

Legislative Analysis



HOUSING INSPECTIONS

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Senate Bill 107 (S-5) as reported from House committee
Sponsor: Rep. Rick Jones
Committee: Local Government
Complete to 10-18-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 169 of 2017)

BRIEF SUMMARY:

Senate Bill 107 would rewrite Section 126 of the Housing Law of Michigan (PA 167 of 1917) in an attempt to clarify existing law regarding the inspection of multiple dwellings and rooming houses. Among other things, the bill would provide that both the owner of the leasehold (e.g., landlord) and the lessee (e.g., tenant) must provide the enforcing agency access to the leasehold during reasonable hours if: (1) the lessee gives consent, or (2) the enforcing agency serves an administrative warrant ordering the owner/lessee to provide access. The lessee may give consent by authorizing inspections by the enforcing agency in the lease, making a complaint to the authority, or consenting to the agency's request for an inspection. (The owner must also provide access if the leasehold is vacant).

FISCAL IMPACT:

Senate Bill 107 would have an unknown fiscal impact on local units of government. To the extent that local units of government are following the provisions of the bill, there would be no fiscal impact. If the provisions of the bill increased required administrative procedures on the part of the local unit of government, there could be minimal cost increases for the local unit of government.

THE APPARENT PROBLEM:

It is understood that this bill is intended to clarify and strengthen provisions in the Michigan Housing Law to protect against unreasonable search and seizure—a right guaranteed by the Fourth Amendment of the U.S. Constitution. A recent federal district court case in Ohio¹ addressed the issue of mandatory housing inspections. In both that instance and current Michigan law, if the lease provided a landlord's right of entry, that right was extended to the enforcing agency, and the agency could require the landlord to provide access. The Ohio court found that the applicable law violated the Fourth Amendment "insofar as it authorize[d] warrantless administrative inspections."

THE CONTENT OF THE BILL:

Currently under the Act, a local governmental unit is required to inspect a multiple dwelling or rooming house regulated by PA 167 only if it receives a complaint from the lessee of a violation of the act. However, the Michigan State Housing Development Authority is required to inspect those dwellings, and the Act currently requires inspections every four years. The bill instead provides that inspections are required every four years if a local unit adopts an ordinance

¹ *Baker v City of Portsmouth*, Case No. 1:14cv512.

providing for inspections using one of several bases for inspections (area basis, recurrent violation basis, compliance basis or percentage basis).

The bill leaves in place an exception that allows inspections every six years if the most recent inspection of premises found no violations and ownership has not changed.

The bill also leaves in place, slightly rewritten, the provision that allows an owner to enter a leasehold at any time without obtaining the lessee's permission in the case of an emergency, including, but not limited to, fire, flood, or other threat of serious injury or death. [This provision was added by a bill in the 2015-2016 legislative session, Senate Bill 394 (Public Act 14 of 2016), which also added the provision that municipalities are not required to inspect multiple dwellings or rooming houses periodically, but only need to inspect such premises if it receives a complaint from a lessee of a violation of this act.]

Other subsections of the act are reordered or rewritten for the sake of clarity. The bill would take effect 90 days after enactment.

MCL 125.526

DISCUSSION:

According to committee testimony, the proposed changes would amend the process by which local units of government inspect multiple dwellings or rooming houses. Currently, if a lease allows a landlord to enter a property, the enforcing agency has used that provision to enter the property as well. As a result, tenants are afforded different Fourth Amendment protections depending on a (likely unnoticed) provision in their leases. Instead, the bill would provide that, if a local unit wanted to inspect a property, it would send a notice to the landlord. The landlord would give notice to the tenant and either secure permission or not. Then, if the tenant did not give permission, the agency would have the option of seeking an administrative warrant to enter the property. No one voted or testified against the bill.

POSITIONS:

Representatives of the following organizations testified in support of the bill:

- Apartment Association of Michigan (9-27-17)
- City of Jackson (9-27-17)

The following organizations support the bill:

- Michigan Realtors (9-27-17)
- Michigan Townships Association (9-27-17)
- Michigan Municipal League (9-27-17)
- Property Management Association of Michigan (10-4-17)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Ben Gielczyk

■ 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.