

House Study Bill 172 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON KAUFMANN)

A BILL FOR

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

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

1 Section 1. Section 631.1, Code 2019, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 10. The district court sitting in small
4 claims has concurrent jurisdiction for administrative warrant
5 applications pursuant to section 657A.1A, subsection 2.

6 Sec. 2. Section 655A.6, Code 2019, is amended to read as
7 follows:

8 **655A.6 Rejection of notice.**

9 1. If either the mortgagor, or successor in interest of
10 record including a contract purchaser, within thirty days of
11 service of the notice pursuant to [section 655A.3](#), files with
12 the recorder of the county where the mortgaged property is
13 located, a rejection of the notice reasonably identifying
14 the notice which is rejected together with proofs of service
15 required under [section 655A.4](#) that the rejection has been
16 served on the mortgagee, the notice served upon the mortgagor
17 pursuant to [section 655A.3](#) is of no force or effect.

18 2. Rejection of notice pursuant to subsection 1 shall not be
19 available to a mortgagor, or successor in interest of record
20 including a contract purchaser, of a mortgaged property that a
21 court of competent jurisdiction determined has been abandoned
22 pursuant to section 657A.2, on or after the date as determined
23 in section 657A.2, subsection 5.

24 Sec. 3. Section 657A.1, subsections 1 and 3, Code 2019, are
25 amended to read as follows:

26 1. *"Abandoned"* or *"abandonment"* means that a building ~~has~~
27 ~~remained~~ is vacant and ~~has been~~ in violation of the housing
28 code or building code of the city in which the property is
29 located or the housing code or building code applicable in the
30 county in which the property is located if outside the limits
31 of a city ~~for a period of six consecutive months.~~

32 3. *"Building"* means a building or structure, including a
33 mobile or manufactured home which has been converted to real
34 estate pursuant to section 435.26, located in a city or outside
35 the limits of a city in a county, which is used or intended

1 to be used for commercial or industrial purposes or which
2 is used or intended to be used for residential purposes and
3 includes a building or structure in which some floors may be
4 used for retail stores, shops, salesrooms, markets, or similar
5 commercial uses, or for offices, banks, civic administration
6 activities, professional services, or similar business or civic
7 uses, and other floors are used, designed, or intended to be
8 used for residential purposes.

9 Sec. 4. Section 657A.1, Code 2019, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 8. "*Responsible building official*" or
12 "*official*" means the person appointed by the city or, if the
13 building is outside the limits of a city, the county, to
14 enforce its building codes and regulations in general or to
15 enforce this chapter in particular.

16 Sec. 5. NEW SECTION. **657A.1A Preliminary inspection of**
17 **building.**

18 1. No sooner than one hundred thirty-five days after a
19 property has become vacant, a person, other than a governmental
20 entity, may request that the responsible building official
21 inspect the property and certify that a property is both
22 abandoned and in need of abatement. The responsible building
23 official may also initiate an inspection on the official's own
24 initiative.

25 2. If the responsible building official finds from an
26 exterior view of the property, in addition to any other
27 credible information that the official may have, that there
28 is reasonable cause to believe that the property is abandoned
29 and in need of abatement, the official shall schedule a date
30 and time for an inspection of the property by the official.
31 The person requesting the inspection shall provide written
32 notice of the scheduled inspection by first class mail and
33 certified mail to the owner and all interested persons at
34 least twenty days before the inspection. The notice must
35 state the date, time, and place of the inspection and state

1 that unless the owner appears at the inspection to allow the
2 responsible building official access to the interior of the
3 property, the official, accompanied by the person serving
4 notice and any interested persons appearing for the inspection,
5 may enter the property to determine whether the property is
6 abandoned and in need of abatement and, if so, to estimate
7 the costs of abatement. The official may enter the property
8 for an inspection, along with the person serving notice and
9 any interested persons, if the owner is not present for the
10 inspection. Upon request, the inspection may be rescheduled
11 as needed. The responsible building official may make an
12 application for an administrative warrant pursuant to section
13 808.14 if necessary to conduct an inspection pursuant to this
14 section.

15 3. The responsible building official's findings shall
16 be in writing with copies provided to the person requesting
17 the inspection, the owner, and all interested parties. The
18 governmental entity employing the responsible building official
19 may establish and charge a fee to cover the reasonable costs
20 of the inspection, which shall be added to costs in an action
21 under this chapter.

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

27 Sec. 6. Section 657A.2, Code 2019, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **657A.2 Petition.**

30 1. No sooner than the latter of thirty days after provision
31 of the responsible building official's findings under section
32 657A.1A and six months after a building has become abandoned,
33 a petition for abatement under this chapter may be filed in
34 the district court of the county in which the property is
35 located by the city in which the property is located, by the

1 county if the property is located outside the limits of a city,
2 by a neighboring landowner, or by a duly organized nonprofit
3 corporation which has as one of its goals the improvement of
4 housing conditions in the county or city in which the property
5 in question is located. The petition shall not demand a
6 personal judgment against any party, but shall concern only
7 the interests in the property. A petition for abatement filed
8 under this chapter shall include the legal description of
9 the real property upon which the public nuisance is located
10 unless the public nuisance is not situated on or confined to
11 a parcel of real property, or is portable or capable of being
12 removed from the real property. Service shall be made on all
13 interested persons by personal service or by both certified
14 mail and first class mail, or if service cannot be made by
15 either method, by posting the notice in a conspicuous place on
16 the building and by publication. Service may also be made as
17 provided in section 654.4A.

18 2. If entering judgment, the court shall determine any
19 issues at law, including issues relating to title, raised by
20 the plaintiff or by a party in interest who has filed a motion
21 or answer.

22 3. In any evidentiary hearing or motion in a proceeding
23 under this chapter, the written findings of the responsible
24 building official relating to the condition of the building and
25 other matters within the scope of this chapter, if provided
26 at least ten days before the hearing to all persons not in
27 default, shall be accepted as evidence without prejudice to the
28 right of any party to require the personal testimony of the
29 responsible building official at the hearing.

30 4. If the court finds at a hearing pursuant to this section
31 that the building is abandoned or is a public nuisance, the
32 court may issue an injunction requiring the owner to correct
33 any conditions that make such building a public nuisance, or
34 issue another order that the court deems appropriate to address
35 the public nuisance.

1 5. If the court finds at a hearing pursuant to this
2 section that the building is abandoned, unless the court
3 order establishes otherwise, the property shall be deemed
4 continuously abandoned from the date the action is indexed
5 pursuant to section 617.10, subsection 1.

6 6. A property shall not be claimed as homestead pursuant to
7 chapter 561 on or after the date determined in subsection 5.

8 7. In a proceeding under this chapter, if the court
9 determines the building is not abandoned or is not a public
10 nuisance, the court shall dismiss the petition and may require
11 the petitioner to pay an interested party's reasonable attorney
12 fees, unless the interested party received proper notice and
13 did not appear for an inspection pursuant to section 657A.1A.

14 Sec. 7. Section 657A.3, Code 2019, is amended to read as
15 follows:

16 **657A.3 Interested persons — opportunity to abate public**
17 **nuisance.**

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

32 2. All amounts expended by the person toward abating the
33 public nuisance are a lien on the property if the expenditures
34 were are approved in advance by the a judge and if the person
35 desires the lien. The Unless an interested person has a

1 contract with the owner providing for a different interest
2 rate, the lien shall bear interest at the rate provided for
3 judgments pursuant to section 535.3, and shall be payable upon
4 terms approved by the judge. If a certified copy of the a
5 court order ~~that approved~~ approving the expenses and the terms
6 of payment for the lien, and a description of the property
7 in question, are filed ~~for~~ of record within thirty days of
8 the date of issuance of the order in the office of the county
9 recorder of the county in which the property is located, the
10 lien has the same priority as the mortgage of a receiver as
11 provided in section 657A.7.

12 ~~2.~~ 3. If the court determines by the date established
13 in subsection 1 or at the a hearing conducted pursuant
14 to ~~subsection 1,~~ on the sufficiency of a timely filed
15 rehabilitation plan that no interested person can undertake the
16 work and furnish the materials required to abate the public
17 nuisance, or if the court determines at any time after the
18 hearing that an interested person who is undertaking corrective
19 work pursuant to this section cannot or will not proceed, or
20 has not proceeded with due diligence, the court may appoint a
21 receiver to take possession and control of the property. The
22 receiver shall be appointed in the manner provided in section
23 657A.4.

24 4. If the building is a historic building or is located in
25 a designated historic district, the court shall give preference
26 to an economically feasible rehabilitation plan that preserves
27 the historical nature of the building.

28 5. Unless a receiver's mortgage provides for periodic
29 payments, a notice, in lieu of the notice pursuant to section
30 654.2D, shall also be served by ordinary or electronic mail
31 informing all interested persons of the date certain for the
32 maturity of the mortgage note, or the event triggering maturity
33 of the mortgage note, and that on maturity the receiver's
34 mortgage loan will be payable in full and the mortgagee may
35 then commence foreclosure without further notice. A notice

1 pursuant to section 654.4B shall also be served by ordinary or
2 electronic mail on the owner of record of the property. The
3 mortgagee shall not commence foreclosure of the mortgage until
4 sixty calendar days have passed since the date of service of a
5 notice under this subsection.

6 Sec. 8. Section 657A.4, Code 2019, is amended to read as
7 follows:

8 **657A.4 Appointment of receiver.**

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

34 Sec. 9. Section 657A.6, unnumbered paragraph 1, Code 2019,
35 is amended to read as follows:

1 Before proceeding with the receiver's duties, a receiver
2 appointed by the court shall post a bond in an amount
3 designated by the court. A receiver shall be immune from
4 liability for any act or omission arising from a good faith
5 effort to comply with court-ordered duties pursuant to
6 this section. The court may empower the receiver to do the
7 following:

8 Sec. 10. Section 657A.6, subsection 9, Code 2019, is amended
9 to read as follows:

10 9. Issue notes and secure the notes by mortgages bearing
11 interest at the rate provided for judgments pursuant to
12 section 535.3, and any terms and conditions as approved by
13 the court. The court may provide for a higher interest rate
14 if the receiver has established to the satisfaction of the
15 court that the receiver has sought financing from individuals
16 and institutions willing to lend money for rehabilitation
17 of property and that the terms proposed by the receiver are
18 reasonable. When transferred by the receiver in return for
19 valuable consideration ~~in~~ including money, material, labor,
20 or services, the notes issued by the receiver are freely
21 transferable. If the receiver has notice that the mortgagee
22 of the receiver's mortgage is contemplating a transfer of the
23 mortgage, the receiver shall disclose such to the court in the
24 application for approval of the mortgage.

25 Sec. 11. Section 657A.7, subsection 1, Code 2019, is amended
26 to read as follows:

27 1. If the receiver's mortgage is filed ~~for~~ of record in
28 the office of the county recorder of the county in which the
29 property is located within sixty days of the issuance of a
30 secured note, the receiver's mortgage is a first lien upon the
31 property and is superior to claims of the receiver and to all
32 prior or subsequent liens and encumbrances except taxes and
33 assessments, including taxes and assessments advanced by any
34 mortgagee in the twelve-month period immediately preceding the
35 date a petition is filed pursuant to section 657A.2. Priority

1 among the receiver's mortgages is determined by the order in
2 which the mortgages are recorded.

3 Sec. 12. Section 657A.7, Code 2019, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 3. If a mortgagee of the receiver's
6 mortgage begins foreclosure procedures pursuant to chapter 655A
7 and an interested party desires to pay off the mortgage loan,
8 the interested party shall also pay the mortgagee's reasonable
9 costs and attorney fees.

10 Sec. 13. Section 657A.8, Code 2019, is amended to read as
11 follows:

12 **657A.8 Assessment of costs.**

13 The court may assess the costs and expenses set out in
14 section 657A.6, subsection 2, and may approve receiver's fees
15 to the extent that the fees are not covered by the income
16 from the property. The receiver shall pay the costs and
17 reasonable attorney fees of a plaintiff who requested an
18 inspection pursuant to 657A.1A unless an interested party
19 not in default who appeared for the inspection objects to
20 the fees and costs in whole or in part. The court shall
21 determine the merits of such objection. If the court finds
22 that a neighboring landowner has pursued an action pursuant to
23 this chapter in bad faith, the court may assess attorney fees
24 against the neighboring landowner and may bar such neighboring
25 landowner from filing future actions under this chapter. If a
26 foreclosure of the receiver's mortgage pursuant to chapter 655A
27 is contemplated, the court may retain jurisdiction to determine
28 the amount of attorney fees payable under 657A.7, subsection 3.

29 Sec. 14. Section 657A.10A, subsection 1, paragraph a, Code
30 2019, is amended to read as follows:

31 a. In lieu of the procedures in sections ~~657A.2~~ 657A.1A
32 through 657A.10 and 657A.10B, a city in which an abandoned
33 building is located may petition the court to enter judgment
34 awarding title to the abandoned property to the city. A
35 petition filed under this section shall include the legal

1 description of the abandoned property. If more than one
2 abandoned building is located on a parcel of real estate, the
3 city may combine the actions into one petition. The owner of
4 the building and grounds, mortgagees of record, lienholders
5 of record, or other known persons who hold an interest in the
6 property shall be named as respondents on the petition.

7 Sec. 15. NEW SECTION. **657A.10B Applicability.**

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

11 Sec. 16. CODE EDITOR DIRECTIVE.

12 1. The Code editor is directed to renumber section 657A.10B,
13 as enacted in this Act, as section 657A.10A, and to renumber
14 section 657A.10A as section 657A.10B.

15 2. The Code editor shall correct internal references in the
16 Code and in any enacted legislation as necessary due to the
17 enactment of this section.

18 EXPLANATION

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

21 This bill changes certain procedures relating to abandoned
22 structures and abatement.

23 The current definition of "abandoned" or "abandonment"
24 requires a property to have been in violation of a housing or
25 building code for at least six months. The bill removes the
26 time element from the definition and states that evidence of
27 financial obligations in respect to the building does not rebut
28 a finding of abandonment if the property is substantially in
29 need of abatement. The bill requires a property to remain
30 vacant for 135 days before a person may request a responsible
31 building official to inspect a building to determine whether
32 it is abandoned and in need of abatement. Responsible
33 building official is defined in the bill. The bill allows the
34 responsible building inspector to make an application to the
35 court for an administrative warrant if necessary to conduct an

1 inspection of a building.

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

5 Current law relies on the current definition of "abandoned"
6 to start the clock for when a person may file a petition
7 for abatement. A hearing is required to determine if the
8 building is abandoned or is a public nuisance. Currently, a
9 petitioner must make service on the building owner in one of
10 three methods. The bill requires a property to remain vacant
11 for at least 135 days before a person may file a petition for
12 abatement. The bill does not allow for a personal judgment
13 against any party and requires the petition to be solely
14 against the interested persons' interest in the property. The
15 bill includes additional methods of service. The bill allows a
16 responsible building official's written inspection report to be
17 accepted as evidence in an evidentiary hearing or motion in a
18 proceeding under Code chapter 657A under certain circumstances.

19 The bill provides that if a court finds that a building is
20 abandoned, unless the court order establishes otherwise, the
21 property is deemed continuously abandoned from the date the
22 action is indexed pursuant to Code section 617.10. A property
23 cannot be claimed as homestead, and a mortgagor, or successor
24 in interest of record, cannot reject a nonjudicial foreclosure
25 written notice served on the mortgagor, or successor in
26 interest, after such date.

27 Current law allows an owner to collect reasonable attorney
28 fees actually incurred from a petitioner if the court finds
29 that the building in question is not abandoned or a public
30 nuisance. The bill allows the court to require the petitioner
31 to pay an interested party's reasonable attorney fees unless
32 the interested party was properly noticed and did not appear
33 for an inspection pursuant to Code section 657A.1A.

34 Current law requires the court to conduct a hearing to offer
35 mortgagees of record, lienholders of record, or other known

1 interested persons the opportunity to abate a public nuisance.
2 The bill eliminates such hearing and creates a new process for
3 interested persons to demonstrate their intent and ability to
4 abate the nuisance and act as a receiver. If the building
5 is a historic building or located in a historic district,
6 the court shall give preference to an economically feasible
7 rehabilitation plan that preserves the historical nature of the
8 building.

9 Current law allows a court to empower a receiver to issue
10 notes and secure the notes by mortgage bearing interest at
11 the statutory rate and any terms and conditions approved by
12 the court. The bill allows the court to provide for a higher
13 interest rate. If the receiver contemplates a transfer of the
14 note and mortgage, at the time that the receiver seeks court
15 authorization of the contemplated transfer, the receiver must
16 disclose to the mortgagee the contemplated transfer in the
17 receiver's application for approval of the mortgage. The bill
18 provides immunity from liability for a receiver acting in good
19 faith to fulfill the receiver's court-appointed duties.

20 The bill makes an interested party responsible for paying
21 the mortgagee's reasonable costs and attorney fees if the
22 interested party pays off the receiver's mortgage loan.

23 The bill requires a receiver to pay a plaintiff's reasonable
24 attorney fees in most situations, but provides that a
25 neighboring landowner who pursued an action in bad faith may
26 be liable for attorney fees. The court may bar such landowner
27 from filing further actions under Code chapter 657A.

28 The bill provides that Code sections 657A.1A through 657A.10
29 shall only apply to cities and counties that adopt such by
30 ordinance.

31 The bill directs the Code editor to renumber new Code section
32 657A.10B as new Code section 657A.10A, and to renumber current
33 Code section 657A.10A as new Code section 657A.10B, and to
34 correct internal Code references as necessary.