

Legislative Analysis



ROOMING HOUSES AND APARTMENTS: REVISE INSPECTION SCHEDULE

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House Bill 4473 (Substitute H-2)

Sponsor: Rep. Chris Ward

Committee: Local Government and Urban Policy

First Analysis (6-1-05)

BRIEF SUMMARY: The bill would revise the time intervals between inspections of rooming houses and apartment buildings with three or more units, prohibit inspections by local governments of properties inspected by HUD or MSHDA unless a complaint was received, restrict the fee for an inspection to the "actual, reasonable cost", and allow for more frequent inspections of a property with multiple violations. (The terms "actual, reasonable cost" and "violation" would be newly defined.)

FISCAL IMPACT: The bill could result in a significant loss of revenue to local governmental units that maintain their own enforcing agency. (Additional information is found later in the analysis.)

THE APPARENT PROBLEM:

Under the Housing Law of Michigan, local enforcing agencies are required to inspect multiple dwelling units (apartments and rooming houses) at least every two years or once every three years if no violations are found. Inspections may also be made on a "complaint" basis, where complaints of violations are inspected within a reasonable time, and on a "recurrent violation basis," where premises found to have a high incidence of recurrent or uncorrected violations are inspected more frequently. In an emergency, which is defined in rules promulgated by the enforcing agency, an inspector or inspection team has the right to enter at any time.

Associations representing property owners believe that some municipalities are conducting inspections more frequently than needed – for example, some require annual inspections. It is felt that since the majority of property owners maintain their buildings well, frequent inspections waste limited city resources and don't allow enforcing agencies to concentrate on the bad actors. In addition, apartments that rent to tenants who receive rent assistance from the U.S. Department of Housing and Urban Development (HUD) and/or the Michigan State Housing Development Authority (MSHDA) may be inspected by either or both of these entities as well as the local enforcing agency. Some feel that these multiple inspections are duplicative, intrusive to tenants, and expensive for property owners.

Another concern property owners have raised pertains to the act allowing municipalities to charge a reasonable fee for the inspections. Some property owners maintain that enforcing agencies are charging more than the actual cost of performing the inspections,

and that some local governments are increasing the frequency of inspections as a way to increase revenue to city coffers. Legislation is being offered to address these concerns.

THE CONTENT OF THE BILL:

Under provisions of the Housing Law of Michigan, the enforcing agency of a city or village with a population of 10,000 or more (and the territory immediately adjacent and contiguous to such a city or village) must periodically inspect multiple dwellings (apartment buildings) and rooming houses regulated by the act. The period between inspections cannot exceed two years; however, a local government can provide by ordinance for a maximum period between inspections of three years if the most recent inspection of a premises found no violations. All other dwellings regulated by the act can be inspected at reasonable intervals.

An inspection must be conducted in the manner best calculated to secure compliance with the act and appropriate to the needs of the community and can include, but is not limited to, conducting the inspections on a geographical area basis, a complaint basis, and/or a recurrent violation basis.

House Bill 4473 would amend the Housing Law to eliminate the above provisions. Instead, the bill would modify the time intervals between inspections, prohibit local governments from inspecting rooming houses and multiple dwellings that are inspected by the U.S. Department of Housing and Urban Development (HUD) or the Michigan State Housing Development Authority (MSHDA) unless a complaint was lodged, require a description of the fees for an inspection to be given to a property owner, and define the terms "actual, reasonable cost" and "violation."

Inspections would have to be conducted at least once every five years and could not be conducted more frequently than one time every three years unless triggered by a complaint or if a premises had a high incidence of recurrent or uncorrected violations.

Complaint-based inspections would have to be conducted within four weeks of a written complaint of a violation to the enforcing agency. If a reinspection were needed, it could not be conducted until at least 30 days after the original complaint-based inspection, but could take place earlier if a potential violation or condition posed an immediate threat to the health and safety of a resident or the public or the condition rendered the premises uninhabitable. In addition, an enforcing agency would be required to initiate a complaint if violations were apparent from a public right-of-way or adjacent property or if a violation or condition posed an immediate threat to the health and safety of a resident or the public and the condition rendered the premises uninhabitable.

Inspections could be conducted more often than once every three years if premises were found to have a high incidence of recurrent or uncorrected violations. A rooming house with 15 or more violations found during a single inspection (whether during a regularly scheduled inspection or as a result of a complaint) would be subject to additional inspections under the bill, as would a multiple dwelling with 10 or more violations found

in at least 20 percent of the units. "Violation" would be defined as a violation of the housing law or a property maintenance code adopted by the local enforcing agency. Multiple occurrences of identical violations of either the act or local property maintenance standards found during an inspection would be considered as one violation.

Under current law, the enforcing agency is allowed to charge a reasonable fee for inspections that cannot exceed the actual, reasonable cost of providing the inspection. The bill would define "actual, reasonable cost" to mean a cost determined as follows:

- For an inspection performed by an employee of the local enforcing agency, the hourly rate for the actual inspection time. The hourly rate would be determined by the employee's annual salary and benefits divided by the number of hours worked in a calendar year. The hourly rate would be multiplied by the actual time taken to perform the inspection, plus five percent to reflect associated administrative costs.
- For an inspection performed by an independent contractor of a local enforcing agency, the allowable fee could not be greater than the fee charged to the local enforcing agency.

MCL 125.401 and 125.526

FISCAL INFORMATION:

Potential loss of revenue for local governments employing their own inspections could be 40 percent to 50 percent of their budget for their housing authority department.

Using Lansing as a benchmark, this translates to a loss of \$550,000 to \$650,000 annually if they can recover only 5 percent of their administrative overhead in the billing rate. Administrative overhead in the context of this bill includes employee benefits for every employee except inspectors, payroll taxes for every employee except inspectors, vehicle operating cost and depreciation, inspection and testing equipment cost, computers, building occupancy charges, and the total cost of indirect employees, such as clerical and supervisory staff. This assumes that no inspectors would be laid off because of a relaxation in the frequency of inspections requirements. This assumption is based on the fact that multiple inspections will continue to be required for properties with uncorrected violations. For local units of government employing a third party inspection service, there will be lost revenue for the overhead needed to administer the housing authority department, but the percentage relationship is indeterminate.

ARGUMENTS:

For:

Property owners have raised several concerns over the provisions of the state housing law that pertain to inspections of rooming houses and apartment buildings. Current law establishes a maximum time interval between inspections of rental units, but allows

municipalities to, by ordinance, set a minimum inspection interval. Frequent inspections do not necessarily increase the safety conditions of a rental unit, but may result in an unnecessary expense to the majority of property owners who keep their buildings well maintained and who must pay the city for the cost of the inspection. When a tenant receives assistance from HUD or MSHDA, the unit may be inspected by all three entities in a single year, which is a great inconvenience to tenants who have a right to privacy and enjoyment of their premises, as well as additional expense to property owners. Furthermore, since the act allows an enforcing agency to charge a "reasonable fee" for the inspection, but does not define the term, some property owners feel that some of the local units of government are inflating the costs of performing an inspection, perhaps as a means to increase revenue to flagging budgets.

The bill would address these concerns by establishing a minimum time interval between inspections of three years and eliminating inspections of properties that received an inspection by HUD or MSHDA. However, a rental unit could be inspected more frequently if a complaint were received or if the last inspection found multiple violations. The bill would also define the term "violation" so that if, say, the air conditioning system malfunctioned, it would count as a single violation instead of one violation times the number of rental units in the building. Basing the inspection schedule on a complaint-based system will enable local governments to concentrate their limited resources on problem units and problem property owners, who, though in the minority, represent the greatest threat to the public safety and welfare.

By defining the term "actual, reasonable cost," enforcement agencies that use municipal employees to perform the inspections could only charge a rate equal to the employee hourly pay (which includes benefits) times the number of hours it took to complete the inspection. An additional five percent could be added to cover the city's administrative costs associated with operating the inspection program.

The changes that the bill would implement would help cities to focus their resources on the "bad actors" rather than treating all property owners the same. Good property owners would therefore get some relief from too frequent of inspections and a good incentive would be provided to all property owners to keep their properties up to code.

Against:

Representatives of municipalities, advocates for the poor, and members of neighborhood associations feel strongly that the bill as reported from committee will restrict the ability of local governments to ensure that safe housing is available to the public. In particular, opponents of the bill have raised the following concerns:

- Unless a complaint was received, an enforcing agency could not inspect apartment buildings that had been inspected by HUD or MSHDA officials. However, the inspection criteria HUD uses is less restrictive than most city ordinances (i.e., HUD does not require smoke detectors) and MSHDA inspections do not have to comply with local or state laws, ordinances, or codes. Therefore, passing a HUD or MSHDA inspection does not mean that a rental unit

is safe, and at least one city representative testified that their inspectors have found some HUD properties to be in deplorable condition. This is all the more worrisome considering that the majority of the renters of these properties are some of the state's most vulnerable citizens – persons with physical and mental disabilities, the elderly, and lower income individuals.

- The bill's restrictions on the frequency of inspections (and eliminating the ability to have different inspection schedules for different geographic areas) interfere with the ability of a local government to establish an inspection schedule that fits the unique needs of the community. For example, communities that have a high volume of young, transient renters (i.e., college towns) need the flexibility to have more frequent inspections as a bad tenant (or immature one) can quickly turn a good property into an unsafe one. Blighted areas or high crime areas also need more frequent inspections in order to help turn neighborhoods around – and keep them that way.
- The bill's definition of "violation" needs further tweaking as the ability to inspect a building more frequently would be triggered by the number of violations rather than the seriousness of the violations. For instance, a missing light bulb is not as serious as a missing or nonworking smoke detector, termite infestation, or a broken furnace in the dead of winter. And, depending upon interpretation, a building could have numerous units with serious plumbing problems, no smoke detectors, peeling paint, and no heat – yet this would only count as 4 violations for the building. Or, a unit with peeling paint, hole in the floor, sagging walls, and a missing door (all structural) would be counted as having one violation. In either case, too few violations to trigger more frequent inspections than once every three years.
- The bill would shift the cost of inspections from property owners to taxpayers in municipalities that utilize city employees to conduct the inspections. Only a small fraction of the actual costs of administering the inspection program (just five percent over the hourly rate multiplied by the actual time taken to perform an inspection) could be recouped. This five percent would not begin to cover the actual expenses of providing vehicles, fuel, laptop computers, flashlights and batteries, hard hats, tools and equipment, etc. Yet, third party contractors providing inspection services to local governments could build these expenses into the fees they charge the municipality. In fact, the bill puts no restrictions on the fees that third party contractors can charge municipalities for services rendered. Therefore, the bill would give no relief in fees for property owners in smaller municipalities that rely on contractors to perform their inspections and would make larger cities, which are already struggling to provide needed services, absorb the lion's share of the inspection costs.
- The bill ignores many facts such as the following: some property owners with bad tenants are glad for frequent inspections because if the tenant doesn't maintain the unit better, the landlord has clear grounds for eviction; frequent

inspections of blighted or high crime areas lead to better maintained properties which in turn raise property values (which increases the state's and city's tax revenues) and decreases drug trafficking and other criminal activities (which decreases police and fire department expenses); some cities have a high number of older rental units which require more, not less, frequent inspections due to the rate of deterioration of older buildings; some landlords avoid inspections through fraudulent means – perhaps the bill could be amended to provide a greater fine for those property owners; and, the bill does not address the problem of negligent property owners (e.g., requiring them to pay a fine for complaint-based inspections if violations are substantiated) but, by lengthening the time between inspections, could make it harder for municipalities to catch them and place the welfare of renters in jeopardy.

POSITIONS:

A representative of the Property Management Association of Michigan and West Michigan indicated support for the bill. (5-25-05)

A representative of the Detroit Metro Apartment Association indicated support for the bill. (5-25-05)

A representative of the Washtenaw Area Apartment Association and the Property Management Association of Mid-Michigan indicated support for the bill. (5-25-05)

The Michigan Municipal League and numerous officials representing local units of government testified in opposition to the bill. (5-25-05)

A representative of the Michigan Association of Housing Officials testified in opposition to the bill.

A representative of the Michigan Advocacy Project indicated opposition to the bill. (5-25-05)

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