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BILL ANALYSIS

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Senate Bill 145 (as reported with amendment)
 Senate Bill 146 (as reported without amendment)
 Senate Bill 147 (as reported without amendment)
 Senate Bill 148 (as reported without amendment)
 Senate Bill 149 (as reported without amendment)
 Sponsor: Senator William Sederburg (Senate Bills 145 and 147)
 Senator Ed Fredricks (Senate Bill 146)
 Senator Mitch Irwin (Senate Bills 148 and 149)
 Committee: Local Government and Veterans
 Date Completed: 4-28-87

RATIONALE

"Bed and breakfast" (B&B) is a traditional form of accommodation for travelers that long has been popular in Europe and New England. Typically, a bed and breakfast establishment is a private home where, for a single price, the owners rent a room and provide breakfast to a traveler. Until recently, when interest in B&Bs has grown nationally, such establishments were practically nonexistent in Michigan. A Michigan State University study completed in December 1986 showed, however, that there were 65 B&Bs in Michigan in 1984 and 110 in 1985, and the signs pointed toward further growth in future years.

Because bed and breakfast establishments offer lodging and food to the public, some officials have attempted to apply, and some may feel obliged to apply in the future, State standards regulating hotels and food service businesses to B&Bs. Other people claim that this not only could blur the distinction between traditional B&Bs and hotels or motels that serve a free breakfast, it also could stifle the growth of the B&B industry in Michigan by placing strict, and often expensive, requirements on individual homes. Some people feel that the State could encourage growth of the industry by defining B&Bs, and outlining what State regulations they must follow.

CONTENT

Senate Bill 145 would amend the Public Health Code, as it pertains to food service sanitation, to exempt bed and breakfasts from food service establishment provisions. Senate Bills 146, 147, 148, and 149 would amend various other Acts to exempt bed and breakfasts from hotel regulation, grant them a lien to enforce payment, limit their liability for guests' property, and define bed and breakfasts as private residences in and remove them from commercial hotel construction codes, respectively. The bills are all tie-barred.

Senate Bill 145

A "bed and breakfast" establishment would be defined as a private residence that also is the innkeeper's residence, that has sleeping accommodations for rent to lodgers in up to 14 rooms, and that serves breakfasts at no extra cost to the lodgers. "Lodger" would be defined as a person who rents a room in a bed and breakfast for fewer than 30 consecutive days.

A bed and breakfast would be exempt from regulation under the Public Health Code as a "food service

establishment" either if it had eight or fewer rooms for rent, or if it had at least nine but fewer than 15 rooms for rent and only served continental breakfasts. "Continental breakfast" would be defined as "the serving of only nonpotentially hazardous food such as a roll, pastry, or doughnut, fruit juice, hot beverage, or individual portions of milk and items incidental to such foods".

MCL 333.12901

Senate Bill 146

The bill would exempt bed and breakfasts from Public Act 188 of 1913, which regulates hotels.

MCL 427.1

Senate Bill 147

The bill would amend Public Act 145 of 1897, which provides for a hotel keeper's lien, to authorize bed and breakfasts to enforce payment by detaining a lodger's baggage in the same way other lodging establishments may do so under the Act.

MCL 427.201

Senate Bill 148

The bill would amend Public Act 42 of 1905, which limits an innkeeper's liability for guests' personal property, to extend the Act to bed and breakfasts. Senate Bill 149 The bill would amend the State Construction Code Act to provide that a bed and breakfast would be considered a permanent residence and could not be treated as a hotel or other facility serving transient tenants. This provision would be in effect throughout the State without local modification, notwithstanding the exemption provisions in the construction code that allow local governments to exempt themselves from parts of the code.

Proposed MCL 125.1504b

BACKGROUND

The popularity of bed and breakfasts in the United States may be a recent trend, according to an MSU study of the B&B industry in Michigan, but the roots of the B&B concept can be traced to 17th century Europe. The B&B form of lodging usually was relatively inexpensive and the cost of the breakfast was included in the price of the room. Traditionally, the establishments were small and consisted of one or two guest bedrooms and a hall bathroom that was shared with the residents of the home. B&Bs, which

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were located in residential neighborhoods and farms, were noted for treating guests more like friends and family members than tourists. American soldiers who had served in Great Britain during World War II were among the first sizeable group of Americans to use B&Bs when they visited Britain after the war. As the popularity of overseas vacations increased after World War II, more American travelers experienced European B&Bs, according to the study.

Since the mid-1970s, when the British B&B concept was introduced in the United States, the number of B&Bs established in this country has grown dramatically. The first bed and breakfasts, the MSU study noted, were located on the East and West coasts in such areas as Cape Cod and the Napa Valley in California. The American Bed and Breakfast Association, as cited in the study, estimated in 1984 that there were over 6,000 B&Bs located in more than 1,300 cities throughout North America.

The popularity of B&Bs in Michigan has grown as in the rest of the country. According to the MSU study, Michigan B&Bs have developed primarily in three areas: the recreation and tourist area in the northwest Lower Peninsula, in historic small towns in southwest Michigan, and along the Great Lakes' coastlines. The B&B industry in the State has changed during the last five years and the number of B&Bs has almost doubled in the last two years. There were 65 B&Bs operating in the State in 1984, and approximately 110 in 1986.

FISCAL IMPACT

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

ARGUMENTS

Supporting Argument

Encouraging the development and growth of B&Bs in Michigan can do nothing but enhance an already flourishing tourism industry. Expansion of the B&B business could have several positive outcomes: creation of new small business opportunities for Michigan residents; proliferation of less expensive alternatives to traditional hotel-motel operations, thus offering diversity in the lodging industry; restoration or preservation of homes with historical significance, by making it economically viable for owners to live in and maintain them; utilization, rather than deterioration, of older homes in urban areas; and development of available lodging in areas of the State that are unable to support more extensive forms of lodging.

Currently, members of the fledgling B&B industry face compliance with the body of State regulations regarding lodging and food service that were designed for hotels, motels, and the restaurant business. If strictly applied to B&Bs, these restrictions could require individuals to incur substantial expenses, thereby either forcing them out of business or making them drastically alter the type of experience they could provide. The bills would ease the burden of regulation faced by B&B owners, thus reflecting the uniqueness of B&Bs in the lodging industry, and making their operation more feasible, attractive, and affordable.

Supporting Argument

The bed and breakfast industry in the State has experienced dramatic growth during the 1980s. Yet, the confusion concerning the nature of B&Bs has caused difficulty for some B&Bs to get established. The bills would facilitate further growth by clarifying the definition of B&Bs. In addition, the bills would reduce the application to B&Bs of, what many in the industry claim are unnecessary regulations, in relation to the operation of B&Bs.

Supporting Argument

Of the B&Bs in the State surveyed in the MSU study, 30% are located in communities that have enacted special ordinances pertaining to B&Bs, which often require special permits and licenses. These ordinances frequently include certain restrictions and requirements such as zoning, minimum square footage of guest rooms, adequate off-road parking, smoke detectors, limits on outside signs, and maintenance of guest records. The bills would not negate these types of local ordinances.

Response: It is not absolutely clear whether the bills would preempt this field or simply set a minimum standard.

Opposing Argument

While encouraging the B&B industry is an excellent idea, Senate Bill 145, in its attempt to do so, raises some serious questions. Of particular concern is the provision that would exempt a B&B from food service regulations if it had eight or fewer rooms for rent. This would mean that a B&B could serve a full breakfast to 16 guests, or possibly more if the permanent residents were included, without having to abide by the sanitation and safety requirements that other food service establishments face. A full breakfast would be more than juice, coffee, and a roll, and could include meat and egg products that are susceptible to contamination if not properly prepared and stored.

According to an MSU survey, while most B&Bs in the State provide a continental breakfast to their guests, 19% serve a full breakfast, which often is associated with B&Bs in England, Ireland, and Europe. Under present health code regulations, only B&Bs with licensed food service facilities can serve meals other than a continental breakfast, juice, coffee and a commercially-produced baked good. Almost half (46%) of the B&Bs that serve only a continental breakfast indicated in the survey that they would serve a full breakfast, if Senate Bill 145 were passed. Like the original B&Bs, however, most B&Bs are private homes that do not contain the kitchen, food storage, and sanitary facilities necessary to serve full breakfasts daily to 16 or more people.

In addition, there are many motels of similar size located throughout the State, but especially in the Upper Peninsula, that would qualify under the bill to serve breakfasts without being licensed. Exempting B&Bs from food service regulations could give them an unfair advantage over nearby restaurants or cafes that are subject to regulation: one facility that serves food should not be regulated while another is free from regulation.

Opposing Argument

Most B&Bs across the country reportedly are subject to some degree of regulation. In fact, B&Bs located in the Northeast, where they first were established, are regulated, with some exemptions for those that serve a continental breakfast. Certain states in the Midwest allow exemptions based on the number of rooms, but their exemptions do not apply to B&Bs that have more than four guest rooms. Ohio and Washington exempt B&Bs that have five or fewer rooms. It is not clear why Michigan should exempt B&Bs with eight or fewer rooms, especially since this is not permitted by other states that have had more experience in dealing with B&Bs. Since disallowing any exemptions may be desirable but not feasible, exemptions should apply to B&Bs with four bedrooms or less. The average domestic kitchen could handle complete food service for eight guests, at full occupancy, with no problem.

Further, the serving of breakfast should be restricted only to morning hours. This would eliminate the possibility that food, especially a "full breakfast", was served any time

of the day, which could tax the limited kitchen facilities and increase the possibility of food contamination, due to improper handling and inadequate storage of food.

Opposing Argument

Proponents of Senate Bill 145 argue that incidents of food contamination occur more often at restaurants than in private homes and that, therefore, B&Bs as private residences would be safer than restaurants in serving food to their guests and should not have to be licensed. Food poisoning statistics argue otherwise, however. State public health officials noted that the Center for Disease Control (CDC), in Atlanta, Georgia, last year investigated between 15,000 and 30,000 reported cases of food contamination that occurred in private and public settings throughout the country. The CDC also estimated that last year there were between 24 million and 81 million unreported cases of food poisoning, which happened in homes and public facilities, and involved campylobacter, salmonella, shigella, staphylococcus, and other forms of food contamination. In 1986, there were more than 100 food-related outbreaks, that affected more than 1,000 people, reported in Michigan at licensed and unlicensed dining facilities. In 1985, Public Health Department officials noted that there were six "major" outbreaks in the State that affected more than 650 people and resulted in two "possibly related" deaths. Health officials also pointed out that many food contamination cases that occur in the home go unreported. Therefore, the contentions by the bill's advocates that more food contamination occurs at public dining facilities than at home, and B&Bs as primarily private residences should not be licensed because they would be safer than restaurants, are unfounded. Besides, the scope of inspections by public health officials goes beyond food handling to include such factors as water supply and sewage disposal. The purpose of requiring B&Bs to be inspected would be to minimize the risk of food poisoning and protect the B&B owners, guests, and neighbors who could be affected by poor sanitation and water supplies, rather than just to regulate for the sake of regulation.

Response: Since most B&Bs owner-occupied homes, the owner-operators are highly motivated to maintain proper sanitation standards because they can ill-afford to earn a bad reputation, or to defend themselves from lawsuits.

Opposing Argument

The bills would establish B&Bs as a special class in the lodging industry. Some aspects of laws and regulations that affect hotels and motels, under the bills, would apply to B&Bs and would benefit the B&B industry. Yet, B&Bs would be exempt from other State laws with which hotels and motels must comply in order to operate in the State. For example, Senate Bill 147 would authorize B&Bs to enforce payment by detaining a lodger's baggage, as other lodging establishments now can do under Public Act 145 of 1897. Senate Bill 148 would extend to B&Bs the limitation on an innkeeper's liability for guests' personal property. Yet, Senate Bill 149, however, would treat B&Bs as a permanent residence and not a hotel or other facility under the State Construction Code Act, removing them from certain commercial hotel construction requirements. Hotels and motels in the State are subject to a number of health, fire, and safety laws, and maybe required to obtain liability insurance, in order to protect the facilities and the traveling public. While B&B proponents contend they are private homes, B&Bs are open to members of the public who deserve the same level of protection they already have at hotels and motels operating in the State.

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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.