

SENATE, No. 2074

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1997

By Senator LaROSSA

1 AN ACT providing for the forfeiture of abandoned property and
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The Legislature hereby finds and declares that:

8 a. Many of the municipalities in the State have been plagued by the
9 existence of buildings which are unoccupied and have been abandoned
10 by their owners, being left to deteriorate and to become a hazard to
11 public safety;

12 b. While the State's largest municipalities were the center of
13 manufacturing and commerce from the advent of the industrial
14 revolution to the Second World War, and were also the major
15 population centers of the State, the subsequent decline of urban
16 manufacturing after the war resulted in the movement of large numbers
17 of people to suburban areas, ending the role of many large
18 municipalities as the primary residential centers of the State's
19 population;

20 c. While there remain in many urban areas viable housing stock and
21 commercial buildings, there are also many buildings which have been
22 abandoned and left to decay by their owners because of their decline
23 in economic value, causing urban blight and providing a disincentive
24 for the entry of new capital to revitalize the cities;

25 d. Many of these abandoned buildings have become sites for
26 criminal activities, are infested with vermin or toxic substances, or
27 have become so structurally unsound that they present a substantial
28 public hazard and make surrounding properties even more undesirable
29 for development for residential or commercial use;

30 e. Municipalities have often been unsuccessful in their attempts to
31 induce owners to maintain their properties in a manner which would
32 ensure that they are inaccessible to criminal elements or vandals who
33 endanger the well-being of the persons living in surrounding properties
34 because there is no effective sanction available to municipalities to
35 force compliance with municipal ordinances; and

36 f. While municipalities have authority to demolish such
37 buildings, the cost of demolition is substantial and cannot therefore be

1 employed on a scale which effectively eliminates a significant number
2 of abandoned properties.

3

4 2. It is the purpose of this act to provide municipalities with an
5 effective means of forcing irresponsible property owners to mitigate
6 the hazards posed by buildings which are sites of criminal activity or
7 which pose an imminent, substantial, and continuing threat to the
8 public welfare by making the refusal to do so a criminal offense.

9

10 3. As used in this act, "abandoned property" means a building of
11 15,000 square feet or less which: has been unoccupied or unused by
12 the owner or lessee for a period of five years or longer; is the site of
13 toxic or environmentally dangerous hazards; has suffered such
14 structural damage or deterioration so as to render it uninhabitable and
15 a danger to the public; or otherwise presents an imminent and
16 substantial hazard to the public health or welfare.

17

18 4. Notwithstanding any other law to the contrary, any municipality
19 may, upon the complaint of any person, including a municipal officer,
20 cause to be investigated any abandoned property. Upon a showing of
21 probable cause that the property represents a danger to the public
22 health or welfare, the municipality may obtain an order from the
23 Superior Court to declare the property a major public hazard.

24

25 5. a. Within ten days of the receipt of such an order, the
26 municipality shall send a notice to the owner of record, by certified
27 mail, return receipt requested, that the property has been declared a
28 major public hazard. The notice shall also be published in a newspaper
29 of general circulation in the county in which the property is located,
30 which shall constitute public notice. The published and mailed notices
31 shall identify the property determined to be a major public hazard by
32 block and lot number and the street address. The tax collector of the
33 municipality shall also send a notice by regular mail to any mortgagee,
34 servicing organization, or property tax processing organization that
35 receives a duplicate copy of the tax bill pursuant to subsection d. of
36 R.S.54:4-64. When the owner of record is not known and cannot be
37 ascertained by the exercise of reasonable diligence by the tax collector,
38 notice shall not be mailed but shall instead be posted on the property
39 in the manner provided for in section 5 of P.L.1942, c.112 (C:40:48-
40 2.7).

41 b. The mailed notice shall contain a statement of the factual basis
42 for the municipality's finding that the property is a major public hazard
43 and a copy of the court order obtained by the municipality which
44 declares the property a major public hazard. A copy of the mailed or
45 posted notice shall also be filed by the municipality in the office of the
46 county clerk or register of deeds and mortgages, as the case may be,

1 wherein the property is located. The notice shall contain a statement
2 of the actions which must be taken by the owner to remediate the
3 property's status as a major public hazard.

4
5 6. In requiring remediation of the property as a major public
6 hazard, the municipality may order that the owner undertake any or all
7 of the following:

8 a. The elimination of any infestation on the property;

9 b. The remediation of any toxic or environmental hazard to a
10 degree that it eliminates danger to public health;

11 c. The obstruction of every means of ingress and egress to the
12 structure;

13 d. The creation of a barrier to public access to the property;

14 e. The shoring up of any elements of the structure which render it
15 liable to collapse;

16 f. If the structural damage is severe to the degree that it is not
17 remediable, that the structure be demolished.

18
19 7. a. Any owner of a property declared to be a major public hazard
20 may challenge the status of the property in a proceeding before the
21 court by filing an appeal with the court within thirty days, except that
22 an owner of a property whose identity is not known to the municipality
23 may file an appeal with the court within a period not to exceed forty-
24 five days. For good cause shown, the court may accept a late filing of
25 the appeal. The court shall schedule a hearing on the appeal within
26 thirty days of the receipt of a notice of appeal. The sole ground for an
27 appeal shall be that the property is not a major public hazard.

28 b. The owner of the property may appeal an adverse determination
29 of the court in the appeal filed pursuant to subsection a. of this section
30 to the Appellate Division within thirty days of the filing of the
31 determination by the court. The sole ground for appeal shall be that
32 the property is not a major public hazard.

33
34 8. If the property is deemed to be a major public hazard as a result
35 of the court proceeding, the owner shall have ninety days within which
36 to remediate the hazard in the manner required by the municipality.
37 Any owner who purposely and knowingly fails to remediate the hazard
38 shall be guilty of a crime of the fourth degree. The court may reduce
39 the penalty if it determines that there are mitigating circumstances.

40
41 9. If an owner of a property which has been once declared a major
42 public hazard has been convicted of a first offense, he shall, for any
43 subsequent offense with regard to the same property, be guilty of a
44 crime of the third degree and the property shall be subject to forfeiture
45 to the municipality.

1 10. a. If an owner is convicted of a second offense regarding the
2 maintenance of the same property as a major public hazard, the
3 forfeiture of the property shall be enforced by a civil action instituted
4 within ninety days of the second conviction, against the property. The
5 complaint shall be verified on oath or affirmation and shall describe the
6 property with reasonable particularity, including the block and lot
7 number and street address of the property, shall contain allegations
8 setting forth the reason or reasons the property is to be forfeited, and
9 shall be accompanied by supporting information.

10 b. The owner of the property that is the subject of the forfeiture
11 action shall file and serve his answer in accordance with the Rules of
12 Court. The answer shall be verified on oath or affirmation. If no
13 answer is made within the applicable time, the property shall be
14 forfeited to the municipality.

15 c. If an answer is filed, the court shall set the matter down for a
16 summary hearing as soon as practicable. Upon application of the
17 municipality or claimant, the court may stay proceedings in the
18 forfeiture action until the criminal proceedings have been concluded
19 by entry of final judgment.

20 d. The municipality may apply to the court for an order permitting
21 use of the seized property pending the disposition of the forfeiture
22 action, providing that the property may be used only by the
23 municipality. Approval shall be liberally given but shall be subject to
24 a written guarantee by the municipality of payment for property which
25 may be subject to return, replacement, or compensation as to
26 reasonable value in the event that the forfeiture is refused by the court
27 or only partial extinguishment of property rights is ordered by the
28 court. The court may appoint a trustee to protect the interests of all
29 parties involved in the action during the pendency of the forfeiture
30 action.

31 e. Evidence of a conviction in the criminal proceeding with regard
32 to a second offense shall be considered in the forfeiture proceeding as
33 creating a rebuttable presumption that the property is subject to
34 forfeiture.

35
36 11. No forfeiture under this act shall affect the rights of any other
37 person with an interest in the property in the ordinary course of
38 business or any person holding a perfected security interest in the
39 property subject to seizure unless it appears that the person had
40 knowledge of or consented to any act or omission upon which the
41 forfeiture is based. Such rights are only to the extent of interest in the
42 seized property and at the option of the municipality.

43
44 12. No owner shall be convicted of a crime of the third or fourth
45 degree or be subject to the forfeiture of property if he establishes by
46 a preponderance of the evidence that he was not involved in or aware

1 of the failure to remediate the property and that he had done all that
2 could reasonably be expected to prevent the violation of law by an
3 agent. A person who manages or possesses property with the consent
4 or knowledge of the owner is deemed to be the agent of the owner for
5 the purposes of this act.

6
7 13. No owner shall be convicted of a crime of the third degree
8 pursuant to this act or be subject to forfeiture if the property is
9 entrusted to an agent for repairs or remediation and if the agent has
10 unlawfully failed, without the owner's knowledge or consent, to carry
11 out the repairs or remediation or converted the funds therefor to his
12 own use.

13
14 14. Property which has been forfeited shall become the property of
15 the municipality and title shall be vested in the municipality. Any
16 owner who could not with due diligence have discovered that the
17 property was forfeited may file a claim for its return within three years
18 of the forfeiture if he can demonstrate that he did not consent to, and
19 had no knowledge of its status as a major public hazard and the failure
20 to remediate it.

21
22 15. This act shall take effect immediately.

23 24 25 STATEMENT

26
27 Recognizing the tremendous economic drain on the State's urban
28 areas represented by properties which languish through long-term
29 neglect and deterioration, this bill establishes a definition of
30 "abandoned property" and sets forth a forfeiture procedure for the
31 acquisition by a municipality of abandoned property.

32 The bill defines "abandoned property" as any building of 15,000
33 square feet or less which: has been unoccupied or unused by the
34 owner or lessee for a period of five years or longer; is the site of toxic
35 or environmentally dangerous hazards; has suffered such structural
36 damage or deterioration so as to render it uninhabitable and a danger
37 to the public; or otherwise presents an imminent and substantial hazard
38 to the public health.

39 Upon the complaint of any person, including a municipal officer, the
40 municipality may cause to be investigated any abandoned property.
41 Upon a showing of probable cause that the property represents a
42 danger to the public health or welfare, the municipality may obtain an
43 order from the Superior Court to declare the property a major public
44 hazard.

45 Within 10 days of the receipt of such an order, the municipality
46 shall send a notice to the owner of record by certified mail that the

1 property has been declared a major public hazard. The mailed notice
2 shall contain a statement of the factual basis for the municipality's
3 finding that the property is a major public hazard and a copy of the
4 court order obtained by the municipality which declares the property
5 a major public hazard. In requiring remediation of the property as a
6 major public hazard, the municipality may order that the owner
7 eliminate any infestation on the property; remediate any toxic or
8 environmental hazard; obstruct every means of ingress and egress to
9 the structure; create a barrier to public access to the property; and
10 shore up of any elements of the structure which render it liable to
11 collapse. If the structural damage is severe to the degree that it is not
12 remediable, the municipality may order that the structure be
13 demolished.

14 The bill recognizes the property rights of those individuals found to
15 own abandoned property and sets forth an appeal procedure for the
16 challenge of the status of the property in court. Ultimately, if the
17 property is deemed to be a major public hazard as a result of the court
18 proceeding, the owner shall have ninety days within which to
19 remediate the hazard in the manner required by the municipality. Any
20 owner who willfully, wantonly, and recklessly fails to remediate the
21 hazard shall be guilty of a crime of the fourth degree. An owner shall
22 be guilty of a crime of the third degree for any subsequent offense and
23 that person's property shall be subject to forfeiture, according to the
24 procedure set forth in the bill.

25

26

27

28

29 _____
Sets forth procedure for forfeiture of abandoned property.