

2018 Regular Session

SENATE BILL NO. 405

BY SENATOR PRICE

PRESCRIPTION. Provides for the acquisition of blighted property in certain municipalities.  
(gov sig)

1 AN ACT

2 To enact R.S. 9:5633.1, relative to three-year acquisitive prescription; to provide for  
3 acquisition of blighted property in certain municipalities; to provide for the filing of  
4 certain affidavits and judgments; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5633.1 is hereby enacted to read as follows:

7 **§5633.1. Blighted property in certain municipalities; acquisitive prescription**

8 **A. In an incorporated municipality that is under a home rule charter,**  
9 **having a population between six thousand six hundred fifty and seven thousand**  
10 **six hundred fifty, according to the latest federal decennial census, ownership of**  
11 **an immovable may be acquired by the prescription of three years without the**  
12 **need of just title or possession in good faith. The requirements for the**  
13 **acquisitive prescription of three years are as follows:**

14 **(1) The land and all improvements thereon shall be located in the**  
15 **municipality and shall have been declared or certified blighted after an**  
16 **administrative hearing, pursuant to R.S. 13:2575 or 2576.**

17 **(2) The following documents in Subparagraphs (a) and (c) of this**

1 Paragraph shall be filed in the mortgage and conveyance records for the parish  
2 where the immovable property is situated:

3 (a) An affidavit by the possessor of the immovable property stating the  
4 name and address of the possessor, stating the intention of the possessor to take  
5 corporeal possession of the immovable property for the possessor's own account  
6 in accordance with this Section, stating that such corporeal possession shall  
7 commence no sooner than fourteen calendar days after the date of filing of the  
8 affidavit and giving a short legal description of the immovable property  
9 intended to be possessed.

10 (b) An owner of immovable property having common boundaries with  
11 the immovable shall have a first right of possession to such immovable. In the  
12 event more than one owner of immovable property having common boundaries  
13 with the immovable files the resolution and affidavit as described in  
14 Subparagraph (a) of this Paragraph, the owner of property having common  
15 boundaries who files first, shall secure the first right to assert possession of the  
16 immovable. An owner of immovable property having common boundaries with  
17 the immovable has the right to file within fourteen days of the municipality  
18 passing the resolution. After fourteen days have elapsed, any interested party  
19 may avail himself of the provisions of this Section.

20 (c) There shall be annexed to and filed with the affidavit described in  
21 Subparagraph (a) of this Paragraph a certified copy of the judgment, order,  
22 declaration, determination, resolution, or ordinance of the municipality,  
23 certified by the municipality as a true copy, hereinafter referred to as  
24 "resolution" declaring the property as an unoccupied premises, and as either  
25 blighted, neglected, littered, abandoned, constituting a public nuisance, in a  
26 dangerous and dilapidated condition, in a state of disrepair, overgrown by  
27 weeds or grass, or on which junked motor vehicles are parked.

28 (3) Within thirty days after the affidavit and resolution are filed as  
29 described in Paragraph (2) of this Subsection, the resolution and affidavit shall

1 be sent by certified mail, return receipt requested, to the owner at the address  
2 shown on the tax rolls of the assessor and to all parties having an interest in the  
3 immovable property, including but not limited to all mortgage holders, as  
4 shown by the conveyance and mortgage records, at the address of each party as  
5 shown in those records. Failure to adequately comply with this Paragraph shall  
6 cause the forfeiture of any and all rights of the possessor granted in this Section.

7 (4) Within one month after the resolution and affidavit are filed as  
8 described in Paragraph (2) of this Subsection, a notice shall be affixed to at least  
9 one prominent location on the immovable, including but not limited to a front  
10 door, front gate or entry, or next to a mailbox. The notice shall state the name  
11 and address of the possessor; that the possessor intends to take corporeal  
12 possession of the immovable for the possessor's own account; and the date that  
13 the notice is affixed.

14 (5) The possessor shall take corporeal possession peaceably, and  
15 commence within a reasonable time, not to exceed forty-five days, to maintain  
16 and repair the property, and shall continue with reasonable diligence to do so  
17 and improving its condition, until the property is no longer blighted or in  
18 disrepair. The municipality shall have the right to determine if this obligation  
19 of the possessor is being completed.

20 (6) All ad valorem taxes, interest, and penalties due and payable shall be  
21 paid in full by said possessor.

22 B. If, after notice to the possessor and a contradictory hearing, the  
23 municipality determines that the possessor is not complying with the possessor's  
24 obligation set forth in Paragraphs (A)(5) and (A)(6) of this Section or should any  
25 possessor seeking to acquire pursuant to this Section fail to satisfy any of the  
26 requisites for acquisitive prescription listed in Subsection A of this Section, then  
27 the right to possession, the running of prescription, and the effect of the  
28 affidavits described in this Section shall cease, and all rights which may have  
29 accrued thereunder shall be terminated, except as specifically set forth in this

1            Section.

2            C. The possessor shall not demolish any structure on the immovable  
3            unless the municipality finds the structure to be a public nuisance and  
4            authorizes the demolition.

5            D. If the possessor has met the requisites listed in Subsection A of this  
6            Section, the possessor shall not be liable to the owner of the immovable for any  
7            tortious act or any civil claim or cause of action related to the possession of the  
8            possessor which may have occurred on or after the date that corporeal  
9            possession was taken, including but not limited to trespass and demolition of the  
10           improvements, and such possessor shall not be subject to criminal prosecution  
11           for trespass upon the immovable or for demolition of the improvements.  
12           Nothing provided in this Section shall prevent the owner from instituting and  
13           prosecuting a real action against the possessor pursuant to Code of Civil  
14           Procedure Article 3651 et seq.

15           E.(1) In the event the owner is successful in bringing a real action against  
16           the possessor pursuant to Code of Civil Procedure Article 3651 et seq., the  
17           owner shall reimburse the possessor for all monies advanced by the possessor  
18           for attorney fees and costs, tax statements or researches, mortgage, or  
19           conveyance certificates, title abstracts, filing fees, postage, copies, printing, the  
20           payment of satisfaction of mortgages, judgments, liens, and other  
21           encumbrances, plus costs and expenses for cancellation thereof, and for all ad  
22           valorem taxes, interest, and penalties paid by the possessor on the immovable,  
23           the value of the improvements made or done on the immovable by the possessor  
24           after the date that corporeal possession was taken, and the cost or value of any  
25           cleaning, clearing, cutting, repairs, rehabilitation, maintenance, removal, work,  
26           or demolition to the extent not otherwise included in the value of the  
27           improvements and for any other reasonable costs incurred or value of work  
28           done by the possessor.

29           (2) In addition to the foregoing reimbursements, all monies advanced by

1 the possessor shall earn, and the possessor shall be entitled to receive interest,  
2 at the Wall Street Journal prime rate.

3 (3) To prove the cost or value of cleaning, clearing, cutting, repairs,  
4 rehabilitation, maintenance, removal, work, or demolition made or done on the  
5 immovable and of any times set forth in Paragraph (1) of this Subsection, the  
6 possessor shall provide proof of payment from the persons who performed the  
7 work or from whom the materials were purchased or affidavits establishing the  
8 hourly rate generally charged for such work in the municipality in which the  
9 immovable subject to this Section is located and the number of hours spent on  
10 work with reasonable itemization. In the event the owner contests the validity  
11 of such documentation, the municipality shall appoint a person to determine the  
12 value or cost of said items.

13 F. If the possessor has met the requirements set forth in Paragraphs  
14 (A)(2), (3), and (4) of this Section, all expenses and monies for the matters set  
15 forth in Subsection E of this Section, that is paid or advanced by or owed to the  
16 possessor, shall be secured by a first lien and privilege on the immovable  
17 property described in the affidavit filed under Subparagraph (A)(2)(a) of this  
18 Section, which lien and privilege shall rank based on the date of recording in the  
19 mortgage records, the affidavit, and resolution as required in Subparagraphs  
20 (A)(2)(a) and (c) of this Section, and the lien and privilege shall be inferior to all  
21 previously recorded mortgages, privileges, liens, and judgments. Such lien and  
22 privilege shall be in favor of the possessor and, as such, it may be encumbered  
23 or assigned to secure any loan made to the possessor for the purpose of  
24 financing the acquisition of the immovable property subject to the acquisitive  
25 prescription provided for in this Section or for the cleaning, clearing, cutting,  
26 repairs, maintenance, rehabilitation work, demolition, or for the construction  
27 of improvements on or to the immovable property.

28 G. Notwithstanding the provisions of this Section, no recorded mortgage  
29 privilege, lien, or judgment encumbering the subject property shall be

1 extinguished or impaired by the accrual of acquisitive prescription under this  
2 Section, and any holder of a mortgage, privilege, lien or judgment, encumbering  
3 the subject property may enforce its rights through foreclosure, including the  
4 seizure and sale of the subject property, as though acquisitive prescription had  
5 not accrued.

6 H. The provisions governing acquisitive prescription of ten years and of  
7 thirty years apply to the prescription of three years provided in this Section to  
8 the extent that their application is consistent with the prescription of three  
9 years.

10 I. Notwithstanding the provisions of Subsection A of this Section, in the  
11 event that the possessor rehabilitates or constructs a residential or commercial  
12 structure, ownership of the immovable may be acquired by prescription without  
13 the need of just title or possession in good faith on the date that a certificate of  
14 use and occupancy shall be obtained by the possessor. For the purpose of this  
15 Subsection, "residential or commercial structure" shall not include garages,  
16 sheds, barns, or other outbuildings. Notwithstanding the provisions of this  
17 Subsection, no mortgage, privilege, lien or judgment encumbering the subject  
18 property shall be extinguished or impaired by the accrual of acquisitive  
19 prescription under this Section, and any holder of a mortgage, privilege, lien or  
20 judgment, encumbering the subject property may enforce its rights through  
21 foreclosure, including the seizure and sale of the subject property, as though  
22 acquisitive prescription had not accrued.

23 J. In the event the possessor does not comply with the provisions of  
24 Subsection A of this Section, or if a termination described in Subsection B of  
25 this Section occurs, any interested party required to be approved by the  
26 municipality may file in the mortgage records of the parish, a certified copy of  
27 the notice of termination described in Subsection B of this Section, which shall  
28 be conclusive evidence of the failure of the possessor to comply with the  
29 requirements necessary to acquire the immovable property by the prescription

1 provided for in this Section and shall act to nullify the filed affidavit of intent  
 2 to possess described in Paragraph (A)(2) of this Section, as if the affidavit was  
 3 never filed, without any need to have the affidavit canceled or released of  
 4 record, but the possessor retains all rights to preserve and recover the amounts  
 5 set forth in Paragraphs (E)(1) through (4) of this Section, and the lien and  
 6 privilege set forth in Subsection F of this Section.

7 K. The filing or depositing in the conveyance or mortgage records of any  
 8 forged or wrongfully altered affidavit, notice of resolution, termination,  
 9 certificate or proof, or mortgage certificate described in this Section, or  
 10 containing a false statement or false representation of a material fact, shall be  
 11 a felony pursuant to R.S. 14:133 and shall be actionable under Civil Code  
 12 Article 2315.

13 L. This Section shall be liberally construed to encourage and to protect  
 14 reasonable good faith work and expenditures by the possessor for cleaning,  
 15 clearing, cutting, maintenance, grass cutting, trash and debris removal, repairs,  
 16 rehabilitation, maintenance, demolition, and work on or to the subject property  
 17 or any structures therein.

18 Section 2. This Act shall become effective upon signature by the governor or, if not  
 19 signed by the governor, upon expiration of the time for bills to become law without signature  
 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 22 effective on the day following such approval.

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The original instrument was prepared by Xavier I. Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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	DIGEST	
SB 405 Reengrossed	2018 Regular Session	Price

Proposed law provides that in an incorporated municipality that is under a home rule charter and has a population between 6,650 and 7,650, according to the latest federal decennial census, upon satisfaction of the following requirements, ownership of an immovable may be acquired by the prescription of three years without need of just title or possession in good faith:

- (1) The land and all the improvements thereon shall be located in the municipality and shall have been declared or certified blighted after an administrative hearing, pursuant to R.S. 13:2575 or 2576.
- (2) Requires the following to be filed in the mortgage and conveyance records of the parish: an affidavit by the possessor stating the name and address of the possessor, stating the intention of the possessor to take corporeal possession of the immovable property for the possessor's own account, stating that such corporeal possession shall commence no sooner than 14 days from the date of filing of the affidavit and a short legal description of the immovable property intended to be possessed.
- (3) A copy of an order, declaration, determination, resolution or ordinance of the municipality, certified by the municipality as a true copy, declaring the property as blighted property.

Proposed law provides that an affidavit and resolution shall be mailed by certified mail to all interested parties, within 30 days of being filed.

Proposed law provides that a notice, stating the name and address of the possessor, possessor's intent to take possession of the immovable, and the date the notice was posted, shall be affixed on a prominent location on the immovable property within one month after an affidavit and resolution are filed.

Proposed law provides that all ad valorem taxes, interest, and penalties due and payable shall be paid in full.

Proposed law provides that possessor's rights shall be terminated for failure to comply with requirements of proposed law.

Proposed law provides that the possessor shall not demolish the immovable property without authority from the municipality.

Proposed law provides that the possessor shall not be held liable for a cause of action pertaining to the immovable property except causes of actions pursuant to C.Cr.P. Art. 3651. Further provides that the possessor shall not be held criminally responsible for trespass or demolition of the immovable property.

Proposed law provides for reimbursement to the possessor in the event the owner is successful in bringing a real action pursuant to C.Cr.P. Art. 3651. Further provides that possessor shall earn and receive interest at the Wall Street Journal prime rate on all monies paid in advance.

Proposed law provides that no recorded mortgage privilege, lien, or judgment encumbering the subject property shall be extinguished or impaired by the accrual of acquisitive prescription and any holder of a mortgage, privilege, lien, or judgment, encumbering the subject property may enforce its rights through foreclosure, including the seizure and sale of the property as though acquisitive prescription had not accrued.

Proposed law provides for certain procedures and requirements in determining cost or value made or done on the immovable property, for reimbursement purposes. Further provides that monies owed to possessor shall be secured by a first privilege lien, which shall be inferior to previously recorded mortgages, privileges, liens, and judgments.

Proposed law provides relative to ownership under acquisitive prescription.

Proposed law provides for criminal penalties for false documents filed under proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.



(Adds R.S. 9:5633.1)

Summary of Amendments Adopted by Senate

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

1. Adds that the failure to comply with notice of affidavit and resolution within 30 days shall result in forfeiture of any and all rights of possessor.
2. Adds that all monies advanced by possessor shall earn interest at the Wall Street Journal prime rate.
3. Adds provision that no liens, privileges, or judgments, shall be impaired by acquisitive prescription, and that liens shall be inferior to previously recorded instruments.

Senate Floor Amendments to engrossed bill

1. Makes technical corrections.