

# Legislative Analysis



## MOBILE HOME PARKS

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**House Bill 5513 (reported from committee as Substitute H-3)**

**Sponsor: Rep. Andy Schor**

**Committee: Regulatory Reform**

**Revised First Analysis (11-13-14)**

**BRIEF SUMMARY:** House Bill 5513 would amend multiple sections of the Mobile Home Commission Act (Public Act 96 of 1987) to modify and add provisions regarding health and safety requirements for mobile home parks and the ability of local units of government to regulate mobile home parks.

**BRIEF FISCAL IMPACT:** House Bill 5513 (H-3), as reported from committee, would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). For more detail on the potential overall impact, see *Fiscal Information*, later in the analysis.

### **THE APPARENT PROBLEM:**

According to testimony from the bill sponsor, current law does not provide a clear distinction between the responsibilities of local and state entities in the regulation of mobile home and seasonal mobile home parks. The example used during testimony was the Life O'Riley mobile home park located in south Lansing. Over the course of several months in 2013 and into 2014, officials from both the Ingham County Health Department and LARA cited violations at the park. However, due to the differing timelines for correcting the problems given by those entities, the problems worsened, eventually leading to the park being shut down in February 2014; residents were relocated with the costs covered by the county.

### **THE CONTENT OF THE BILL:**

#### **New definitions**

References to "department" when used in respect to powers and duties concerning water supply systems and sewage collection and disposal systems for mobile home parks and seasonal mobile home parks would mean the Department of Environmental Quality.

A new term, "technical bulletin," would be defined as a document issued by the Department of Licensing and Regulatory Affairs (LARA) to promote uniform interpretation and enforcement of this act and the rules promulgated under the act. A rule promulgated or order issued under this act is not a technical bulletin.

#### **Manufactured Housing Commission**

Currently, one of the commission's responsibilities is overseeing ordinances passed by local governments that govern mobile homes. The bill would add the following to a list of duties for the director of the commission, or the director's authorized representative:

- Promptly notify each local government in which a park is located of the details of any complaints received concerning that park.
- Prepare a detailed written explanation of the powers and duties of local governments with respect to mobile home parks, seasonal mobile home parks, and mobile homes and post and maintain the document on the department's website.
- Post and maintain on the department's website all current technical bulletins.
- Promptly notify a local government of the issuance, amendment, or rescission of a technical bulletin if the department has knowledge that a mobile home park or seasonal mobile home park is located in, or an application has been filed for the licensure of a park proposed to be located in, the local government. The notice shall be sent by first-class mail or electronic mail to each of the following:
  - The clerk of the local government.
  - The chief executive officer of the local government.
  - The enforcing agency for the local government if the local government has assumed responsibility for the administration and enforcement within its jurisdiction of that act and the State Construction Code or a part of the code of limited application.

### **Park inspections**

Currently, local governments are allowed to adopt ordinances for the inspection of mobile homes, both inside and outside mobile home parks or seasonal mobile home parks. The inspection is limited to the following areas (changes made by the bill are underlined):

- Furnace
- Water heater
- Electrical wiring
- Sanitation and plumbing
- Ventilation
- Heating equipment
- Structural integrity
- Smoke alarms

While the act states that the Department of Environmental Quality (DEQ) or its authorized representative is responsible for conducting the physical inspection of mobile home parks and seasonal mobile home parks, Executive Order 16 of 2006 shifted all inspection duties to the Department of Labor and Economic Growth, the predecessor to LARA, with the exception of water supply systems and sewage collection and disposal systems. House Bill 5513 would update the wording of the act to reflect this.

Under the bill, after LARA or its authorized representative performs an annual inspection, it would be required to submit a copy of the inspection report to each local government where the park is located. Currently, a local government is not allowed to take part in an inspection unless it is for the purposes of issuing or re-issuing a license or if it has reason to believe that the act, or rules promulgated under the act, have been violated. Also, an annual inspection is not presently required under the act. The bill would add this annual inspection requirement.

A county health department would gain the ability to perform inspections if it so chooses. LARA would then enter into a contract with a county health department that chooses to perform the inspections of mobile home parks or seasonal mobile home parks and pay any reasonable costs to the local health department.

#### **Licensing of mobile home and seasonal mobile home parks**

The criteria for issuing a license would be modified by the bill. Currently, the Department of Licensing and Regulatory Affairs is required to issue or renew a license following the completion, review, and approval of certifications. Under the bill, the department would issue a license only if all of the following requirements were met:

- The applicant submits a complete license application.
- Certifications and recommendations of appropriate agencies and local governments are submitted to and approved by the department.
- The applicant provides financial assurance, as described below.
- The applicant pays a required fee.
- The mobile home park or seasonal mobile home park was approved after its most recent annual inspection by either the state or local government.

A license to operate a mobile home park or seasonal mobile home park is valid for three years. The license fees are \$225 plus \$3 per home site in excess of 25 for a mobile home park, and \$120 plus a \$1.50 per site in excess of 25 for a seasonal park. The length of a license and fee amounts would be unchanged by the bill.

#### **Distressed parks/Financial assurance**

If the park is determined to be a distressed park, under the bill, the park operator would be required to provide a financial assurance to the LARA that would cover the estimated cost of maintenance and repairs to the park during the next three years. A distressed park is a mobile home park or seasonal mobile home park that is not in "substantial compliance" with rules promulgated under the act concerning health and safety and construction standards for mobile homes and the parks.

The bill would require the Mobile Home Commission to provide an opportunity for an evidentiary hearing concerning a potential distressed park. During the hearing, the commission would have to consider all of the following:

- The length of time the park has not been in substantial compliance with the promulgated rules.
- Whether the owner or operator was notified and had sufficient opportunity to bring the park into substantial compliance.
- Any imminent threat to the health or safety of the residents of the park.
- Whether the park has been, or is likely to be, abandoned by its owner or operator.

#### **Forms of financial assurance**

The assurance could be in the form of a certificate of deposit, cash, certified check, irrevocable bank letter of credit, or surety bond acceptable to the department. An individual posting a cash bond would receive the interest accrued on such a bond.

If the department determines that the operator of a mobile home park or seasonal mobile home park has violated the act or related promulgated rules by failing to maintain or repair any infrastructure or facilities of the mobile home park or seasonal mobile home park, the department would be required to give notice of the determination by personal service or first-class mail to the local governments where the mobile home park is located, the owner, the operator, and, if the financial assurance is in the form of a bond, the surety executing the bond.

If the owner, operator, and surety fail to perform the specified maintenance and repair within 60 days after service of the notice, the department may enter the park and perform the specified maintenance and repair. The owner, operator, and any surety would be jointly and severally liable for all expenses incurred. The department would then certify the claim to the owner, operator, and any surety, listing in the claim the items of expense in performing the maintenance or repair, and draw on the financial assurance for the payment of the claim. The department would then notify the local government where the mobile home park is located when the specified maintenance and repairs have been completed.

The commission would be required to promulgate rules to determine whether a park is distressed and a financial assurance is required. The commission also would be required to submit a report to the standing committees of the Senate and House with primary responsibility for legislation affecting mobile home parks on the progress of the rule promulgation 180 days following the effective date of this legislation.

#### **Violation notices issued by local government**

If a local government issues an ordinance violation notice to the operator of a park and the operator fails to comply with the order contained within the violation notice, the local government may then bring an action to enforce the ordinance and abate or enjoin the violation.

If the violation goes uncorrected and endangers the health and safety of the occupants of the park, or, if the park is empty, endangers the health and safety of the public, the local government would be required to file a motion for a preliminary injunction or other temporary relief appropriate to remove the danger during the pendency of the action.

The local government would serve a copy of the complaint and a summons on each owner and lienholder of record that can be identified with the exercise of reasonable diligence. The local government would also be required to file a notice of the pendency of the action with the register of deeds for the county where the park is located.

The court would then make orders and determinations consistent with the objectives of the ordinance. The court may enjoin the maintenance of an unsafe, unhealthy, or unsanitary condition, or a violation of the ordinance, and may order the defendant to perform maintenance and repairs or make other corrections, including removal of a building or structure necessary to abate the condition. The court may authorize the local government to perform maintenance or repairs or to remove a building or structure owned or operated by the owner or operator of the park. However, the court could not

authorize removal of a building or structure unless the cost of repair of the building or structure will be greater than the state equalized value of the building or structure.

If the expense of maintenance, repair, or removal is not otherwise provided for, the court may enter an order approving the expense and placing a lien on the real property for the payment of the expense. The order may establish the lien as a senior lien, except as to tax and assessment liens, and except as to a recorded mortgage of first priority, recorded prior to all other liens of record. The order may also specify the time and manner for foreclosure of the lien if the lien is not satisfied. To perfect the lien, a copy of the order shall be filed with the register of deeds for the county where the mobile home park or seasonal mobile home park is located within 10 days after entry of the order.

#### **Appointment of a receiver**

The local health department may file an emergency petition with the circuit court to place a park under the control of a receiver. The court may grant the petition if it finds that the health or safety of the residents of the park would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue.

If the court appoints a receiver, the receiver shall be the director of the local health department or a designee, the director of the Department of Environmental Quality, the director of LARA, or another state agency or person designated by the director of LARA. The receiver would use the income and assets of the park to maintain and operate the park and to attempt to correct the conditions that constitute a threat to the health or safety of residents.

If requested by the receiver, LARA or the DEQ would provide available personnel to consult with the receiver on the fulfillment of the receiver's duties.

The receivership would be terminated when the receiver and the court certify that the conditions that prompted the appointment have been corrected or, if the mobile home park or seasonal mobile home park ceases operation, when the residents are safely placed in other housing, whichever occurs first. Upon termination of the receivership, the receiver shall render a complete accounting to the court.

#### **Imminent danger**

If the condition of a park is an imminent danger to the health or lives of individuals, the local health department may issue an order requiring the park to cease operation or prohibiting the presence of individuals at all or part of the park because of the condition of the park.

#### **Penalties and Fines**

The maximum civil fine that can be assessed to a person who violates the act from the current \$10,000 to not more than \$50,000. The act specifies that a fine collected would be deposited into the mobile home commission fund, which the bill would rename the mobile home code fund.

## FISCAL INFORMATION:

House Bill 5513 (H-3), as reported from committee, would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA).

HB 5513 (H-3) would have a negative fiscal impact on LARA to the extent that costs would be engendered by the drafting and posting of written explanations and technical bulletins on LARA's website; by having to determine whether a particular mobile home park is distressed; by the obligation to give notice of the failure to maintain or repair infrastructure or facilities, and, if the failure was not remedied, by the obligation to administer and certify claims of the expenses incurred by LARA to perform such maintenance or repairs; and by the potential appointment as a receiver of a mobile home park posing health or safety risks to residents or the public.

However, should a county health department choose to perform the inspections, HB 5513 (H-3) would require that LARA pay reasonable costs incurred by the county health department, regardless of the amount of revenue generated by regulation of the mobile home parks within the county. As described below, revenue generated by the regulation of mobile home parks has not adequately offset LARA's costs to inspect mobile home parks in recent years; the fiscal impact of this contract requirement would depend on whether county health departments choosing to perform inspections expend, overall, more or less than LARA.

HB 5513 (H-3) does not adjust the fees collected by LARA for the regulation of mobile home parks, although it does substantially increase the maximum civil fine for violating the Mobile Home Commission Act. While the overall fiscal impact of HB 5513 (H-3) on LARA is not currently known, the table below exhibits the revenues, expenditures, and balances of the Mobile Home Code Fund and illustrates that the Fund experienced a net loss at the close of FY 2012-13 and year-to-date FY 2013-14, resulting in a current balance of approximately \$1.1 million.

Mobile Home Code Fund				
Fiscal Year	Revenue	Expenditures	Net Income (Loss)	Cum. Bal.
2005-06				\$926,724
2006-07	\$2,405,959	\$1,703,000	\$702,959	\$1,629,683
2007-08	\$2,118,606	\$1,963,253	\$155,353	\$1,785,036
2008-09	\$2,722,386	\$2,090,339	\$632,047	\$2,417,083
2009-10	\$2,084,193	\$2,015,163	\$69,029	\$2,486,113
2010-11	\$1,885,196	\$2,167,342	(\$282,146)	\$2,203,967
2011-12	\$2,642,013	\$2,402,747	\$239,266	\$2,443,233
2012-13	\$2,147,610	\$2,841,339	(\$693,729)	\$1,749,504
2013-14 YTD	\$1,795,245	\$2,424,765	(\$629,519)	<b>\$1,119,985</b>

SOURCE: House Fiscal Agency analysis of MAIN database.

Additionally, local units could encounter indeterminate administrative costs in bringing action to enforce an ordinance, filing motions for injunction or other relief, serving notice of complaints and summons to owners and lienholders, filing notice with Registers of Deeds, and recovering expenses related to performing maintenance and repairs.

## ***ARGUMENTS:***

### ***For:***

Supporters of the bill say it is necessary to ensure that residents in mobile home parks are able to remain in their homes if a park owner or operator does not comply with health and safety standards.

### ***Against:***

While the bill was reported from committee with no formal opposition, several representatives questioned whether better outcomes could be achieved for inspections of mobile home and seasonal mobile home parks by cutting the state out of the inspection process.

## ***POSITIONS:***

### ***Support:***

Michigan Manufactured Housing Association (9-30-14)

Michigan Township Association (9-23-14)

Michigan Municipal League (9-23-14)

Michigan Association for Local Public Health (in concept, 9-23-14)

Ingham County Health Department (in concept, 9-23-14)

City of Lansing (9-23-14)

Kara Hope, Ingham County Commissioner (9-23-14)

Southeast Michigan Council of Governments (9-23-14)

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