

2011 DRAFTING REQUEST

Bill

Received: **01/05/2012**

Received By: **fknepp**

Wanted: **Soon**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Rob**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - munis generally
Real Estate - landlord/tenant
Local Gov't - counties**

Addl. Drafters: **fknepp**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to: **marc.shovers@legis.wisconsin.gov
fern.knepp@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Homeowners right to rent their home

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 01/05/2012	wjackson 01/05/2012		_____			S&L
/P1			jmurphy 01/05/2012	_____	ggodwin 01/05/2012		S&L
/1	mshovers 01/09/2012	wjackson 01/09/2012	phenry 01/10/2012	_____	mbarman 01/10/2012	sbasford 02/10/2012	

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FE Sent For:

<END>

at
intro
2-15-12

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/P1			jmurphy 01/05/2012	_____	ggodwin 01/05/2012		S&L
/I	mshovers 01/09/2012	wjackson 01/09/2012	phenry 01/10/2012	_____	mbarman 01/10/2012		

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/?	mshovers 01/05/2012	wjackson 01/05/2012	<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>			S&L
/P1			jmurphy 01/05/2012	<i>[Handwritten initials]</i>	ggodwin 01/05/2012		

11 MES 1/9/12

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1?	mshovers	1/11/12		_____			

1/11 MES OFFK 4/5/12

FE Sent For:

<END>

Telephone Call w/ Thomas Larson - WRA
1/4/12

Instead of amending "tourist or transient"
provide exemption language for definitions
of b+b, hotel, & tourist rooming house for
stays of less than 7 days

MES

homes by (a) prohibiting local governments from adopting or enforcing ordinances that restrict, regulate or prohibit the manner in which real property is owned, and (b) redefining the term "transient" on the basis of the length of the rental period, rather than the type of renter.

Background

Thousands of Wisconsin homeowners choose to rent out their homes every year. Some rent their homes when they must move away on a temporary basis for work, school or military duty. Others purchase homes in popular vacation areas for investment purposes and rent them out to tourists who travel to Wisconsin for vacation. With the downturn in the real estate market, many more homeowners are choosing to rent out their homes, rather than sell them at significant losses.

State and local regulations, however, are making it more difficult and, in some cases, impossible for homeowners to rent out their homes. For example, Wisconsin's Department of Health Services imposes expensive inspection requirements and fees on homeowners if they rent their homes to anyone who has another permanent residence, regardless of the duration of the rental period. See Wis. Stat. § 254.61. Local communities often charge \$200 to \$500 to perform these inspections. Other communities have gone even further by adopting ordinances that specifically prohibit the rental of single-family homes.

Impact on Homeowners and the Real Estate Market

Making it more expensive to and/or prohibiting homeowners from renting out their homes is harmful to Wisconsin families, homeowners and the real estate industry for the following reasons:

- + **Negative impact on second-home markets** -- Many people have purchased second homes as an investment, with the intention of renting them out on a seasonal basis to generate income or to help pay for ownership costs. Banning the rental of homes by ordinance undermines the investment-backed expectations of these homeowners and

RUSH - please call to let Rob Kovach 6-3512

prevents them from using the property for the primary purpose for which they purchased it. Moreover, without the ability to rent, prospective homebuyers may be less likely to purchase homes in these areas, which could negatively impact the prices and/or marketability of these homes.

+ **Increase in foreclosures** – Many homeowners who didn't intend to rent out their homes have recently been forced to do so due to the downturn in the economy. Renting out their homes provides these homeowners with a necessary income source to provide for their family and to possibly avoid foreclosure. Prohibiting rentals could result in a greater number of foreclosures

+ **Greater difficulty obtaining financing** – Obtaining financing to purchase or refinance real estate has become more difficult. Appraisers and loan underwriters are scrutinizing more closely all conditions that could affect the value of the property, including local ordinances. Ordinances which prohibit the rental of homes could negatively impact the value and thus the ability to obtain financing for these homes.

+ **Hurts tourism** – The ability to rent a cottage or cabin “up north” is part of Wisconsin's cultural heritage. For generations, families from Wisconsin and other parts of the country have rented cottages and cabins to spend time together hunting, fishing and boating. For those families who cannot afford to own a second home, renting a cottage or cabin for one or two weeks out of the year presents them with a special opportunity to enjoy Wisconsin's wonderful water resources. Local ordinances that ban the rental of cottages and cabins, and/or subject them to expensive inspection requirements, limit the ability of families to vacation in Wisconsin and ultimately hurts our state's tourism industry.

Proposed solutions

To address the problems highlighted above, we recommend the following two changes to state law:

(1) Prohibit the enforcement or adoption of local ordinances that prohibit or unreasonably restrict the ability of homeowners to rent out their homes.

(2) Redefine “transient” to include a reasonable rental period that more fairly differentiates between transient housing and short-term housing that is considered to be a home. Specifically, the term “transient” can be more carefully defined by adding a requirement that the person rent for less than a ~~14-day consecutive rental period~~¹: *7 days*

¹Under Internal Revenue Service rules, a dwelling unit is considered a “home” for purposes of tax treatment of rental income if the dwelling unit is used by the owner for more than 14 days. See, IRS Publication 527, *Residential Rental Property*

254.61(5r) "Tourist or transient" means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business, or employment for a period of time of less than ~~14 consecutive days~~ *7 consecutive days*

This would not alleviate hotels, daily rental units, etc from the need to be inspected but would remove from DHS regulation those who rent their homes for longer periods of time. Moreover, the proposed change would be consistent with the DHS's own rules that, while equally ambiguous, recognize the need to differentiate between renters based upon the duration of the rental period.²

²"Tourist or transient" means a person who travels to a location away from his or her permanent address for a **short period time** for vacation, pleasure, recreation, culture, business, or employment. See Wis. Admin. Code § DHS 195.03(19) (emphasis added)



State of Wisconsin
2011 - 2012 LEGISLATURE



-3736/p

LRB-3718??
MES&FFK:Y

WJY (FMNR)

Today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-NOTE

1 AN ACT ...; **relating to:** lodging establishments and restricting a local
2 government's ability to prohibit or restrict an individual from renting his or her
3 home..

Analysis by the Legislative Reference Bureau

This bill prohibits a political subdivision (any city, village, town, or county) from enacting or enforcing an ordinance ~~which~~ prohibits, or unreasonably restricts, an individual from renting out his or her home. The bill defines "home" as any residential dwelling owned by an individual as either a primary or secondary dwelling. If any political subdivision has such an ordinance in effect on the effective date of the bill, the ordinance does not apply and may not be enforced.

Under current law, the Department of Health Services regulates a variety of types of lodging establishments, including hotels, bed and breakfasts, and tourist rooming houses. This bill excludes from the definitions of hotel, bed and breakfast, and tourist rooming house a residential dwelling that is rented exclusively for periods of time that are 7 consecutive days or longer. Thus, the bill provides that a residential dwelling that is rented exclusively for periods of 7 consecutive days or longer does not qualify as a hotel, a bed and breakfast, or a tourist rooming house and therefore is not subject to regulations that apply to such lodging establishments.

SR

establishment

SR

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.1014 of the statutes is created to read:

2 **66.1014 Limits on home rental prohibited.** (1) In this section:

3 (a) "Home" means any residential dwelling owned by an individual, as either
4 the individual's primary dwelling or secondary dwelling.

5 (b) "Political subdivision" means any city, village, town, or county.

6 (c) "Residential dwelling" has the meaning given in s. 254.61 (4f).

7 (d) "Secondary dwelling" means any residential dwelling owned by an
8 individual other than the individual's primary dwelling.

 ****NOTE: Does this definition meet your intent? Do you want to limit "secondary dwelling" to a second home only, such as a vacation home, or do you intend for the definition to include any number of residential dwellings owned by an individual?

9 **(2)** (a) A political subdivision may not enact or enforce an ordinance ~~which~~ ^{that}
10 prohibits, or unreasonably restricts, an individual from renting out his or her home.

 ****NOTE: Does par. (a) meet your intent? I believe it's consistent with your instructions, but I'm not sure what legal standard is imposed by the phrase "unreasonably restricts". Would you like to clarify this phrase?

11 (b) If a political subdivision has in effect on the effective date of this paragraph ...
12 [LRB inserts date] an ordinance that is inconsistent with par. (a), the ordinance does
13 not apply and may not be enforced. ↓

14 **SECTION 2.** 254.61 (1) (g) of the statutes is created to read:

15 254.61 (1) (g) Is not a residential dwelling rental.

16 **SECTION 3.** 254.61 (3) of the statutes is amended to read:

17 254.61 (3) "Hotel" means all places wherein sleeping accommodations are
18 offered for pay to transients, in 5 or more rooms, and all places used in connection

1 therewith except that "hotel" does not include a residential dwelling rental.
2 "Hotelkeeper", "motelkeeper" and "innkeeper" are synonymous and "inn,", "motel,"
3 and "hotel" are synonymous.

History: 1973 c. 190; 1975 c. 189; 1975 c. 413 s. 13; Stats. 1975 s. 50.50; 1983 a. 163, 189, 203, 538; 1985 a. 135; 1987 a. 27, 307; 1989 a. 269, 354, 359; 1993 a. 27 s. 65; Stats. 1993 s. 254.61; 1993 a. 399; 1997 a. 27, 237; 1999 a. 135; 2005 a. 348; 2007 a. 67, 97.

4 **SECTION 4.** 254.61 (4f) of the statutes is created to read:

5 254.61 (4f) "Residential dwelling" means any building, structure, or part of the
6 building or structure that is primarily used and occupied for human habitation or
7 intended to be so used and includes any appurtenances belonging to it or usually
8 enjoyed with it.

9 **SECTION 5.** 254.61 (4m) of the statutes is created to read:

10 254.61 (4m) "Residential dwelling rental" means a residential dwelling that
11 is offered for rent exclusively for periods of 7 consecutive days or longer.

12 **SECTION 6.** 254.61 (6) (d) of the statutes is created to read:

13 254.61 (6) (d) A residential dwelling rental.

14 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-3736/Pldn
LRB-8716/dn
MES&FFK:.....
Wlj

Date

To ~~Representative Riva~~ *Senator Lase* SR *establishment* SP

This draft alters the definitions of "hotel," "bed and breakfast," and "tourist rooming house" by excluding residential dwellings that are exclusively rented for ~~7~~ consecutive days ~~for~~ longer. This means that the exemption from the definitions will not apply to a residential dwelling that is rented for a period of less than ~~7~~ days, even if such shorter rentals are only offered occasionally. The definition changes also affect cross references to these definitions in other chapters of the statutes. Please confirm that these changes are consistent with your intent. Cross references to these definitions include the following:

- a. 101.123 Smoking prohibited. *This section is the* General prohibition against smoking in lodging establishments, which include hotels, bed and breakfasts, and tourist rooming houses.
- b. 101.149 Carbon monoxide detectors. *This section requires* Requirement that the owner of a residential building, which includes bed and breakfasts and tourist rooming houses, install carbon monoxide detectors. *establishments*
- c. 101.647 Carbon monoxide detectors. The owner of a dwelling shall install any carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector. For purposes of this section, "dwelling unit" does not include a "tourist rooming house." *establishment*
- d. 106.52 Public places of accommodation or amusement. Hotel, bed and breakfast, and tourist rooming house are included in the definition of a "public place of accommodation or amusement." This section contains various prohibitions related to public places of accommodation or amusement. *establishment*
- e. 350.01 Definitions for ~~Ch. 350~~ (Snowmobiles). Hotel, bed and breakfast, and tourist rooming house are included in the definition of lodging establishment for purposes of chapter 350, which is used for purposes of defining "purpose of access from lodging."

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3736/P1dn
MES&FFK:wlj:jm

January 5, 2012

To Senator Lasee:

This draft alters the definitions of "hotel," "bed and breakfast establishment," and "tourist rooming house" by excluding residential dwellings that are exclusively rented for seven consecutive days or longer. This means that the exemption from the definitions will not apply to a residential dwelling that is rented for a period of less than seven days, even if such shorter rentals are offered only occasionally. The definition changes also affect cross-references to these definitions in other chapters of the statutes. Please confirm that these changes are consistent with your intent. Cross-references to these definitions include the following:

- a. 101.123 Smoking prohibited. This section is the general prohibition against smoking in lodging establishments, which include hotels, bed and breakfast establishments, and tourist rooming houses.
- b. 101.149 Carbon monoxide detectors. This section requires that the owner of a residential building, which includes bed and breakfast establishments and tourist rooming houses, install carbon monoxide detectors.
- c. 101.647 Carbon monoxide detectors. The owner of a dwelling shall install any carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector. For purposes of this section, "dwelling unit" does not include a "tourist rooming house."
- d. 106.52 Public places of accommodation or amusement. Hotel, bed and breakfast establishment, and tourist rooming house are included in the definition of a "public place of accommodation or amusement." This section contains various prohibitions related to public places of accommodation or amusement.
- e. 350.01 Definitions for ch. 350 (snowmobiles). Hotel, bed and breakfast establishment, and tourist rooming house are included in the definition of "lodging establishment" for purposes of chapter 350, which is used for purposes of defining "purpose of access from lodging."

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

Knepp, Fern

From: Kovach, Robert

Sent: Monday, January 09, 2012 1:39 PM

To: Knepp, Fern

Subject: FW: Draft review: LRB 11-3736/P1 Topic: Homeowners right to rent their home

Thanks again for your super-fast turnaround!

Responses to questions:

Changes to cross references in other chapters of the statutes

101.123 Smoking prohibited -- Yes, please exempt residential dwellings. The owner can address this issue in the rental contract.

101.149 Carbon monoxide detectors -- They are already required in all residential dwellings, so it doesn't matter if you exempt from hotel definitions.

101.647 Carbon monoxide detectors -- Same as above.

106.52 Public places of accommodation or amusement -- Yes. A private residence is a different type of facility.

350.01 Snowmobiles -- Yes, please exempt residential dwellings

Page 2, after line 8 -- Yes the definition of "secondary dwelling" is fine, as drafted.

Page 2, after line 10 -- Yes, please leave the "unreasonably restricts" language in place. While it is ambiguous, the term allow flexibility at the local level to regulate these dwellings in a manner that is reasonable. Ultimately, a court will have to determine whether a regulation is reasonable.

Recommended change

Page 2, line 10 -- Add "for 7 days or longer" to the end of the sentence after the word "home."



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3736/F1
MES&FFK:wlj:jm

stop
MK

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

WANTED:
Tues

res

1 AN ACT *to amend* 254.61 (3); and *to create* 66.1014, 254.61 (1) (g), 254.61 (4f),
2 254.61 (4m) and 254.61 (6) (d) of the statutes; **relating to:** lodging
3 establishments and restricting a local government's ability to prohibit or
4 restrict an individual from renting his or her home.

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for seven consecutive days or longer

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18 offered for pay to transients, in 5 or more rooms, and all places used in connection

Godwin, Gigi

From: Kovach, Robert

Sent: Thursday, February 09, 2012 4:50 PM

To: LRB.Legal

Subject: please jacket lrb-3736/1 for senate
please jacket lrb-3736/1 for senate

Thank you.

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512