

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1893

6 By: Scott

7 COMMITTEE SUBSTITUTE

8 An Act relating to cities and towns; creating the
9 Abandoned and Neglected Properties Rehabilitation
10 Act; stating legislative findings; defining terms;
11 providing for determination of abandoned and
12 neglected property; providing for determination of
13 nuisance property; allowing municipality to bring
14 certain action to district court; providing for
15 filing of complaint; providing for defense to
16 complaint; authorizing municipality to submit certain
17 plan; authorizing municipality to exercise certain
18 rights; designating certain ownership interest to
19 municipality; authorizing owner to petition for
20 reinstatement; providing for contents of petition for
21 reinstatement; requiring owner to post bond;
22 authorizing court to grant certain rights to
23 municipality if owner fails to take certain actions;
24 providing for municipality to purchase property for
fair market value; providing priority for
distribution of proceeds; authorizing certain persons
to place a lien on property; providing for
codification; and declaring an emergency.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 56-101 of Title 11, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Abandoned and
2 Neglected Properties Rehabilitation Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 56-102 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 The Legislature finds and declares that:

7 1. Abandoned and neglected properties, particularly those
8 located within urban areas or in close proximity to occupied
9 residences and businesses, create a wide range of problems for the
10 communities in which the properties are located, fostering criminal
11 activity, creating public health problems and otherwise diminishing
12 the quality of life for residents and business operators in those
13 areas;

14 2. Abandoned and neglected properties diminish the property
15 values of neighboring properties and have a negative effect on the
16 quality of life of adjacent property owners, increasing the risk of
17 property damage through arson and vandalism and discouraging
18 neighborhood stability and revitalization;

19 3. For these reasons, abandoned and neglected properties are
20 presumptively considered to be nuisances, in view of their negative
21 effects on nearby properties and the residents or users of those
22 properties;

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1 4. The continued presence of abandoned and neglected properties
2 in Oklahoma's communities acts as a significant barrier to urban
3 revitalization and to the regeneration of the state's urban centers;

4 5. Abandonment is a local problem that must be addressed
5 locally and the most important role of state government is to
6 provide local governments, local community organizations, citizens,
7 and residents with the tools to address the problem;

8 6. The responsibility of a property owner to maintain a
9 property in sound condition and prevent it from becoming a nuisance
10 to others extends to properties which are not in use and "demolition
11 by neglect", leading to the deterioration and loss of the property,
12 or failure by an owner to comply with legitimate orders to demolish,
13 stabilize or otherwise repair his or her property creates a
14 presumption that the owner has abandoned and neglected the property;
15 and

16 7. Many abandoned and neglected buildings still have potential
17 value for residential and other uses and such buildings should be
18 preserved rather than demolished, wherever feasible, particularly
19 buildings that have historic or architectural value, or contribute
20 to maintaining the character of neighborhoods or streetscapes, or
21 both, as the case may be.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 56-103 of Title 11, unless there
24 is created a duplication in numbering, reads as follows:

1 As used in the Abandoned and Neglected Properties Rehabilitation
2 Act:

3 1. "Department" means the Oklahoma Department of Commerce;

4 2. "Agency" means the Oklahoma Housing Finance Agency;

5 3. "Lienholder" or "mortgage holder" means any person or entity
6 holding a note, mortgage or other interest secured by the building
7 or any part thereof;

8 4. "Municipality" means any city, town or township situated
9 within the boundaries of this state and shall include a qualified
10 rehabilitation entity that may be designated by the municipality
11 pursuant to Section 10 of the Abandoned and Neglected Properties
12 Rehabilitation Act;

13 5. "Owner" means the holder or holders of title to an abandoned
14 and neglected property;

15 6. "Property" means any building or structure and the land
16 appurtenant thereto;

17 7. "Officer", "official" or "employee" means a person employed,
18 designated or otherwise assigned by a municipality to enforce
19 provisions of Section 22-111 of Title 11 and Title 50 of the
20 Oklahoma Statutes; and

21 8. "Qualified rehabilitation entity" means an entity organized
22 or authorized to do business under the Oklahoma Statutes which shall
23 have as one of its purposes the construction or rehabilitation of
24 residential or nonresidential buildings, the provision of affordable

1 housing, the restoration of abandoned and neglected property, the
2 revitalization and improvement of urban neighborhoods, or similar
3 purpose, and which shall be well qualified by virtue of its staff,
4 professional consultants, financial resources, and prior activities
5 set forth in the Abandoned and Neglected Properties Rehabilitation
6 Act to carry out the rehabilitation of vacant buildings in urban
7 areas.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 56-104 of Title 11, unless there
10 is created a duplication in numbering, reads as follows:

11 Except as provided in Section 6 of the Abandoned and Neglected
12 Properties Rehabilitation Act, any property that has not been
13 legally occupied for a period of twelve (12) months and which meets
14 any one of the following additional criteria may be deemed to be
15 abandoned and neglected property upon a determination by the
16 officer, official or employee that:

17 1. The property is in need of rehabilitation in the reasonable
18 judgment of the officer, official or employee, and no rehabilitation
19 has taken place during that twelve-month period;

20 2. Construction was initiated on the property and was
21 discontinued prior to completion, leaving the building unsuitable
22 for occupancy, and no construction has taken place for at least
23 twelve (12) months as of the date of a determination by the officer,
24 official or employee pursuant to this section;

1 3. At least one installment of property tax remains unpaid and
2 delinquent on that property as of the date of a determination by the
3 officer, official or employee pursuant to this section; or

4 4. The property has been determined to be a nuisance by the
5 officer, official or employee in accordance with Section 5 of the
6 Abandoned and Neglected Properties Rehabilitation Act.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 56-105 of Title 11, unless there
9 is created a duplication in numbering, reads as follows:

10 A property may be determined to be a nuisance if:

11 1. The property has been found to be unfit for human
12 habitation, occupancy or use;

13 2. The condition and vacancy of the property materially
14 increases the risk of fire to the property and adjacent properties;

15 3. The property is subject to unauthorized entry leading to
16 potential health and safety hazards; the owner has failed to take
17 reasonable and necessary measures to secure the property; or the
18 municipality has secured the property in order to prevent such
19 hazards after the owner has failed to do so;

20 4. The presence of vermin or the accumulation of debris, uncut
21 vegetation or physical deterioration of the structure or grounds has
22 created potential health and safety hazards and the owner has failed
23 to take reasonable and necessary measures to remove the hazards; or
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1 5. The dilapidated appearance or other condition of the
2 property materially affects the welfare, including the economic
3 welfare, of the residents of the area in close proximity to the
4 property, and the owner has failed to take reasonable and necessary
5 measures to remedy the conditions.

6 An officer, official or employee who determines a property to be
7 a nuisance pursuant to this section shall follow the notification
8 procedures set forth in Sections 22-111 and 22-112 of Title 11 of
9 the Oklahoma Statutes.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 56-106 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 A summary action or otherwise to transfer possession and control
14 of abandoned and neglected property in need of rehabilitation to a
15 municipality may be brought by a municipality in the district court
16 in the county in which the property is situated. If the court shall
17 find that the property is abandoned and neglected pursuant to
18 Section 4 of the Abandoned and Neglected Properties Rehabilitation
19 Act and the owner or party in interest has failed to submit and
20 initiate a rehabilitation plan, then the court may authorize the
21 municipality to take possession and control of the property and
22 develop a rehabilitation plan.

23 The municipality granted possession and control may commence and
24 maintain those further proceedings for the conservation, protection

1 or disposal of the property or any part thereof that are required to
2 rehabilitate the property, necessary to recoup the cost and expenses
3 of rehabilitation and for the sale of the property; provided,
4 however, that the court shall not direct the sale of the property if
5 the owner applies to the court for reinstatement of control of the
6 property as provided in the Abandoned and Neglected Properties
7 Rehabilitation Act.

8 Failure by the owner to submit plans for rehabilitation to the
9 municipality, obtain appropriate construction permits for
10 rehabilitation or, in the alternative, submit formal applications
11 for funding the cost of rehabilitation to local, state or federal
12 agencies providing such funding within that six-month period shall
13 be deemed prima facie evidence that the owner has failed to take any
14 action to further the rehabilitation of the property.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 56-107 of Title 11, unless there
17 is created a duplication in numbering, reads as follows:

18 A complaint filed pursuant to the Abandoned and Neglected
19 Properties Rehabilitation Act shall include:

- 20 1. Documentation that the property is on the municipal
21 abandoned and neglected property list or a certification by the
22 officer, official or employee that the property is abandoned; and
- 23 2. A statement by an individual holding appropriate
24 professional qualifications that there are sound reasons that the

1 building should be rehabilitated rather than demolished based upon
2 the physical, aesthetic or historical character of the building or
3 the relationship of the building to other buildings and lands within
4 its immediate vicinity.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 56-108 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Within ten (10) days of filing a complaint pursuant to the
9 Abandoned and Neglected Properties Rehabilitation Act, the plaintiff
10 shall file a notice of lis pendens with the county recording officer
11 of the county within which the building is located.

12 B. At least thirty (30) days before filing the complaint, the
13 municipality shall serve a notice of intention to take possession of
14 an abandoned and neglected building. The notice shall inform the
15 owner and interested parties that the property has not been legally
16 occupied for twelve (12) months and of those criteria that led to a
17 determination of abandonment pursuant to Section 4 of the Abandoned
18 and Neglected Properties Rehabilitation Act. The notice shall
19 provide that unless the owner or a party in interest prepares and
20 submits a rehabilitation plan to the appropriate municipal
21 officials, the municipality will seek to gain possession of the
22 building to rehabilitate the property and the associated cost shall
23 be a lien against the property, which may be satisfied by the sale
24 of the property, unless the owner petitions the court for

1 reinstatement of control of the property as provided in the
2 Abandoned and Neglected Properties Rehabilitation Act.

3 After the complaint is filed, the complaint shall be served on
4 the parties in interest in accordance with the Oklahoma Rules of
5 Court.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 56-109 of Title 11, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Any owner may defend against a complaint filed pursuant to
10 Section 8 of the Abandoned and Neglected Properties Rehabilitation
11 Act by submitting a plan for the rehabilitation and reuse of the
12 property which is the subject of the complaint and by posting a bond
13 equal to one hundred twenty-five percent (125%) of the amount
14 determined by the officer, official or employee or the court to be
15 the projected cost of rehabilitation.

16 B. A plan submitted by an owner pursuant to this section shall
17 include, but not be limited to:

18 1. A detailed financial feasibility analysis, including
19 documentation of the economic feasibility of the proposed reuse,
20 including operating budgets or resale prices, or both, as
21 appropriate;

22 2. A budget for the rehabilitation of the property, including
23 sources and uses of funds, based on the terms and conditions of
24 realistically available financing, including grants and loans;

1 3. A timetable for the completion of rehabilitation and reuse
2 of the property, including milestones for performance of major steps
3 leading to and encompassing the rehabilitation and reuse of the
4 property; and

5 4. Documentation of the qualifications of the individuals and
6 firms that will be engaged to carry out the planning, design,
7 financial packaging, construction, and marketing or rental of the
8 property.

9 C. 1. The court shall approve any plan that, in the judgment
10 of the court, is realistic and likely to result in the expeditious
11 rehabilitation and reuse of the property which is the subject of the
12 complaint.

13 2. If the court approves the owner's plan, then it may appoint
14 the officer, official or employee to act as monitor of the owner's
15 compliance. If the owner fails to carry out any step in the
16 approved plan, then the municipality may apply to the court to have
17 the owner's bond forfeited, possession of the building transferred
18 to the municipality to complete the rehabilitation plan and
19 authorization to use the bond proceeds for rehabilitation of the
20 property.

21 3. The owner shall provide quarterly reports to the
22 municipality on its activities and progress toward rehabilitation
23 and reuse of the property. The owner shall provide those reports to
24 the court on its activities that the court determines are necessary.

1 D. The court may reject a plan and bond if it finds that the
2 plan does not represent a realistic and expeditious means of
3 ensuring the rehabilitation of the property or that the owner or his
4 representatives or agents, or both, lack the qualifications,
5 background or other criteria necessary to ensure that the plan will
6 be carried out successfully.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 56-110 of Title 11, unless there
9 is created a duplication in numbering, reads as follows:

10 A. If a municipality has been granted possession of a property
11 pursuant to Section 6 of the Abandoned and Neglected Properties
12 Rehabilitation Act, that municipality shall be deemed to have an
13 ownership interest in the property for the purpose of filing plans
14 with public agencies and boards, seeking and obtaining construction
15 permits and other approvals, and submitting applications for
16 financing or other assistance to public or private entities.

17 B. For the purposes of any state program of grants or loans,
18 including but not limited to programs of the Oklahoma Department of
19 Commerce and the Oklahoma Housing Finance Agency, possession of a
20 property under this section shall be considered legal control of the
21 property.

22 C. Notwithstanding the granting of possession to a
23 municipality, nothing in the Abandoned and Neglected Properties
24 Rehabilitation Act shall be deemed to relieve the owner of the

1 property of any obligation the owner or any other person may have
2 for the payment of taxes or other municipal liens and charges, or
3 mortgages or liens to any party, whether those taxes, charges or
4 liens are incurred before or after the granting of possession.

5 D. The granting of possession shall not suspend any obligation
6 the owner may have as of the date of the granting of possession for
7 payment of any operating or maintenance expense associated with the
8 property, whether or not billed at the time of the granting of
9 possession.

10 E. The court may approve the borrowing of funds by a
11 municipality to rehabilitate the property and may grant a lien or
12 security interest in the property.

13 F. Where the municipality has been granted possession by the
14 court in the name of the municipality, the municipality may seek the
15 approval of the court to assign its rights to another entity, which
16 approval shall be granted by the court when it finds that:

17 1. The entity to which the municipality's rights will be
18 assigned is a qualified rehabilitation entity; and

19 2. The assignment will further the purposes of this section.

20 G. Where a municipality has designated a qualified
21 rehabilitation entity to act on its behalf, the qualified
22 rehabilitation entity shall provide quarterly reports to the
23 municipality on its activities and progress toward rehabilitation
24 and reuse of the property. The municipality or qualified

1 rehabilitation entity, as the case may be, shall provide such
2 reports to the court as the court determines to be necessary. If
3 the court finds that the municipality or its designee has failed to
4 take diligent action toward rehabilitation of the property within
5 one (1) year from the grant of possession, then the court may
6 request the municipality to designate another qualified
7 rehabilitation entity to exercise its rights, or if the municipality
8 fails to do so, may terminate the order of possession and return the
9 property to its owner.

10 H. The municipality shall file a Notice of Completion with the
11 court, and shall also serve a copy on the owner and any mortgage
12 holder or lienholder, at such time as the municipality has
13 determined that no more than six (6) months remain to the
14 anticipated date on which rehabilitation will be complete. This
15 notice shall include an affidavit of the officer, official or
16 employee attesting that rehabilitation can realistically be
17 anticipated to be complete within that time period, and a statement
18 setting forth such actions as it plans to undertake to ensure that
19 reuse of the property takes place consistent with the plan.

20 SECTION 11. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 56-111 of Title 11, unless there
22 is created a duplication in numbering, reads as follows:

23 A. An owner may petition for reinstatement of the owner's
24 control and possession of the property at any time after one (1)

1 year from the grant of possession, but no later than thirty (30)
2 days after the municipality has filed a Notice of Completion with
3 the court or, in the event the Notice of Completion is filed within
4 less than one (1) year of the grant of possession, within thirty
5 (30) days after the municipality has filed notice.

6 B. The court may allow additional time for good cause if that
7 additional time does not materially delay completion of the
8 rehabilitation, place undue hardship on the municipality, or affect
9 any of the terms or conditions under which the municipality has
10 applied for or received financing for the rehabilitation of the
11 property.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 56-112 of Title 11, unless there
14 is created a duplication in numbering, reads as follows:

15 Any petition for reinstatement of the owner's control and
16 possession of the property filed pursuant to Section 11 of the
17 Abandoned and Neglected Properties Rehabilitation Act shall:

18 1. Include a plan for completion of the rehabilitation and
19 reuse of the property consistent with the plan previously approved
20 by the court;

21 2. Provide legally binding assurances that the owner will
22 comply with all conditions of any grant or loan secured by the
23 municipality or repay those grants or loans in full, at the
24 discretion of the maker of the loan or grant; and

1 3. Be accompanied by payment equal to the sum of:

2 a. all municipal liens outstanding on the property,

3 b. all costs incurred by the municipality in bringing
4 action with respect to the property,

5 c. any costs incurred by the municipality not covered by
6 grants or loans to be assumed or repaid pursuant to
7 this section, and

8 d. any costs remaining to complete rehabilitation and
9 reuse of the property, as determined by the officer,
10 official or employee, which payment shall be placed in
11 escrow with the clerk of the court pending disposition
12 of the petition.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 56-113 of Title 11, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Prior to the granting of a petition on the part of the owner
17 by the court pursuant to Section 11 of the Abandoned and Neglected
18 Properties Rehabilitation Act, the owner may be required to post a
19 bond or other security in an amount determined by the court, after
20 consultation with the officer, official or employee, as likely to
21 ensure that the owner will continue to maintain the property in
22 sound condition. That bond or other security shall be made
23 available to the municipality to make any repair on the property in
24 the event of a code violation which is not corrected in timely

1 fashion by the owner. The bond or other security may be forfeit in
2 full in the event that the owner fails to comply with any
3 requirement imposed as a condition of the reinstatement petition
4 filed pursuant to Section 11 of the Abandoned and Neglected
5 Properties Rehabilitation Act.

6 B. The owner may seek approval of the court to be relieved of
7 this requirement after five (5) years, which shall be granted if the
8 court finds that the owner has maintained the property in good
9 repair during that period, that no material violations affecting the
10 health and safety of the tenants have occurred during that period,
11 and that the owner has remedied other violations in a timely and
12 expeditious fashion.

13 SECTION 14. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 56-114 of Title 11, unless there
15 is created a duplication in numbering, reads as follows:

16 If the owner fails to petition for the reinstatement of control
17 and possession of the property within thirty (30) days after the
18 entity in possession has filed a Notice of Completion or in any
19 event within two (2) years after the initial grant of possession, or
20 if the owner fails to meet any conditions that may be set by the
21 court in granting a reinstatement petition filed pursuant to Section
22 15 of the Abandoned and Neglected Properties Rehabilitation Act,
23 upon petition from the entity in possession, the court may grant the
24 municipality title or authorize the municipality to sell the

1 property, subject to the provisions of Section 15 of the Abandoned
2 and Neglected Properties Rehabilitation Act.

3 SECTION 15. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 56-115 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Where the municipality seeks to gain title to the property,
7 it shall purchase the property for fair market value on such terms
8 as the court shall approve, and may place the proceeds of sale in
9 escrow with the court.

10 B. The court may authorize the municipality to sell the
11 building free and clear of liens, claims and encumbrances, in which
12 event all such liens, claims and encumbrances shall be transferred
13 to the proceeds of sale with the same priority as existed prior to
14 resale in accordance with the provisions of this section.

15 C. The municipality may seek approval of the court to sell the
16 property to a third party when the court finds that such conveyance
17 will further the effective and timely rehabilitation and reuse of
18 the property.

19 D. Upon approval by the court the municipality shall sell the
20 property on such terms and at such price as the court shall approve,
21 and may place the proceeds of sale in escrow with the court. The
22 court shall order a distribution of the proceeds of sale after
23 paying court costs in the order of priority set forth according to
24 Oklahoma law.

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 56-116 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 The officer, official or employee, with the approval of the
5 court, may place a lien on the property to cover any costs of the
6 municipality in connection with a proceeding under the Abandoned and
7 Neglected Properties Rehabilitation Act incurred prior to the grant
8 by the court of an order of possession under the Abandoned and
9 Neglected Properties Rehabilitation Act, which may include costs
10 incurred to stabilize or secure the property to ensure that it can
11 be rehabilitated in a cost-effective manner. Any such lien shall be
12 considered a municipal lien for the purposes of Section 22-112 of
13 Title 11 of the Oklahoma Statutes with the rights and status of a
14 municipal lien pursuant thereto.

15 SECTION 17. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 56-117 of Title 11, unless there
17 is created a duplication in numbering, reads as follows:

18 With respect to any lien placed against any real property
19 pursuant to the provisions of Section 22-112 of Title 11 of the
20 Oklahoma Statutes the municipality shall have recourse with respect
21 to the lien against any asset of the owner of the property if an
22 individual, against any asset of any partner if a partnership, and
23 against any asset of any owner of a ten-percent interest or greater
24 if a corporation.

1 SECTION 18. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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