

# SENATE BILL No. 514

September 6, 2017, Introduced by Senators YOUNG and JONES and referred to the Committee on Local Government.

A bill to provide for court-appointed conservators to rehabilitate, close, seal, demolish, operate, manage, lease, or sell abandoned, blighted or unsafe structures or parcels that violate municipal ordinances; to provide for the ownership interest of conservators in such property for certain purposes; and to provide for financing and the creation and priority of liens.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "abandoned real property conservatorship act".

3           Sec. 2. As used in this act:

4           (a) "Actively marketed" means that a "for sale" sign has been  
5 placed on the property with accurate contact information and the  
6 owner has done 1 or more of the following:

1           (i) Engaged the services of a real estate broker licensed  
2 under article 25 of the occupational code, 1980 PA 299, MCL  
3 339.2501 to 339.2518, to place the property in a multiple listing  
4 service or otherwise market the property.

5           (ii) Placed weekly or more frequent advertisements for the  
6 property in print or electronic media.

7           (iii) Distributed printed advertisements for the property.

8           (b) "Building" means a residential, commercial, or industrial  
9 building or structure and the land appurtenant thereto, including a  
10 vacant parcel on which a building has been demolished.

11           (c) "Competent entity" means a person or entity, including a  
12 governmental unit, with experience in the rehabilitation of  
13 residential, commercial, or industrial buildings and the ability to  
14 provide or obtain the necessary financing for such rehabilitation.

15           (d) "Conservator's fee" means a fee equal to the greatest of  
16 the following:

17           (i) An amount equal to \$2,500.00, adjusted upward each year by  
18 2% of the previous year's amount.

19           (ii) A 20% markup of the other project costs as described in  
20 the final remedial plan and actually incurred.

21           (iii) 20% of the sale price of the building, if the building  
22 is sold pursuant to section 7 or 12.

23           (e) "Court" means a court of competent jurisdiction.

24           (f) "Final remedial plan" means a remedial plan as approved by  
25 the court under section 9.

26           (g) "Historic property" means a property that is any of the  
27 following:

1 (i) Listed on the National Register of Historic Places.

2 (ii) A contributing property in a district listed on the  
3 National Register of Historic Places.

4 (iii) Located in a local government ordinance historic  
5 district established by or pursuant to a local ordinance.

6 (h) "Immediate family" of an owner means a parent, spouse,  
7 child, brother, or sister of the owner.

8 (i) "Municipal code" means a building, housing, property  
9 maintenance, fire, health, or other public safety ordinance adopted  
10 by a city, village, or township.

11 (j) "Nonprofit corporation" means a nonprofit corporation that  
12 has, as 1 of its purposes, remediation of blight or community  
13 development activities, including economic development, historic  
14 preservation, or the promotion or enhancement of affordable housing  
15 opportunities.

16 (k) "Owner" means the holder or holders of title to, or of a  
17 legal or equitable interest in, a building. Owner includes an heir,  
18 assignee, trustee, beneficiary, or lessee if the interest is a  
19 matter of public record.

20 (l) "Party in interest" means a person or entity who has a  
21 direct and immediate interest in a building, including any of the  
22 following:

23 (i) The owner.

24 (ii) A lienholder.

25 (iii) A resident who lives within 2,000 feet of the building  
26 or the owner of a business located within 2,000 feet of the  
27 building.

1           (iv) A nonprofit corporation that is located in the  
2 municipality where the building is located.

3           (v) A municipality or school district in which the building is  
4 located.

5           (m) "Project costs" means costs for rehabilitation and  
6 operation or demolition, including reasonable nonconstruction costs  
7 associated with the project, including, but not limited to,  
8 environmental remediation, architectural, engineering, and legal  
9 fees and costs, permits, financing fees, and a conservator's fee.

10          (n) "Rehabilitation" means construction, stabilization,  
11 improvement, and repair.

12          (o) "Remedial plan" means a plan described in section 9(3).

13          (p) "Substantial rehabilitation" means rehabilitation to which  
14 1 or both of the following apply:

15           (i) The cost of rehabilitation exceeds 15% of the property's  
16 value after completion of all rehabilitation.

17           (ii) More than 1 of the following is being replaced:

18           (A) Roof structure.

19           (B) Ceiling.

20           (C) Wall or floor structure.

21           (D) Foundation.

22           (E) Plumbing system.

23           (F) Heating and air-conditioning system.

24           (G) Electrical system.

25          Sec. 3. (1) A party in interest may file a petition for the  
26 appointment of a conservator to take possession and to undertake  
27 the rehabilitation of a building. The petition shall be filed in a

1 court in the county in which the building is located. The  
2 proceeding on the petition is an action against the property,  
3 rather than the owner.

4 (2) The petition submitted to the court shall include a sworn  
5 statement that, to the best of the petitioner's knowledge, the  
6 property meets the conditions for conservatorship set forth in  
7 section 4(4). The petition shall also include, to the extent  
8 available to the petitioner after reasonable efforts to obtain such  
9 information, all of the following:

10 (a) A copy of any citation charging the owner with a violation  
11 of a municipal code or declaring the building to be a public  
12 nuisance under a municipal code.

13 (b) A recommendation as to which person or entity should be  
14 appointed conservator.

15 (c) A preliminary plan with initial estimates for project  
16 costs to bring the building into compliance with all municipal  
17 codes for the area in which the building is located and anticipated  
18 funding sources.

19 (d) A schedule of liens on the building.

20 (3) The petitioner shall file a notice of lis pendens in the  
21 office of the register of deeds for the county in which the  
22 building is located.

23 (4) Notice of filing of the petition shall be provided as  
24 follows:

25 (a) Upon filing the petition with the court, the petitioner  
26 shall notify the owner of the building, all political subdivisions  
27 in which the building is located, all municipal authorities known

1 to have provided service to the building, and all lienholders of  
2 the filing. The notice shall be given by registered or certified  
3 mail to the last known address of each person and by posting a copy  
4 of the notice on the building.

5 (b) If the registered or certified mail is returned with  
6 notation by the postal authorities that the recipient refused to  
7 accept the mail, the petitioner shall mail a copy to the recipient  
8 at the same address by ordinary mail with the return address of the  
9 petitioner appearing on the envelope.

10 (c) Service by ordinary mail is considered complete if the  
11 mail is not returned to the petitioner within 30 days after  
12 mailing.

13 (d) If the registered or certified mail is returned with the  
14 notation by the postal authorities that it was unclaimed, the  
15 notice shall be personally served.

16 (e) If personal service is not made after 2 attempts, the  
17 petitioner shall mail the petition to the recipient at the same  
18 address by ordinary mail with the return address of the petitioner  
19 appearing on the envelope. The service by ordinary mail is  
20 considered complete if the mail is not returned to the petitioner  
21 within 15 days after the mailing.

22 (5) The petition may include 1 or more adjacent buildings in a  
23 single action if both of the following apply:

24 (a) The building that is the primary subject of the action is  
25 owned by the same owner as the adjacent building.

26 (b) The buildings are or were used for a single or  
27 interrelated function.

1           Sec. 4. (1) The court shall hold a hearing within 60 days of  
2 receipt of a petition under section 3 and shall render a decision  
3 no later than 30 days after completion of the hearing.

4           (2) In the manner provided in section 3(4), the petitioner  
5 shall notify the owner and each lienholder of the hearing date and  
6 that the owner and lienholders may petition to intervene in the  
7 action.

8           (3) A party in interest may intervene in the proceeding and be  
9 heard with respect to the petition, the requested relief, or any  
10 other matter that may come before the court in connection with the  
11 proceeding. At the hearing, any party in interest may present  
12 evidence to support or contest the petition, including, but not  
13 limited to, the schedule of liens.

14           (4) The court may appoint a conservator if all of the  
15 following apply as of the date of filing the petition:

16           (a) The building was not legally occupied at any time during  
17 the previous 12 months.

18           (b) The owner fails to present compelling evidence that the  
19 owner actively marketed the property during the preceding 60-day  
20 period and made a good-faith effort to sell the property at a price  
21 that reflects the circumstances and market conditions.

22           (c) The property is not subject to a pending foreclosure  
23 action by an individual or nongovernmental entity.

24           (d) The owner fails to establish that the owner has acquired  
25 the property within the preceding 180 days. For the purposes of  
26 this subdivision, acquisition does not include either of the  
27 following circumstances:

1           (i) The prior owner is a member of the immediate family of the  
2 current owner, unless the transfer of title results from the death  
3 of the prior owner.

4           (ii) The current owner is a corporation, partnership, or other  
5 entity in which the prior owner or the immediate family of the  
6 prior owner has an interest in excess of 5%.

7           (iii) The prior owner is a corporation, partnership, or other  
8 entity in which the current owner or the immediate family of the  
9 current owner has an interest in excess of 5%.

10           (e) The court finds 3 or more of the following:

11           (i) The building is a public nuisance.

12           (ii) The building is in need of substantial rehabilitation and  
13 no significant rehabilitation has taken place during the previous  
14 12 months.

15           (iii) The building is unfit for human habitation, occupancy,  
16 or use.

17           (iv) The condition and vacancy of the building materially  
18 increase the risk of fire to the building and to adjacent  
19 properties.

20           (v) The building is subject to unauthorized entry leading to  
21 potential health and safety hazards and 1 or both of the following  
22 apply:

23           (A) The owner has failed to take reasonable and necessary  
24 measures to secure the building.

25           (B) The municipality has secured the building in order to  
26 prevent such hazards after the owner has failed to do so.

27           (vi) The building is an attractive nuisance to children,

1 including, but not limited to, the presence of abandoned wells,  
2 shafts, basements, excavations, and unsafe structures.

3 (vii) The presence of vermin or the accumulation of debris,  
4 uncut vegetation, or physical deterioration of the building has  
5 created a potential health and safety hazard and the owner has  
6 failed to take reasonable and necessary measures to eliminate the  
7 hazard.

8 (viii) The dilapidated appearance or other condition of the  
9 building negatively affects the economic well-being of residents  
10 and businesses in close proximity to the building, including  
11 decreases in property value and loss of business, and the owner has  
12 failed to take reasonable and necessary measures to remedy  
13 appearance or the condition.

14 (ix) The building is an attractive nuisance for illicit  
15 purposes, such as prostitution, drug use, or vagrancy.

16 Sec. 5. (1) If the court appoints a conservator, the court  
17 shall also certify the schedule of liens and grant such other  
18 relief as may be just and appropriate. The certification is binding  
19 with respect to all liens, including municipal liens, arising or  
20 attaching to the property before the date the petition was filed.

21 (2) In appointing a conservator, the court shall do all of the  
22 following:

23 (a) Give first consideration for appointment as conservator to  
24 the most senior nongovernmental lienholder on the property. If the  
25 senior lienholder is found to be not competent or declines the  
26 appointment, the court may appoint a nonprofit corporation or other  
27 competent entity.

1 (b) Consider any recommendations contained in the petition or  
2 otherwise presented by a party in interest.

3 (c) Give preference to the appointment of a nonprofit  
4 corporation or governmental unit over an individual.

5 (3) A conservator may be removed by the court at any time upon  
6 the request of the conservator or upon a showing by a party to the  
7 action that the conservator is not carrying out the conservator's  
8 responsibilities under this act.

9 Sec. 6. (1) If the court finds after a hearing that the  
10 conditions for conservatorship set forth in section 4(4) have been  
11 established, but the owner represents that the conditions described  
12 in section 4(4)(e) will be remedied in a reasonable period, the  
13 court may enter an order providing that, if those conditions are  
14 not remedied by the owner by a specific date or that other  
15 specified remedial activities have not occurred by a specific date  
16 or dates, an order granting the relief requested in the petition  
17 shall be entered.

18 (2) An order under subsection (1) allowing the owner to remedy  
19 the conditions shall require the owner to post a bond in the amount  
20 of the project costs estimated in the petition as a condition to  
21 retaining possession of the building.

22 Sec. 7. (1) Upon a finding that the petition states conditions  
23 for conservatorship or if the owner elects either to remedy all  
24 violations and nuisance or emergency conditions or to sell the  
25 property subject to the conservatorship, the owner shall reimburse  
26 the petitioner for all costs incurred by the petitioner in  
27 preparing and filing the petition under section 3 and the

1 conservator's fee.

2 (2) The conservator may file a lien against the property in an  
3 amount based on the costs incurred during the conservatorship,  
4 including, but not limited to, project costs and court costs. The  
5 lien amount may be adjusted from time to time.

6 Sec. 8. (1) The conservator shall promptly take possession of  
7 the building and other property subject to the conservatorship.

8 (2) The conservator has all powers and duties necessary or  
9 desirable for the efficient rehabilitation of the building to bring  
10 it into compliance with all municipal codes and fulfill the  
11 conservator's responsibilities under this act. Those powers and  
12 duties include, but are not limited to, the power to do any of the  
13 following:

14 (a) Take possession and control of the building and any  
15 personal property of the owner used with respect to the building,  
16 including any bank or operating account for the building.

17 (b) Collect outstanding accounts receivable.

18 (c) Pursue all claims or causes of action of the owner with  
19 respect to the building and all other property subject to the  
20 conservator.

21 (d) Contract for the rehabilitation of the building. The  
22 contracts shall be appropriately documented and included in the  
23 reports and accounting that the conservator is required to submit  
24 or file under this act. The conservator shall make a reasonable  
25 effort to solicit 3 bids for contracts valued at more than  
26 \$25,000.00, except when the contractor provides or obtains  
27 financing for the conservatorship.

1 (e) Borrow money and incur indebtedness under section 11.

2 (f) Contract and pay for the maintenance and restoration of  
3 utilities to the building.

4 (g) Purchase materials, goods, and supplies to accomplish  
5 repairs and operate the building.

6 (h) With the court's approval, enter into new leases for a  
7 period not to exceed 1 year.

8 (i) Affirm, renew, or enter into contracts providing for  
9 insurance coverage on the building.

10 (j) Engage and pay legal, accounting, appraisal, and other  
11 professionals to aid the conservator in the conduct of the  
12 conservatorship.

13 (k) If the building has been designated a historic property,  
14 consult with the municipality's historical commission or board of  
15 historical and architectural review, a local historic preservation  
16 organization or, in the absence thereof, the state historic  
17 preservation office for recommendations on preserving the  
18 property's historic character. If the building has been designated  
19 a historic property, the conservator shall restore architectural  
20 features that define the property's historic character. If  
21 demolition of a property in a historic district is necessary, the  
22 conservator shall design any replacement construction on the site  
23 to comply with applicable standards under current law.

24 (l) Apply for and receive public grants or loans.

25 (m) Sell the property as provided in section 12.

26 (n) Exercise all authority that an owner of the building would  
27 have to improve, maintain, operate, and manage the building.

1           (3) While in possession of the building, the conservator shall  
2 do all of the following:

3           (a) Maintain, safeguard, and insure the building.

4           (b) Apply all revenue generated from the building consistent  
5 with this act.

6           (c) Develop a remedial plan.

7           (d) Implement the final remedial plan.

8           (e) Submit a status report to the court and parties to the  
9 action annually or more frequently as the court may determine  
10 appropriate. The status report shall include all of the following:

11           (i) A copy of any contract entered into by the conservator to  
12 rehabilitate the building.

13           (ii) An account of the disposition of all revenue generated  
14 from the building.

15           (iii) An account of all costs.

16           (iv) The status of developing the remedial plan and  
17 implementing the final remedial plan pursuant to this subsection.

18           (v) A description of any proposed actions to be taken in the  
19 next 6 months to rehabilitate the building.

20           Sec. 9. (1) Within 120 days after the appointment of a  
21 conservator, the court shall conduct a hearing on a remedial plan.

22           (2) Thirty days before the date of the hearing under  
23 subsection (1), the conservator shall submit the remedial plan to  
24 the court and to all parties to the action.

25           (3) The remedial plan shall include a cost estimate, a  
26 financing plan, and either a description of the work to be done for  
27 the rehabilitation of the building or, if rehabilitation is not

1 feasible, a proposal for the closing, sealing, and demolition of  
2 the building. The remedial plan shall conform with all municipal  
3 codes and historic preservation requirements. The final remedial  
4 plan shall describe how the conservator will remedy the conditions  
5 under section 4(4)(e) on the basis of which the petition was  
6 granted or, if remediation is not feasible, shall provide for  
7 alternatives, including the closing, sealing, or demolition of all  
8 or part of the building.

9 (4) At the hearing, all parties may comment on the remedial  
10 plan, and the court shall take all comments into consideration when  
11 assessing the feasibility of the remedial plan and the proposed  
12 financing. The court shall give reasonable regard to the  
13 conservator's determination of the scope and necessity of work to  
14 be done in approving the remedial plan and in approving the costs  
15 of conservatorship and sale of the property.

16 (5) Within 15 days of the hearing, the court shall issue an  
17 order approving the remedial plan or requiring that the remedial  
18 plan be amended.

19 (6) If the court order requires that the remedial plan be  
20 amended, the order shall set a hearing date on the amendment within  
21 60 days from the date of the order.

22 (7) Upon the implementation of the final remedial plan, the  
23 conservator shall file with the court a full accounting of all  
24 income and expenditures during the period of time it took to  
25 implement the final remedial plan.

26 Sec. 10. (1) A conservator has an ownership interest in and  
27 legal control of the property for the purposes of filing plans with

1 public agencies and boards, seeking and obtaining construction  
2 permits and other approvals, and submitting applications for  
3 financing or other assistance to public or private entities.

4 (2) Notwithstanding the appointment of a conservator under  
5 section 4, this act does not relieve the owner of any civil or  
6 criminal liability or of any obligation to pay taxes, municipal or  
7 private liens, or municipal or other fees or charges, whether  
8 incurred before or after the appointment of the conservator and  
9 such liability is not transferred to the conservator.

10 (3) Notwithstanding any law to the contrary, the conservator  
11 is not liable for any environmental damage to the building that  
12 existed before the appointment of the conservator.

13 Sec. 11. (1) A conservator may borrow money or incur  
14 indebtedness to cover the project costs or to otherwise fulfill the  
15 conservator's obligations under this act.

16 (2) To facilitate the borrowing of funds for the project  
17 costs, the court may grant priority status to a lien given to  
18 secure payment on a debt incurred for purposes authorized under  
19 this act if both of the following apply:

20 (a) The conservator sought to obtain the necessary financing  
21 from the senior, nongovernmental lienholder, but the lienholder  
22 declined to provide financing for reasonable project costs on  
23 reasonable terms.

24 (b) Lien priority is necessary to induce another lender to  
25 provide financing on reasonable terms.

26 (3) If the senior lienholder agrees to provide financing for  
27 project costs, any funds loaned to cover the project costs are

1 added to the senior lienholder's preexisting first lien.

2 (4) The court may approve financing for project costs, the  
3 terms of which may include deferred repayment and use restrictions.  
4 The terms of the financing may remain with the property after the  
5 conservatorship has ended and be assumed by any of the following:

6 (a) The owner, if the owner regains possession of the property  
7 under section 13.

8 (b) A buyer who takes title under section 12.

9 Sec. 12. (1) If a building subject to conservatorship is sold  
10 by the owner or foreclosed upon by a lienholder or if any interest  
11 therein is transferred, the sale, foreclosure, or transfer is  
12 subject to the conservatorship.

13 (2) Upon application of the conservator, the court may order  
14 the sale of the property if the court finds all of the following:

15 (a) Notice and an opportunity to provide comment to the court  
16 was given to each record owner of the building and each lienholder.

17 (b) The conservator has been in control of the building for  
18 more than 90 days and the owner has not successfully petitioned to  
19 terminate the conservatorship under section 13.

20 (c) The terms and conditions of the sale are acceptable to the  
21 court, and the buyer has a reasonable likelihood of maintaining the  
22 property.

23 (3) The court may authorize the conservator to sell the  
24 building free and clear of all claims and liens, if the proceeds of  
25 the sale will be distributed pursuant to subsection (4) at  
26 settlement. If the proceeds of the sale are insufficient to pay all  
27 existing claims and liens, the proceeds shall be distributed

1 according to the priorities set forth in subsection (4) and all  
2 unpaid claims and liens that have not been assumed under section  
3 11(4) are extinguished.

4 (4) The proceeds of the sale shall be applied to the following  
5 in the following order of priority:

6 (a) All court costs.

7 (b) Liens of this state, liens for unpaid property taxes, and  
8 properly recorded municipal liens.

9 (c) Costs of sale.

10 (d) Principal and interest on any borrowing or incurrence of  
11 indebtedness granted priority over existing liens under section  
12 11(2).

13 (e) Costs incurred by the petitioner in preparing and filing  
14 the petition under section 3.

15 (f) Costs, other than costs of sale, for which the lien  
16 authorized under section 7(2) was filed.

17 (g) Valid liens in accordance with their priority.

18 (h) Any unpaid obligations of the conservator.

19 (i) The owner.

20 (5) If the owner cannot be located, any proceeds from the sale  
21 that belong to the owner are presumed to be unclaimed and are  
22 subject to the uniform unclaimed property act, 1995 PA 29, MCL  
23 567.221 to 567.265.

24 Sec. 13. Upon request of a party in interest or the  
25 conservator, the court may order the termination of the  
26 conservatorship if it determines any of the following:

27 (a) All of the following apply:

1           (i) The conditions that were the grounds for the petition and  
2 all other municipal code violations have been remedied.

3           (ii) The obligations and rehabilitation and other costs of the  
4 conservatorship, including the conservator's fee, have been fully  
5 paid or provided for.

6           (iii) The purposes of the conservatorship have been fulfilled.

7           (b) All of the following apply:

8           (i) The owner or lienholder has requested the conservatorship  
9 be terminated.

10           (ii) The conditions that constituted grounds for the petition  
11 will be promptly remedied.

12           (iii) The obligations and rehabilitation and other costs of  
13 the conservatorship, including the conservator's fee, have been  
14 fully paid or provided for.

15           (iv) The purposes of the conservatorship have been fulfilled.

16           (c) The building has been sold by the conservator and the  
17 proceeds distributed under section 12(4).

18           (d) The conservator has been unable, after diligent effort, to  
19 present a remedial plan that could be approved under section 9 or  
20 to implement a final remedial plan or, for any reason, the purposes  
21 of the conservatorship cannot be fulfilled.

22           Sec. 14. (1) This act does not apply to commercial and  
23 residential buildings, structures, or land owned by or held in  
24 trust for the federal government and regulated under the United  
25 States housing act of 1937, 42 USC 1437 to 1437bbb-9, and  
26 regulations promulgated under that act.

27           (2) This act does not apply if the property owner has vacated

1 the property to perform military service in time of war or armed  
2 conflict or to assist with relief efforts during a declared federal  
3 or state emergency as a member of the United States Armed Forces or  
4 its reserve component.

5 Enacting section 1. This act takes effect 90 days after the  
6 date it is enacted into law.