

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 31

As Amended by Senate Committee on Ethics,
Elections and Local Government

Brief*

SB 31 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. Under the bill, the total number of separate definitions of “abandoned property” would be increased from two to three. The bill would add a third category to include residential real estate that has not been occupied for 15 months by persons legally in possession and which 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. This amendment to the definition of abandoned residential property would expire July 1, 2021.

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.

*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>

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 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; uncleanness; 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 an Organization (Section 2)

The bill would amend the purposes for which an organization could file a petition with the district court for temporary possession of an abandoned property to add, if the petition is filed before July 1, 2021, the property could be used for ancillary facilities related to housing, including infrastructure, parks, and parking facilities.

Petition by a City (Section 2)

The bill would, until July 1, 2021, authorize a city, as well as an organization, to file a petition with the district court for an order of temporary possession if the city meets certain requirements pertaining to organizations: the property must meet the definition of “abandoned”; the property will be rehabilitated for use as housing or for ancillary facilities including, but not limited to, infrastructure, open space, parks, or parking facilities; and notices have been sent to the enforcing officer and the parties in interest of the property, by certified or registered mail at their last known addresses, and posted on the property at least 20 days but not more than 60 days before the petition is filed. In addition, a city would be required to designate an organization to rehabilitate the property and send notice to 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. The bill would require the governing body of the city filing the petition to formally approve the filing of the petition.

The bill 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

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

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.

[Note: The bill would not amend requirements the court make its own determination of whether the property is in fact abandoned, approve the rehabilitation plan, and approve or deny a petition for temporary possession.]

Organization Use of a Property

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 quiet 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 quiet 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 quiet title if the court finds the property has been rehabilitated in accordance with the approved rehabilitation plan.

If no petition for quiet 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 2016 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, who testified as a proponent in the hearing by the Senate Committee on Elections. Also testifying in support of the bill were a member of the Wichita City Council; representatives of the Kansas Association of Realtors, League of Kansas Municipalities, the Unified Government of Wyandotte County and Kansas City, Kansas, the Matlock Neighborhood Association of Wichita, and the Elmhurst

Neighborhood Association of Topeka; and a private citizen from Wichita.

Written-only proponent testimony was provided by officials of the cities of Arkansas City, Baxter Springs, Dodge City, El Dorado, Fall River, Manhattan, McLouth, Olathe, Overland Park, Russell, Salina, and Topeka; and by representatives of Healthy Communities Wyandotte and the Topeka Chamber of Commerce.

Among the points presented by proponents were that cities need an additional tool to address abandoned properties, abandoned properties present risks to health and safety and adversely affect the value of nearby properties, and this version of the bill addresses concerns raised by opponents to earlier versions.

Neutral testimony was provided by Senator Haley and a representative of The Associated Landlords of Kansas, with suggested amendments.

Opponent testimony was provided by a private citizen from Wichita and a representative of the Tennessee Town Neighborhood Improvement Association of Topeka, who raised concerns about possible taking of property.

Committee members received a report on versions of this bill introduced since 2012. This included 2016 SB 338, which was vetoed by the Governor.

The Senate Committee amended the bill to specify the definition of “abandoned property” would not mean real estate for which an owner is known, expresses in writing a desire to retain and maintain the property, and brings the property into code compliance within 90 days of expressing that desire.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the League of Kansas Municipalities (League) is unable to estimate the fiscal effect the enacted bill would have on Kansas cities because it

cannot determine how many qualified persons or cities would take action based on the new provisions included in the bill. The League indicates enactment could reduce costs for cities by shortening the amount of time spent on oversight of these properties.