



TESTIMONY

SENATE COMMITTEE ON ETHICS, ELECTIONS AND LOCAL GOVERNMENT

HB 2506

An Act concerning cities; relating to the rehabilitation of abandoned property

**Whitney Damron
On behalf of the City of Topeka
March 13, 2018**

PROPONENT

Good morning Madam Chair Bowers and Members of the Committee. I am Whitney Damron and I appear before you today as a proponent of HB 2506 relating to the rehabilitation of abandoned housing.

To review history, legislation relating to abandoned housing has been around for the past 6-7 years and in a form very similar to HB 2506 for the past three years. An earlier version was vetoed by Governor Brownback in 2016 (SB 338) and since that time, proponents have continued to refine this legislation in attempts to address concerns of the opponents.

The bill before you today passed the House on a vote of 90-32 on February 15.

Following the passage of HB 2506, we became aware of amendments being suggested by Americans for Prosperity. The AFP amendments have been circulated to the parties of interest and for the most part, are acceptable to the City of Topeka. We do have a concern, which has been shared with AFP and as of this time, we are not in agreement with the modification suggested by the one of the proponents of this legislation. I will elaborate on that matter in a moment.

Attached to my testimony are balloon amendments to HB 2506 as it passed the House that were suggested by AFP, which I will outline:

- Definition of “abandoned property” remains essentially the same as found in HB 2506.
- “Blighting influence” is defined with a series of specifically-delineated deficiencies.
- References are made to “housing, maintenance or building code violations” that have not been remedied;
- A requirement that “uncured housing, maintenance, and building code violations” must cost more than 50% of the county appraiser’s assessed valuation of the property before this Act can be used.*

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- Failure by the property owner to respond to two certified letters within ten days sent 30 days apart may be deemed by a judge or magistrate as denial of access to the building.
- The court shall make its own determination as to whether a property is in fact abandoned and has a blighting influence consistent with definitions contained in K.S.A. 12-1750.

***Comment to Proposed Amendments:**

In consultation with the League of Kansas Municipalities, we suggested to AFP that if a city disagreed with the county appraiser's value for a property, they could obtain, at their expense, a fee appraisal from an independent appraiser. Such an appraisal would be made part of the report provided to a district court when a city files a petition for temporary possession.

County appraisers appraise residential property through a computerized program called "Computer Assisted Mass Appraisal" or "CAMA". County appraisers rarely inspect individual properties to make changes in valuations unless there is an appeal by a property owner or special circumstances (e.g., known reconstruction, remodeling, etc.), but rather they rely upon computerized modeling. As such, the actual value of an abandoned property in decline may not be accurately reflected in the value the county appraiser has for the property. In such instances, we suggest a city should have the right to seek a third-party appraisal at their own expense, which would be reviewed by a district court judge.

The City of Topeka accepts all other amendments suggested by AFP in the spirit of compromise and would respectfully ask for consideration of the attached balloon amendments with the City of Topeka's modification as noted in this Comment to Proposed Amendments.

Closing Remarks.

First and foremost, this bill relates to abandoned property. It is not intended to address situations where the property owner is known and subject to service of process and court jurisdiction. The bill is not a tool to allow cities to accumulate abandoned property for transfer to third party developers or owners; cities do not want to own these properties – they want responsible owners and tenants living in them, neighborhoods kept up, taxes paid, and safe neighborhoods for all concerned. Cities have the requisite tools to deal with code violations if they have a property owner to cite.

The bill is an attempt to address very unique circumstances where, for whatever reason, a residential property has been abandoned by its lawful owner or owners and no one can be located and held responsible for its upkeep.

Cities would not keep bringing this legislation forward if current law provided an alternative solution. Currently, in instances of significant code violations that impact public safety, cities can cite a known owner if process can be served or the alternative is to demolish the house under dangerous structures statutes. In the latter instance, the city has the expense for demolition and is unlikely ever to be repaid by the property owner for the \$7,500 - \$15,000+ cost of demolition, as well as the inherent obligation after demolition to care for a vacant lot forever.

On behalf of the City of Topeka, we respectfully ask for your favorable support of HB 2506 to fill in the gap between code violations and dangerous properties by giving cities the ability to work in between those two extremes with a nonprofit to address abandoned properties.

Following my remarks, Deputy City Manager Doug Gerber will testify on the importance of this legislation to the City of Topeka and why it has been a legislative priority for the past four years.

I am pleased to stand for questions at the appropriate time.

Thank you.

Whitney Damron

Attachment: Balloon Amendments to HB 2506

HOUSE BILL No. 2506

By Committee on Local Government

1-19

1 AN ACT concerning cities; relating to the rehabilitation of abandoned
2 property; amending K.S.A. 2017 Supp. 12-1750 and 12-1756a and
3 repealing the existing sections; also repealing K.S.A. 2017 Supp. 12-
4 1756e.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2017 Supp. 12-1750 is hereby amended to read as
8 follows: 12-1750. As used in this act:

9 (a) "Structure" means any building, wall or other structure.

10 (b) "Enforcing officer" means the building inspector or other officer
11 designated by ordinance and charged with the administration of the
12 provisions of this act.

13 (c) (1) "Abandoned property" means:

14 ~~(1) Any residential real estate for which taxes are delinquent for the
15 preceding two years and which has been unoccupied continuously by
16 persons legally in possession for the preceding 90 days; or~~

17 ~~(2) (A) Any residential real estate for which taxes are delinquent for
18 the preceding two years that has been unoccupied continuously by persons
19 legally in possession for the preceding 15 months and that has a blighting
20 influence on surrounding properties, unless the exterior of the property is
21 being maintained and the property is either the subject of a probate
22 action, action to quiet title or other ownership dispute, or the property is
23 subject to a mortgage; or~~

24 (B) commercial real estate for which the taxes are delinquent for the
25 preceding two years and which has a blighting influence on surrounding
26 properties. "Commercial real estate" means any real estate for which the
27 present approved use is other than one to four residential units or for
28 agricultural purposes.

29 (2) "Abandoned property" shall not mean any real estate whose
30 owner is known and has expressed in writing to the governing body a
31 desire to retain ownership and maintain such real estate and has brought
32 the property into code compliance within 90 days of such expressed desire.

33 ~~(d) "Blighting influence" means conditions in such structure which
34 are dangerous or injurious to the health, safety or morals welfare of the
35 occupants of such buildings or other residents of the municipality or which
36 have an adverse impact on properties in the area. Such conditions may~~

(A) A residential property:

- (1) For which property taxes are delinquent for the preceding two years;
- (2) that has been substantially unoccupied for the preceding 15 months by a person with a legal or equitable right to occupy the property; and,
- (3) that has a blighting influence on surrounding properties, unless the property is the subject of a probate action, action to quiet title or other ownership dispute, or the property is subject to a mortgage.

(d) "Blighting influence" means a structure:

- (1) That was inspected by the appropriate local government and cited for one or more enforceable housing, maintenance or building code violations that:

- (a) Affect the safety of the occupants or the public; and
- (b) Involve one or more of the following:

- (1) A roof and roof framing element;
- (2) support walls, beams and headers;
- (3) foundation, footings, and subgrade conditions;
- (4) light and ventilation;
- (5) fire protection, including egress;
- (6) internal utilities, including electricity, gas and water;
- (7) flooring and flooring elements; or
- (8) walls, insulation, and exterior envelope.

- (2) In which the cited housing, maintenance, or building code violations have not been remedied within a reasonable time after two notices to cure the noncompliance; and
- (3) That the satisfaction of those enforceable, cited and uncured housing, maintenance, and building code violations cost more than 50 percent of the assessor's taxable market value for the building, excluding land value, for property taxes payable in the year in which the condemnation is commenced. In lieu of the assessor's taxable market valuation, a city, at its own expense, may obtain a fee appraisal of the property. If a fee appraisal is obtained, the report shall be made a part of the petition filed in district court a required under this act.

Note: Underlined language is City of Topeka modification of AFP proposed amendments.

~~1 include, but are not limited to, the following: Defects increasing the
2 hazards of fire, accident, or other calamities; air pollution; light or lack of
3 sanitary facilities; dilapidation; disrepair; structural defects; uncleanness;
4 dead and dying trees, limbs or other unsightly natural growth or unsightly
5 appearances that constitute a blight to adjoining property, the
6 neighborhood or the city; walls, sidings or exteriors of a quality and
7 appearance not commensurate with the character of the properties in the
8 neighborhood; unsightly stored or parked material, equipment, supplies,
9 machinery, trucks or automobiles or parts thereof; vermin infestation;
10 inadequate drainage; or any violation of health, fire, building or property
11 maintenance codes or zoning regulations that constitute a health or safety
12 threat.~~

13 (e) "Organization" means any nonprofit corporation organized under
14 the laws of this state ~~and which~~ that has among its purposes the
15 improvement of housing *and has been in existence for a period of three*
16 *years or more.*

17 (f) "Rehabilitation" means the process of improving the property into
18 compliance with applicable fire, housing and building codes.

19 (g) "Parties in interest" means any owner or owners of record,
20 judgment creditor, tax purchaser or other party having any legal or
21 equitable title or interest in the property.

22 (h) "Last known address" includes the address where the property is
23 located, or the address as listed in the tax records.

24 Sec. 2. K.S.A. 2017 Supp. 12-1756a is hereby amended to read as
25 follows: 12-1756a. (a) (1) An organization may file a petition with the
26 district court for an order for temporary possession of property if:

27 ~~(1)(A)~~ The property meets the definition of abandoned as set forth in
28 K.S.A. 12-1750, and amendments thereto;

29 ~~(2)(B)~~ the organization intends to rehabilitate the property and use
30 the property as housing; and

31 ~~(3)(C)~~ the organization has sent notice to the enforcing officer and
32 the parties in interest of the property, by certified or registered mail, mailed
33 to their last known address and posted on the property at least 20 days but
34 not more than 60 days before the date the petition is filed, of the
35 organization's intent to file a petition for possession under K.S.A. 12-1750
36 through ~~12-1756e~~ 12-1756d, and amendments thereto.

37 (2) *The governing body of any city may file a petition with the district*
38 *court for an order for temporary possession of property if:*

39 (A) *The property meets the definition of abandoned in K.S.A. 12-*
40 *1750, and amendments thereto;*

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

43 (C) *such designated organization intends to rehabilitate the property*

1 *and use the property as housing; and*

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

4 *(b) The governing body of the city or the organization filing the*
5 *petition shall send notice to the enforcing officer and the parties in interest*
6 *of the property, owners of property located within 200 feet of the property*
7 *that is subject to the petition and any neighborhood improvement*
8 *association or associations in which the property is located, by certified or*
9 *registered mail, mailed to their last known address and posted on their*
10 *property at least 20 days, but not more than 60 days, before the date the*
11 *petition is filed, of the governing body's intent to file a petition for*
12 *temporary possession under K.S.A. 12-1750 through 12-1756d, and*
13 *amendments thereto.*

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

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

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

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

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

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

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

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

36 *(c) Any defendant may file as part of such defendant's answer, as an*
37 *affirmative defense, a plan for the rehabilitation of the property and*
38 *evidence of capacity and resources necessary to complete rehabilitation of*
39 *the property. The court shall grant the defendant 90 days to bring the*
40 *property into compliance with applicable fire, housing and building codes*
41 *and to pay all delinquent ad valorem property tax. For good cause shown,*
42 *the court may extend the ninety-day compliance period for an additional*
43 *90 days. If the property is brought into such compliance within the ninety-*

1 day period or extension of time thereof, the petition shall be dismissed. If
2 the defendant fails to bring the property into such compliance within the
3 ninety-day period or extension of time thereof, or if the defendant's plan is
4 otherwise insufficient, the defendant's affirmative defense shall be
5 stricken. *In no case shall the defendant's affirmative defense be stricken*
6 *solely on the basis of delinquent property taxes.*

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

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

19 (f) If the court approves the petition, the court ~~shall~~ may enter an
20 order approving the rehabilitation plan and granting temporary possession
21 of the property to the petitioning organization or governing body of a city.
22 ~~The organization, subject to court approval, may enter into leases or other~~
23 ~~agreements in relation to the property.~~ Whether the court approves or
24 denies the petition, the organization shall provide the governing body of a
25 city a copy of the order within 30 days of the organization's receipt or
26 knowledge of such order.

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

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

For the purposes of establishing the basis for the use of eminent domain for
the remediation of a blighted property or developing a rehabilitation plan, the
governing body of a city is authorized to seek from a judge or magistrate an
administrative warrant to gain access to inspect a specific building. The
governing body of a city must show probable cause that a code violation has
occurred, that the violation has not been cured, and that the owner has denied
the local government access to the specific building. The property owner's
failure to respond after 10 days to two certified letters requesting access
mailed 30 days apart may be deemed by a judge or magistrate as denial of
access to the building. The letters must be mailed to the address of all known
property owners. Items of evidence that may support a conclusion of
probable cause include recent fire or police inspections, exterior evidence of
deterioration, or other similarly reliable evidence of present violations of the
municipal code in the specific building. Government officials may be
accompanied by representatives of the petitioning organization and enter the
property.

and has a blighting influence

1 *thereto.*

2 Sec. 3. K.S.A. 2017 Supp. 12-1750, 12-1756a and 12-1756e are
3 hereby repealed.

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