SENATE FILE 93
BY LOFGREN

(As Amended and Passed by the Senate March 19, 2019)
ALL New Language by the Senate

## A BILL FOR

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

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

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

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

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

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

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

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

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

1. *"Abandoned"* or *"abandonment"* means that a building ~~has remained~~ is vacant, or is occupied only by trespassers, and ~~has been~~ in violation of the housing code or building code of the city in which the property is located or the housing code or building code applicable in the county in which the property is located if outside the limits of a city ~~for a period of six consecutive months~~.

3. *"Building"* means a building or structure, excluding a mobile home, a modular home, and a manufactured home as defined in section 435.1, unless the mobile home or manufactured

home has been converted to real estate pursuant to section 435.26, located in a city or outside the limits of a city in a county, which is used or intended to be used for commercial or industrial purposes or which is used or intended to be used for residential purposes and includes a building or structure in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

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

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

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

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

2. If the responsible building official finds from an exterior view of the property, in addition to any other credible information that the official may have, that there is reasonable cause to believe that the property is abandoned and in need of abatement, the official shall schedule a date and time for an inspection of the property by the official. The person requesting the inspection shall provide written notice of the scheduled inspection by first class mail and

certified mail to the owner and all interested persons at least twenty days before the inspection. The notice must state the date, time, and place of the inspection and state that unless the owner appears at the inspection to allow the responsible building official access to the interior of the property, the official, accompanied by the person serving notice and any interested persons appearing for the inspection, may enter the property to determine whether the property is abandoned and in need of abatement and, if so, to estimate the costs of abatement. The official may enter the property for an inspection, along with the person serving notice and any interested persons, if the owner is not present for the inspection. Upon request, the inspection may be rescheduled as needed. The responsible building official must obtain an administrative search warrant pursuant to section 808.14 to enter any building to conduct an inspection pursuant to this section.

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

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

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

**657A.2 Petition.**

1. No sooner than the latter of thirty days after provision of the responsible building official's findings under section 657A.1A and six months after a building has become abandoned,

a petition for abatement under this chapter may be filed in the district court of the county in which the property is located by the city in which the property is located, by the county if the property is located outside the limits of a city, by a neighboring landowner, or by a duly organized nonprofit corporation which has as one of its goals the improvement of housing conditions in the county or city in which the property in question is located. The petition shall not demand a personal judgment against any party, but shall concern only the interests in the property. A petition for abatement filed under this chapter shall include the legal description of the real property upon which the public nuisance is located unless the public nuisance is not situated on or confined to a parcel of real property, or is portable or capable of being removed from the real property. Service shall be made on all interested persons by personal service or, if personal service cannot be made, by certified mail and first class mail to the last known address of record of the interested person and by posting the notice in a conspicuous place on the building, or by publication. The last known address of record for the property owner shall be the address of record with the county treasurer of the county where the property is located. Service may also be made as provided in section 654.4A.

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

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

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

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

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

7. In a proceeding under this section, if the court determines the building is not abandoned, the court shall dismiss the petition and may require the petitioner to pay an interested party's reasonable attorney fees. An owner of the property who failed to appear for an inspection pursuant to section 657A.1A shall not be awarded attorney fees under this section.

8. If a party to the action holds an interest in the property as a nominee, a fiduciary, or another representative capacity for a third party, or an underlying loan on the property is guaranteed by a third party, the party to the action may apply to the court for a stay of action, as it affects the party's interest, for a reasonable time to allow the party to obtain the appropriate authority, information, or instructions from or on behalf of the beneficiary or guarantor as related to the property interest or underlying loan.

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

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

1. Before appointing a receiver to perform work or to furnish material to abate a public nuisance under this chapter,

the court shall ~~conduct a hearing at which the court shall offer mortgagees of record, lienholders of record, or other known interested persons in the order of priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance. The~~ establish a date before which interested persons may file with the court ~~shall require the person selected to demonstrate the~~ written proof of intent and ability to promptly undertake ~~promptly~~ the work required and to post security for the performance of the work. If no such written proof is filed by that date, the court may appoint a receiver pursuant to subsection 3.

2. All amounts expended by the person toward abating the public nuisance are a lien on the property if the expenditures ~~were~~ are approved in advance by ~~the~~ a judge and if the person desires the lien. ~~The~~ Unless an interested person has a contract with the owner providing for a different interest rate, the lien shall bear interest at the rate provided for judgments pursuant to section 535.3, and shall be payable upon terms approved by the judge. If a certified copy of ~~the~~ a court order ~~that approved~~ approving the expenses and the terms of payment for the lien, and a description of the property in question, are filed ~~for~~ of record within thirty days of the date of issuance of the order in the office of the county recorder of the county in which the property is located, the lien has the same priority as the mortgage of a receiver as provided in section 657A.7.

~~2.~~ 3. If the court determines by the date established in subsection 1 or at ~~the~~ a hearing ~~conducted pursuant to subsection 1,~~ on the sufficiency of a timely filed rehabilitation plan that no interested person can undertake the work and furnish the materials required to abate the public nuisance, or if the court determines at any time after the hearing that an interested person who is undertaking corrective work pursuant to this section cannot or will not proceed, or

has not proceeded with due diligence, the court may appoint a receiver to take possession and control of the property. The receiver shall be appointed in the manner provided in section 657A.4.

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

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

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

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

~~After conducting~~ If after expiration of a date established pursuant to section 657A.3, subsection 1, or a hearing pursuant to section 657A.3, the court may appoint a receiver to take possession and control of the property in question. A person shall not be appointed as a receiver unless the person has first provided the court with a viable financial and construction plan for the rehabilitation of the property in question and has demonstrated the capacity and expertise to perform the required work in a satisfactory manner. The appointed receiver may be a financial institution that possesses an interest of record in the property, a nonprofit

corporation that is duly organized and exists for the primary purpose of improving housing conditions in the county or city in which the property in question is located, or any person deemed qualified by the court. No part of the net earnings of a nonprofit corporation serving as a receiver under this section shall benefit a private shareholder or individual. Membership on the board of trustees of a nonprofit corporation does not constitute the holding of a public office or employment and is not an interest, either direct or indirect, in a contract or expenditure of money by a city or county. No member of a board of trustees of a nonprofit corporation appointed as receiver is disqualified from holding public office or employment, nor is a member required to forfeit public office or employment by reason of the membership on the board of trustees.

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

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

Sec. 10. NEW SECTION. **657A.6A Receiver — prohibited acts.**

Notwithstanding section 657A.10, it shall be unlawful, and a receiver may be held liable for actual damages as determined by a court, for entering a residential property that is not

abandoned for the purpose of forcing, intimidating, harassing, or coercing a lawful occupant of the property to vacate in order to render the property vacant and abandoned, and it shall be unlawful to otherwise force, intimidate, harass, or coerce a lawful occupant of a residential property to vacate so the property may be deemed vacant and abandoned. A receiver who peacefully enters a property for the purpose of rendering the property vacant and abandoned shall be immune from liability if the receiver makes a good-faith effort to comply with this chapter and all terms of any applicable mortgage, lease, or other agreement related to the occupancy of the building.

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

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

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

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

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

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

The court may assess the costs and expenses set out in

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

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

*a.* In lieu of the procedures in sections ~~657A.2~~ 657A.1A through 657A.10 and 657A.10B, a city in which ~~an abandoned~~ a building that has been abandoned for at least six consecutive months is located may petition the court to enter judgment awarding title to the abandoned property to the city. A petition filed under this section shall include the legal description of the abandoned property. If more than one abandoned building is located on a parcel of real estate, the city may combine the actions into one petition. The owner of the building and grounds, mortgagees of record, lienholders of record, or other known persons who hold an interest in the property shall be named as respondents on the petition.

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

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

Sec. 16. NEW SECTION. **657A.10C Petition for injunction.**

As an alternative to the remedies under this chapter, a city, or a county if a property that is alleged to be a public nuisance is located outside the limits of a city, may petition the court for an injunction that requires the owner of the property to correct or eliminate the condition or violation causing the public nuisance. Service of the original notice shall be made as provided in section 657A.2, subsection 1.

Sec. 17. CODE EDITOR DIRECTIVE.

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

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