

Senate Study Bill 3097 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CHAIRPERSON GARRETT)

A BILL FOR

1 An Act relating to abandoned structures and abatement of
2 nuisances.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 657A.1, subsections 1 and 3, Code 2018,
2 are amended to read as follows:

3 1. "*Abandoned*" or "*abandonment*" means that a building ~~has~~
4 ~~remained~~ is vacant and ~~has been~~ in violation of the housing
5 code or building code of the city in which the property is
6 located or the housing code or building code applicable in the
7 county in which the property is located if outside the limits
8 of a city ~~for a period of six consecutive months~~.

9 3. "*Building*" means a building or structure, including a
10 mobile or manufactured home which has been converted to real
11 estate pursuant to section 435.26, located in a city or outside
12 the limits of a city in a county, which is used or intended
13 to be used for commercial or industrial purposes or which
14 is used or intended to be used for residential purposes and
15 includes a building or structure in which some floors may be
16 used for retail stores, shops, salesrooms, markets, or similar
17 commercial uses, or for offices, banks, civic administration
18 activities, professional services, or similar business or civic
19 uses, and other floors are used, designed, or intended to be
20 used for residential purposes.

21 Sec. 2. Section 657A.1, Code 2018, is amended by adding the
22 following new subsection:

23 NEW SUBSECTION. 8. "*Responsible building official*" or
24 "*official*" means the person appointed by the city or, if the
25 building is outside the limits of a city, the county to enforce
26 its building codes and regulations in general or to enforce
27 this chapter in particular.

28 Sec. 3. NEW SECTION. 657A.1A **Preliminary inspection of**
29 **building.**

30 1. No sooner than one hundred thirty-five days after a
31 property has become vacant, a person, other than a governmental
32 entity, may request that the responsible building official
33 inspect the property and certify that a property is both
34 abandoned and in need of abatement. The responsible building
35 official may also initiate an inspection on the official's own

1 initiative.

2 2. If the responsible building official finds from an
3 exterior view of the property, in addition to any other
4 credible information that the official may have, that there is
5 reasonable cause to believe that the property is abandoned and
6 in need of abatement, the official shall schedule a date and
7 time for an inspection of the property by the official. The
8 person requesting the inspection shall provide written notice
9 of the scheduled inspection to the owner and all interested
10 persons at least twenty days before the inspection. The
11 official may enter the property for an inspection, along with
12 the person serving notice and any interested persons, if the
13 owner is not present for the inspection. The notice must
14 state the date, time, and place of the inspection and state
15 that unless the owner appears at the inspection to allow the
16 responsible building official access to the interior of the
17 property, the official, accompanied by the person serving
18 notice and any interested persons appearing for the inspection,
19 may enter the property to determine whether the property is
20 abandoned and in need of abatement and, if so, to estimate
21 the costs of abatement. Upon request, the inspection may be
22 rescheduled as needed.

23 3. The responsible building official's findings shall
24 be in writing with copies provided to the person requesting
25 the inspection, the owner, and all interested parties. The
26 government entity employing the responsible building official
27 may establish and charge a fee to cover the reasonable costs
28 of the inspection, which shall be added to costs in an action
29 under this chapter.

30 4. Evidence that financial obligations in respect to a
31 building, including but not limited to payments of a mortgage,
32 bills, or property taxes, are currently met does not rebut a
33 finding of abandonment if the property is substantially in need
34 of abatement in an action filed under section 657A.2.

35 Sec. 4. Section 657A.2, Code 2018, is amended by striking

1 the section and inserting in lieu thereof the following:

2 **657A.2 Petition.**

3 1. No sooner than the latter of thirty days after provision
4 of the responsible building official's findings under section
5 657A.1A and six months after a building has become abandoned,
6 a petition for abatement under this chapter may be filed in
7 the district court of the county in which the property is
8 located, by the city in which the property is located, by the
9 county if the property is located outside the limits of a city,
10 by a neighboring landowner, or by a duly organized nonprofit
11 corporation which has as one of its goals the improvement of
12 housing conditions in the county or city in which the property
13 in question is located. The petition shall not demand a
14 personal judgment against any party, but shall concern only
15 the interests in the property. A petition for abatement filed
16 under this chapter shall include the legal description of the
17 real property upon which the nuisance or dangerous or unsafe
18 condition is located unless the nuisance or dangerous or unsafe
19 condition is not situated on or confined to a parcel of real
20 property or is portable or capable of being removed from the
21 real property. Service shall be made on all interested persons
22 by personal service or by both certified mail and first class
23 mail, or if service cannot be made by either method, by posting
24 the notice in a conspicuous place on the building and by
25 publication. Service may also be made as provided in section
26 654.4A.

27 2. When entering a default judgment, the court shall
28 determine any issues at law, including issues relating to
29 title, raised by plaintiff or by a party in interest who has
30 filed a motion or answer.

31 3. In any evidentiary hearing or motion in a proceeding
32 under this chapter, the written findings of the responsible
33 building official relating to the condition of the building and
34 other matters within the scope of this chapter, if provided
35 to all persons not in default at least ten days before the

1 hearing, shall be accepted as evidence without prejudice to the
2 right of any party to require the personal testimony of the
3 official at the hearing.

4 4. In a proceeding under this chapter, if the court
5 determines the building is not abandoned or is not in a
6 dangerous or unsafe condition, the court shall dismiss the
7 petition and may require the petitioner to pay an interested
8 party's reasonable attorney fees actually incurred, unless the
9 interested party did not appear for an inspection held under
10 section 657A.1A.

11 Sec. 5. Section 657A.3, Code 2018, is amended to read as
12 follows:

13 **657A.3 Interested persons — opportunity to abate public**
14 **nuisance.**

15 1. Before appointing a receiver to perform work or to
16 furnish material to abate a public nuisance under **this chapter**,
17 the court shall ~~conduct a hearing at which the court shall~~
18 ~~offer mortgagees of record, lienholders of record, or other~~
19 ~~known interested persons in the order of priority of interest~~
20 ~~in title, the opportunity to undertake the work and to furnish~~
21 ~~the materials necessary to abate the public nuisance. The~~
22 establish a date before which interested persons may file with
23 the court shall require the person selected to demonstrate the
24 written proof of intent and ability to undertake promptly the
25 work required and to post security for the performance of the
26 work. If no such written proof is filed by that date, the court
27 may appoint a receiver pursuant to subsection 3.

28 2. All amounts expended by the person toward abating the
29 public nuisance are a lien on the property if the expenditures
30 were approved in advance by the judge and if the person desires
31 the lien. The Unless an interested person has a contract with
32 the owner providing for a different interest rate, the lien
33 shall bear interest at the rate provided for judgments pursuant
34 to **section 535.3**, and shall be payable upon terms approved
35 by the judge. If a certified copy of the court order that

1 approved the expenses and the terms of payment for the lien,
2 and a description of the property in question are filed for
3 record within thirty days of the date of issuance of the order
4 in the office of the county recorder of the county in which
5 the property is located, the lien has the same priority as the
6 mortgage of a receiver as provided in [section 657A.7](#).

7 ~~2.~~ 3. If the court determines by the date established
8 in subsection 1 or at the a hearing conducted pursuant
9 to ~~subsection 1~~, on the sufficiency of a timely filed
10 rehabilitation plan that no interested person can undertake the
11 work and furnish the materials required to abate the public
12 nuisance, or if the court determines at any time after the
13 hearing that an interested person who is undertaking corrective
14 work pursuant to [this section](#) cannot or will not proceed, or
15 has not proceeded with due diligence, the court may appoint a
16 receiver to take possession and control of the property. The
17 receiver shall be appointed in the manner provided in section
18 657A.4.

19 4. If the building is a historic building or is located in
20 a designated historic district, the court shall give preference
21 to an economically feasible rehabilitation plan, other than to
22 a rehabilitation plan proposed in good faith by the owner, that
23 preserves the historical nature of the building.

24 5. Unless a receiver's mortgage provides for periodic
25 payments, a notice, in lieu of the notice provided for in
26 section 654.2D, shall also be served by ordinary or electronic
27 mail informing all interested persons of the date certain for
28 the maturity of the mortgage note, or the event triggering
29 maturity of the mortgage note, that, on maturity, the
30 receiver's mortgage loan will be payable in full and that the
31 mortgagee may then commence foreclosure without further notice.
32 A notice under section 654.4B shall also be served similarly
33 on the owner of record of the property. The mortgagee shall
34 not commence foreclosure of the mortgage until sixty days have
35 passed since the service of notices under this subsection.

1 Sec. 6. Section 657A.4, Code 2018, is amended to read as
2 follows:

3 **657A.4 Appointment of receiver.**

4 ~~After conducting~~ If after expiration of a date established
5 in section 657A.3, subsection 1, or a hearing pursuant to
6 section 657A.3, the court may appoint a receiver to take
7 possession and control of the property in question. A
8 person shall not be appointed as a receiver unless the person
9 has first provided the court with a viable financial and
10 construction plan for the rehabilitation of the property in
11 question and has demonstrated the capacity and expertise to
12 perform the required work in a satisfactory manner. The
13 appointed receiver may be a financial institution that
14 possesses an interest of record in the property, a nonprofit
15 corporation that is duly organized and exists for the primary
16 purpose of improving housing conditions in the county or city
17 in which the property in question is located, or any person
18 deemed qualified by the court. No part of the net earnings of a
19 nonprofit corporation serving as a receiver under [this section](#)
20 shall benefit a private shareholder or individual. Membership
21 on the board of trustees of a nonprofit corporation does not
22 constitute the holding of a public office or employment and is
23 not an interest, either direct or indirect, in a contract or
24 expenditure of money by a city or county. No member of a board
25 of trustees of a nonprofit corporation appointed as receiver
26 is disqualified from holding public office or employment, nor
27 is a member required to forfeit public office or employment by
28 reason of the membership on the board of trustees.

29 Sec. 7. Section 657A.6, subsection 9, Code 2018, is amended
30 to read as follows:

31 9. Issue notes and secure the notes by mortgages bearing
32 interest at the rate provided for judgments pursuant to section
33 535.3, and terms and conditions as approved by the court. The
34 court may provide for a higher interest rate if the receiver
35 has established to the satisfaction of the court that the

1 receiver has sought financing from persons and institutions
2 willing to lend money for rehabilitation of property and that
3 the terms proposed by the receiver are reasonable and the best
4 reasonably available. When transferred by the receiver in
5 return for valuable consideration in money, material, labor,
6 or services, the notes issued by the receiver are freely
7 transferable. If the receiver contemplates a transfer of
8 its note and mortgage, with or without recourse, at the time
9 the receiver seeks court authorization of the contemplated
10 transfer, the receiver shall disclose to the mortgagee the
11 contemplated transfer in the application for approval of the
12 mortgage.

13 Sec. 8. Section 657A.7, Code 2018, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 3. If the mortgagee of the receiver's
16 mortgage begins foreclosure procedures pursuant to chapter 655A
17 and an interested party desires to pay off the mortgage loan,
18 the interested party shall also pay the mortgagee's reasonable
19 costs and attorney fees.

20 Sec. 9. Section 657A.8, Code 2018, is amended to read as
21 follows:

22 **657A.8 Assessment of costs.**

23 The court may assess the costs and expenses set out in
24 section 657A.6, subsection 2, and may approve receiver's fees
25 to the extent that the fees are not covered by the income
26 from the property. The receiver shall pay the costs and
27 reasonable attorney fees of a plaintiff who requested an
28 inspection under section 657A.1A unless an interested party
29 not in default who appeared for the inspection justifiably
30 objects to the fees and costs in whole or in part. The court
31 shall determine the merits of such an objection. If the court
32 finds that a neighboring landowner has pursued an action under
33 this chapter in bad faith, the court may assess attorney fees
34 against the neighboring landowner and may bar the neighboring
35 landowner from filing future actions under this chapter. If a

1 foreclosure of the receiver's mortgage pursuant to chapter 655A
2 is contemplated, the court may retain jurisdiction to determine
3 the amount of attorney fees payable under 657A.7, subsection 3.

4 Sec. 10. Section 657A.10A, subsection 1, paragraph a, Code
5 2018, is amended to read as follows:

6 a. In lieu of the procedures in sections ~~657A.2~~ 657A.1A
7 through 657A.10 and 657A.10B, a city in which an abandoned
8 building is located may petition the court to enter judgment
9 awarding title to the abandoned property to the city. A
10 petition filed under this section shall include the legal
11 description of the abandoned property. If more than one
12 abandoned building is located on a parcel of real estate, the
13 city may combine the actions into one petition. The owner of
14 the building and grounds, mortgagees of record, lienholders
15 of record, or other known persons who hold an interest in the
16 property shall be named as respondents on the petition.

17 Sec. 11. NEW SECTION. 657A.10B Applicability.

18 The provisions of sections 657A.1A through 657A.10 shall
19 only apply to cities and counties that have, by ordinance,
20 provided that the provisions shall apply.

21 Sec. 12. CODE EDITOR DIRECTIVE.

22 1. The Code editor is directed to renumber section 657A.10B,
23 as enacted in this Act, as section 657A.10A, and to renumber
24 section 657A.10A as section 657A.10B.

25 2. The Code editor shall correct internal references in the
26 Code and in any enacted legislation as necessary due to the
27 enactment of this section.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill changes certain procedures relating to abandoned
32 structures and abatement.

33 The current definition of "abandoned" or "abandonment"
34 requires a property to have been in violation for at least six
35 months. The bill removes the time element from the definition

1 and states that evidence of financial obligations in respect
2 to the building does not rebut a finding of abandonment if the
3 property substantially needs abatement. The bill requires a
4 property to remain vacant for 135 days before a person may
5 request the responsible building official to inspect a building
6 to determine whether it is abandoned.

7 The term "building" currently includes buildings and
8 structures only. The bill adds mobile and manufactured homes
9 that have become real property pursuant to Code section 435.26.

10 The bill adds to Code section 657A.1 the term "responsible
11 building official".

12 Current law relies on the current definition of "abandoned",
13 which requires that a building remain vacant or in violation
14 of a housing or building code for a period of six months,
15 to start the clock for when a person may file a petition
16 for abatement and includes a hearing to determine whether
17 the building is abandoned or in an unsafe and dangerous
18 condition and whether the building is a public nuisance. A
19 petitioner must make service on the owner in one of three
20 methods. The bill requires a property to remain vacant for
21 at least 135 days before a person may file a petition for
22 abatement. The bill does not allow for personal judgments
23 against any party, but requires the petition to be solely
24 against the interested persons' interest in the property. The
25 bill includes additional methods of service. The bill removes
26 the application for an injunction and the subsequent hearing.
27 The bill allows the responsible building official to provide
28 findings for evidence in an evidentiary hearing or motion in a
29 proceeding under Code chapter 657A under certain circumstances.

30 Current law allows only an owner to collect reasonable
31 attorney fees actually incurred from the petitioner if the
32 court finds that the building in question is not abandoned
33 or in an unsafe or dangerous condition. The bill allows
34 the court to require the petitioner to pay an interested
35 party's reasonable attorney fees actually incurred unless the

1 interested party did not appear for an inspection pursuant to
2 Code section 657A.1A.

3 Current law requires the court to conduct a hearing at
4 which the court shall offer mortgagees of record, lienholders
5 of record, or other known interested persons in the order of
6 priority of interest in title the opportunity to abate a public
7 nuisance. The bill removes this hearing and creates a new
8 process for interested persons to demonstrate their intent and
9 ability to abate the nuisance and act as the receiver. If
10 the building is a historic building or located in a historic
11 district, the court shall give preference to an economically
12 feasible rehabilitation plan, other than a plan proposed in
13 good faith by the owner, that preserves the historical nature
14 of the building.

15 Current law allows a court to empower a receiver to issue
16 notes and secure the notes by mortgage bearing interest at
17 the rate provided for judgments pursuant to Code section
18 535.3 and terms and conditions approved by the court. The
19 bill allows the court to provide for a higher interest rate
20 than that provided in Code section 535.3 if it meets certain
21 conditions. If the receiver contemplates a transfer of the
22 note and mortgage at the time that the receiver seeks court
23 authorization of the contemplated transfer, the receiver shall
24 disclose to the mortgagee the contemplated transfer in the
25 receiver's application for approval of the mortgage.

26 The bill makes the interested party responsible for paying
27 the mortgagee's reasonable costs and attorney fees when the
28 interested party pays off the receiver's mortgage loan.

29 Current law does not require the receiver to pay the
30 reasonable attorney fees for a plaintiff who requested an
31 inspection under Code section 567A.1A. The bill makes the
32 receiver responsible for the plaintiff's reasonable attorney
33 fees in most situations, but creates scenarios that could make
34 a neighboring landowner who pursued the action in bad faith
35 liable for attorney fees. The court may bar that landowner

1 from making further claims under Code chapter 657A.

2 The bill provides that Code sections 657A.1A through 657A.10
3 apply to only those cities and counties that choose to apply
4 these Code sections by adoption through ordinance.

5 The bill directs the Code editor to renumber new Code section
6 657A.10B as new Code section 657A.10A and to renumber current
7 Code section 657A.10A as new Code section 657A.10B and to
8 correct internal references as necessary.