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SFA



BILL ANALYSIS

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Senate Bill 487 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Mat J. Dunaskiss
Committee: Local, Urban and State Affairs

Date Completed: 6-9-97

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. An inspector or team of inspectors may request permission to enter all premises at reasonable hours to undertake an inspection. If there is an emergency, as defined by 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, however, is not required unless the owner or occupant demands an enforcing agency to obtain a warrant. For routine inspections, local inspectors apparently seek permission of the landlords, but not necessarily of the tenants, to enter these dwellings. Some tenants contend that the practice of conducting inspections without their approval violates their right to privacy. They believe that inspectors should have to ask for and receive a tenant's consent before entering his or her dwelling.

CONTENT

The bill would amend the Housing Law to permit, instead of require, an enforcing agency to inspect periodically multiple dwellings and rooming houses regulated by the Law. The bill also would do the following:

- **Permit a local government to provide by ordinance that the maximum period between inspections could be from two to six years.**
- **Permit an enforcing agency to require an owner to provide an inspector access to one or more regulated premises under certain circumstances.**
- **Require an enforcing agency to provide a leasehold owner written notice of an inspection at least 14 days before it was to occur.**
- **Require a leasehold owner, within three days of receiving notice of an inspection, to provide an occupant written notice of the day and time of the inspection.**
- **Require an occupant who objected to an inspection to give an owner written notice of the objection and of an alternative date and time for the inspection.**
- **Provide for exceptions to the inspection notification requirements under certain circumstances.**
- **Prohibit an enforcing agency from charging an inspection fee that exceeded actual costs.**

Currently, the period between inspections may not be longer than two years. Under the bill, a local government could provide by ordinance for a maximum period between inspections of a multiple dwelling or rooming house that was longer than two years but not more than six years.

Under the Law, an inspector, or team of inspectors, may 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 has the right to enter at any time. The bill

would delete these provisions.

Under the bill, an enforcing agency could require an owner to provide an inspector or an inspection team access to one or more regulated premises to undertake an inspection if the access were provided under one or more of the following conditions: to a common area in a two-family dwelling or in a multiple dwelling or rooming house; upon presentation of a warrant, as permitted under the Law; in an emergency; or, to a leasehold and the lease permitted the owner to provide the access. ("Leasehold" would mean 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 were leased to the occupant. "Emergency" would mean an emergency as defined under rules promulgated by the enforcing agency.)

An inspection would have to take place at a reasonable hour, although an inspection in an emergency could take place at any time. Except for an inspection of a leasehold, and except as otherwise provided in the bill, the enforcing agency would have to provide an owner of premises regulated under the Law reasonable advance notice of an inspection. If the inspection were of a leasehold, the enforcing agency would have to provide notice as described below.

Except as otherwise provided in the bill, before inspecting a leasehold, an enforcing agency would have to provide the owner of the leasehold with written notice of the date and time of the inspection at least 14 days before the inspection was to occur. Within three days after receiving the notice, the leasehold owner would have to provide the occupant of each leasehold to be inspected with written notice of the date and time of the inspection. If an occupant objected to the inspection's date and time, the occupant would have to notify the owner in writing of the objection and of an alternative date and time to which the occupant did not object. The alternative date and time would have to be within 14 days of the date and time of the inspection to which the occupant objected. If the occupant notified the owner of an alternative date and time, then the enforcing agency would have to reschedule the inspection for that date and time.

The bill's requirements for providing notice of an inspection would not apply under one or more of the following circumstances: an emergency; upon presentation of a warrant; if the inspection were in response to a complaint; and, another provision of

law provided that notice was not required.

Currently, the enforcing agency may establish and charge a reasonable fee for inspections conducted under the Law. Under the bill, the fee could not exceed actual and reasonable costs. The bill also would require that upon request, the enforcing agency provide, pursuant to the Freedom of Information Act, a copy of a record relating to the calculation of the fee.

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 are violated during inspections of these dwellings because the inspections often are conducted only with the permission of a landlord. Renters sometimes feel that they are treated as second-class citizens because inspectors may enter their residences without the tenants' permission. Local inspectors, however, may not enter a single-family home or condominium without the owner's consent, unless they obtain a search warrant. The bill would revise the procedures for conducting inspections of leased dwellings, such as apartments, by requiring that a leasehold owner and an occupant be notified in writing of an impending inspection. While the bill would not require the written consent of an occupant, it would at least require a tenant to be notified in writing of an inspection as well as permit a tenant to object to a scheduled inspection and arrange for an alternative date and date when he or she could be present.

Response: Under the bill, an enforcing agency would have to give notice of a scheduled inspection to an owner of a leasehold. The owner then would have to give each occupant written notice of the day and time of the inspection. Some people believe that an enforcing agency, and not a landlord, should be responsible for notifying occupants.

Supporting Argument

Under the Law, multiple unit dwellings must be inspected at least every two years. Some owners of rental property contend that some local governments require inspections to be conducted more frequently, whether or not there is a need for an inspection. The Law also permits an enforcing

agency to establish and charge a reasonable fee for inspections. A number of rental property owners believe that many local inspectors conduct frequent inspections as one way of generating revenues for their local governments. These owners would prefer that inspections be conducted only upon a tenant's request and not at intervals specified in the Law. The bill would increase from two to six years the maximum interval between required inspections. While the bill would not eliminate the requirement that inspections be conducted, it would establish a more reasonable time period during which an inspection must be conducted. Furthermore, the bill would prohibit an inspection fee from exceeding actual and reasonable costs of conducting an inspection.

Response: While the bill would establish procedures for notifying a landlord and tenant of an initial inspection, it would not provide for follow-up inspections. Follow-up inspections often are needed to ensure that a repair, required as the result of the 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 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 would 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, would increase from two to six years the maximum period between inspections. Thus, a local government could triple the length of time between inspections so that leased dwellings would be inspected only once every six years. Without more frequent inspections, irresponsible landlords would have greater opportunities to operate substandard dwellings and continue to neglect affordable housing stock in many communities.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Local units that increased the maximum period between housing inspections would reduce their collections of inspection fees. The fees charged could not exceed actual and reasonable costs of conducting the inspection. This bill would have no State fiscal impact.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.