



Sen. Cristina Castro

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LRB100 18632 AWJ 40192 a

1 AMENDMENT TO HOUSE BILL 5201

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5201 by replacing  
3 everything after the enacting clause with the following:

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 expired mechanics liens on residential property, which cloud  
11 title to property, are a rapidly growing problem throughout the  
12 State. In order to address the increase in expired mechanics  
13 liens and, more specifically, those that have not been released  
14 by the lienholder, a recorder may establish a process to demand  
15 and refer mechanics liens that have been recorded but not  
16 litigated or released in accordance with the Mechanics Lien Act

1 to an administrative law judge for resolution or demand that  
2 the lienholder commence suit or forfeit the lien.

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

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

6 "Mechanics lien" and "lien" are used interchangeably in  
7 this Section.

8 "Notice of Expired Mechanics Lien" means the notice a  
9 recorder gives to a property owner under subsection (d)  
10 informing the property owner of an expired lien.

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

13 "Recording" and "filing" are used interchangeably in this  
14 Section.

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

18 "Residential property" means real property improved with  
19 not less than one nor more than 4 residential dwelling units; a  
20 residential condominium unit, including, but not limited to,  
21 the common elements allocated to the exclusive use of the  
22 condominium unit that form an integral part of the condominium  
23 unit and any parking unit or units specified by the declaration  
24 to be allocated to a specific residential condominium unit; or  
25 a single tract of agriculture real estate consisting of 40  
26 acres or less that is improved with a single-family residence.

1 If a declaration of condominium ownership provides for  
2 individually owned and transferable parking units,  
3 "residential property" does not include the parking unit of a  
4 specified residential condominium unit unless the parking unit  
5 is included in the legal description of the property against  
6 which the mechanics lien is recorded.

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

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

19 (d) Notice of Expired Lien. If a recorder determines, after  
20 review by legal staff or counsel, that a mechanics lien  
21 recorded in the grantor's index or the grantee's index is an  
22 expired lien, the recorder shall serve a Notice of Expired Lien  
23 by certified mail to the last known address of the owner. The  
24 owner or legal representative of the owner of the residential  
25 property shall confirm in writing his or her belief that the  
26 lien is not involved in pending litigation and, if there is no

1 pending litigation, as verified and confirmed by county court  
2 records, the owner may request that the recorder proceed with a  
3 referral or serve a Demand to Commence Suit.

4 For the purposes of this Section, a recorder shall  
5 determine a lien is an expired lien if the lien fits into one  
6 of the following classifications:

7 (1) unenforced (if a suit to enforce the lien has not  
8 been commenced by the lienholder or a counterclaim has not  
9 been filed (within 2 years after the completion date of the  
10 contract as specified in the recorded mechanics lien, the  
11 completion of extra or additional work, or furnishing of  
12 extra or additional material under Section 9 of the  
13 Mechanics Lien Act) and if an automatic stay under Section  
14 362(a) of the United States Bankruptcy Code does not  
15 prohibit a suit or counterclaim to foreclose; if a  
16 completion date is not specified in the recorded lien,  
17 then, as provided under Section 6 of the Mechanics Lien  
18 Act: (A) if the work is done or material is furnished  
19 within 3 years from the commencement of the work or the  
20 commencement of furnishing the material in the case of work  
21 done or material furnished as to residential property; or  
22 (B) if no later than 5 years from the commencement of the  
23 work or the commencement of furnishing the material in the  
24 case of work done or material furnished as to any other  
25 type of property and if an automatic stay under Section  
26 362(a) of the United States Bankruptcy Code does not

1 prohibit a suit or counterclaim to foreclose); or

2 (2) failure to record a satisfaction or release (if the  
3 lienholder has failed to fulfill the requirements of  
4 subsection (a) of Section 35 of the Mechanics Lien Act).

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

25 When the lienholder commences a suit or files an answer  
26 within 30 days or the lienholder records a release of lien with

1 the county recorder as required by subsection (a) of Section 34  
2 of the Mechanics Lien Act, then the demand and referral process  
3 is completed for the recorder for that property.

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

25 No later than 30 business days after receipt of the Notice  
26 of Referral, the code hearing unit shall schedule a hearing to

1 occur no later than 30 days after receiving the referral.  
2 Notice of the hearing shall be provided by the county recorder,  
3 by and through his or her representative, to the filer, or the  
4 party represented by the filer, of the expired lien, the legal  
5 representative of the recorder of deeds who referred the case,  
6 and the last owner of record, as identified in the Notice of  
7 Referral.

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

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

24 A decision by an administrative law judge is reviewable  
25 under the Administrative Review Law, and nothing in this  
26 Section precludes a property owner or lienholder from

1 proceeding with a civil action to resolve questions concerning  
2 a mechanics lien.

3 A lienholder or property owner may remove the action from  
4 the code hearing unit to the circuit court as provided in  
5 subsection (i).

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

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

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



1 mechanics lien demand and referral process created by this  
2 Section.

3 A lienholder or property owner may remove a matter in the  
4 referral process to the circuit court at any time prior to the  
5 final decision of the administrative law judge by delivering a  
6 certified notice of the suit filed in the circuit court to the  
7 administrative law judge. Upon receipt of the certified notice,  
8 the administrative law judge shall dismiss the matter without  
9 prejudice. If the matter is dismissed due to removal, then the  
10 demand and referral process is completed for the recorder for  
11 that property. If the circuit court dismisses the removed  
12 matter without deciding on whether the lien is expired and  
13 without prejudice, the recorder may reinstitute the demand and  
14 referral process under subsection (d).

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

16 (55 ILCS 5/5-41065 new)

17 Sec. 5-41065. Mechanics lien demand and referral  
18 adjudication.

19 (a) Notwithstanding any other provision in this Division, a  
20 county's code hearing unit must adjudicate an expired mechanics  
21 lien referred to the unit under Section 3-5010.8.

22 (b) If a county does not have an administrative law judge  
23 in its code hearing unit who is familiar with the areas of law  
24 relating to mechanics liens, one may be appointed no later than  
25 3 months after the effective date of this amendatory Act of the

1 100th General Assembly to adjudicate all referrals concerning  
2 mechanics liens under Section 3-5010.8.

3 (c) If an administrative law judge familiar with the areas  
4 of law relating to mechanics liens has not been appointed as  
5 provided subsection (b) when a mechanics lien is referred under  
6 Section 3-5010.8 to the code hearing unit, the case shall be  
7 removed to the proper circuit court with jurisdiction.

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

9 (55 ILCS 5/5-43043 new)

10 Sec. 5-43043. Mechanics lien demand and referral  
11 adjudication.

12 (a) Notwithstanding any other provision in this Division, a  
13 county's code hearing unit must adjudicate an expired mechanics  
14 lien referred to the unit under Section 3-5010.8.

15 (b) If a county does not have an administrative law judge  
16 in its code hearing unit who is familiar with the areas of law  
17 relating to mechanics liens, one may be appointed no later than  
18 3 months after the effective date of this amendatory Act of the  
19 100th General Assembly to adjudicate all referrals concerning  
20 mechanics liens under Section 3-5010.8.

21 (c) If an administrative law judge familiar with the areas  
22 of law relating to mechanics liens has not been appointed as  
23 provided subsection (b) when a mechanics lien is referred under  
24 Section 3-5010.8 to the code hearing unit, the case shall be  
25 removed to the proper circuit court with jurisdiction.

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

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

4            (770 ILCS 60/34) (from Ch. 82, par. 34)

5            Sec. 34. Notice to commence suit.

6            (a) Upon written demand of the owner, lienor, a recorder  
7        under Section 3-5010.8 of the Counties Code, or any person  
8        interested in the real estate, or their agent or attorney,  
9        served on the person claiming the lien, or his agent or  
10       attorney, requiring suit to be commenced to enforce the lien or  
11       answer to be filed in a pending suit, suit shall be commenced  
12       or answer filed within 30 days thereafter, or the lien shall be  
13       forfeited. Such service may be by registered or certified mail,  
14       return receipt requested, or by personal service.

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

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

21           (770 ILCS 60/34.5 new)

22           Sec. 34.5. Mechanics lien administrative adjudication.

23           (a) Notwithstanding any other provision in this Act, a

1 county's code hearing unit may adjudicate the validity of a  
2 mechanics lien under Section 3-5010.8 of the Counties Code. If  
3 the recorder shows by clear and convincing evidence that the  
4 lien being adjudicated is an expired lien, the administrative  
5 law judge shall rule the lien is forfeited under this Act and  
6 that the lien no longer affects the chain of title of the  
7 property in any way.

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