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

BILL ANALYSIS

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

Senate Bill 107 (Substitute S-5 as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Local Government

Date Completed: 8-17-17

## RATIONALE

The Housing Law regulates the alteration, improvement, inspection, maintenance, and safety of dwellings, as well as defines separate classes of dwellings, among other things. Apparently, there is concern that the Housing Law does not sufficiently recognize an owner's and a tenant's right under the Fourth Amendment of the United States Constitution, which protects against unreasonable searches and seizure. Specifically, the Law allows an inspecting unit to compel a landlord to grant access to leased property without consent if a lease gives the owner a right of entry. Some have suggested that amendments to the Law should reinforce that consent must be obtained from a lessee.

## CONTENT

**The bill would amend the Housing Law of Michigan to do the following:**

- **Specify that inspectors would have to receive consent from the lessee to enter a leasehold.**
- **Revise provisions regarding an owner's and a lessee's responsibilities in providing inspectors with access to a leasehold, and require a lessee to allow access under certain conditions.**
- **Refer to a lessee, rather than an occupant, in a provision prohibiting discrimination based on consenting to or refusing entry to a leasehold.**
- **Require an owner of a leasehold to notify the enforcing agency within 10 days after a lessee who refused an inspection by the enforcing agency vacated the leasehold.**
- **Revise provisions regarding the maximum period between inspections of a multiple dwelling or other dwellings, depending on the basis of the inspection and whether the local unit of government adopted an ordinance providing for inspections.**
- **Refer to "other dwelling", rather than "rooming house", in several provisions.**

The bill would take effect 90 days after its enactment.

Period between Inspections

Under the Law, the period between inspections of a multiple dwelling or rooming house may not be longer than four years, but a local unit may provide by ordinance for a maximum period between inspections that is not longer than six years if the most recent inspection found no violations of the Law and the multiple dwelling or rooming house has not changed ownership during the six-year period. All other dwellings regulated by the Law may be inspected at reasonable intervals.

The bill specifies instead that, if a local unit adopted an ordinance providing for inspections of multiple dwellings or other dwellings on an area basis, a recurrent violation basis, a compliance basis, or a percentage basis, both of the following would apply:

-- The period between inspections of a multiple dwelling or rooming house could not be longer than four years, or six years if the most recent inspection of the premises found no violations of the Law and the multiple dwelling or rooming house had not changed ownership during the six-year period.
-- All other dwellings regulated by the Law could be inspected at reasonable intervals.

(Under the Housing Law, in an inspection conducted on an area basis, all the regulated premises in a predetermined geographical area are inspected simultaneously, or within a short period. On a recurrent violation basis, premises that have a high incidence of recurrent or uncorrected violations are inspected more frequently. On a compliance basis, premises brought into compliance before the expiration of a certificate of compliance or any requested repair order may be issued a certificate of compliance for the maximum renewal certification period authorized by the local unit. On a percentage basis, a local unit establishes a percentage of units in a multiple dwelling to be inspected in order to issue a certificate of compliance for the multiple dwelling.)

Permission to Enter for Inspection

Except as otherwise provided, the Housing Law requires an inspector or team of inspectors to request and receive permission to enter before entering a leasehold regulated by the Law to undertake an inspection. The bill specifies that the inspector or team of inspectors would have to request and receive consent to enter from the lessee.

Under the Law, the enforcing agency may require the owner of a leasehold to do one or more of the following (and a local unit may adopt an ordinance to implement this provision):

-- Provide the enforcing agency with access to the leasehold if the lease gives the owner a right of entry.
-- Provide access to areas other than a leasehold or areas open to public view, or both.
-- Notify the lessee of the agency's request to inspect a leasehold, make a good faith effort to obtain permission for an inspection, and arrange for the inspection.
-- Provide access to the leasehold if a lessee of that leasehold has made a complaint to the enforcing agency.

The bill would delete that provision, but would require the owner of a leasehold to give the enforcing agency access to areas of the multiple dwelling or other dwelling that were not part of the leasehold or that were open to public view.

The bill also would require the owner of a leasehold to notify the lessee of the enforcing agency's request to inspect the leasehold, make a good-faith effort to obtain the lessee's consent for an inspection, and, if the owner obtained consent, arrange for the inspection by the enforcing agency.

In addition, the owner of a leasehold would have to give the enforcing agency access to the leasehold for an inspection during reasonable hours if any of the following applied:

-- The lease authorized an enforcing agency inspector to enter the leasehold for an inspection.
-- The lessee had made a complaint to the enforcing agency.
-- The leasehold was vacant.
-- The enforcing agency served an administrative warrant ordering the owner to provide access.
-- The lessee consented to an inspection.

If a lessee were not present during the inspection, the enforcing agency could rely on the owner's representation to the enforcing agency that the lessee had consented to the enforcing agency's inspection.

A lessee would have to give the enforcing agency access to the leasehold for an inspection during reasonable hours if any of the following applied:

-- The lease authorized an enforcing agency inspector to enter the leasehold for an inspection.
-- The lessee had made a complaint to the enforcing agency.
-- The enforcing agency served an administrative warrant ordering the lessee to provide access.
-- The lessee had given consent.

The Housing Law 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 an oral or written lease. The bill would delete that definition.

The bill specifies that, when used in the Law as a noun, "lease" would mean a written or unwritten agreement or contract that sets forth the terms and conditions, rights and obligations of each party with respect to a residential dwelling, dwelling unit, rooming unit, building, premises, or structure that is not occupied by the owner of record.

Discrimination Prohibition

The Law prohibits an enforcing agency or owner from discriminating against an occupant on the basis of whether the occupant requests, permits, or refuses entry to the leasehold. The bill instead would prohibit an enforcing agency or owner from discriminating against a lessee on the basis of whether the lessee consented to or refused entry to the leasehold for an inspection by the enforcing agency.

Requirement to Inspect

Under the Housing Law, a local governmental unit is not required to inspect a multiple dwelling or rooming house unless the local governmental unit receives a complaint from a lessee of a violation of the Law. Subject to this provision, an enforcing agency must inspect multiple dwellings and rooming houses regulated by the Law and in accordance with it. The bill would refer to other dwelling or dwellings, instead of rooming house or houses, in these provisions.

Reference to Other Dwelling

The bill would refer to "other dwelling", rather than "rooming house", in provisions that do the following:

-- Allow a local governmental unit and an enforcing agency to rely on inspections of a multiple dwelling or rooming house conducted the U.S. Department of Housing and Urban Development or other government agencies as a substitute for inspections required by a local enforcing agency.

-- Specify that, if a compliant identifies a dwelling or rooming house in which an individual under 18 lives, the dwelling must be inspected before any inspection in response to a nonemergency compliant.

Adoption of Ordinance

Subject to the requirement that the owner of a leasehold give an enforcing agency access to the leasehold under certain conditions, the bill would allow a local governmental unit to adopt an ordinance to implement Section 126 of the Housing Law (the section the bill would amend).

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**

Currently, inspector access to a dwelling without consent from the lessee under the Housing Law depends on how a lease is written. For example, in the event of an inspection of a dwelling where the parties signed a lease that allows broad or universal access to the dwelling without the lessee's consent, a landlord may be compelled by inspectors to open the unit for inspection without obtaining consent. In contrast, a person can sign a lease that allows access to his or her dwelling only during an emergency, so the landlord must ask the tenant for consent before opening the unit for inspection.

A Federal court case in Ohio has highlighted the potential liability of a municipality or landlord under the Housing Law's current provisions. Specifically, in 2015, a U.S. District Court ruled against the City of Portsmouth, Ohio, in *Baker* v *City of Portsmouth*, (No. 1:14cv512), after property owners argued successfully that the City violated the Fourth Amendment of the United States Constitution by authorizing warrantless administrative inspections. Apparently, many of the City's dwellings are old and the recent recession left a number of them vacant and unmaintained for a long period of time. The City's officials evidently assumed that these factors created unsafe or unsanitary conditions, and became concerned about the health of potential tenants. For those and other reasons, the officials enacted a code that required rental property owners to apply for a permit before renting the property. Criteria for obtaining a permit included passing a property inspection. Rental property owners who failed to respond to contacts from the City regarding inspections received a letter ordering them to contact the City to schedule an inspection or face consequences, including the possible issuance of a misdemeanor citation. According to the Court, the property owners and/or tenants in Portsmouth were presented with the choice of consenting to warrantless inspections or facing criminal charges. The Court concluded that Portsmouth's rental code authorized warrantless administrative searches in violation of the Fourth Amendment.

The bill would amend the Housing Law so Michigan municipalities, property owners, and residents would comply with Federal and State law and avoid situations similar to the one that occurred in Portsmouth, Ohio. At the same time, the bill would retain the right of a local government to seek an administrative search warrant.

In addition, by referring to other dwellings, instead of rooming houses, in some provisions, the bill would make it clear that all types of residential rental property are subject to the same regulations. The bill also would clarify language pertaining to the period between inspections, based on a local unit's adoption of an ordinance.

Legislative Analyst: Drew Krogulecki

**FISCAL IMPACT**

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

Fiscal Analyst: Elizabeth Pratt

SAS\A1718\s107a