to do one or more of the following:

-- Provide the enforcing agency access to the leasehold if the lease provides the owner a right of entry.
-- Provide access to areas other than a leasehold and/or areas open to public view.
-- 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. If a tenant vacates a leasehold after the enforcing agency has requested to inspect it, a leasehold owner must notify the enforcing agency of that fact within 10 days after the leasehold is vacated.
-- Provide access to the leasehold if a tenant of that leasehold has made a complaint to the enforcing agency.

A local government may adopt an ordinance to implement these provisions.

For multiple lessees in a leasehold, the bill specifies that notifying at least one lessee and requesting and obtaining the permission of at least one lessee satisfies the bill's requirements concerning access and permission to enter.

Neither the enforcing agency nor the owner may discriminate against an occupant on the basis of whether the occupant requests, permits, or refuses entry to the leasehold. The enforcing agency may not discriminate against an owner who has met the bill's access requirements but has been unable to obtain the occupant's permission, based on the owner's inability to obtain that permission.

Fees

The Law permits an enforcing agency to establish and charge a reasonable fee for inspections. Under the bill, the fee may not exceed the actual, reasonable cost of providing the inspection for which the fee is charged.

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 have been violated during inspections of these dwellings because the inspections often were conducted only with the permission of a landlord. Renters sometimes felt that they were treated as second-class citizens because inspectors could enter their residences without the tenants' permission. Local inspectors, however, could not and may not enter a single-family home or condominium without the owner's consent, unless they obtain a search warrant. The bill revises the procedures for conducting inspections of leased dwellings, such as apartments, by requiring that a leasehold owner notify a tenant of an enforcing agency's request for an inspection. In addition, the bill requires a leasehold owner to request and obtain permission to enter, before entering a leasehold.

Response: Under the bill, an enforcing agency may require an owner to notify a tenant of a enforcing agency's request to inspect a leasehold. Some people believe that an enforcing agency, and not a landlord, should be responsible for notifying occupants.

Supporting Argument
As a rule, under the Law, multiple unit dwellings must be inspected at least every two years. The Law also permits an enforcing agency to charge a reasonable fee for inspections. Some owners of rental property contend that some local

governments require inspections to be conducted, whether or not there is a need for an inspection, as one way of generating revenues. These owners would prefer that inspections be conducted only upon a tenant's request and not at intervals specified in the Law. The bill permits a local government to provide by ordinance that the maximum interval between required inspections is up to three years, if the most recent inspection found no violations. While the bill does not eliminate the requirement that inspections be conducted, it establishes a more reasonable time period during which an inspection must be conducted for leasehold owners who have not violated the law. Furthermore, the bill prohibits an inspection fee from exceeding actual and reasonable costs of conducting an inspection.

Response: The bill does not provide for follow-up inspections, which often are needed to ensure that a repair, required as the result of an initial inspection, was completed.

Opposing Argument

Although some renters might feel that housing inspections invade their privacy, this does not mean that Michigan's Housing Law is or was 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 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, under the Housing Law, an owner or occupant may demand a warrant for a nonemergency inspection (MCL 125.527); the bill does not change this provision.

Opposing Argument

Systematic inspections of multiple dwellings have helped many local officials preserve affordable housing for low and medium income persons in their communities. One cannot 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. Frequent 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. The bill, however, allows local units to increase to three years the maximum period between inspections. Without more frequent inspections, irresponsible landlords will have greater opportunities to operate substandard dwellings and continue to neglect affordable housing stock in many communities.

Response: As a general rule, the Law still prohibits the period between inspections from being longer than two years. A local government may provide for a maximum period of up to three years only if the most recent inspection found no violations of the Law. Thus, local governments may schedule inspections every three years for properties that are maintained at a high standard. This provides landlords with an incentive for maintaining their rental properties in a safe condition, since extending the period between inspections will result over time in landlords having to pay fewer inspection fees.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Local units that increase the maximum period between housing inspections will reduce their collection of inspection fees. The fees charged may not exceed actual and reasonable costs of conducting the inspection. The bill will have no State fiscal impact.

Fiscal Analyst: R. Ross

A9798\S487EA