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BILL ANALYSIS



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Senate Bill 195 (Substitute S-1 as enrolled)
Sponsor: Senator Valde Garcia
Committee: Agriculture, Forestry and Tourism

Date Completed: 5-2-05

RATIONALE

Under Part 124 of the Public Health Code, a person must obtain an annual license from the Michigan Department of Agriculture (MDA) in order to operate an "agricultural labor camp", which provides housing for migrant workers. The MDA is required to issue a license if, after inspecting the camp, it finds that the camp and its proposed operation conform or will conform to the minimum standards of construction, health, sanitation, sewage, water supply, plumbing, rubbish disposal, and operation set forth in administrative rules. The MDA may issue a full license or a temporary license, or deny a license. If the inspector finds a violation, the MDA's response will depend on the nature of the violation. A critical violation may necessitate one or more additional inspections. Evidently, the MDA attempts to continue working with camp operators until violations have been corrected. In the case of persistent noncompliance, particularly if a violation is life-threatening, the Department might seek assistance from the local prosecuting attorney. Given the nature of the offense, however, and the competing demands of the prosecutor's workload, the matter might receive little attention. To provide the MDA with leverage against noncomplying camp operators, the Department has suggested that it be authorized to impose an administrative fine for violations of the license requirement.

CONTENT

The bill would amend Part 124 of the Public Health Code to establish an administrative fine of up to \$1,000 for operating an agricultural labor camp without a license. Each day a person operated without a license would be a separate violation, but

the total fine for continued noncompliance could not exceed \$10,000. All fines would have to be credited to the Migratory Labor Housing Fund.

The Code prohibits a person from operating an agricultural labor camp, or causing or allowing an agricultural labor camp to be occupied and used as one, without a license. The bill specifies that a person would not be in violation of this provision if the sole reason the person was operating the camp without a license was the failure of the Michigan Department of Agriculture to respond within a timely manner to an application submitted in accordance with Section 12412 of the Code. (Under that section, a person wishing to operate an agricultural labor camp must submit an application to the MDA on a form and in a manner prescribed by the Department; the application must contain specific information and be submitted at least 30 days before the first day the proposed camp is to be operated.)

The Code provides for the Migratory Labor Housing Fund to receive funds appropriated by the Legislature, and allows an employer of migratory farm laborers to receive a grant from the Fund of up to 50% of the costs of an extensive remodeling that do not exceed \$10,000. Under the bill, the Fund also would receive fines collected from the operators of unlicensed camps. The bill states that money in the Fund at the close of a fiscal year would remain in the Fund and not lapse to the General Fund.

(The Act defines "agricultural labor camp" as a tract of land and all tents, vehicles, buildings, or other structures pertaining to

it, part of which is established, occupied, or used as living quarters for five or more migratory laborers engaged in agricultural activities, including related food processing.)

MCL 333.12411 & 333.12431

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

Migrant workers are an important element of the agricultural industry's ability to plant, cultivate, harvest, and process the many labor-intensive crops grown in this State, and safe, sanitary housing must be available for the workers and their families. Michigan contains approximately 850 agricultural labor camps, with the capacity to house some 22,000 individuals. With only five inspectors to visit all of the camps, it is necessary for the MDA to concentrate its resources on violations that may jeopardize health or safety. While most camps comply with the rules, and the Department makes every effort to work with noncomplying operators, there are cases of persistent, critical violations. In these situations, the MDA has no recourse but to turn to the prosecuting attorney, who might write to the violator, seek an injunction, or bring criminal charges. In the event of a prosecution, an MDA inspector must devote valuable time to appearing in court, instead of working in the field. On the other hand, the prosecuting attorney's office might not have the resources to devote to the matter, or consider it worth pursuing. A violation of Part 124 is a misdemeanor with no specified penalty, which means that the maximum punishment is 90 days in jail and/or a \$500 fine.

By authorizing the MDA to impose an administrative fine of up to \$1,000 for license violations, the bill would give the Department leverage against noncomplying camp operators, without having to rely on prosecutor attorneys for help. If recalcitrant operators knew that they could be fined a total of \$10,000 for continued noncompliance, it is likely that they would be more willing meet the standards required for licensure. Ultimately, the MDA would have fewer persistent violators to contend

with, and migrant workers would have healthier and safer living conditions.

Opposing Argument

It is not clear why the MDA should be authorized to assess fines against people who provide migrant housing. Other structures are subject to construction codes and inspections by local building code officials. The standards that apply to housing should not vary depending on who is going to occupy it.

Response: Under Part 124 of the Public Health Code, the MDA has the statutory authority and mandate to regulate agricultural labor camps. (Originally within the Department of Community Health, this responsibility was transferred to the MDA by Executive Order 1996-2.) Further, migrant housing is exempt from the Single State Construction Code Act, which states, "...a building permit is not required for a building incidental to the use for agricultural purposes of the land on which the building is located..." (MCL 125.1510). The Act also specifies that it must not be construed to repeal, amend, supersede, or otherwise affect the powers and duties exercised under Part 124 of the Public Health Code (MCL 125.1528).

Local units of government, however, do have some ability to regulate migrant housing. The administrative rules state that they do not take precedence over a requirement in an applicable local rule, ordinance, or code that is more stringent than the rules (R 325.3605). In addition, agricultural labor camps are subject to local zoning requirements, as long as the requirements do not have the effect of prohibiting the camps (Opinion of the Attorney General, No. 6609). In a case decided in 2002, the Michigan Court of Appeals agreed with the plaintiff-farm operator that the nature of migrant labor housing requires a uniform system of regulation within the State in regard to the condition of migrant housing, but held that Part 124 of the Public Health Code does not preempt zoning ordinances that govern the location of agricultural labor camps (*Frens Orchards, Inc. v Dayton Township Board*, 253 Mich App 129).

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could increase State revenue associated with the creation of the administrative fine for operating an agricultural labor camp without a license. It is unknown how many fines would be assessed annually.

Although the bill would not have an impact on the Migrant Labor Housing Construction Grant Program, it is worth noting that this program would be eliminated under the Governor's fiscal year 2005-06 budget. The program provides cost-sharing grants, up to \$5,000 per unit and \$20,000 per applicant per year, for the construction and rehabilitation of migrant labor housing in Michigan. The program is funded in the current budget by a \$255,000 General Fund appropriation to the Michigan Department of Agriculture. This funding provided resources for 122 rehabilitation projects and 41 construction projects in fiscal year 2002-03.

The proposed budget would not reduce funding for the migrant labor housing inspection program.

Fiscal Analyst: Craig Thiel

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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.