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## **OLR Bill Analysis**

### **sSB 1070 (as amended by House "A" and Senate "A")\***

#### ***AN ACT CONCERNING ABANDONED AND BLIGHTED PROPERTY STEWARDSHIP.***

#### **SUMMARY**

This bill establishes a mechanism to rehabilitate abandoned properties in municipalities with populations of at least 35,000 by providing that if an owner of a residential, commercial, or industrial building fails to maintain it in accordance with applicable municipal codes, the Superior Court may appoint a receiver to make the necessary improvements. Under the bill, "owners" are holders of legal title to, or of a legal or equitable interest in, a building. (Owners include heirs, assignees, trustees, beneficiaries, or building lessees, if the interest is a matter of public record). A "receiver" is a person or entity that takes possession of a building under the bill's provisions to rehabilitate or otherwise dispose of it.

Lienholders and individuals and entities with development capacity may seek to be appointed as the receiver and, once appointed, are granted extensive powers to rehabilitate the property pursuant to a court-approved plan. Once the property is rehabilitated, the court may approve its sale, free of any encumbrances. The bill (1) establishes a process for distributing sale proceeds and (2) requires the receiver to draft a deed after the sale that states that (a) recognizable and marketable title to the property is vested in the purchasers and (b) prior ownership interests are extinguished.

Unless terminated by the court, a receivership continues even if the property owner sells the property or it is foreclosed by a lender. Appointment of a receiver does not terminate the owner's debt or environmental obligations related to the property.

Under the bill, "buildings" are structures and appurtenant land,

including vacant lots on which such a structure was demolished. Receivership petitions may include adjacent buildings if they share an owner and the properties are used for a single or interrelated purpose. The bill's provisions do not apply to (1) commercial or residential buildings, structures, or land owned by or held in trust for the U.S. government and regulated under the United States Housing Act of 1937 and related regulations and (2) property owned by a member of the U.S. Armed Forces or any reserve component thereof who has vacated the building to (a) perform military service during a war or armed conflict or (b) assist relief efforts during a declared federal or state emergency.

\*Senate Amendment "A" (1) renames "stewards" as "receivers" and defines receivers; (2) limits petitions to municipalities with populations of at least 75,000; (3) removes provisions requiring owners to pay a receiver's or developer's fee and instead allows the court to determine reimbursement amounts for costs associated with the petition; (4) removes a provision requiring the property owner to post a bond to keep an abandoned property; (5) gives receivers power and authority equivalent to property ownership, rather than an ownership interest; (6) adds a requirement that the receiver draft a deed stating that ownership is vested in the property purchaser after the property is sold and proceeds are distributed; and (7) makes other minor, technical, and conforming changes.

\*House Amendment "A" increases the number of properties that are eligible for receivership by allowing the petitions for properties in municipalities with populations of at least 35,000, rather than 75,000.

EFFECTIVE DATE: January 1, 2020

## **PROCEDURE FOR RECEIVER'S APPOINTMENT**

### ***Petitioning Party***

Under the bill, any party in interest may file a petition to appoint a receiver with the Superior Court for the judicial district in which the subject building is located; such petitions constitute an "action in rem" (i.e., action to determine property rights).

A “party in interest” is a person or entity with a direct and immediate interest in a building, including (1) the owner; (2) a lienholder or other secured creditor; (3) a local resident or business owner whose property is located within 1,000 feet of the building in the same municipality; (4) the municipality or school district in which the building is located; or (5) a development organization located in the same municipality that has participated in a project in line with the organization’s purpose within a five-mile radius of the building.

“Development organizations” are nonprofit corporations established in part to remediate blight, engage in community or economic development or historic preservation, or promote or enhance affordable housing opportunities.

### ***Copy of Petition***

The bill requires a true copy of the petition to be served, in the same manner that civil actions are served, on (1) the municipality (unless it is the petitioner) and (2) each building owner and lienholder of record (i.e., who has a valid, recorded interest in the property).

The petitioner must also file a notice of “lis pendens” with the municipal clerk, which is generally a notice that the property is subject to an ongoing legal proceeding.

### ***Petition’s Contents***

The petition must include the petitioner’s sworn statement that, to the best of his, her, or its knowledge, the building meets the requirements for a receiver to be appointed as of the petition’s filing date (see “Property Conditions Necessitating Receivership” below). It must also include, to the extent available following the petitioner’s reasonable efforts to obtain them, the following:

1. a copy of any citation or order (a) charging the building owner with a violation of municipal code requirements or (b) determining the building is a public nuisance, blighted, or unfit for human occupancy or use;
2. the recommended receiver; and

3. a preliminary plan detailing (a) initial estimated property rehabilitation costs to comply with any applicable municipal code or municipally adopted plan for the neighborhood where the property exists; (b) anticipated funding sources; and (c) a schedule of mortgages, liens, and other encumbrances on the building.

### ***Petition Hearing and Decision***

The bill requires the court to hold a hearing on the petition and thereafter issue a decision. The court may only appoint a receiver for the building if it is deemed “abandoned property” (see “Property Conditions Necessitating Receivership” below). It may also opt to give the property owner time to remediate the conditions that make it an abandoned property.

If the court appoints a receiver, it may grant any other relief it deems just and appropriate.

### ***Selecting a Receiver***

If the court opts to appoint a receiver, it must first consider appointing the most senior nongovernmental lienholder of record. If such lienholder is unable to serve as receiver or declines to do so, the court may appoint a willing (1) development organization or (2) other person or entity, including a governmental unit, with experience rehabilitating buildings and the ability to obtain or provide the necessary financing.

In selecting a receiver, the court must (1) consider the petitioner’s recommendation and that of any petitioner in interest and (2) prioritize a development organization or governmental unit over an individual.

### ***Petitioner’s Costs***

If the court finds a building is “abandoned property” and opts to either appoint a receiver or give the owner time to remediate it, or that the owner is selling the building, the owner must reimburse the petitioner for costs incurred to prepare and file the petition as determined by the court.

### ***Certifying Encumbrances***

If the court appoints a receiver, it must certify the schedule of each mortgage, lien, or other encumbrance, which is binding if the encumbrance arose or attached before the receivership petition was submitted.

### **PROPERTY CONDITIONS NECESSITATING RECEIVERSHIP**

A building is “abandoned property,” and thus eligible to be overseen by a receiver, only if:

1. in the 12 months immediately preceding the petition’s filing, it has not been legally occupied;
2. as determined by the court, the owner fails to present compelling evidence that he or she has either (a)(i) “actively marketed” (see below) the building in the 60 days immediately preceding the petition filing and (ii) made a good faith effort to sell it at a price reflecting circumstances and market conditions or (b) acquired the building within the 12 months immediately preceding the filing, but this provision does not apply when the building’s ownership is in dispute in any other legal proceeding;
3. there is no pending foreclosure action by an individual or nongovernmental entity; and
4. the court finds that at least three problematic building conditions exist (see below).

Under the bill, “actively marketed” means (1) a sign was placed on the property advertising its sale, containing accurate contact information for the owner, broker, or salesperson and (2) the owner has (a) hired a licensed broker or salesperson to list the property in the multiple listing service or otherwise marketed it; (b) placed advertisements, at least weekly, in print or electronic media; or (c) distributed printed advertisements.

Regarding compelling evidence of recent acquisitions, the bill excludes transfers between close parties, specifically when the (1) prior

owner is a parent, spouse, child, or sibling (“immediate family”) unless ownerships resulted from the prior owner’s death and (2) owner or prior owner is a business or other entity of which more than a 5% interest is held by a principal, or member of the principal’s immediate family, of such owner or prior owner.

***Problematic Building Conditions***

Under the bill, before an abandoned building can be deemed such, the court must find that at least three of the following conditions exist:

1. under an applicable municipal code, the building is a public nuisance, blighted, or unfit for human occupation or use;
2. it requires “substantial rehabilitation” (see below) and no effort to rehabilitate it has been made in the 12 months immediately preceding the petition filing;
3. its condition and vacant status materially increase the fire risk to it and adjacent property;
4. it is susceptible to unauthorized entry and resulting potential health and safety hazards, and (a) the owner has failed to take reasonable and necessary steps to secure it or (b) it has been secured by the municipality following an owner’s failure to do so;
5. it is an attractive nuisance (a) to children due to abandoned wells, shafts, basements, excavations, and other unsafe structures or (b) for illicit purposes, such as prostitution, drug use, and vagrancy;
6. it creates potential health and safety hazards due to vermin, debris accumulation, uncut vegetation, or physical deterioration, and the owner has not taken reasonable and necessary steps to remedy its appearance or condition; or
7. its appearance or other condition negatively impacts the economic well-being of nearby residents or businesses, which

may include decreasing property values or lost business, and the owner has not taken reasonable and necessary steps to remedy its appearance or condition.

Under the bill, “substantial rehabilitation” means (1) repair, replacement, or improvement costs that exceed 15% of the building’s value after the work is completed or (2) replacing two or more of the following: roof structures, ceilings, wall or floor structures, foundations, plumbing systems, heating and air conditioning systems, or electrical systems.

### **OWNER’S ABILITY TO CONTROL PROPERTY**

Even if a court determines that a building is “abandoned property,” it may issue an order giving the owner time to remedy the conditions, if the owner represents that such work will be completed in a reasonable amount of time. The court may issue an order stating that the receivership petition is granted if the owner fails to comply with court-set remediation deadlines.

### **OWNER’S CONTINUING LIABILITY**

Abandoned property owners remain (1) liable for environmental damage that existed before the receiver’s appointment and (2) criminally, civilly, or otherwise liable for taxes; municipal liens or charges; mortgages; and private liens, fees, and charges incurred before and after the appointment. Under the bill, liability does not transfer to the receiver.

### **RECEIVER’S POWERS AND DUTIES**

Following appointment, a receiver must promptly take possession of the building. The bill deems the receiver to have powers and authority equivalent to ownership and legal control of the property for purposes of (1) filing plans with public agencies and boards, (2) seeking or obtaining construction permits or other approvals, and (3) submitting financing or other assistance applications to public or private entities.

Generally, the receiver must (1) maintain, safeguard, and insure the

property; (2) apply any revenue the property generates as required by the bill; and (3) develop and implement a court-approved final plan.

***Developing Plan***

The receiver must develop a court-approved plan for abating the conditions that qualify the property as abandoned. If the receiver cannot feasibly develop such a plan, the receiver must develop a plan for alternatives, such as closing, sealing, or demolishing all or part of the property. If the property is in a historic district and must be demolished, the plan must provide a design plan for any replacement construction to comply with the law.

The receiver may present the plan for court approval at the time of appointment or on a subsequent date. In either case, a hearing on the final plan must be set within 120 days after the receiver’s appointment; the plan must be provided to the court and each party to the action at least 30 days before the hearing. During the hearing each party to the action may comment on the plan.

The court must issue a decision approving the plan or requiring it to be amended, in which case an additional hearing date must be set. When reviewing the plan’s feasibility and proposed financing, the court must consider all comments provided at the hearing and the receiver’s assessment of the scope and necessity of rehabilitation or demolition work.

When considering the property’s sale or receiver’s costs, the court must give reasonable regard to the receiver’s assessment of the scope and necessity of rehabilitation or demolition work.

***Plan’s Contents.*** The plan must include the following:

1. a cost estimate and financing plan;
2. a description of the proposed rehabilitation or, if rehabilitation is not feasible, a proposal for closing, sealing, or demolishing the property; and
3. if it was previously designated a “historic property” (see below),

provisions for rehabilitating architectural features that define its historic character.

Under the bill, “historic properties” are those that are (1) listed on the National Register of Historic Places, (2) contributing properties in a National Register historic district, or (3) located in a local historic district.

Plans must conform to applicable municipal codes, municipally adopted plans for the neighborhood where the property exists, and historic preservation requirements. Under the bill, “municipal codes” are any local ordinances about buildings, housing, blight, property maintenance, fire, health, or other public safety concerns.

### ***Borrowing Power***

With the court’s approval, a receiver may borrow funds to cover “costs of rehabilitation” (see below) or fulfil any of the receivership’s duties. The court may approve financing to cover the costs of rehabilitation, including deferred repayment terms and use restrictions. The terms may remain with the rehabilitated property even after the receivership terminates and be assumed by (1) the property owner, if possession is regained, or (2) the rehabilitated property’s purchaser.

Under the bill, “costs of rehabilitation” are building construction, stabilization, restoration, maintenance, operation, or demolition expenses. Such costs also include any action reasonably associated with rehabilitation, including environmental remediation and architectural, engineering, legal, financing, permit, and receiver’s and developer’s fees.

To make borrowing money to cover costs of rehabilitation easier, the court may grant priority status to a lien securing such debt, if (1) the receiver sought financing from the most senior, nongovernmental lienholder, and the lienholder opted not to provide the financing on reasonable terms, and (2) granting the lien priority is necessary to induce another lender to provide financing on reasonable terms.

If the receiver obtains a loan from the most senior, nongovernmental lienholder, the amount of such loan is added to the lienholder's preexisting priority lien.

***Other Powers and Duties***

Under the bill, the receiver has all powers necessary and appropriate as approved by the court for the efficient operation, management, and improvement of the abandoned property in order to bring it into compliance with municipal codes and fulfill the receiver's duties, which, subject to the court's approval, include:

1. taking possession and control of the abandoned property and any personal property the owner used with respect to it, as well as pursuing claims and causes of action against the owner related to such property;
2. collecting outstanding accounts receivable;
3. contracting for the abandoned property to be repaired and maintained (if a contract is valued at more than \$25,000, an attempt to get three bids generally must be made);
4. contracting and paying for maintaining and restoring utilities;
5. purchasing materials, goods, and supplies to repair and operate the property;
6. entering into a rental contract or lease for up to 12 months, if the court approves;
7. affirming, renewing, or entering into insurance contracts;
8. hiring and paying legal, accounting, appraisal, or other professionals as necessary;
9. if deemed a historic property prior to the receiver's appointment, consulting the local historical and historic properties entities for recommendations on preserving the property's historic character;

10. applying for and receiving public grants and loans;
11. selling the building in accordance with the bill's provisions; and
12. exercising any right a property owner would have to improve, maintain, or otherwise manage the property to the extent necessary to carry out the receivership's powers and duties.

The receiver may file a lien on the abandoned property for costs incurred during the receivership, including rehabilitation costs, attorney's fees, and court costs.

### ***Continued Receivership after Transfer or Sale***

Unless the court approves the receivership's termination, a property remains subject to the receiver's control even if (1) the property owner sells the property, (2) a lienholder forecloses the property, or (3) an interest in the property is transferred.

### ***Status Reporting***

The bill requires receivers, annually or more frequently if the court requires it, to submit a status report to the court and each party to the action. The report must include:

1. a copy of any contract the receiver enters into regarding the property's rehabilitation;
2. an account of the disposition of any property-generated revenue;
3. an account of expenses, repairs, and improvements;
4. the plan's status (i.e., its development and implementation); and
5. a description of any proposed rehabilitation actions to be taken within the next six months.

### ***Accounting***

When the plan is implemented, the receiver must file with the court a full accounting of income and expenditures during the period from the plan's approval to complete implementation. The receiver must

include information on each repair or rehabilitation contact.

### **TERMINATION OF RECEIVERSHIP OR REMOVAL OF RECEIVER**

Upon the request of a receiver or a party in interest, the court may terminate the receivership if it finds any of the following:

1. the receivership's purposes were fulfilled;
2. the owner, a mortgagee, or lienholder has requested its termination and provides adequate assurance that the receivership's purposes will be fulfilled;
3. the receiver sold the property and distributed the proceeds as required by the bill; or
4. even after a diligent effort, the receiver was unable to (a) develop a court-approved final plan, (b) implement such plan, or (c) fulfill the receivership's purposes.

The court may also remove a receiver at any time upon the receiver's, petitioner's, or party in action's request and upon a showing that the receiver's duties are not being carried out.

### **RECEIVER-INITIATED PROPERTY SALE**

Upon the receiver's application, the court may authorize the receiver to sell the property free and clear of any lien, claim, or encumbrance if:

1. proceeds of the sale are distributed as required under the bill and the court approves of such distribution;
2. each record owner and lienholder of record has been given notice and an opportunity to provide comment to the court;
3. the receiver has controlled the property for at least three months, and the owner has not successfully petitioned to terminate the receivership;
4. the purchaser is reasonably likely to maintain the property; and

5. the court accepts the sale's terms and conditions.

The bill specifies how the proceeds must be distributed. If the proceeds are insufficient to pay each lien, claim, and encumbrance, they are extinguished unless the original owner or purchaser assumed them.

***Distribution of Proceeds***

Sale proceeds must be distributed in the following order:

1. court costs;
2. unless they were sold or transferred, state liens, unpaid property tax liens, and properly recorded municipal liens;
3. sale costs and expenses;
4. principal and interest on debt that a court granted priority over existing liens and security interests;
5. petitioner's costs related to preparing and filing the receivership petition;
6. "costs of rehabilitation" and fees and expenses the receiver incurred to sell or safeguard the property as reflected in the lien the receiver placed on the property (see above);
7. sold or transferred state liens, unpaid property tax liens, and properly recorded municipal liens;
8. other valid liens and security interests, in their priority order;
9. the receiver's unpaid obligations; and then to
10. the owner of the abandoned property.

If the owner cannot be located at the time of distribution of sale proceeds, the owner's portion of the proceeds are presumed unclaimed and forfeited to the municipality in which the sold property is located. The municipality must use the funds to recoup costs for securing and

remediating blight and enforcing blight ordinances.

After the sale concludes and proceeds are distributed, the bill requires the receiver to draft a deed stating that recognizable and marketable title to the property is vested in the property's purchaser and that any prior ownership interest in the abandoned property is extinguished. Under the bill, once the court approves of the deed and the deed is filed in the municipal land records, the property's transfer and ownership is deemed fully effectuated.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/29/2019)

Judiciary Committee

Joint Favorable

Yea 34 Nay 4 (04/30/2019)