ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Housing and Real Estate
Public Hearing, January 3, 2018
Assembly Bill 771
10:00 A.M.
Room 411 South
Assembly Bill 771: "The Affordable Renting Housing Act of 2017"

Representative Jagler and members of the Housing and Real Estate Committee, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 771, "The Affordable Rental Housing Act of 2017."

Assembly Bill 771 is designed to make it easier for landlords to provide Wisconsinites with quality, clean, safe, and affordable housing. Assembly Bill 770 affords owners of historic properties with greater autonomy by allowing them to use materials, during the repair and replacement process, that are substantially similar to the original. Original materials are often very costly, do not have the same warranties, and are difficult to obtain.

In an effort to create greater statewide uniformity, as it relates to rental housing inspections, Assembly Bill 771 maintains that municipalities are authorized to conduct inspections upon a complaint. What is more, if a complaint is made, a record related to said inspection must be completed.

Municipalities are prohibited, under this bill, from using aesthetics as a consideration for rental housing inspections. Some municipalities throughout the state have conducted rental housing inspections because they disliked the color of paint used on interior walls. Tenants have every right to personalize their living space, unfettered from government interference.

Assembly Bill 771 establishes distinctions between assistance and emotional support animals, making Wisconsin the first state to do so, statutorily. In essence, assistance animals are trained to perform a task on behalf of their owner. This legislation preserves HUD and fair housing guidelines for service animals, as eliminating these regulations

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would be a violation of federal law. Conversely, Assembly Bill 771 stipulates that those seeking to keep an "emotional support" animal show documentation from a state-licensed health professional, acting within his or her scope of practice, of their disability and disability-related need for the animal. This bill seeks to streamline the process by ensuring that individuals who need animal companionship are afforded that right, not discriminated against, and have a legitimate need for one of these animals.

Lastly, "The Affordable Rental Housing Act of 2017," expedites the process of eliminating the rental weatherization program. Act 59 eliminated this program effective January 1, 2018. Assembly Bill 771 provides that, on program elimination date, orders related to the program issued by DSPS are void and unenforceable. This program is outmoded and ineffectual. In fact, DSPS advocated for its removal in the 2017-19 biennial budget.

To date, we have had numerous meetings with stakeholders on both sides of many of the issues that will be discussed today. I want to thank the League of Municipalities specifically for coordinating a number of those meetings with local officials from across the state. We have received extremely good feedback from them and now seek additional feedback from the both the public and committee members today. I assure you this bill is still fluid; amendments will be authored to address outstanding issues and concerns. I will work with committee members and stakeholders to further enhance this legislation.

I would, at this time, be more than willing to answer any questions members of the committee might have. Thank you for your time and consideration.

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Wisconsin Council for Local History, Inc.

WISCONSIN COUNCIL FOR Local History

John R. Decker
President
143 West Main Street
Evansville, Wisconsin 53536
Telephone (608) 882-5528

January 3, 2018
Re: AB771

To the Wisconsin Assembly Committee on Housing and Real Estate

Thank you for this opportunity to address our organization's objections to Sections 1-6 of AB771. The Wisconsin Council for Local History is composed of 402 local, county, and specialty historical societies throughout the State of Wisconsin. We have been serving our members and their communities continuously since 1961.

I was elected president of our organization after service as president of three of our member historical societies, including the Wisconsin Association of Historic Preservation Commissions. I am authorized by that organization to advise you that it strongly supports removal of sections 1-6 from the Bill.

I served on the Evansville Historic Preservation Commission for ten years, on the Evansville Economic Development Committee for nine years, and on the city's Redevelopment Authority for fifteen years, with most of that time as its chairperson. My wife and I own three income-producing properties in the Evansville Historic District, in addition to our personal residence in that district.

I have practiced law in Wisconsin for more than forty years, mostly in the areas of construction and real estate law, but also in defense of local government agencies in constitutional law matters. I am a past president of the State Bar of Wisconsin.

Based on personal experience, I appreciate that my properties do not exist in isolation; rather their value is derived from the character of their neighborhood. What my across-the-street or down-the-block property owners do with their properties will affect my property, and vice-versa. Economists refer to these effects as "externalities", but they are very real.

Authenticity, rather than a faux Disney image, drives value in our many Wisconsin historical communities, including Evansville. We take particular pride in our four historic districts listed on the National Register of Historic Places. Our first historic district, which encompasses our downtown businesses and nearby Victorian homes, is one of the largest and oldest in the state – it contains 300 structures deemed to contribute to the historical character of the city. We know that the quality of our downtown district, described by architectural historians as one of the most intact Nineteenth Century streetscapes in the state, draws many visitors to our community and customers to our businesses every year.

Our community has invested millions of dollars over the last fifteen years in our downtown district. From my work during that period on our Redevelopment Authority, I am well aware of the many projects that have been accomplished and the nature of their funding. Most have been public-private partnerships, which have funded the restoration and adaptive reuse of two large department stores, historic restoration of many

individual commercial/residential structures (including the restoration of the home of our city's namesake, Dr. John M. Evans), the restoration and appropriate expansion of our 1908 Public Library, and even the restoration of the original 1914 brick pavement of Main Street. Many of these projects have won awards or other recognition, including national recognition for the restoration of one of our department store buildings.

Evansville's downtown has been revitalized due to those investments. That revitalization, and the assurance that historic preservation will regulated through our comprehensive historic preservation ordinances and our experienced preservation commission, have encouraged my wife and me to invest in a downtown commercial/residential building constructed in the 1880s. We have the additional confidence to make a six-figure investment in converting the main floor to a retail and food service establishment.

In a large sense, the historic preservation provisions of AB771 and its companion Senate Bill are deja vu all over again: the battle lines drawn over them are the same that were drawn two years ago in the proceedings that resulted in 2015 Wisconsin Act 176. That enactment provided appeal rights for any property owner affected by any decision of a historic preservation commission, including a decision to designate a parcel as a landmark or as part of a historic district, or a decision related to any proposed alteration of a historic property. This was a compromise of competing positions, and one vigorously fought over by both sides.

We respectfully submit that the proponents of the current historic preservation provisions in AB771 have not offered a convincing argument as to why the compromise just reached in the last session of the Legislature is insufficient. At best, anecdotes have been presented, and no mechanism exists here to test their validity or extent.

The measure contained in the current draft, from the perspective of an "ordinary observer" looking from the centerline of an adjacent "highway", is fraught with difficulty. Given the statutory definition of "highway", the measuring point may be anywhere from the median of an Interstate to the middle of a narrow lane like Montgomery Court in the Evansville Historic District, which is so slim that two vehicles cannot pass on it, yet meets the statutory definition of "highway" because it is a public thoroughfare.

Many historic properties are set back from streets and highways, so that a cardboard cutout couldn't reasonably be distinguished from the Real McCoy. And what is to be done in the case of materials on facades that are oblique or perpendicular to the "highway" or face away from it entirely? We have no answer in the draft, and historic preservation commissions have no sensible guidance in providing due process and equal protection of the laws to the property owners with business before them.

The draft also considers appearance alone to be determinative to the question of appropriateness of substitute materials. Preservation also means sustaining the viability of structures and sites, which includes the avoidance of damaging materials or processes, such as joining of chemically-incompatible metals, or use of mortar that will wreak havoc on brick or stone in masonry units, or moving water or moisture toward rather than away from an improvement, or installation of materials that cannot be repaired, but can only be replaced entirely, or the unnecessary removal of intact and serviceable historical materials.

For all of these reasons our Council respectfully urges you to delete sections 1-6 of AB771.

We thank you for your kind attention.

Respectfully submitted,

John R. Decker
President

Regarding Assembly Bill 771

I am here to represent the Wisconsin Apartment Association and Rental Finders, Inc. from Appleton, WI. I am also a landlord of six years with 16 units. I support Assembly Bill 771.

Unfortunately, accommodations for Emotional Support Animals are being abused. It is currently possible to go to one of many websites and for $89.95 they will certify your current pet and fill out a letter signed by a counselor from California. They are **not** formally trained service animals and some breeds are uninsurable for the property owner. Of our current tenants seeking emotional support, or therapy animals, only 5% meet the disability requirements as determined by a Wisconsin licensed healthcare professional. The tenants that are abusing this situation are seeking to avoid paying the extra security deposit or are seeking to bring pets into traditionally non-pet properties. This can be a problem for existing tenants that wanted to avoid animals. Some of them have allergies, or just prefer not to be around pets. They have rights, too.

The Wisconsin Circuit Court Access (CCAP) provides a wonderful tool for background checks. When a Landlord is screening an applicant, the best indicator is the tenants' past. We support keeping case management information available for at least ten years.

Section 48 discusses allowing a landlord to enforce lease elements that he had not previously been strict about. This is the section that allows us to be human. There are many times that I will try to work with a tenant when I know he is working through a period of financial instability. While this often works favorably for both tenant and landlord, there are times where it becomes clear the tenant will not be able to return to fulfilling the basic financial requirements of the lease in the foreseeable future. If the court requires that I always follow my lease, then I will be unable to work with individuals of

hardship; this would **cause Homelessness**. This section ensures that our hands remain untied and we can work with people on a case by case basis.

Thank you for your time,

Melissa Klimek

Rental Finders, Inc.

Klimek Rental Investments, LLC

IGT Properties, LLC

715-351-0062

Eau Claire City-County
Health Department

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TO: Committee on Housing and Real Estate
FROM: KT Gallagher, Environmental Health Supervisor, Eau Claire City-County Health Dept.
DATE: January 3, 2018
SUBJECT: Testimony regarding AB 771

The Eau Claire City-County Health department would like to speak about our local Housing Maintenance Code and corresponding Housing Inspection Program. Our long-standing program works to ensure safe and healthy housing for all residents in our county. This program promotes safe, sanitary housing and neighborhoods for our whole community. After 30 years, the municipal code was updated in April after a comprehensive, collaborative community effort. *The updated code prioritizes the community's desire to incentivize the upkeep of the community's housing stock and support safe, sanitary housing for at-risk populations.*

- **Our collaborative process intentionally incorporated feedback from all local constituency groups**. The process started two years in advance of the code re-write, engaging groups that represented whole neighborhoods, marginalized populations, home owners, rental property owners and property management companies. We understood that it was important to incorporate feedback from all segments that would be impacted by any change to our local code. We had multi-modal stakeholder engagement with people that shared their lived experience regarding unsafe housing, the lack of market forces to maintain properties in their neighborhoods and undue landlord scrutiny.

- **Our code incentivizes the safety and upkeep of both owner-occupied and renter-occupied housing.** Houses kept in good condition will likely never be identified for a Health Department initiated inspection. Additionally, owners of identified houses are given considerable written notice prior to the inspection. This allows for the owner to make any self-identified health and safety oriented repairs. If no violations are noted during the routine inspection, then the ultimate goal of the program is achieved and the inspection fee is waived.

As you review AB 771 please consider the following:

- Local municipalities are best able to engage the community and craft a local code that addresses the needs of the constituency.
- Proactive programs assure that barriers to safe and healthy housing are decreased for marginalized populations. Section 8 may impact how we do our work in Eau Claire.
- It is critically important that local programs are able to capture all appropriate costs of inspection programs including staff training, inspection scheduling and direct program related infrastructure. Our reasonable fee structure may be impacted by Section 9.

We welcome the opportunity to provide additional feedback. Please contact me directly at kt.gallagher@co.eau-claire.wi.us or 715-839-4718. Thank you for the opportunity to speak to you today.

WISCONSIN HOUSING ALLIANCE
THE VOICE OF FACTORY-BUILT HOUSING

OUR MISSION: **TO BE AN ADVOCATE FOR MEMBERS, FACILITATING RELATIONSHIPS WHICH EDUCATE, SUPPORT AND PROMOTE THE INDUSTRY**

January 2, 2018

Dear Assembly Committee on Housing and Real Estate:

Thank you for allowing public testimony on AB771.

Wisconsin's manufactured housing industry provides an important source of unsubsidized housing in Wisconsin. There are currently 1066 manufactured home communities in the state occupied by nearly 54,000 proud homeowners and their families.

The industry is in strong support of AB771 in its entirety, however, to keep my comments brief, I would like to simply comment on a few of the provisions.

The Wisconsin Housing Alliance fields questions multiple time per week regarding the significant increase in several tenants needing an emotional support animal. There are families that have requested one pit bull for each member of the family and the doctor was willing to state in writing that this was necessary. In another situation, a child needed an alligator for ADHD. One medical professional's note was written by a California marriage counselor to a man in Fond du Lac, Wisconsin. I believe being able to state that Wisconsin Statutes provide a penalty for falsifying the need by an individual or a medical professional would assist in differentiating a true need vs. someone who just wants a dangerous breed dog. Rental communities must maintain safety, cleanliness and peace for all residents and the emotional support/comfort animal scenario has gotten completely out of control.

The State of Wisconsin has been making strides to keep property taxes reasonable. Unfortunately, this has led to the proliferation of fees for almost everything. These fees are often unreasonable. The provisions in this bill will require rental unit inspection fees to be uniform and those fees may not exceed actual and direct costs for performing the inspection. This is very important so that inspection fees do not become supplemental revenue in lieu of increased property taxes.

This bill is comprehensive and necessary to keep affordable housing in Wisconsin. The manufactured housing industry supports AB771 and I urge all of you to as well. Thank you!

Sincerely,

Amy Bliss

Amy Bliss
Executive Director
Amy@housingalliance.us

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Re: AB 771

Representatives Jagler, Allen, Katsma, Brooks, Murphy, Pronschinske, Stuck, Young, Goyke

Janesville Area Rental Property Association President
Dale Hicks
316 N Washington St
Janesville, WI 53458

I would like to speak about the portion on inspections. Municipalities that are pushing for large inspection fees without physically being on the property is wrong. There is a better way of doing things and that is better communication. Let me explain. A number of years ago, I was on an ad hoc committee examining codes dealing with the condemnation of houses, be it rentals or owner occupied. Each property and I repeat each, started out as an outdoor issue or failure and in a 2 year time period became an interior problem leading to the condemnation.

Through communication the ordinance was changed to read" fix or remove." This took the blame off the inspectors.

Today the inspectors in Janesville work a ½ day in the office and the other ½ day out in the field. They each have wards they look after. They drive systematically down each street and from their car when they see a violation, they write up an order to correct to be sent to the owner or it could go to the tenant if necessary. After a certain period of time, usually 10-14 days, the property is re-inspected. If the correction is not made a re-inspection fee is then applied. This is a better way of communication. I have worked with the city through 3 city managers and also 3 city chiefs of police over a period of 14 years and am happy to say that we have had excellent communication and cooperation during that time.

I believe the above is a good example of cooperation rather than a city taking advantage of those who are trying to provide affordable housing to those who need it.
I am in favor of AB 771

JARPA President
Dale Hicks
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608-201-3774

RE AB 771

Representatives Jagler, Allen, Katsma, Brooks, Murphy, Pronschinske, Stuck, Young, Goyke

Janesville Area Rental Property Association Vice President

Jim Bestul

1915 Independence Rd

Janesville Wi 53545

My name is Jim Bestul from Jarpa. I am in favor for CCAP (Consolidated Court Automation Programs) being easily available and free to the general public. (According to the Rock County Courthouse $5.00 from every filing goes to the funding to CCAP). This is a very good tool when screening potential tenants. It is much easier for property management companies and landlords to look up potential tenants rather than go to the court house and ask to look up someone's file. Having a court employee doing that for landlords all day is very time consuming, unproductive and very costly to taxpayers.

Nowadays with all the ligation and possible retaliation from past tenants not all property owners will tell you anything about any past tenant. By having this website, we can avoid potential issues with tenants or landlords that don't want to say anything that could get them in trouble for past judgements or evictions. Everyone wants to know about the bad landlords, why cant we know about the bad tenants?

CCAP also helps the general public when companies hire employees, people want to hire a contractor to work on there house, non for profit organizations need to screen there volunteers and being a father myself I need to screen my daughters future boyfriends.

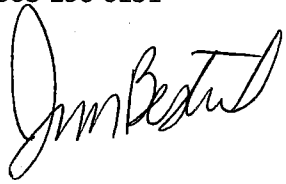
I understand that certain cases should that were dismissed should be deleted only if the defendant was wrongly accused. I do believe that people do get second chances in life and shouldn't be punished for crimes that happened years ago. We are here today to talk about cases that involve judgements and evictions for housing that should stay on CCAP for 10 years or more.

I am in favor of AB 771. Thank you for your time

Jim Bestul

Jbestul9@gmail.com

608-290-0151



DATE: JANUARY 3, 2018

TURTLE LAKE Wisconsin

TO: THE ASSEMBLY COMMITTEE ON HOUSING AND REAL ESTATE

FROM: TRUSTEE KENNETH MANDLEY

Thank you for the opportunity to comment on AB771 (The Landlord's Bill). I have four concerns with the bill, but all four concerns share the fundamental aspect of continuing erosion of local control. Local elected officials are almost always in the best position to know what is 'best' for their communities and often mandates or limitations imposed by the state may solve a specific problem in one community while creating new problems in many other communities throughout Wisconsin. The first area of concern is proposed elimination of scheduled inspection of rental properties. Currently, many communities use a scheduled inspection process to help identify health and safety issues in the community. When Turtle Lake began its scheduled inspection process about 15 years ago, approximately 85% of inspections revealed a significant health or safety violation. Today, our contract inspector estimates that about 20% of inspections result in a significant violation. In the early days of our inspection program we found holes in the flooring large enough for a child to fall through to the floor below, furnaces that had not worked for months (the landlord told the renter to open the oven door and heat the apartment with the oven), illegal apartments in the basement with no egress except a steep stairway to the first floor, apartments that received electrical service through extension cords from the next apartment, and roof leaks that were several years old. Tenants, when asked why they chose to live in these conditions replied that they were afraid to complain and could not afford to move. We believe, based on this history, that a regular inspection program is

critical to the well-being of tenants in our community. It is important to note that about 50% of dwelling units in the Village are rentals. Regularly scheduled inspections resulted in better upkeep of this segment of village properties which improved the village overall.

The second concern is the prohibition of registration fees outside the City of Milwaukee. Some have suggested that all municipalities should be able to charge registration fees based on direct costs to the municipality, but we oppose that as well simply because the cost to track direct costs would add a significant burden to our very small administrative department. If the state really needs to play here, we suggest imposing a ceiling on the cost to landlords of registration and inspection. In our case, we currently charge $90 for an inspection which occurs once every three years in the scheduled inspection program.

The third concern is the requirement for notice to Landlords prior to imposing a charge for ordinance enforcement. We support the League of Municipalities position on this matter.

The fourth concern has to do with language regarding 'aesthetic' concerns and violations. If the state must play here, there needs to be clear definition of, and limitations concerning, aesthetics. For instance, color of exterior paint is an aesthetic issue, but a porch that is disconnected from the house is not. However, without definition, some landlords would argue that the porch issue is one of aesthetics and not safety.

Again, thank you for this opportunity.

Kenneth Mandley
Trustee, Village of Turtle Lake

Jeffery Pralle
Director of Legal Affairs
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Thank You Senators for allowing me to speak to you about this bill.

You will have copies of some information on Emotional Support animals and Rental Inspections.

#1. I think it is time to approve this Legislation related to Service or Assistance animals; also, Emotional Support Animals. The issues of fake animals are a growing concern not only for landlords but also the airlines, hotels, restaurants, shopping centers and the like.
As a landlord, I want to allow these animals where they are truly needed but there has become an ever-increasing issue of those wanting to get animals in and avoid paying the additional security deposit and extra rent a landlord may require with a pet or to avoid a restriction on size and/or a No Pet policy.
This law will now require proper documentation as should be required as proof of need.

#2. Rental Inspections:
It is time, with this legislation, to act on the overreach of municipalities when it comes to rental inspections and protect the constitutional rights of our citizens.
In September of 2015 the United States District Court for the Southern District of Ohio ruled that mandatory rental inspections were unconstitutional warrantless searches. In the case of Baker v. City of Portsmouth, the court ruled that the city's mandatory rental inspections were warrantless searches and violated the Fourth Amendment of the US Constitution. This is what local real estate investors have been claiming for years.

I would use 2 examples of cities using these programs strictly to make money for the city budget.

A. LaCrosse: during their inspection and registration program the local president of the apartment association and one of the board members gave the then City Planner and Head of Inspections (Larry Kirsch) a list of 500 unregistered rentals. His reply was that it was too much work to deal with those ($500 fine for not registering) and they would just work with what they had registered)
B. In Oshkosh, I understand, when the tenants would not let the inspector in, he would just stand outside, look at the building for the inspection; and I believe the charge was $145.00 per building with less than a few minutes work. I would not call that a legitimate inspection program

The overwhelming majority of landlords keep their place up very well. And if you look around any city in this state, there are many run down single-family owner-occupied homes; yet no program has been started to inspect them. I believe cities have been targeting what they consider to be easy money grab which keeps inspectors busy during other wise less busy times.

Thank you for your time.

Jeffery Pralle

Federal Court Rules Rental Inspections Unconstitutional

Federal Court Rules Rental Inspections Unconstitutional
Posted on 10/25/2015
Last Month, the United States District Court for the Southern District of Ohio ruled that mandatory rental inspections were unconstitutional warrantless searches. In the case of Baker v. City of Portsmouth, the court ruled that the city's mandatory rental inspections were warrantless searches and violated the Fourth Amendment of the United States Constitution. This is what local Port Huron real estate investors have been claiming for decades.

The Fourth Amendment of the United States Constitution states that the government cannot search persons, their houses, papers, or effects unless a search warrant has been issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Basically, the government cannot search you, your home or your stuff without a proper probable cause search warrant.

The City of Portsmouth, Ohio had mandatory rental inspection requirements very similar to Port Huron's Rental Inspection Ordinance. Both programs required regular mandatory inspections and mandatory periodic inspection fees. Also like Port Huron's ordinance, the Portsmouth program provided for possible criminal penalties if the properties are rented without complying with the rental inspection requirements.

The 1851 Center for Constitutional Law filed the successful lawsuit on behalf of four rental property owners and one tenant. The Executive Director of the 1851 Center for Constitutional Law, Maurice Thompson, announced:

"The Federal Court's ruling yesterday is a victory for all property owners and tenants. Local government agents do not have unlimited authority to force entry into Ohioans' homes or businesses. To the contrary 'houses' are one of the types of property specifically mentioned by the Fourth Amendment; and Ohioans have a moral and constitutional right to exclude others, even government agents, from their property. Entry requires either a warrant or an emergency, and neither is present with respect to these suspicion-less rental inspections,"

"Government inspections of one's home frequently results in arbitrary orders to make thousands of dollars worth of untenable improvements to even the most well-maintained properties. These enactments were nothing more than a set of back-door tactics to collect revenue on the backs of Ohio property owners, while attempting to chase 'the wrong type of owners' out of town."

The court made a number of findings that seem very much applicable to the Port Huron Rental Inspection Ordinance. In the court's amended order, Judge Susan J. Dlott stated:
"[T]he Court finds that the Portsmouth [Rental Dwelling Code] violates the Fourth Amendment insofar as it authorizes warrantless administrative inspections. It is undisputed that the [Rental

Dwelling Code] affords no warrant procedure or other mechanism for precompliance review . . . the owners and/or tenants of rental properties in Portsmouth are thus faced with the choice of consenting to the warrantless inspection or facing criminal charges, a result the Supreme Court has expressly disavowed under the Fourth Amendment."

That sounds like this could also be applicable to the Port Huron Rental Inspection Ordinance. Although some violations of the Port Huron Rental Inspection Ordinance are "civil infractions," continued violations and renting could result in criminal penalties, such as jail time. The Judge in the Portsmouth case went on to say:
"The inspections are also significantly intrusive. As the Supreme Court has noted, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"

A person's home is their castle which should not be intruded upon. In reviewing the inspection procedure, Judge Dlott continued: "The search inspection sheet details eighty items to be inspected throughout the entirety of the rental property. The Court thus concludes that the intrusion is significant."

Doesn't Port Huron have a rental inspection checklist? Could that also be considered intrusive?
"When balanced against the significant privacy interest and substantial intrusion thereon, the Court concludes that the warrantless inspections authorized by the Code are unreasonable under the Fourth Amendment"
Ditto, Port Huron?

"Having determined that the Code is not saved by special needs or the closely regulated industry exceptions, the Court concludes that the Code's failure to include a warrant provision violates the Fourth Amendment."
The city needs a probable cause warrant to perform a rental unit inspection.

The court in the Portsmouth case also allowed the property owners to continue their case against the city to seek reimbursement for all of their inspection fees that they paid for the unconstitutional inspections. I wonder what the total inspection fees that the city of Port Huron has collected over the years. What would be the impact on the city budget if the city of Port Huron had to pay it all back to the real estate investors? Hmmm.

How will this affect Port Huron? That all depends upon city council and city administration. It also may depend upon some property owners and tenants stepping up to the plate to defend their constitutional rights. We shall see.

By: Matthew M. Wallace, CPA, JD

Published edited October 25, 2015 in The Times Herald newspaper, Port Huron, Michigan as: **Court rules against rental inspections**

Institute for Justice

Government Overreach Knocks on Renters' Doors

Article | Institute For Justice

Robert Peccola

Attorney

Most of us have lived in a rental property at least once in our lives. Like any place we call home, a rented house should be protected against illegal searches and seizures—and government officials should be forbidden from entering without probable cause that a crime or safety violation has been committed inside. Pottstown, Pennsylvania, however, sees things differently.

Pottstown residents Dottie and Omar Rivera are living every renter's nightmare. City officials—in keeping with a disturbing national trend—have threatened to enter their home without their permission as part of a "rental inspection" sanctioned by local law. Without any evidence that something is wrong with the home, an inspector has license to rifle through every area: storage areas, bedroom closets, kitchen and bathroom cabinets, attics and basements. Even furniture and appliances are not safe from the inspector's prying eyes—refrigerators, stovetops and washers are all fair game.

These invasive inspections happen in cities across Pennsylvania (and many other states) on account of a single U.S. Supreme Court case: *Camara v. Municipal Court. Camara* allows invasive rental inspections to happen, over tenants' objections, under the Fourth Amendment by creating "administrative warrants"—warrants that do not require evidence of anything wrong with the home. Under *Camara*, things like the "passage of time" (rather than suspicion of a violation) are sufficient to grant the government access to your home.

Fortunately, this is one area where the U.S. Supreme Court does not get the last word—and IJ is stepping in to help protect Dottie, Omar and all Pennsylvania renters who care about privacy and property rights. The Pennsylvania Constitution's protections against illegal searches and seizures are as old as the nation—and stronger than the federal Fourth Amendment. Steeped in this history, Pennsylvania courts have repeatedly interpreted the Pennsylvania Constitution's search and seizure provision to provide greater protection against unreasonable searches and seizures than the Fourth Amendment.

Dottie, Omar and their landlord, Steve Camburn, are teaming up with IJ to challenge Pottstown's rental inspection program in state court. Dottie and Omar have happily rented their home from Steve for the last five years and believe an inspection would be extremely invasive and violate their family's rights.

IJ will help Dottie and Omar affirm the prerogatives of the Pennsylvania framers who so cherished the sanctity of the home. After all, a home is a home—regardless of whether it is rented or owned.

Posted on 10/25/2015 <https://www.happylaw.com/2015/10/25/4313/>

Last Month, the United States District Court for the Southern District of Ohio ruled that mandatory rental inspections were unconstitutional warrantless searches. In the case of Baker v. City of Portsmouth, the court ruled that the city's mandatory rental inspections were warrantless searches and violated the Fourth Amendment of the United States Constitution. This is what local Port Huron real estate investors have been claiming for decades.

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The City of Portsmouth, Ohio had mandatory rental inspection requirements very similar to Port Huron's Rental Inspection Ordinance. Both programs required regular mandatory inspections and mandatory periodic inspection fees. Also like Port Huron's ordinance, the Portsmouth program provided for possible criminal penalties if the properties are rented without complying with the rental inspection requirements.

The 1851 Center for Constitutional Law filed the successful lawsuit on behalf of four rental property owners and one tenant. The Executive Director of the 1851 Center for Constitutional Law, Maurice Thompson, announced:

"The Federal Court's ruling yesterday is a victory for all property owners and tenants. Local government agents do not have unlimited authority to force entry into Ohioans' homes or businesses. To the contrary 'houses' are one of the types of property specifically mentioned by the Fourth Amendment; and Ohioans have a moral and constitutional right to exclude others, even government agents, from their property. Entry requires either a warrant or an emergency, and neither is present with respect to these suspicion-less rental inspections,"

"Government inspections of one's home frequently results in arbitrary orders to make thousands of dollars worth of untenable improvements to even the most well-maintained properties. These enactments were nothing more than a set of back-door tactics to collect revenue on the backs of Ohio property owners, while attempting to chase 'the wrong type of owners' out of town."

The court made a number of findings that seem very much applicable to the Port Huron Rental Inspection Ordinance. In the court's amended order, Judge Susan J. Dlott stated:
"[T]he Court finds that the Portsmouth [Rental Dwelling Code] violates the Fourth Amendment insofar as it authorizes warrantless administrative inspections. It is undisputed that the [Rental Dwelling Code] affords no warrant procedure or other mechanism for precompliance review . . . the owners and/or tenants of rental properties in Portsmouth are thus faced with the choice of consenting to the warrantless inspection or facing criminal charges, a result the Supreme Court has expressly disavowed under the Fourth Amendment."

That sounds like this could also be applicable to the Port Huron Rental Inspection Ordinance. Although some violations of the Port Huron Rental Inspection Ordinance are "civil infractions," continued violations and renting could result in criminal penalties, such as jail time. The Judge in the Portsmouth case went on to say:
"The inspections are also significantly intrusive. As the Supreme Court has noted, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"

A person's home is their castle which should not be intruded upon. In reviewing the inspection procedure, Judge Dlott continued: "The search inspection sheet details eighty items to be inspected throughout the entirety of the rental property. The Court thus concludes that the intrusion is significant."

Doesn't Port Huron have a rental inspection checklist? Could that also be considered intrusive?
"When balanced against the significant privacy interest and substantial intrusion thereon, the Court concludes that the warrantless inspections authorized by the Code are unreasonable under the Fourth Amendment"
Ditto, Port Huron?

"Having determined that the Code is not saved by special needs or the closely regulated industry exceptions, the Court concludes that the Code's failure to include a warrant provision violates the Fourth Amendment."
The city needs a probable cause warrant to perform a rental unit inspection.

The court in the Portsmouth case also allowed the property owners to continue their case against the city to seek reimbursement for all of their inspection fees that they paid for the unconstitutional inspections. I wonder what the total inspection fees that the city of Port Huron has collected over the years. What would be the impact on the city budget if the city of Port Huron had to pay it all back to the real estate investors? Hmmm.

How will this affect Port Huron? That all depends upon city council and city administration. It also may depend upon some property owners and tenants stepping up to the plate to defend their constitutional rights. We shall see.

By: Matthew M. Wallace, CPA, JD

Published edited October 25, 2015 in

Hal Herzog Ph.D. Animals and Us

Service Animal Scams: A Growing Problem

A cottage industry has developed around fake emotional support animals.

Posted Jun 11, 2014

While bicycling around the lovely public squares of Savannah a couple of years ago, I spotted a family with three young kids and a handsome German shepherd wearing bright red Service Dog vest. I enjoy talking with people about their companion animals, so I stopped, complimented them on their dog, and naively asked the dad, "I see she's a service dog. What service does she provide?" He suddenly got the deer-in-the-headlights look, hemmed and hawed a bit, and finally said, "Errrr...she's not really an official service dog. She just helps keep the kids together when we go for walks." It turns out that he had purchased the nifty service dog vest from Amazon.

When I got back to my hotel, I started searching the Internet for service dog paraphernalia. I was shocked. With absolutely no proof of an animal's training or abilities, Amazon will sell you vests, leashes, collars, and dog tags indicating that your dog is a "Service Dog," an "Emotional Support Dog," or a "Seizure Alert Dog." For a few bucks more you can purchase an ominous legal-looking card saying you are prepared to sue the skeptical restaurant owner who thinks their no-pets allowed policy applies to your puppy.

I also discovered a host of dubious service and emotional support animal "registries." For example, the United States Dog Registry will certify any dog as a "service dog" or a "therapy dog" for $58, and an outfit called ESA of America will happily certify your pet rat, hamster, or iguana as an "emotional support animal." (Sample ESA customer testimonial–"I have now taken 3 flights with my dog, and the peace of mind of being able to just pack up and go anywhere I want with him is the greatest thing ever.")

Then I began to ask around about bogus assistance animals and immediately began to hear stories. A high profile animal activist confessed to me that several of his friends had purchased phony service vests so they could take their pets into restaurants (he refuses to go out to eat with those friends anymore). And my daughter told me about a woman she knows who got a free flight for her dog to Southeast Asia by having a social worker pal write letter a saying the pet provided her with emotional support (while the ruse worked, the dog did have to wear a canine diaper on the trip).

A Legal Morass

Plenty of people with medical and psychological disabilities have legitimate needs for service dogs, therapy dogs, or emotional support animals. And having your service dog wear a vest can make things a lot easier when it comes to getting assistance animals into places where pets are not allowed. But the present system governing the status of service animals is rife with abuse. Here's why:

Three different sets of federal statues apply to the rights of individuals with disabilities to be accompanied by animals: the American's with Disabilities Act, the Fair Housing Act, and the Air Carrier Access Act. This division of responsibility has resulted in a bewildering array of conflicting and confusing regulations. Take, for example, the laws pertaining to animals in public places such as restaurants, stores, and shopping malls and the laws governing the right to take assistance animals on airplanes.

Dogs in Public Places: The Americans with Disabilities Act

The ADA governs the accessibility of public places and commercial enterprises. The rules (here) are administered by the Civil Rights Division of the Department of Justice, and they only pertain to "service animals." The guidelines are strict–in theory. First, under ADA regulations, only dogs can qualify as service animals (in a few special cases, miniature horses can also qualify). Second, pets are not considered service animals. Third, and most important, service dogs must be specially trained to perform specific services for specific disabilities. Legitimate service dogs range from guide dogs for the blind to psychiatric service animals which can sense oncoming panic attacks in owners suffering from post-traumatic stress disorder.

The ADA regulations seem reasonable, but the devil is in the details. One problem is that the law stipulates a person claiming to have a service dog can only be asked two questions by, for example, the owner of a no-pets restaurant. The first is, "Does the dog provide a service?" The second is "What has the dog been trained to do?" This means that a person with a service dog cannot be asked what their disability is (I inadvertently violated the law when I asked the family in Savanah about their "service" dog). Nor can they be asked to provide any documentation attesting that their dog has been trained and certified as a service animal. Indeed, there is no federally recognized service animal certification program. Further, contrary to conventional wisdom, service animals do not need to have any kind of identification such as a vest.

Free Plane Rides: The Air Carrier Access Act

My daughter's friend who snagged a free trip to Asia for her dog did so under the auspices of a different federal agency–the Department of Transportation. The DOT regulations (here) differ from the Americans with Disabilities Act in several important respects. First, unlike the ADA, the Air

Carrier Access Act gives legal standing to animals whose sole function is to provide emotional support. This means that, unlike service dogs, emotional support animals are not required to be trained to perform specific tasks. It's enough that they are necessary for your psychological wellbeing. Thus your lovable pet puppy may well be entitled to free air travel if she helps you get through your day.

But don't get too excited just yet. In some ways, the rules for emotional support animals are more rigorous than for service dogs. That's because the feds have given airlines considerable flexibility in what is required of passengers who claim they need to be in the company of their emotional support animal.

Take Delta Airlines (here). If you claim to need four-legged emotional support to stave off a panic attack on your next flight, you will need to provide the airline with a signed letter from a "licensed mental health professional" (your family doctor will not do the trick). The letter must include the professional's address and phone number, and it must state that you have a disorder listed in the fourth edition of the *Diagnostic and Statistical Manual of the American Psychiatric Association*. Further, you have to be under active treatment for your disorder by this "mental health professional." The good news is that this letter, however, will allow your pet to accompany you in the cabin of the plane for free for a year.

The AACA differs from the ADA in another respect as well. Emotional support animals are not restricted to dogs. So if it is okay with the airline, you can bring your iguana along on the ride to calm your jangled nerves. I would advise, however, against becoming psychologically dependent on a Great Dane; emotional support animals flying on Delta are required to fit under their owner's seat.

The Cesspool of Human-Animal Relationships?

One person who is concerned about the proliferation of bogus service animal registries is Dr. Steve Zawistowski, senior science advisor of the ASPCA. When I asked him about the cottage industry that has arisen around fake assistance animal paraphernalia and phony service dog certifications, he replied "It's the cesspool of human animal

relationships that no one wants to talk about." And when I asked a Department of Justice agent about the proliferation of Internet service dog registrations agencies, she said simply, "They are frauds."

There are legitimate service dog training programs that have rigorous standards. But for a list of some service and emotional support animal registries that have few if any standards and that have been accused of being bogus see here.

For a personal account of the unfortunate consequences bogus service animal industry see here.

Finally, if you need an official looking letter to the airlines from a "mental health professional" indicating that your dog, cat, iguana or goldfish qualifies as an "emotional support animal," try these guys. For 168 dollars, they will diagnose your psychological problems over the internet. And they have master's degrees!

Bon voyage!

City of Oshkosh

TO: Honorable Mayor and Members of the Common Council

FROM: Rental Housing Advisory Board

DATE: January 2, 2018

RE: Concerns regarding provisions of SB 639/AB 771

SB 639/AB 771 seeks to limit the power of municipalities to create, implement, and enforce rental inspection ordinances. This bill is sponsored by the landlord lobby, and is designed specifically to prevent municipalities from conducting widespread inspections of rental properties. This is done through a two-pronged approach: restricting the conditions under which inspections can be conducted, and limiting the power of municipalities to collect fines and fees for inspections.

By restricting the conditions of inspections to a complaint-based system, the original problems of negligent landlords which the rental inspection ordinance sought to address will continue to replicate. Landlords object about the cost of exterior inspections, but omit the fact that 100% of interior inspections yielded violations of housing code. Given that the rental inspection ordinance was designed to supplement complaint-based inspections, and given that the landlord lobby has sought to obstruct the ability of the city to conduct inspections, a return to a purely complaint-based inspection system will not solve housing code issues in Oshkosh.

Limiting the power to collect fines and fees is an attempt to exsanguinate the rental inspection ordinance, allowing negligent landlords to continue violating housing codes without penalty. This provision also prevents the City of Oshkosh from fully implementing the rental inspection program. While landlords point out the small number of interior inspections versus exterior inspections, obstruction of the program, through local and state-level efforts, have prevented the inspection ordinance from being fully implemented. The standards which SB 639/AB771 sets for collecting fees is intentionally vague, in order to allow landlords to challenge any municipality for any collection of fees. Thus, SB 639/AB771 puts the City of Oshkosh in a double-bind: either fees cannot be raised to support the rental inspection ordinance, which means the current level of enforcement will diminish over time, and/or opens the City of Oshkosh to lawsuits from individual landlords and landlord organizations.

For the reasons listed above, the Rental Housing Advisory Board offers our formal objection to SB 639/AB 771.

Good afternoon Chairman Jagler and members of the Committee:

Thank you for the opportunity to address you today. I am Mark Rohloff, City Manager for the City of Oshkosh. In addition to testimony you have already heard, I want to provide some additional perspective on why changes are needed to AB 771 to ensure safe and healthy housing for our residents.

Current law effectively requires a city wide inspections program. AB 771 proposes a complaint only inspection system. Frankly, neither approach has proven to be effective. I would recommend municipalities be granted the flexibility to administer programs in specific neighborhoods where we know the real problems lie. A one size fits all approach will not be effective in our state. I truly believe that local officials know best how to address their local problem areas.

AB 771 requires that we track exact cost for each individual inspection, and bill the costs in an hourly form. While no cost allocation system is perfect, the requirement for us to track exact time on actual individual inspections would add significant cost to track everything that is done. The simple, yet transparent, system that we currently use allows us to take our total cost and divide it over the number of inspections to come up with a per inspection rate.

We also want our pricing system to provide incentives to cooperative landlords who are just as concerned about health and safety issues as we are.

AB 771 also requires that the city send out a notice prior to charging any fees for other inspections and enforcement activities. This could have several negative effects. For example, sending out a letter prior to enforcement activities does not factor in new violations for repeat offenders, many of whom ignore first, second, and third notices.

We tried early notices. Frankly they did not work. We have gained much greater compliance by fielding a complaint, and noticing the property owner for the violation if one exists. For minor problems, they are typically corrected the first time and not repeated.

For multiple offenders, it captures their attention much earlier and results in greater compliance. To reverse our practice will lead to habitual violators playing the system, knowing that we have to warn them first before we take action. This creates a disincentive for them not to comply until they receive multiple warnings. Our good landlords should not be punished due to the actions of a few bad actors.

There are other practical challenges associated with AB 771 that it would take much more time for me to fully go through all of them. Instead, let me leave you today with a request that the legislature work with local governments, our League of Municipalities, as well as landlord and tenant groups, to develop and administer a common sense rental inspection program.

Thank you for the opportunity to speak to you today.

Lori Palmeri, Oshkosh Common Council

Tel. 920.209.9368

Good afternoon Chairman Jagler and Members of the Committee:

Thank you for your consideration regarding SB 639/AB771. Respectfully, our residednts oppose this legislation in its current form. I ask you to consider protecting tenants' rights to safe housing as a consumer protection in a commercial industry – that of human habitation in a community with a less than 3% rental vacancy rate, by allowing cities in Wisconsin to continue regular interval rental inspections.

My name is Lori Palmeri, Councilmember at large for City of Oshkosh. I have a Masters in Urban Planning and years of experience in marginal neighborhoods both as a resident and representative in various advocacy roles. Allow me to provide some direct experience working in neighborhoods of both inner Milwaukee and central Oshkosh. I have rented in the city upon transferring as a university student. I have been neighbor to and represented and organized for, tenants and landlord investment owners, regarding property conditions as related to our recently enacted mandatory rental inspection ordinance; the purpose of which is to promote safe rental property conditions and protect surrounding property values. While there are some responsible rental owners involved, there is disagreement on how to repair this broken system of negligent rental maintenance by those who defer maintenance for serious safety concerns.

The topic of rental inspections surfaced during discussions among a newly created neighborhood association City partnered planning process, as a way to address property owner's most important concern – declining property conditions and absentee rental owners. The densely populated downtown neighborhood of Middle Village, in 2010 was approximately 40percent owner occupied and 60% rental. By the time the neighborhood was officially recognized by the City, and had begun the formal planning

process, the dumber of rental units had reached 80%, 20% owner occupied. I live in that neighborhood and have for 10 years. I know of what I speak. Intimately. Students, artists, musicians, single parents, elderly, disabled, African American, Caucasian, Hispanic, Asian all share densely populated census tract 5 Block Group 6. The majority homes, don't quite qualify as "historic registry", but are in the 75 to 100 years old range as are more than half of the homes in the City of Oshkosh. There have been numerous fires, and demolitions, home births, deaths and drug house turnovers in the last 10 years. Most of the families in the area are the working poor.

It is not fair to say that people in poverty without a collective voice should have to LITIGATE in order to rent safe housing with proper heat, doors that lock, running clean water and functioning roofs over their heads to shelter from the Wisconsin elements. . Across the city as a whole, the property conditions don't just affect the poor. There are examples of university professors, educated, resourced and able to communicate rights that have had trouble just getting an oven repaired for safe cooking. Vulnerable elderly and disabled residents live in fear, fear of raised rent or eviction retaliation if they call inspections to complain. The most heartbreaking experiences come from families with young children.

Consider your salad days, remember back when you rented at some point in your life? If we don't safeguard tenant health and safety, then let us just resort to human storage in warehouses with cots like makeshift homeless shelters. Dramatic picture isn't it?

I have spoken with the local landlord association on a few occasions. I am often asked why can't a complaint based inspection program suffice. The answer is fear and powerlessness along with hopelessness and "this is all I deserve" because that is the mentality of many investment owners that these "people" made bad choices and don't deserve to have their properties kept up to code. They get what they get because the landlords deign to rent to them.

If you were a single parent just coming out of shelter and could only afford to be in the worst of the worst overcrowded, and feared calling to complain because you do not want to go back to shelter, or that you were doubled up in numbers, would you complain?

Examples...

i. Middle Village Neighborhood Association Plan– neighbors top of list concerns property conditions since 2010 – dumpster days can only address exterior – As a gesture of goodwill even helped one landlord get rid of abandoned property while his property was one of the worst in the area

ii. Imagine Oshkosh Center City Investment Strategy – property decline – thousands of dollars spent to document the exterior perception of blighted "shoulder neighborhoods" and calls by more affluent residents to "tear down multiple blocks of rental housing" like some antiquated urban renewal swipe of Robert Moses. I am no Jane Jacobs, but these neighborhoods are worth saving, and the rental residents deserve more than just a holey roof and backed up toilet for shelter. Children are especially affected. The number of children in our school district in poverty is roughly half on free or reduced lunch.

iii. A set of grandparents taking care of children otherwise guardianless,, lost their home to a voracious fire and while everyone made it out, they had to start over. The vacant lot is now a recreational greenspace in the wanna be resilient neighborhood that I live in.

iv. One on one and group discussions – Aging in place ELDERLY ladies paying above market rents for a clean decent place but afraid to complain because they have nowhere else to go for their disabled needs or their adult children would place them in assisted living

v. Jaime H. – south side – human waste in basement backed up repeatedly – just came out of homeless shelter and was afraid of being evicted due to uninhabitable – begged not to call inspections but asked for help getting landlord to fix the backup on a Sunday afternoon. The other tenant told her it had to be fixed every few months

vi. Bern W. – Moved from and upper/lower duplex with an elderly neighbor where conditions were such that hole in the ceiling from burst water heater remained months later not repaired, but was warned by landlord not to call inspections or else "What would happen to Gracie?" (the elderly neighbor left behind)

vii. South side apartment upper in attic – smell of gas upon entry, young mom with small child thought it was just a pilot light thing – didn't want to bother landlord because it was also her boss at work, didn't know she should call fire department

viii. Holes in roofs, heating not working, electrical burns and windows that could not be opened with no A/C are just a few more examples I have been asked about directly.

ix. Threats by landlords if allowing city inspectors in, eviction or raised rent or charging a fee

x. One landlord told me personally he had advised his tenants not to let city inspector come in or else they would pay extra

City of Oshkosh

Address / Unit #:	
Tenant: (please print)	
Tenant Signature:	

CITY OF OSHKOSH RENTAL INSPECTION CHECKLIST

EXTERIOR	YES	NO	COMMENTS
Is the address visible from the street?			
Is there any evidence of roof damage?			
Are there any broken windows or missing screens?			
Do foundation walls appear structurally sound?			
Do the stairways and hand/guardrails appear structurally sound?			
Furnace/ Boiler/ Water heater venting - Are there any visible signs of deterioration indicating unsafe conditions?			
INTERIOR			
Are smoke detectors installed and functioning properly?			
Are CO detectors installed and functioning properly ?			
Are there any gas leaks to appliances apparent?			
Are there any visible leaks in plumbing system?			
Is there hot water supplied to all required fixtures?			
Are any cross connection controls needed on plumbing fixtures?			
Are plumbing fixtures or piping properly installed and functional?			
Are there any electrical switches, receptacles missing cover plates?			
Is there any exposed electrical wiring that is not properly supported?			
Is there any open/ bare electrical wiring?			
Do all electrical fixtures and receptacles function properly?			
Do bathroom exhaust fans function?			
Do all the windows open properly?			
Are the exterior doors free of damage or deterioration?			
Do the exterior doors have working hardware and deadbolt locks?			
Are there any holes (excluding nail holes) in walls or ceilings?			
Do the stairways and hand/ guardrails appear structurally sound?			
Are there any signs of water leakage from the foundation walls or basement floor?			
Is there an accumulation of refuse, trash or other matter that may pose rodent infestation or fire risk?			
Are there any signs of rodent or pest infestation?			
Are there proper heating appliances able to maintain minimum 67 degree heat?			
Is the furnace properly vented?			
Is the water heater properly vented?			
Is the clothes dryer properly vented?			

NOTE: The above inspection was completed for the purpose of performing a rental inspection. This inspection performed is for a limited purpose and does not mean that there are no building code violations outside the scope of the inspection performed. The City of Oshkosh reserves the right to issue correction notices, citations, or take any other lawful action to remedy any code violation in the future, even though such condition may have existed at the time of the above inspection but was not identified or noted.

LEAGUE OF WISCONSIN MUNICIPALITIES

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Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Assembly Committee on Housing and Real Estate
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities
Date: January 3, 2018
Re: AB 771, Limiting authority of local governments to regulate and inspect rental properties.

The League of Wisconsin Municipalities opposes AB 771 as introduced. Since the bill was introduced we have had discussions with the author and proponents that are encouraging. If the changes we have discussed are introduced as an amendment, our concerns with the bill will be removed. We greatly appreciate the authors' willingness to meet with us to discuss and negotiate possible changes to earlier versions of this bill.

Our top concerns about the bill as introduced are:

1. Section 8 – **Limiting Rental Inspections to Complaint Basis Only**. Our biggest concern about this bill is that it deletes compromise language inserted into last session's landlord legislation clearly allowing communities to establish and implement systematic rental unit inspection programs to ensure the health and safety of tenants and neighbors. It is imperative that municipalities have the flexibility to enact and enforce a system of regularly scheduled rental unit inspection programs not based exclusively on complaints. This change in the law protects irresponsible landlords while jeopardizing the health and safety of students, families, and other vulnerable individuals living in potentially dangerous conditions who decline to file complaints to avoid being evicted.
2. Section 10 – **Prohibiting Landlord Registration Fees outside of Milwaukee**. While the bill allows Milwaukee to charge a fee covering the reasonable and direct costs of implementing a landlord registration requirement, no other local government in the state may recover its landlord registration program costs. This doesn't make any sense. We urge that the same fee enabling language apply statewide. If necessary, consider placing a cap on registration fees, but allow communities to cover their expenses.
3. Section 17 – **Requiring notice by first class mail to landlords prior to imposing a charge for enforcing ordinances related to noxious weeds, electronic waste, or other building or property maintenance standards**. Municipalities could live with this provision if it simply required communities to email or text property owners if they sign-up with the municipality to receive such notification. Such an opt-in approach would save postage and time, but still ensure notice for those requesting it. Also we asked that the following exception be included in any such notice requirement: "This section does not apply to the clearing of snow and ice from sidewalks, or to violations that create an imminent danger to public health, safety or welfare."
4. Section 23 – **Definition of "aesthetic considerations" is open ended**. This provision prohibits municipalities from regulating the aesthetics of the interiors of homes. We are concerned that the definition of "aesthetic considerations" is too broad. We recommend that it be specific and limited in scope, as follows: ""aesthetic considerations" are considerations relating to color, and texture and design that are unrelated to health or safety."

5. Section 14 – **Deleting the Levy Limit Reduction exception for garbage collection by a political subdivision owning a Landfill in 2013**. This exception was put into place at the request of the City of Superior several years ago and its elimination would have significant negative impacts on that city, which has come to rely on it.

Before closing, I want to point out that there is a provision in the bill that we strongly support. Section 15 limits the negative adjustment for fee revenues on covered services under the levy limit law. Notwithstanding this positive provision, League urges you to vote against recommending passage of AB 771 unless the bill is amended along the lines that we have been discussing with the author. Thanks for considering our comments.

MADISON TRUST for Historic Preservation

NATIONAL TRUST FOR HISTORIC PRESERVATION Local Partner

Assembly Committee on Housing and Real Estate
Public Hearing, January 3, 2018
Assembly Bill 771 (companion to 2017 SB 639)

Representative Jagler and Members of the Committee:

The State of Wisconsin is fortunate to contain a wide variety of cities and towns that appeal to a wide range of both residents and visitors. The variety of these different communities is an important asset, one that attracts tourists and helps residents establish a stronger sense of place and community pride.

Every community has some level of interest in its history. In certain communities, the interest may be very limited. But in every county there are other communities where the interest and investment is high and visually apparent. These cities and towns attract visitors who, in turn, provide substantial economic benefit to the region.

* * *

Sections 1 through 6 of Assembly Bill 771 would undermine historic preservation throughout our State by setting a single minimal, yet vague, standard to be applied when repairing or replacing any historic landmark in every community within our 72 counties. The Madison Trust for Historic Preservation takes the position that these six sections should simply be deleted from the Bill.

* * *

I'm not an architect and I do not have a degree in historic preservation, but I do look around at both the landscape and the built environment.

I appreciate current language in Subd. 62.23(7)(em)1., Stats., that *requires* every city in the state that contains a property on either the National or State Register of Historic Places to "enact an ordinance to regulate any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, *for the purpose of preserving the place, structure or object and its significant characteristics*."

You may find people like me looking out of car windows at buildings as we pass by them, but we know you can only fully appreciate a structure on foot. We realize that the vast majority of buildings have been constructed to be viewed and used by people who are walking.

People like me understand that there is a tension between historic preservation and the owning a landmark structure. I was briefly the business manager for the First Unitarian Society of Madison, and had an office in their Frank Lloyd Wright designed Meeting House, a structure designated as a National Historic Landmark and currently the subject of a multimillion dollar fundraising effort to replace its leaky copper roof --- with a new copper roof.

The bill now before the Committee would effectively replace every city's carefully considered standard for materials used to repair or replace a property designated as a historic landmark or included within a historic district. As they currently exist, those standards often require consideration of numerous factors. This bill would base the new standard solely on what can be seen from the center of an adjacent road, irrespective of how far the road might be from the property in question or whether there is a sidewalk that runs much closer to the building. In addition, the new standard requires the interpretation of two vague phrases that invite lengthy and expensive litigation: "ordinary observer" and "substantially similar appearance."

Any owner of a property affected by a city landmarks commission decision already has the right to appeal the decision to the city's common council. This remedy was only recently put into place and there is no reason to believe it is unsuccessful in accomplishing the statutory purpose of "preserving the [historic] place, structure or object and its significant characteristics."

Thank you for considering the above concerns.

Sincerely,

Kurt Stege
President

Atty Heiner Giese
1230 N. Prospect **Ave.**
Milwaukee, WI 53202-3014

Facts about Evictions in Wisconsin

1. Eviction cases have not increased that much in recent years.
2. There are **very few** "illegal" or "frivolous" evictions. Over 90% are for nonpayment of rent.
3. When a unit has defective conditions, say bedbugs or a leaky sink, tenants often don't pay *any* rent thinking this will defeat an eviction.
4. Providing free legal counsel does not prevent or avoid evictions – it simply delays them in most cases.
5. Evictions in cities like New York, San Francisco and Seattle are different because of their dramatic shortages of affordable housing. For example, in New York landlords may *want* to evict low income tenants to free up a rent-controlled apartment. These landlords may purposely not make repairs to drive out tenants. Not the case in Milwaukee. Why would a landlord want the stress and expense of an eviction?
6. Municipal nuisance laws cause evictions when police blame tenants and landlords for street crime on the block. Instead of drug houses the dealers now pick a neighborhood and work on the street out of their cars.
7. Recent legislation in Wisconsin has not changed tenants' substantive rights. What's new is that landlords no longer have to hire a lawyer or a sheriff-supervised mover. It has made it cheaper and faster to evict non-paying tenants which results in lower operating costs for landlords and lets them meet their mortgage payments. And not have to increase the rent for their paying tenants because of eviction losses.
8. There is a myth spread by some tenant advocates that evictees get their belongings dumped on the curb. This was certainly not the case when Desmond was doing his study in Milwaukee in 2008 – 09. Back then landlords *had* to hire a mover and the charges of the movers (including packing boxes) was billed to the landlord (easily $400 plus). Now the landlords can use their own crew to clean out the apt but it would be foolish for the landlord to put the belongings on the curb because this will result in a city clean-up charge to the property owner.

ONE DAY OF EVICTIONS

I have read thru all the CCAP entries for the **74** eviction cases filed in Milwaukee County on **May 23, 2017**. For now, I wanted to pick a date when the Eviction Defense Project was not in court. Also wanted to pick a date recent but back far enough so the case was likely to be completed. Only a few are still open for damages issues. Here are some stats:

1 commercial case
73 residential
ALL but 6 were city of Milwaukee residences based on defendant's address - though maybe I misread a few with a Milw zipcode but might have been Glendale.
In 47 the tenant appeared pro se.
In 26 it was a tenant default (this is interesting because Desmond claimed about 70% tended to be defaults but on this day it is only 36%)
In 18 cases (25%) there was a stipulated dismissal of the first cause of action which later broke down - a week to two months later - with a writ then being issued.

I did not do a complete analysis of damages awarded -- lots of cases had the 2nd & 3rd dismissed, either voluntarily by plaintiff or plaintiff just did not show up. I did make a note of the following judgment amounts on some cases: 2162, 750, 2745, 2080, 3575, 780, 2299,1818, 1907, 1178, 3783, 1567 and 4838. About 20 cases were filed by Citywide Rentals on behalf of various LLC's and they almost never bothered with a money damage claim.

There were 5 or 6 evictions filed by Mohammed Rashaed thru his LLC's. One speculation I have heard is that he rents to people who have problems because of multiple evictions. One of his defendants had 4 evictions, another had 4 or 5 and a third had **9** evictions (over the last 10 years).

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WISCONSIN **REALTORS®** ASSOCIATION

TO: Committee on Housing and Real Estate

FROM: Joe Murray, Director of Political and Government Affairs
Wisconsin REALTORS® Association

DATE: Wednesday, January 3, 2018

RE: AB 771/SB 639 – Affordable Rental Housing Legislation

The Wisconsin REALTORS® Association (WRA) supports AB 771/SB 639, legislation that modifies numerous provisions to landlord-tenant law in Wisconsin. While this legislation covers a variety of landlord-tenant issues, the WRA strongly supports this legislation and these provisions:

- **Section 34-35: Landlord work provision** – Under current law, a landlord may allow a tenant to repair any damage the tenant is responsible for or the landlord may elect to repair or remediate and charge the tenant. SB 639 specifies that a landlord can recover the costs of their own labor and time when repairing tenant damage. This provision is needed because some courts or court commissioners have not allowed landlords to charge for their own time and labor.

- **Section 17: Local fees and charges** – Landlords do not always receive a timely and direct notice when/if their rental property is in violation of an ordinance as it relates to weeds, electronic waste, or building and property maintenance standards. Violations often include a fine when the municipality steps in to correct the violation. SB 639 requires municipalities to notify the property owner of an ordinance violation by first class mail or email. This way the person responsible for the problem, the landlord, can remedy the situation before the fine is imposed.

- **Section 39: Electronic delivery of notices** – SB 639 would allow landlords and tenants to communicate and reach agreement through electronic delivery, including rental agreements and security deposits. This will make it quicker and easier to resolve issues between both parties.

- **Section 24-28: Emotional Support animals** – SB 639 provides that a tenant who is seeking to keep an emotional support animal in the unit may be required to provide documentation from a state-licensed professional, acting within their scope of practice, on his/her disability and disability-related need for the animal. Emotional support animals are defined as animals that provide emotional support, well-being, comfort, or companionship, but are not trained to perform specific tasks for the benefit of a person with a disability. Wisconsin needs to address the issue of those who fraudulently claim the need for emotional support animal status. This is a growing problem for landlords across the state.

- **Section 22: Refund of fees** – In cases where a municipal determination against a landlord is overturned or withdrawn, the landlord does not always receive a refund of his/her filing fees. SB 639 requires the fees to be returned if the determination is overturned or withdrawn. This provision is a matter of fairness. A filing fee should be reimbursed to a prevailing party, just as it is in civil actions.

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- **Section 41: Defining late fees as rent** – SB 639 modifies the definition of "rent" to include any rent that is past due and any late fees owed for rent that is past due. Too often, a justifiable eviction can be easily dismissed if the landlord adds late fees to a 5-day notice for unpaid rent.

- **Section 42: Incorrect amount stated on notice** – This provision would eliminate an unfair technical defense for tenants in eviction actions. Tenants have been successful in challenging an eviction even though they owe back rent because the amount claimed in the 5-day notice may be wrong, even when the tenant made no effort to pay the amount the tenant believed was actually due.

- **Section 48: Waiver defense to eviction** – A catch-all defense sometimes raised in an eviction is that the landlord let the tenant slide previously, did not aggressively pursue overdue rent and thus should be held to have waived the right to now evict for overdue rent. This waiver says if the landlord showed good faith by not penalizing a tenant for a breach the first time, the landlord can't enforce the lease provision for future breaches. This is a technical loophole for tenants who have a pattern of nonpayment for rent or unacceptable behavior.

- **Section 52: Rental weatherization** – The 2017-19 state budget bill eliminated the DSPS rental weatherization program. Under SB 639, all remaining rental unit stipulations and waivers would be void and unenforceable, consistent with the elimination of the Renal Unit Energy Efficiency program in the state budget. This program was outdated and no longer being enforced by the DSPS.

- **Section 37: Local regulation of rent abatement** – This provision would prohibit any local municipality from enacting their own rent abatement ordinance which would be inconsistent with state law under s.704.07(4). Current state law provides a fair, understandable and single standard for rent abatement when tenants are unable to fully enjoy the use of their unit.

- **Sections 8-13: Municipal inspections** – SB 639 provides that if a municipality has an ordinance that authorizes an inspection of rental property upon a complaint from an inspector, municipal employee, or elected official of that municipality, the municipality must keep records of the name of the inspector, employee, or elected official that made the complaint and a statement of the reasons for the complaint. And, any fee charged for the complaint may not exceed the actual and direct costs of providing the inspection. This bill allows for complaint based inspections only.

We ask for your support of AB 771/SB 639.

WISCONSIN HISTORICAL SOCIETY

Information Paper on SB 639/AB 771

The Wisconsin State Historic Preservation Office (SHPO), funded mostly through federal grants from the Historic Preservation Fund, has facilitated billions of dollars of economic development in Wisconsin communities through its preservation programs. For every $1 million spent, between 18 and 28 jobs are generated. In state fiscal 2017, tax credit-related historic preservation projects generated $599.4 million in construction and generated nearly 9,000 jobs in Wisconsin. From 1982 through state fiscal 2017, rehabilitation project investments in Wisconsin have totaled $1.8 billion.

The bill draft language in SB 639/AB 771 removes the authority from landmark commissions to apply a review standard that protects the appearance of historic properties. The standard is replaced by language that states: "In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this subsection, a [county, town or city] shall permit an owner to use materials that an ordinary observer would perceive, when viewed from the centerline of an adjacent highway, as having a substantially similar appearance to the original material."

We offer the following comments regarding the potential fiscal and regulatory effects of the bill on the Wisconsin State Historic Preservation Office (SHPO), local units of government, and Wisconsin citizens;

Fiscal:

- The Code of Federal Regulations (36 CFR 61) defines how State Historic Preservation Offices operate and how we allocate federal money.

- Certified Local Government (CLG) communities choose to apply for designation and to participate in the federal historic preservation program by making a local commitment to historic preservation. The National Park Service must approve the language of every CLG's ordinance to assure it meets minimal requirements. Any change must seek approval.

- Federal regulations require each SHPO to pass 10 percent of its federal grant to compliant CLG communities as a condition of funding. Wisconsin's annual grant is approximately $1 million, providing $100,000 in local funding.

- CLG grant funding stimulates private community reinvestment by identifying properties that may qualify for state and federal rehabilitation tax credits and bring federal dollars back to Wisconsin taxpayers.

- Federal guidelines (CFR 61.6 (e)(1)) define the responsibilities of CLGs. This bill will place Wisconsin's CLG communities in noncompliance with requirements for certified local government designation, jeopardizing grant funding.

- Unspent grant funds must be returned to the federal government, and may lead to loss of SHPO annual funding.

- This bill would necessitate a lengthy and costly approval process for revisions to CLG processes and guidelines, as well as revision of over 80 local landmark ordinances across the state.

- The draft language in SB 639/AB 771 has the potential to impact the character of communities and designated landmark districts through incompatible work, thereby decreasing their economic value. Studies indicate that properties in landmark historic districts outperform the market with values that are rising, and fare better when the market is in decline. Further, local historic district properties contribute exponentially to the property tax base when compared to comparable new-construction neighborhoods.[1]

Process:

- Landmark designation is a part of local zoning powers and has been upheld by the Supreme Court. As a zoning power, it must follow due process and be consistently applied in a community. Landmark commissions exist as the formal entities to ensure fair treatment and uniform standards. Their members are established by ordinance but members are appointed and may be removed by the governing authority.

- The proposed language allows the use of materials of similar appearance. The proposed language is vague and open to broad interpretation. There is no standard for an "ordinary observer," or for "similar appearance".

- The vague language may lead to litigation in the courts to define a standard for "ordinary observer" or "similar appearance."

- The existing Secretary of the Interior's Standards is a flexible and open set of standards developed by the Department of the Interior that have been in place for over 40 years. The Standards allow the replacement of historic materials with modern counterparts.

- This proposed language attempts to fix a problem that does not exist. Under current law, property owners may appeal decisions they find unreasonable or cost-prohibitive to their town/county board or city council. These elected officials may overturn or modify any commission decision.

Proposed revision:

In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this subsection, a [county, town or city] historic preservation commission shall use the Secretary of the Interior's Standards for Rehabilitation or locally adopted design standards that have been developed in consultation with property owners.

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[1] Place Economics, *Designing a 21st-Century City: Historic Preservation and the Raleigh of Tomorrow*, 2014.