



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5201

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

See Index

Amends the Counties Code. Creates a mechanics lien demand and referral pilot program. Provides that in counties with a code hearing unit, a recorder may adopt rules establishing a mechanics lien demand and referral process for residential property after a public hearing. Provides that if a recorder determines that a mechanics lien recorded in the grantor's index or the grantee's index is a defective lien, the recorder shall serve a Notice of Defective Lien by certified mail to the last known address of the owner. Provides that if the owner or legal representative of the owner of the residential property confirms in writing that the lien is not involved in pending litigation, the owner may request that the recorder refer the defective mechanics lien to the county's code hearing department for adjudication or serve a Demand to Commence Suit forcing the lienholder to either file suit, respond to the Demand, or forfeit the lien. Provides how the recorder is to serve a Demand to Commence Suit or file a Notice of Referral with the code hearing unit. Provides that if the mechanics lien is referred to the code hearing unit, the code hearing unit will set a hearing and notify the applicable parties. Provides if the recorder shows by clear and convincing evidence that the lien in question is a defective lien, the administrative law judge shall rule the lien is forfeited and that the lien no longer affects the chain of title of the property in any way. Limits liability. Includes other provisions. Repeals the provisions on January 1, 2022. Further amends the Counties Code making conforming changes in county code hearing unit provisions. Amends the Mechanics Lien Act making conforming changes.

LRB100 18632 AWJ 33857 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by adding Sections
5 3-5010.8, 5-41065, and 5-43043 as follows:

6 (55 ILCS 5/3-5010.8 new)

7 Sec. 3-5010.8. Mechanics lien demand and referral pilot
8 program.

9 (a) Legislative findings. The General Assembly finds that
10 invalid and expired mechanics liens on residential property,
11 which cloud title to property, are a rapidly growing problem
12 throughout the State. In order to address the increase in
13 invalid and expired mechanics liens, and more specifically,
14 those that have not been released by the lienholder, a recorder
15 may establish a process to demand and refer mechanics liens
16 that have been recorded but not litigated or released in
17 accordance with the Mechanics Lien Act to an administrative law
18 judge for resolution or demand that the lienholder commence
19 suit or forfeit the lien.

20 (b) Definitions. As used in this Section:

21 "Demand to Commence Suit" means the written demand
22 specified in Section 34 of the Mechanics Lien Act.

23 "Mechanics lien", "contractor's lien", and "lien" are used

1 interchangeably in this Section.

2 "Notice of Defective Mechanics Lien" means the notice a
3 recorder gives to a property owner under subsection (d)
4 informing the property owner of a defective lien.

5 "Notice of Referral" means the document referring a
6 mechanics lien to a county's code hearing unit.

7 "Referral" or "refer" means a recorder's referral of a
8 mechanics lien to a county's code hearing unit to obtain a
9 determination as to whether a recorded mechanics lien is valid.

10 "Recording" and "filing" are used interchangeably in this
11 Section.

12 "Subcontractor" has the meaning given to that term in
13 subsection (a) of Section 21 of the Mechanics Lien Act.

14 (c) Establishment of a mechanics lien demand and referral
15 process. After a public hearing, a recorder in a county with a
16 code hearing unit may adopt rules establishing a mechanics lien
17 demand and referral process for residential property. A
18 recorder shall provide public notice 90 days before the public
19 hearing. The notice shall include a statement of the recorder's
20 intent to create a mechanics lien demand and referral process
21 and shall be published in a newspaper of general circulation in
22 the county and, if feasible, be posted on the recorder's
23 website and at the recorder's office or offices.

24 (d) Notice of Defective Lien. If a recorder determines,
25 after review by legal staff or counsel, that a mechanics lien
26 recorded in the grantor's index or the grantee's index is a

1 defective lien, the recorder shall serve a Notice of Defective
2 Lien by certified mail to the last known address of the owner.
3 The owner or legal representative of the owner of the
4 residential property shall confirm in writing his or her belief
5 that the lien is not involved in pending litigation and, if
6 there is no pending litigation, as verified and confirmed by
7 county court records, the owner may request that the recorder
8 proceed with a referral or serve a Demand to Commence Suit.

9 For the purposes of this Section, a recorder shall
10 determine a lien is a defective lien if the lien fits into one
11 of the following classifications:

12 (1) forfeited (if the property owner or parties were
13 served written notice and demand as required by Section 34
14 of the Mechanics Lien Act and there is a failure to
15 institute a suit to enforce a lien and a release of lien
16 has not been filed by the lienholder as provided in Section
17 35 of the Mechanics Lien Act);

18 (2) unenforced (if a suit to enforce the lien has not
19 been commenced by the lienholder or a counterclaim has not
20 been filed (within 2 years after the completion date of the
21 contract as specified in the recorded mechanics lien, the
22 completion of extra or additional work, or furnishing of
23 extra or additional material under Section 9 of the
24 Mechanics Lien Act); if a completion date is not specified
25 in the recorded lien, then, as provided under Section 6 of
26 the Mechanics Lien Act: (A) if the work is done or material

1 is furnished within 3 years from the commencement of the
2 work or the commencement of furnishing the material in the
3 case of work done or material furnished as to residential
4 property; or (B) if no later than 5 years from the
5 commencement of the work or the commencement of furnishing
6 the material in the case of work done or material furnished
7 as to any other type of property);

8 (3) flawed claim for lien (if the lien was recorded in
9 accordance with the requirements of subsection (a) of
10 Section 7 of the Mechanics Lien Act);

11 (4) 10-day notice not provided (if the lienholder
12 failed to provide the necessary notice to an
13 owner-occupied, single-family residence as required by
14 subsection (d) of Section 7 of the Mechanics Lien Act);

15 (5) flawed subcontractor's claim for lien (if the
16 lienholder is a subcontractor and has failed to comply with
17 the requirements of subsections (c), (d), or (e) of Section
18 21 of the Mechanics Lien Act);

19 (6) flawed subcontractor notice (if the lienholder is a
20 subcontractor and has failed to comply with the
21 requirements of subsection (a) of Section 24 of the
22 Mechanics Lien Act);

23 (7) failure to record a satisfaction or release (if the
24 lienholder has failed to fulfill the requirements of
25 subsection (a) of Section 35 of the Mechanics Lien Act);

26 (8) improperly named parties (if the lienholder has

1 filed the lien against an improper party as provided by
2 Section 3 of the Mechanics Lien Act); or

3 (9) improper statement of persons furnishing labor,
4 services, material, fixtures, apparatus or machinery,
5 forms, or form work notice waiver owner of waiver (if the
6 lienholder has failed to fulfill the requirements of
7 subsection (b) of Section 5 of the Mechanics Lien Act).

8 (e) Demand to Commence Suit. Upon receipt of an owner's
9 confirmation that the lien is not involved in pending
10 litigation and a request for the recorder to serve a Demand to
11 Commence Suit, the recorder shall serve a Demand to Commence
12 Suit on the lienholder of the defective lien as provided in
13 Section 34 of the Mechanics Lien Act. A recorder may request
14 that the Secretary of State assist in providing registered
15 agent information or obtain information from the Secretary of
16 State's registered business database when the recorder seeks to
17 serve a Demand to Commence suit on the lienholder. Upon
18 request, the Secretary of State, or his or her designee, shall
19 provide the last known address or registered agent information
20 for a lienholder who is incorporated or doing business in the
21 State. The recorder must record a copy of the Demand to
22 Commence suit in the grantor's index or the grantee's index
23 identifying the mechanics lien and include the corresponding
24 document number and the date of demand. The recorder may, at
25 his or her discretion, notify the Secretary of State regarding
26 a Demand to Commence suit determined to involve a company,

1 corporation, or business registered with that office.

2 When the lienholder commences a suit or files an answer
3 within 30 days or the mechanics lien is forfeited because no
4 suit or answer is filed under subsection (a) of Section 34 of
5 the Mechanics Lien Act, then the demand and lien process is
6 completed for the recorder for that property.

7 (f) Referral. Upon receipt of an owner's confirmation that
8 the lien is not involved in pending litigation and a request
9 for a the recorder to proceed with a referral, the recorder
10 shall: (i) file the Notice of Referral with the county's code
11 hearing unit; (ii) identify and notify the lienholder by
12 telephone, if available, of the referral and send a copy of the
13 Notice of Referral by certified mail to the lienholder using
14 information included in the recorded mechanics lien or the last
15 known address or registered agent received from the Secretary
16 of State or obtained from the Secretary of State's registered
17 business database; (iii) send a copy of the Notice of Referral
18 by mail to the physical address of the property owner
19 associated with the lien; and (iv) record a copy of the Notice
20 of Referral in the grantor's index or the grantee's index
21 identifying the mechanics lien and include the corresponding
22 document number. The Notice of Referral shall clearly identify
23 the person, persons, or entity believed to be the owner,
24 assignee, successor, or beneficiary of the lien. The recorder
25 may, at his or her discretion, notify the Secretary of State
26 regarding a referral determined to involve a company,

1 corporation, or business registered with that office.

2 No later than 30 business days after receipt of the Notice
3 of Referral, the code hearing unit shall schedule a hearing to
4 occur no later than 30 days after receiving the referral.
5 Notice of the hearing shall be provided by the administrative
6 law judge to the filer, or the party represented by the filer,
7 of the defective lien, the legal representative of the recorder
8 of deeds who referred the case, and the last owner of record,
9 as identified in the Notice of Referral.

10 If the recorder shows by clear and convincing evidence that
11 the lien in question is a defective lien, the administrative
12 law judge shall rule the lien is forfeited under Section 34.5
13 of the Mechanics Lien Act and that the lien no longer affects
14 the chain of title of the property in any way. The judgment
15 shall be forwarded to all parties identified in this
16 subsection. Upon receiving judgment of a forfeited lien, the
17 recorder shall, within 5 business days, record a copy of the
18 judgment in the grantor's index or the grantee's index.

19 If the administrative law judge finds the lien to be valid
20 and still within the statutorily prescribed period of time to
21 remain as an active lien in the property's chain of title, the
22 recorder shall, no later than 5 business days after receiving
23 notice of the decision of the administrative law judge, record
24 a copy of the judgment in the grantor's index or the grantee's
25 index.

26 A decision by an administrative law judge does not preclude

1 a property owner or lienholder from proceeding with a civil
2 action to resolve questions concerning a mechanics lien.
3 Additionally, if a lienholder or property owner desires to
4 remove the action from the code hearing unit to the circuit
5 court of the county that the property is located, either party
6 may remove the action at any time before the final judgment of
7 the administrative law judge.

8 (g) Final administrative decision. The recorder's decision
9 to refer a mechanics lien or serve a Demand to Commence Suit is
10 a final administrative decision that is subject to review under
11 the Administrative Review Law by the circuit court of the
12 county where the real property is located. The standard of
13 review by the circuit court shall be de novo.

14 (h) Liability. A recorder and his or her employees or
15 agents are not subject to personal liability by reason of any
16 error or omission in the performance of any duty under this
17 Section, except in the case of willful or wanton conduct. The
18 recorder and his or her employees or agents are not liable for
19 the decision to refer a lien or serve a Demand to Commence
20 Suit, or failure to refer or serve a Demand to Commence Suit,
21 of a lien under this Section.

22 (i) Private actions; use of demand and referral process.
23 Nothing in this Section precludes a private right of action by
24 any party with an interest in the property affected by the
25 mechanics lien or a decision by the code hearing unit. Nothing
26 in this Section requires a person or entity who may have a

1 mechanics lien recorded against his or her property to use the
2 mechanics lien demand and referral process created by this
3 Section.

4 (j) Repeal. This Section is repealed on January 1, 2022.

5 (55 ILCS 5/5-41065 new)

6 Sec. 5-41065. Mechanics lien demand and referral
7 adjudication.

8 (a) Notwithstanding any other provision in this Division, a
9 county's code hearing unit must adjudicate a defective
10 mechanics lien referred to the unit under Section 3-5010.8.

11 (b) If a county does not have an administrative law judge
12 in its code hearing unit that specializes in public records,
13 one shall be appointed no later than 3 months after the
14 effective date of this amendatory Act of the 100th General
15 Assembly to adjudicate all referrals concerning mechanics
16 liens under Section 3-5010.8.

17 (c) If an administrative law judge that specializes in
18 public records has not been appointed as provided subsection
19 (b) when a mechanics lien is referred under Section 3-5010.8 to
20 the code hearing unit, the case shall be removed to the proper
21 circuit court with jurisdiction.

22 (d) This Section is repealed on January 1, 2022.

23 (55 ILCS 5/5-43043 new)

24 Sec. 5-43043. Mechanics lien demand and referral

1 adjudication.

2 (a) Notwithstanding any other provision in this Division, a
3 county's code hearing unit must adjudicate a defective
4 mechanics lien referred to the unit under Section 3-5010.8.

5 (b) If a county does not have an administrative law judge
6 in its code hearing unit that specializes in public records,
7 one shall be appointed no later than 3 months after the
8 effective date of this amendatory Act of the 100th General
9 Assembly to adjudicate all referrals concerning mechanics
10 liens under Section 3-5010.8.

11 (c) If an administrative law judge that specializes in
12 public records has not been appointed as provided subsection
13 (b) when a mechanics lien is referred under Section 3-5010.8 to
14 the code hearing unit, the case shall be removed to the proper
15 circuit court with jurisdiction.

16 (d) This Section is repealed on January 1, 2022.

17 Section 10. The Mechanics Lien Act is amended by changing
18 Section 34 and adding Section 34.5 as follows:

19 (770 ILCS 60/34) (from Ch. 82, par. 34)

20 Sec. 34. Notice to commence suit.

21 (a) Upon written demand of the owner, lienor, a recorder
22 under Section 3-5010.8 of the Counties Code, or any person
23 interested in the real estate, or their agent or attorney,
24 served on the person claiming the lien, or his agent or

1 attorney, requiring suit to be commenced to enforce the lien or
2 answer to be filed in a pending suit, suit shall be commenced
3 or answer filed within 30 days thereafter, or the lien shall be
4 forfeited. Such service may be by registered or certified mail,
5 return receipt requested, or by personal service.

6 (b) A written demand under this Section must contain the
7 following language in at least 10 point bold face type:
8 "Failure to respond to this notice within 30 days after
9 receipt, as required by Section 34 of the Mechanics Lien Act,
10 shall result in the forfeiture of the referenced lien."

11 (Source: P.A. 97-1165, eff. 2-11-13.)

12 (770 ILCS 60/34.5 new)

13 Sec. 34.5. Mechanics lien administrative adjudication.

14 (a) Notwithstanding any other provision in this Act, a
15 county's code hearing unit may adjudicate the validity of a
16 mechanics lien under Section 3-5010.8 of the Counties Code. If
17 the recorder shows by clear and convincing evidence that the
18 lien being adjudicated is a defective lien, the administrative
19 law judge shall rule the lien is forfeited under this Act and
20 that the lien no longer affects the chain of title of the
21 property in any way.

22 (b) This Section is repealed on January 1, 2022.

1 INDEX

2 Statutes amended in order of appearance

3 55 ILCS 5/3-5010.8 new

4 55 ILCS 5/5-41065 new

5 55 ILCS 5/5-43043 new

6 770 ILCS 60/34 from Ch. 82, par. 34

7 770 ILCS 60/34.5 new