

Regular Session, 2012

SENATE BILL NO. 265

BY SENATOR MORRELL

PUBLIC SFTY/CORRECT DEPT. Authorizes the state fire marshal to declare certain buildings and structures as blighted. (8/1/12)

AN ACT

To enact Subpart E of Part III of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1651 and 1652, relative to blighted buildings and structures; to authorize the state fire marshal to declare certain buildings and structures in parishes and municipalities as blighted property; to provide for service of notice; to provide for costs and fees attributed to such notice; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart E of Part III of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1651 and 1652, is hereby enacted to read as follows:

SUBPART E. DANGEROUS STRUCTURES IN PARISHES

AND MUNICIPALITIES; AUTHORITY OF STATE FIRE MARSHAL

§1651. Declaration of blighted buildings or structures by the state fire marshal

The state fire marshal may declare any building or structure within a parish or municipality to be blighted property as provided for in R.S. 40:1651(E).

1 **§1652. Notice to owner**

2 **A.(1) Before the state fire marshal declares any building or structure**
3 **blighted, there shall be a written report signed by the state fire marshal or other**
4 **person authorized to act in such matters for the office of the state fire marshal.**
5 **Once the report is signed, the state fire marshal shall thereupon serve notice on**
6 **the owner of the building or structure. The notice shall include a copy of the**
7 **written report and a requirement for the owner to publish an announcement**
8 **listing:**

9 **(a) Why the building or structure is blighted.**

10 **(b) The date when the building will be repaired and no longer**
11 **considered dangerous to the public, as provided for in R.S. 40:1575(C).**

12 **(2)(a) The notice may be served by mailing it via the United States Postal**
13 **Service, by certified mail, return receipt requested, to the owner at the owner's**
14 **last known address or by first class mail.**

15 **(b) Service by certified mail shall be considered personal service if the**
16 **certified return receipt or the return form is signed by the addressee. Service**
17 **by certified mail shall be considered domiciliary service if the certified return**
18 **receipt or the return form is signed by anyone other than the addressee.**

19 **(c) If the certified mail is returned for failure to obtain a signature on**
20 **the return receipt form or returned due to refusal of delivery, service may be**
21 **accomplished by first class mail, with a certificate of mailing. Service by first**
22 **class mail in accordance with this Subparagraph shall be considered personal**
23 **service and is effective when mailed.**

24 **(d) When notice is served by first class mail, with a certificate of mailing,**
25 **notice shall be considered received on the seventh day after mailing.**

26 **(3) The notice may also be served by the state fire marshal or any of his**
27 **deputies, and the state fire marshal or his deputy shall make return of the**
28 **service as in ordinary cases.**

29 **B. If the owner is absent from the state or unrepresented therein, then**

1 the notice shall be served upon the occupant of the condemned building or
2 structure, if any, and also upon an attorney at law appointed by the state fire
3 marshal where the building or structure is located to represent the absentee
4 owner. Domiciliary service may be made as in ordinary cases. Appointment of
5 an attorney shall be in the same manner and in accordance with the provisions
6 of the Code of Civil Procedure for unrepresented defendants.

7 C. In case of grave public emergency where the condition of the building
8 or structure is such as to cause possible immediate loss or damage to person or
9 property, the state fire marshal may declare the building or structure as
10 blighted after twenty-four hours notice served upon the owner, or his agent, or
11 the occupant and attorney at law appointed to represent the absentee owner.
12 Any such notice may be attached to an external door or entrance of the
13 premises and shall have the same effect as delivery to or personal service on the
14 owner, occupant, or attorney at law appointed to represent the absentee owner.

15 D.(1) The announcement required in Paragraph A(1) of this Section
16 shall be published, without cost to the parish or municipality, in the official
17 journal of the parish or municipality where the property is located on two
18 separate days within ninety days of receipt of the notice and written report by
19 the state fire marshal. Failure to publish the announcement shall subject the
20 owner to a fifty dollar per day penalty, not to exceed five thousand dollars per
21 property.

22 (2) Any penalties collected shall be remitted by the parish or
23 municipality to the Louisiana Blighted Property Reclamation Revolving Loan
24 Fund as provided for in R.S. 33:4770.

25 E. For the purposes of this Subpart "blighted building or structure"
26 shall mean any building or structure which meets any or all of the following
27 criteria:

28 (a) The building or structure is likely to partially or completely collapse
29 because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii)

1 the removal, movement or instability of any portion of the ground necessary for
2 the purpose of supporting such building or structure; (iv) the deterioration,
3 decay or inadequacy of its foundation; or (v) any other causes.

4 (b) The building or structure is likely to cause sickness or disease when
5 sought to be used for its intended purpose because of dilapidation, decay,
6 damage, faulty construction or arrangement, inadequate light, air or sanitation
7 facilities, or otherwise is determined by any code enforcement officer or the
8 building or structure inspector or his assignee to be unsanitary or unfit for
9 human habitation.

10 (c) It has been determined by the fire marshal chief that the building or
11 structure is a fire hazard because of obsolescence, dilapidated conditions,
12 deterioration, damage, lack of sufficient fire-resistive construction, faulty
13 electric wiring, gas connections or heating apparatus, or other causes as
14 provided in R.S. 33:4770.6.

15 (d) It has been determined that any portion of the building or structure
16 remaining on a site, after the demolition or destruction of such building or
17 structure, or whenever an unsecured building or structure has been abandoned
18 so as to constitute the building or structure or portion thereof a hazard to the
19 public.

20 (e) Whenever the building or structure, exclusive of the foundation,
21 shows thirty-three percent or more damage or deterioration of its supporting
22 member or members, or fifty percent or more of damage or deterioration of its
23 non-supporting members, enclosing or outside walls or coverings.

24 (f) Whenever the building or structure has been so damaged by fire,
25 wind, flood or other natural occurrence, or has become so dilapidated or
26 deteriorated as to become an attractive nuisance to children or a harbor for
27 vagrants.

28 (g) Whenever any building or structure is in such a condition as to be
29 deemed or declared a public nuisance by a court of competent jurisdiction.

1 **(h) Whenever an owner keeps the doors and windows of a vacant**
 2 **building or structure open or the building or structure is deficient and lacking**
 3 **the appropriate number of walls in such a manner as to allow unauthorized**
 4 **entry.**

5 **(i) Whenever any building or structure lacks illumination, ventilation or**
 6 **sanitation facilities adequate to protect the health or safety of the occupants or**
 7 **the public.**

The original instrument was prepared by Michelle Ducharme. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy R. Wells.

DIGEST

Morrell (SB 265)

Proposed law authorizes the state fire marshal to declare any building or structure as blighted when such building or structure is in a dilapidated and dangerous condition that endangers the public welfare.

Proposed law defines "blighted building or structure" as any building or structure which meets any or all of the following criteria:

1. The building or structure is likely to partially or completely collapse because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building or structure; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other causes.
2. The building or structure is likely to cause sickness or disease when sought to be used for its intended purpose because of dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise is determined by any code enforcement officer or the building or structure inspector or his assignee to be unsanitary or unfit for human habitation.
3. It has been determined by the fire marshal chief that the building or structure is a fire hazard because of obsolescence, dilapidated conditions, deterioration, damage, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other causes as provided in R.S. 33:4770.6.
4. It has been determined that any portion of the building or structure remaining on a site, after the demolition or destruction of such building or structure, or whenever an unsecured building or structure has been abandoned so as to constitute the building or structure or portion thereof a hazard to the public.
5. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent or more of damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
6. Whenever the building or structure has been so damaged by fire, wind, flood or other natural occurrence, or has become so dilapidated or deteriorated as to become an

attractive nuisance to children or a harbor for vagrants.

7. Whenever any building or structure is in such a condition as to be deemed or declared a public nuisance by a court of competent jurisdiction.
8. Whenever an owner keeps the doors and windows of a vacant building or structure open or the building or structure is deficient and lacking the appropriate number of walls in such a manner as to allow unauthorized entry.
9. Whenever any building or structure lacks illumination, ventilation or sanitation facilities adequate to protect the health or safety of the occupants or the public.

Proposed law requires the state fire marshal to prepare a written report declaring such property as blighted and to serve notice to the owner of such property, along with the written report and a requirement for the owner to publish an announcement listing why such building or structure is blighted and the date when such building will be repaired and no longer considered dangerous to the public. Proposed law provides the procedure for serving notice to the owner.

Proposed law requires such announcement to be published, without cost to the parish or municipality, in the official journal of the parish or municipality where the property is located on two separate days within 90 days of receipt of the notice and written report by the state fire marshal.

Proposed law subjects the owner to a \$50 per day penalty, not to exceed \$5000 per property for failure to publish the required announcement.

Present law creates the Louisiana Blighted Property Reclamation Revolving Loan Fund and allows any parish or municipality to obtain funding from the fund for the purposes of maintenance, repair, removal, or demolition of dangerous structures pursuant to the law governing the removal of dangerous structures in the parishes and municipalities.

Proposed law requires that any penalties collected be remitted by the parish or municipality to the Louisiana Blighted Property Reclamation Revolving Loan Fund as provided for in present law.

Effective August 1, 2012.

(Adds R.S. 40:1651 and 1652)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Removes provisions of proposed law relative to the authority of the state fire marshal to demolish, remove, or repair any dilapidated and dangerous building or structure.
2. Removes provisions of proposed law relative to certain notice to owners, hearings, and notices filed with the recorder of mortgages on the demolition or removal of any dilapidated and dangerous building or structure.
3. Removes provisions of proposed law relative to liens and privileges for costs of demolitions and removal of buildings.

4. Adds provisions requiring an owner to publish an announcement on such blighted property.
5. Adds civil penalties for failure of owners of such blighted property to publish the required announcement and for the disposition of any fines collected.

Senate Floor Amendments to engrossed bill

1. Removes authority of state fire marshal to condemn certain properties.
2. Authorizes the state fire marshal to declare certain properties as "blighted".
3. Defines "blighted building or structure".
4. Increases the time of the announcement publication from 60 to 90 days within receipt of the notice and written report.