**South Carolina General Assembly**

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**H. 3948**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Brannon, W.J. McLeod, Dillard, Daning, Sabb, Rivers, Sottile and Ridgeway

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Companion/Similar bill(s): 375

Introduced in the House on April 16, 2013

Currently residing in the House Committee on **Judiciary**

Summary: Dilapidated Buildings Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/16/2013 House Introduced and read first time ([House Journal‑page 7](file:///h:\HJ%20Archive\2013\04-16-13.docx))

4/16/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 7](file:///h:\HJ%20Archive\2013\04-16-13.docx))

5/16/2013 House Member(s) request name added as sponsor: Ridgeway

**VERSIONS OF THIS BILL**

[4/16/2013](file:///p:\pprever\2013-14\3948_20130416.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 38 TO TITLE 6 SO AS TO ENACT THE “DILAPIDATED BUILDINGS ACT”, TO PROVIDE DEFINITIONS, TO PROVIDE THAT A MUNICIPALITY MAY BRING A CAUSE OF ACTION AGAINST THE OWNER OF PROPERTY NOT IN SUBSTANTIAL COMPLIANCE WITH CERTAIN MUNICIPAL ORDINANCES, TO IDENTIFY WHO MAY SERVE AS A COURT‑APPOINTED RECEIVER FOR PROPERTY SUBJECT TO THIS CAUSE OF ACTION, TO DESIGNATE THE POWERS OF A COURT‑APPOINTED RECEIVER, TO ESTABLISH REPORTING REQUIREMENTS OF THE MUNICIPALITY CONCERNING A VIOLATION AGAINST WHICH THE MUNICIPALITY MAY BRING A CAUSE OF ACTION UNDER THIS ACT, AND TO PROVIDE CERTAIN REMEDIES AND PROCEDURES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 6 of the 1976 Code is amended by adding:

“CHAPTER 38

Dilapidated Buildings Act

Section 6‑38‑10. This chapter must be known and may be cited as the ‘Dilapidated Buildings Act’. This chapter may be used only when a municipality has:

(1) developed and followed its locally adopted procedures to deal with the abatement of unsafe structures pursuant to authority granted to municipalities in Sections 31‑15‑20 and 5‑7‑80;

(2) given the owner of record proper notice requirements and reasonable time under the circumstances for the correction of a condition pursuant to Section 5‑25‑390 or the International Property Maintenance Code if properly adopted by a municipality pursuant to Section 6‑9‑60; and

(3) Property or structure first must be declared unsafe for human occupancy by a municipality under its police powers pursuant to Section 5‑13‑30 or 31‑15‑20 or the International Property Maintenance Code.

Section 6‑38‑20. (A) In considering this legislation, a court is explicitly authorized, notwithstanding the actual language of the statute itself, to exercise its customary sound equitable discretion and in so doing take into account reasonable steps that might be taken, such as to:

(1) avoid judicial actions taken after a state or national disaster, such as a hurricane, so as to give owners or lien holders additional time to respond, to make repairs, or to otherwise maintain the status quo in light of those highly unusual exceptional situations;

(2) exercise an equity court’s own inherent equitable discretion to protect whenever possible or feasible a property owner’s property;

(3) operate with the presumption that property should not have a receiver and that as such a receiver may only be appointed to consider repairs or demolitions when there is clear and convincing evidence that it is necessary for the immediate public health, order, or safety to do so; or

(4) reconfirm that the court has the discretion not to require immediate expenditures but to phase in necessary repairs that are most appropriate for the situation. The court may direct incremental repairs to portions of a building be undertaken to preserve public safety or to ameliorate imminent danger.

(B) The presumption remains that a receiver is a special, extraordinary equitable remedy to be used sparingly and all reasonable doubts will be exercised to preserve the property rights of existing property owners and lien holders of record and the order of appointing a receiver will recite specifically what evidence permits the court to exercise its extraordinary authority pursuant to this chapter.

Section 6‑38‑30. The rules of equity govern an action under this chapter unless inconsistent with this chapter or other law.

Section 6‑38‑40. For purposes of this chapter:

(1) ‘Imminent danger’ means a condition that could cause serious or life‑threatening injury or death at any time.

(2) ‘Owner of record’ means a person who is the owner of property according to the most recently approved county tax roll.

(3) ‘Police power’ means the basic right granted under state law to make laws and regulations for the purpose of preserving public health, order, or safety.

(4) ‘Unsafe structures’ means buildings that are found to be dangerous to the life, health, property, or safety of the public or the occupants.

(5) ‘Substantial compliance’ means compliance with the substantial or essential requirements of the local ordinance relating to unsafe structures that satisfies its purpose or objective even though it failed to exactly meet the specifics.

(6) ‘Substantial risk’ means a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur or that a certain circumstance may exist. It is risk of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

Section 6‑38‑50. A municipality may bring an action under this chapter in circuit court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding:

(1) prevention of substantial risk of injury to a person;

(2) condition of the property constitutes an imminent danger to the public health or safety; or

(3) public nuisance, building code, or sanitary code.

Section 6‑38‑60. (A) On or before the sixtieth day before the date a municipality files an action pursuant to this chapter, it must provide notice of an ordinance violation and written notice why the municipality believes there is a serious, present, and imminent public health harm or safety hazard, alleged to exist on the property, by mail, to the:

(1) physical address of the property; and

(2) address as indicated on the most recently approved county tax roll for the property owner or the agent of the property owner.

(B) A municipality bringing an action pursuant to this chapter shall serve notice of the proceedings to each owner of record and holders of recorded property interests. An owner of record or lien holder of record who is not available after due diligence may be served by alternative means, including publication, as prescribed by the South Carolina Rules of Civil Procedure. Actual service or service by publication on all owners of record or lien holders of record constitutes notice to each owner of record or lien holder of record.

(C) A municipality bringing an action pursuant to this chapter shall file a notice of lis pendens to provide constructive notice of the pending action.

Section 6‑38‑80. The court may appoint a receiver for the property for a term not to exceed two years or for a time determined appropriate by the court based on the nature of the work to be done if the court finds:

(1) structures on the property are in substantial violation of one or more ordinances of the municipality pursuant to Section 6‑38‑50;

(2) the property is not an owner‑occupied, single‑family residence;

(3) the property does not have one to four family residences where at least one unit is owner occupied; and

(4) the property is not currently in foreclosure or bankruptcy proceedings.

Section 6‑38‑90. A receiver appointed under this chapter may petition the court to terminate the receivership and order the sale of the property if:

(1) the work has been successfully completed; and

(2) the owner of record lien holders, and others holding recorded interests have been served with notice but none of these have repaid the outstanding costs and expenses of the receiver and any receivership fee on or before the ninetieth day after the date the notice was served.

Section 6‑38‑100. Subject to control of the court, a court‑appointed receiver has all powers necessary and customary to the powers of a receiver under the laws of equity and may:

(1) take possession and control of the property;

(2) operate and manage the property;

(3) establish and collect rents and income on the property;

(4) lease the property;

(5) make repairs and improvements necessary to bring the property into compliance with local codes, ordinances, and state laws, including:

(a) performing and entering into contracts for the performance of work and the furnishing of materials for repairs and improvements; and

(b) entering into loan and grant agreements for repairs and improvements to the property;

(6) pay expenses, including paying for utilities and paying taxes and assessments, insurance premiums, and reasonable compensation to a property management agent;

(7) enter into contracts for operating and maintaining the property;

(8) exercise all other authority of an owner of the property other than the authority to sell the property; and

(9) perform other acts regarding the property as authorized by the court.

Section 6‑38‑110. (A) Before beginning any work the receiver must submit to the court a detailed report describing the problems associated with the property and a detailed plan for abating the problems.

(1) This report must be accompanied by a performance bond or performance bond binder as well as a detailed timeline for completion of the work.

(2) The court shall require the receiver to submit progress reports every forty‑five days or as the court determines to demonstrate compliance with the time schedules established for commencement and performance of the work.

(3) The court also shall provide a copy of the report and estimate to the owner of record, lien holders, and others with a recorded property interest.

(B)(1) A court‑appointed receiver may demolish a structure only after a hearing is held to demolish the property where a detailed report from the receiver establishes:

(a) it is not economically feasible to bring the structure into compliance with local codes, local ordinances, and state laws; and

(b) the structure:

(i) is unfit for human habitation;

(ii) is a hazard to public health or safety; or

(iii) has been unoccupied by its owners, lessees, or other invitees, for at least one hundred eighty consecutive days and property taxes are in arrears and have not been paid, and electricity has not been maintained.

(2) A copy of the report must be sent to all owners of record, all lien holders, and all others with a recorded property interest, and the property must be posted with notice of the pending action. If, within ninety days of this notice being sent and property posted, no owner, lien holder, or other person with a recorded interest appears to explain to the court’s satisfaction why the property has been left in its current state, the court may approve demolition of the structure.

(3) In considering the factors mentioned above, the court also may consider whether the property is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children. If the property is boarded, fenced, or otherwise secured, the court may consider whether:

(a) the structure constitutes a danger to the public even though secured from entry; or

(b) the means used to secure the structure are inadequate to prevent unauthorized entry or use of the structure.

(C) On demolition of the structure, the court may authorize the sale of the property to an individual or organization that will bring the property into productive use after compliance with the notice requirements of Section 6‑38‑90 and Section 6‑38‑150.

Section 6‑38‑120. The following may serve as a court‑appointed receiver:

(1) an entity with, as determined by the court, sufficient capacity, resources, and experience rehabilitating properties, abating code violations;

(2) an individual with, as determined by the court, sufficient capacity, resources, and experience rehabilitating properties, abating code violations, or both;

(3) in the case of historic properties, an entity, nonprofit organization, or individual with, as determined by the court, sufficient capacity, experience, and demonstrated record of rehabilitating historical buildings to comply with the guidelines for rehabilitating historic properties established by the United States Secretary of the Interior under 16 U.S.C. Section 470, et seq., or the historic preservation ordinance of the municipality, if applicable; or

(4) a licensed and bonded contractor in the State of South Carolina who possesses appropriate levels of insurance coverage, including general liability insurance, workers’ compensation insurance, and other coverage that is required by law.

Section 6‑38‑125. If a loss occurs to the property entrusted to the receiver, out of the receiver’s negligence or dishonest execution of trust, the receiver must be liable for damages.

Section 6‑38‑130. (A) A receiver who completes repairs to a structure or demolishes a structure, upon or before petitioning a court for termination of the receivership, shall file with the court a full accounting of:

(1) all costs and expenses incurred in the repairs or demolition, including reasonable costs for labor and supervision;

(2) all income received from the property; and

(3) at the discretion of the receiver, a receivership fee not to exceed ten percent of the costs and expenses in item (1).

(B) If the property was sold pursuant to Section 6‑38‑150 and the revenue exceeds the total of the costs and expenses incurred by the receiver plus a receivership fee, any net income must be returned to the owner after all liens have been paid. If the property is not sold and the income produced exceeds the total of the costs and expenses incurred by the receiver plus a receivership fee, the rehabilitated property must be restored to the owner and any net income must be returned to the owner. If the total of the costs and expenses incurred by the receiver plus a receivership fee exceeds the income produced during the receivership, the receiver may maintain control of the property until all rehabilitation and maintenance costs plus a receivership fee are recovered or until the receivership is terminated pursuant to Section 6‑38‑150.

Section 6‑38‑140. (A) A receiver shall have a lien on the property for all of the unreimbursed costs and expenses of the receiver, plus a receivership fee.

(B) A lien holder of record or other person with a recorded property interest may, after initiation of an action pursuant to this chapter:

(1) intervene in the action; and

(2) request appointment as a receiver pursuant to this chapter if the lien holder or other person with a recorded property interest demonstrates to the court an ability and willingness to rehabilitate the property.

Section 6‑38‑150. (A) The court may order the sale of the property if the court finds that:

(1) ninety‑day notice was given to each recorded owner of the property and each lien holder of record and those holding recorded property interests;

(2) the receiver’s costs are reasonable based on:

(a) nature, extent, and difficulty of the services rendered; (b) time and labor devoted to the case;

(c) professional standing of the receiver;

(d) contingency of compensation;

(e) fee customarily charged in the locality for similar services; and

(f) beneficial results obtained;

(3) the receiver has been in control of the property and the owner has failed to repay all the receiver’s outstanding costs and expenses of rehabilitation plus a receivership fee within the period pursuant to Section 6‑38‑90; and

(4) no lien holder of record or other holder of a recorded property interest has intervened in the action and tendered the costs and expenses of the receiver, plus a receivership fee, and assumed control of the property.

(B) The court may order the property sold:

(1) at public auction; or

(2) to a party as the court may direct.

(C) The receiver may bid on the property at the sale described by this section and may use a lien granted pursuant to Section 6‑38‑140 as credit toward the purchase. The court must confirm the sale of the property.

Section 6‑38‑160. (A) The court shall confirm a sale under this chapter and order a distribution of the proceeds of the sale in the following order:

(1) court costs;

(2) costs and expenses, plus a receivership fee, and any lien held by the receiver; and

(3) other valid liens.

(B) Any remaining overage belongs to the owner of record. These sums are payable ninety days after execution of the deed unless a judicial action is instituted during that time by another claimant. If neither claimed nor assigned within five years of date of public auction sale, the overage shall escheat to the general fund of the governing body to be set aside for the purpose. Before the escheat date unclaimed overages must be kept in a separate account and must be invested so as not to be idle and the governing body of the political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body.

Section 6‑38‑170. (A) The court shall award fee title to the purchaser after the proceeds are distributed. If proceeds from the sale are insufficient to pay all liens, claims, and encumbrances on the property, the court shall extinguish all unpaid liens, claims, and encumbrances on the property and award title to the purchaser free and clear.

(B) This chapter does not foreclose any right or remedy that may be available under other state law or the laws of equity.”

SECTION 2. This act takes effect upon approval by the Governor.

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