

**MESSAGE FROM THE GOVERNOR
REGARDING Senate Bill 338**

The right to private property serves as a central pillar of the American constitutional tradition. It has long been considered essential to our basic understanding of civil and political rights. Property rights serve as a foundation to our most basic personal liberties. One of government's primary purposes is to protect the property rights of individuals.

The purpose of Senate Bill 338, to help create safer communities, is laudable. However, in this noble attempt, the statute as written takes a step too far. The broad definition of blighted or abandoned property would grant a nearly unrestrained power to municipalities to craft zoning laws and codes that could unjustly deprive citizens of their property rights. The process of granting private organizations the ability to petition the courts for temporary and then permanent ownership of the property of another is rife with potential problems.

Throughout the country, we have seen serious abuse where government has broadened the scope of eminent domain, especially when private development is involved. The use of eminent domain for private economic development should be limited in use, not expanded. Senate Bill 338 opens the door for serious abuse in Kansas. Governmental authority to take property from one private citizen and give it to another private citizen should be limited, but this bill would have the effect of expanding such authority without adequate safeguards.

Kansans from across the political spectrum contacted me to discuss their concerns that this bill will disparately impact low income and minority neighborhoods. The potential for abuse of this new statutory process cannot be ignored. Government should protect property rights and ensure that the less advantaged are not denied the liberty to which every citizen is entitled.

There is a need to address the ability of municipalities and local communities to effectively maintain neighborhoods for public safety. However, Senate Bill 338 does much more. Though I am vetoing this bill, I would welcome legislation that empowers local communities to respond to blight and abandoned property that does not open the door to abuse of the fundamental rights of free people.

Dated: April 11, 2016



Sam Brownback
Governor of Kansas

SENATE BILL No. 338

AN ACT concerning cities; relating to the rehabilitation of abandoned property; amending K.S.A. 2015 Supp. 12-1750 and 12-1756a and repealing the existing sections; also repealing K.S.A. 2015 Supp. 12-1756e.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2015 Supp. 12-1750 is hereby amended to read as follows: 12-1750. As used in this act:

- (a) "Structure" means any building, wall or other structure.
- (b) "Enforcing officer" means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.
- (c) "Abandoned property" means:
 - (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; ~~or~~
 - (2) *any residential real estate which has been unoccupied continuously by persons legally in possession for the preceding 365 days and which has a blighting influence on surrounding properties, unless the exterior of the property is being maintained and the property is either the subject of a probate action, action to quiet title or other ownership dispute, or the property is subject to a mortgage; or*
 - (3) commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. "Commercial real estate" means any real estate for which the present *approved* use is other than one to four residential units or for agricultural purposes.
- (d) "Blighting influence" means conditions in such structure which are dangerous or injurious to the health, safety or ~~moral~~ *welfare* of the occupants of such buildings or other residents of the municipality ~~or which have an adverse impact on properties in the area~~. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; ~~light or lack of~~ sanitary facilities; dilapidation; disrepair; structural defects; ~~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 the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; ~~inadequate drainage;~~ or any violation of health, fire, building or *property maintenance codes* or zoning regulations *which constitute a health or safety threat*.
- (e) "Organization" means any nonprofit corporation organized under the laws of this state ~~and~~ which has among its purposes the improvement of housing *and has been in existence for a period of three years or more*.
- (f) "Rehabilitation" means the process of improving the property into compliance with applicable fire, housing and building codes.
- (g) "Parties in interest" means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.
- (h) "Last known address" includes the address where the property is located, or the address as listed in the tax records.

The provisions of subsection (c)(2) shall expire on July 1, 2020.

Sec. 2. K.S.A. 2015 Supp. 12-1756a is hereby amended to read as follows: 12-1756a. (a) (1) An organization may file a petition with the district court for an order for temporary possession of property if:

- ~~(1)~~(A) The property meets the definition of abandoned as set forth in K.S.A. 12-1750, and amendments thereto;
 - ~~(2)~~(B) the organization intends to rehabilitate the property and use the property as housing *or if the petition is filed prior to July 1, 2020, for ancillary facilities relating to housing, including infrastructure, parks and parking facilities;* and
 - ~~(3)~~(C) the organization has sent notice to the enforcing officer and the parties in interest of the property, by certified or registered mail, mailed to their last known address and posted on the property at least 20 days but not more than 60 days before the date the petition is filed, of the organization's intent to file a petition for possession under K.S.A. 12-1750 through ~~12-1756e~~ 12-1756d, and amendments thereto.
- (2) *Prior to July 1, 2020, the governing body of any city may file a*

petition with the district court for an order for temporary possession of property if:

(A) *The property meets the definition of abandoned in K.S.A. 12-1750, and amendments thereto;*

(B) *the governing body of the city filing a petition under this section has designated an organization to rehabilitate the property;*

(C) *such designated organization intends to rehabilitate the property and use the property as housing or for ancillary facilities related to housing, including, but not limited to, infrastructure, open space, parks or parking facilities;*

(D) *the governing body of the city filing the petition under this section has sent notice to the enforcing officer and the parties in interest of the property, by certified or registered mail, mailed to their last known address and posted on their property at least 20 days but not more than 60 days before the date the petition is filed, of the governing body's intent to file a petition for temporary possession under K.S.A. 12-1750 through 12-1756d, and amendments thereto; and*

(E) *the governing body of the city filing the petition under this section has formally approved the filing of the petition.*

(b) (1) The proceeding shall be commenced by filing a verified petition in the district court in the county in which the property is located. The petition shall state that the conditions specified in subsection (a) exist. All parties in interest of the property shall be named as defendants in the petition.

(2) *The petition shall include the following information:*

(A) *The history of municipal utility service for the property for the preceding 365 days or longer;*

(B) *the history of property tax payments for the preceding three years or longer;*

(C) *the history of code violations for the preceding two years or longer and efforts by the city to remedy the code violations;*

(D) *the history of attempts to notify the last known owner or owners of any enforcement action or actions; and*

(E) *the history of actions taken by other governmental entities regarding the property, including, but not limited to, tax liens or bankruptcy proceedings.*

(3) Summons shall be issued and service shall be made pursuant to K.S.A. 60-303, and amendments thereto. Service may be made by publication if the organization or the governing body of a city with due diligence is unable to make service of summons upon a defendant pursuant to ~~subsection (a)(3) of~~ K.S.A. 60-307(a)(3), and amendments thereto.

(c) Any defendant may file as part of such defendant's answer, as an affirmative defense, a plan for the rehabilitation of the property and evidence of capacity and resources necessary to complete rehabilitation of the property. The court shall grant the defendant 90 days to bring the property into compliance with applicable fire, housing and building codes and to pay all delinquent ad valorem property tax. For good cause shown, the court may extend the ninety-day compliance period ~~for an additional 90 days~~. If the property is brought into such compliance within the ninety-day period or extension of time thereof, the petition shall be dismissed. If the defendant fails to bring the property into such compliance within the ninety-day period or extension of time thereof, or if the defendant's plan is otherwise insufficient, the defendant's affirmative defense shall be stricken. *In no case shall the defendant's affirmative defense be stricken solely on the basis of delinquent property taxes.*

(d) ~~At the hearing on the organization's~~ *a petition filed in accordance with, and as permitted by, subsection (a), the petitioning organization or governing body of a city shall submit to the court a plan for the rehabilitation of the property and present evidence that the organization has adequate resources to rehabilitate and thereafter manage the property. For the purpose of developing such a plan, representatives of the organization or the governing body of a city may be permitted entry onto the property by the court at such times and on such terms as the court may deem appropriate.*

(e) The court shall make its own determination as to whether the property is in fact abandoned consistent with the terms of K.S.A. 12-1750 through ~~12-1756~~ 12-1756d, and amendments thereto.

(f) If the court approves the petition, the court ~~shall~~ *may* enter an

order approving the rehabilitation plan and granting temporary possession of the property to the *petitioning organization or governing body of a city*. ~~The organization, subject to court approval, may enter into leases or other agreements in relation to the property.~~ Whether the court approves or denies the petition, the organization shall provide the governing body of a city a copy of the order within 30 days of the organization's receipt or knowledge of such order.

(g) (1) *Not less than 365 days nor more than 730 days after receiving temporary possession of property by an order of the court upon a petition for temporary possession, an organization shall seek quiet title to such property by petition to the court. The petitioner for quiet title shall send notice of intent to file the petition to the parties of interest of the property, by certified or registered mail, mailed to their last known address at least 20 days but not more than 60 days before the date the petition is filed.*

(2) *Upon a finding by the court that the property has been rehabilitated in accordance with the approved rehabilitation plan, the court shall grant the petition for quiet title. If no petition for quiet title is filed as permitted by this subsection or a petition for quiet title is filed as permitted by this subsection but the court finds that the organization that filed the petition has not rehabilitated the property in accordance with the rehabilitation plan approved by the court, the property shall immediately be sold by either the board of county commissioners or the governing body of a city in the manner prescribed for sale of property at a judicial tax foreclosure sale pursuant to K.S.A. 79-2801 et seq., and amendments thereto.*

Sec. 3. K.S.A. 2015 Supp. 12-1750, 12-1756a and 12-1756e are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.