

Legislative Analysis



REGULATION AND LICENSURE OF MOBILE HOME PARKS

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House Bill 4054 as enacted
Public Act 40 of 2015
Sponsor: Rep. Andy Schor
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 7-20-15

BRIEF SUMMARY: House Bill 4054 amends multiple sections of the Mobile Home Commission Act (Public Act 96 of 1987) to add new provisions and modify existing provisions regarding health and safety requirements for mobile home parks and the ability of local units of government to inspect and regulate mobile home parks. The bill takes effect September 1, 2015.

FISCAL IMPACT: House Bill 4054 (S-1), as passed by the Senate, 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. One example cited 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, and the lack of collaboration and communication, and confusion over lines of authority, 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:

Departmental references and duties

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 (DEQ). Currently, the Department of Licensing and Regulatory Affairs (LARA) is the default "department," though the Department of State is also listed as having some duties under the act.

While the act presently states that the 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 4054 would update the wording of the act to reflect this.

A new term, "guideline," would be defined as "an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person."

Manufactured Housing Commission

Currently, the commission is called the "Mobile Home Code Commission." It is tasked with, among other things, overseeing ordinances passed by local governments that govern mobile homes. The bill renames the commission as the "Manufactured Housing Commission," and adds 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 guidelines.
- Promptly notify a local government of the issuance, amendment, or rescission of a guideline 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 the State Construction Code or a part of the State Construction Code of limited application under Section 8a or 8b of the Stille-DeRossett-Hale Single State Construction Code Act.

Park inspections

Currently, LARA or its authorized representative is required to perform a physical inspection of mobile home and seasonal mobile home parks in accordance with standards established by the department. A local government takes part in an inspection only if 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. The bill would add the requirement that following the inspection, the department submit a copy of the inspection report to each local governmental unit in which the park is located.

Licensing of mobile home and seasonal mobile home parks

The criteria for issuing a license are modified by the bill. Currently LARA 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 the following requirements were met:

- The applicant submits a completed license application.
- Certifications and recommendations of appropriate agencies and local governments are submitted to, and approved by, the department.
- The applicant pays applicable fees (detailed below).
- The mobile home park or seasonal mobile home park was approved as being in substantial compliance after its most recent inspection.

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 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.

The assurance would be in the form of a bond, cash deposit, certified check, or other financial arrangement. An individual posting a cash bond would receive the interest accrued on such a bond.

Maintenance and repairs using financial assurance

If the department determines that the operator of a mobile home park or seasonal mobile home park has violated the act or rules promulgated under this act 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, or surety fail to perform or begin the specified maintenance and repair within 60 days after service of the notice, the department, or an authorized representative, may enter the park and perform the specified maintenance and repair. The owner, operator, or surety may request, and the department may grant, an extension of up to an additional 90 days.

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 in which 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.

Uncorrected violation notices

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

Action by the court

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 also authorize the department or 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 shall 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 covered by the financial assurance or 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 recorded prior to all other liens of record, except for tax and assessment liens, and except for a recorded mortgage of first priority. 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.

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 on a person who violates the act would increase to \$50,000 from the current \$10,000. The act specifies that a fine collected would be deposited into the Mobile Home Commission Fund. The fund is the recipient of all fees and fines provided for under the act.

FISCAL IMPACT:

House Bill 4054 would have a fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent that costs would be engendered by the drafting and posting of guidelines on LARA's website, by the requirement that LARA prepare and submit reports documenting its findings, and by the obligation to give notice of the failure to maintain or repair infrastructure or facilities and, if not remedied, by administering and certifying claims of the expenses incurred by LARA to perform such maintenance or repairs.

HB 4054 would increase the maximum fine that may be levied under the act to \$50,000 from \$10,000. However, it does not adjust the fees collected by LARA nor otherwise modify the revenue generated by the regulation of mobile home parks. While the extent of the fiscal impact of HB 4054 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)	\$1,119,985

SOURCE: House Fiscal Agency analysis of MAIN database.

Currently, local units of government can perform inspections if they believe the act, or rules promulgated under the act, are being violated. Local units also could encounter indeterminate administrative costs in bringing action to enforce an ordinance, filing

motions for injunction or other relief, serving notice of complaints and summonses to owners and lienholders, filing notice with Registers of Deeds, and recovering expenses related to performing maintenance and repairs. Additionally, costs may be incurred by local health departments under the provisions for emergency petition to the court and appointment of a receiver under Section 48, and under the proposed amendment to Section 17(2), which also provides for payment of reasonable costs by the state to the local health department.

House Bill 4054 would have an indeterminate fiscal impact on the Department of Environmental Quality (DEQ). While the bill's provisions regarding mobile home park complaints may increase the administrative workload for the DEQ by requiring that the "department" – in some cases the DEQ, depending upon the type of complaint – notify each local government in which a park is located of the details of each complaint, any increased departmental costs are anticipated to be minimal.

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. The bill requires better collaboration and communication between the number of agencies involved in mobile home park oversight and increases fines for bad actors whose inaction threatens the health and safety of mobile home park residents. The bill provides clearer lines of authority than currently exist.

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.

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