

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2506

As Recommended by House Committee on
Local Government

Brief*

HB 2506 would allow cities, as well as certain organizations as authorized by current law, to take temporary possession of abandoned property for purposes of rehabilitating the property. The bill would also make a number of definitional and other changes to laws dealing with rehabilitation of abandoned property.

Definitions (Section 1)

Abandoned property. The bill would change the definition of abandoned property applicable to residential real estate to mean residential real estate with taxes delinquent for the preceding two years that has not been occupied continuously for 15 months by persons legally in possession and that has a blighting influence on surrounding properties, unless the exterior is being maintained and the property is either subject to probate action, action to quiet title, or other ownership dispute, or is subject to a mortgage.

The definition of “abandoned property” applicable to a commercial property would be amended to require its approved use (rather than its use, as in current law) be other than one to four residential units, or for agricultural purposes.

The bill would specify “abandoned property” would not mean real estate for which the owner is known and has expressed in writing a desire to retain ownership and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

maintain the real estate and brings the property into code compliance within 90 days of the expressed desire.

Blighting influence. In the definition of “blighting influence,” the bill would replace “morals” with “welfare,” to define it as “conditions in such structure which are dangerous or injurious to the health, safety or welfare of the occupants of such buildings or other residents of the municipality.” The conditions may include, but not be limited to, multiple factors, and the bill would make the following changes to the list of factors:

- Specify “lack of” sanitary facilities;
- Remove various conditions of a structure that could make it dangerous or injurious to the health, safety, or welfare of its occupants or other residents of the municipality: have an adverse impact on properties in the area; uncleanliness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood, or the city; walls, sidings, or exteriors of a quality and appearance not commensurate with the character of properties in the neighborhood; and inadequate drainage; and
- Specify any code violation related to deeming a property a blighting influence must constitute a health or safety threat and add the violation could be of a property maintenance code.

Organization. The bill would amend the definition of “organization” to add the organization must have been in existence for at least three years.

Petition by a City (Section 2)

The bill would authorize the governing body of a city to file a petition with the district court for an order of temporary possession if the city meets the following requirements:

- The property must meet the definition of “abandoned”;
- The city has designated an organization to rehabilitate the property;
- The property will be rehabilitated for use as housing;
- Notices have been sent to the following entities:
 - The enforcing officer;
 - The parties in interest of the property;
 - Owners of property located within 200 feet of the property subject to the petition; and
 - Any neighborhood improvement association or associations in which the property is located; and
- The governing body of the city to formally approved the filing of the petition.

The bill would required notices to be sent by certified or registered mail to their last known addresses, and posted on the property at least 20 days but not more than 60 days before the petition is filed by the city or organization.

The bill also would add the requirement that a city submit a rehabilitation plan to the court (as is currently required of organizations), and the court could allow representatives of the city to enter the property as the court determines appropriate (as is currently allowed for representatives of organizations).

Petition Contents (Section 2)

The bill would require a petition from an organization or a city to take temporary possession of a property to include the following information:

- The history of municipal utility service to the property for the preceding 365 days or longer;
- The history of property tax payments for the preceding 3 years or longer;
- The history of code violations for the preceding 2 years or longer and efforts by the city to remedy the code violations;
- The history of attempts to notify the last known owner or owners of any enforcement action or actions; and
- The history of actions taken by other governmental entities including, but not limited to, tax liens or bankruptcy proceedings.

Defense to a Petition (Section 2)

The bill would remove the 90-day limitation on the extension of the compliance period a court may grant for good cause to allow the property owner to bring the property into compliance with applicable fire, housing, building codes, and pay all delinquent *ad valorem* property taxes. This would allow the court to determine length of an extension.

The bill would add that in no case shall the defendant's affirmative defense to a petition be stricken solely on the basis of delinquent property taxes.

Organization Use of a Property (Section 2)

The bill would remove the option for an organization to enter into leases or other agreements in relation to the property if the court grants the petition for temporary possession.

Title to the Property (Section 2, except as otherwise noted)

The bill would require an organization or a city to petition the court for title not less than 365 days nor more than 730 days after receiving temporary possession of a property. The city or organization would be required to send notice of intent to file a petition for title to the parties of interest of the property, by certified or registered mail, to their last known address at least 20 days but not more than 60 days before the petition is filed.

The bill would require the court to grant the petition for title if the court finds the property has been rehabilitated in accordance with the approved rehabilitation plan.

If no petition for title is filed, or the court finds the organization has not rehabilitated the property in accordance with the approved rehabilitation plan, the bill would require the property be immediately sold by either the board of county commissioners or the governing body of a city in the manner prescribed for sale at a judicial tax foreclosure sale.

The bill would repeal a statute (KSA 2017 Supp. 12-1756e; see Section 3) that allows an organization to obtain a quit-claim judicial deed if the original property owner takes no action to regain possession and after notice.

Background

The bill was requested by a representative of the City of Topeka. In the House Committee on Local Government hearing, representatives of the City of Overland Park, the City of Topeka, the Kansas Association of Realtors, and the League of Kansas Municipalities (League) testified as proponents of the bill.

Written-only proponent testimony was provided by officials of the cities of Chanute, El Dorado, Lansing, Manhattan, McPherson, Olathe, Salina, and Wichita. Additional testimony was provided by the Kansas Association of Chiefs of Police, the Topeka Chamber of Commerce, and the Unified Government of Wyandotte County.

Among the points presented by proponents were that cities need an additional tool to address abandoned properties, which present risks to health and safety and adversely affect the value of nearby properties.

Neutral testimony was provided by Senator Haley, with suggested amendments.

Opponent testimony was provided by private citizens from the cities of Topeka and Wichita, a representative of Educational Management Consultants, and a representative of the Tennessee Town Neighborhood Improvement Association of Topeka.

Written-only opponent testimony was provided by a private citizen from Wichita and a member of the Sedgwick County Board of Commissioners.

Among the points presented by opponents was concern about the possible unlawful taking of property and how the bill would affect low-income individuals.

According to the fiscal note prepared by the Division of the Budget, the League states the bill would reduce

administrative costs resulting from decreased emergency services provided to blighted properties and decreased staff time spent on notifications of property owners regarding issues of blight. However, the League states it is not possible to quantify the amount of savings because it is unable to determine how many properties would meet the new definition of blighting influence. The Office of Judicial Administration indicates there would be a fiscal effect on the operations of the court system, but it is not possible to predict the number of additional court cases that may arise, or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined, but would most likely be accommodated within the existing schedule of court cases. Any fiscal effect associated with the bill is not reflected in the *FY 2019 Governor's Budget Report*.