



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB2519

Introduced 2/26/2007, by Rep. Michael J. Madigan - Barbara Flynn Currie

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-31-1

from Ch. 24, par. 11-31-1

Amends the Illinois Municipal Code. Makes a technical change in a Section concerning the demolition, repair, enclosure, or remediation of dangerous and unsafe buildings.

LRB095 01287 HLH 21289 b

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 Illinois Municipal Code is amended by
5 changing Section 11-31-1 as follows:

6 (65 ILCS 5/11-31-1) (from Ch. 24, par. 11-31-1)

7 Sec. 11-31-1. Demolition, repair, enclosure, or
8 remediation.

9 (a) The ~~The~~ corporate authorities of each municipality may
10 demolish, repair, or enclose or cause the demolition, repair,
11 or enclosure of dangerous and unsafe buildings or uncompleted
12 and abandoned buildings within the territory of the
13 municipality and may remove or cause the removal of garbage,
14 debris, and other hazardous, noxious, or unhealthy substances
15 or materials from those buildings. In any county having adopted
16 by referendum or otherwise a county health department as
17 provided by Division 5-25 of the Counties Code or its
18 predecessor, the county board of that county may exercise those
19 powers with regard to dangerous and unsafe buildings or
20 uncompleted and abandoned buildings within the territory of any
21 city, village, or incorporated town having less than 50,000
22 population.

23 The corporate authorities shall apply to the circuit court

1 of the county in which the building is located (i) for an order
2 authorizing action to be taken with respect to a building if
3 the owner or owners of the building, including the lien holders
4 of record, after at least 15 days' written notice by mail so to
5 do, have failed to put the building in a safe condition or to
6 demolish it or (ii) for an order requiring the owner or owners
7 of record to demolish, repair, or enclose the building or to
8 remove garbage, debris, and other hazardous, noxious, or
9 unhealthy substances or materials from the building. It is not
10 a defense to the cause of action that the building is boarded
11 up or otherwise enclosed, although the court may order the
12 defendant to have the building boarded up or otherwise
13 enclosed. Where, upon diligent search, the identity or
14 whereabouts of the owner or owners of the building, including
15 the lien holders of record, is not ascertainable, notice mailed
16 to the person or persons in whose name the real estate was last
17 assessed is sufficient notice under this Section.

18 The hearing upon the application to the circuit court shall
19 be expedited by the court and shall be given precedence over
20 all other suits. Any person entitled to bring an action under
21 subsection (b) shall have the right to intervene in an action
22 brought under this Section.

23 The cost of the demolition, repair, enclosure, or removal
24 incurred by the municipality, by an intervenor, or by a lien
25 holder of record, including court costs, attorney's fees, and
26 other costs related to the enforcement of this Section, is

1 recoverable from the owner or owners of the real estate or the
2 previous owner or both if the property was transferred during
3 the 15 day notice period and is a lien on the real estate; the
4 lien is superior to all prior existing liens and encumbrances,
5 except taxes, if, within 180 days after the repair, demolition,
6 enclosure, or removal, the municipality, the lien holder of
7 record, or the intervenor who incurred the cost and expense
8 shall file a notice of lien for the cost and expense incurred
9 in the office of the recorder in the county in which the real
10 estate is located or in the office of the registrar of titles
11 of the county if the real estate affected is registered under
12 the Registered Titles (Torrens) Act.

13 The notice must consist of a sworn statement setting out
14 (1) a description of the real estate sufficient for its
15 identification, (2) the amount of money representing the cost
16 and expense incurred, and (3) the date or dates when the cost
17 and expense was incurred by the municipality, the lien holder
18 of record, or the intervenor. Upon payment of the cost and
19 expense by the owner of or persons interested in the property
20 after the notice of lien has been filed, the lien shall be
21 released by the municipality, the person in whose name the lien
22 has been filed, or the assignee of the lien, and the release
23 may be filed of record as in the case of filing notice of lien.
24 Unless the lien is enforced under subsection (c), the lien may
25 be enforced by foreclosure proceedings as in the case of
26 mortgage foreclosures under Article XV of the Code of Civil

1 Procedure or mechanics' lien foreclosures. An action to
2 foreclose this lien may be commenced at any time after the date
3 of filing of the notice of lien. The costs of foreclosure
4 incurred by the municipality, including court costs,
5 reasonable attorney's fees, advances to preserve the property,
6 and other costs related to the enforcement of this subsection,
7 plus statutory interest, are a lien on the real estate and are
8 recoverable by the municipality from the owner or owners of the
9 real estate.

10 All liens arising under this subsection (a) shall be
11 assignable. The assignee of the lien shall have the same power
12 to enforce the lien as the assigning party, except that the
13 lien may not be enforced under subsection (c).

14 If the appropriate official of any municipality determines
15 that any dangerous and unsafe building or uncompleted and
16 abandoned building within its territory fulfills the
17 requirements for an action by the municipality under the
18 Abandoned Housing Rehabilitation Act, the municipality may
19 petition under that Act in a proceeding brought under this
20 subsection.

21 (b) Any owner or tenant of real property within 1200 feet
22 in any direction of any dangerous or unsafe building located
23 within the territory of a municipality with a population of
24 500,000 or more may file with the appropriate municipal
25 authority a request that the municipality apply to the circuit
26 court of the county in which the building is located for an

1 order permitting the demolition, removal of garbage, debris,
2 and other noxious or unhealthy substances and materials from,
3 or repair or enclosure of the building in the manner prescribed
4 in subsection (a) of this Section. If the municipality fails to
5 institute an action in circuit court within 90 days after the
6 filing of the request, the owner or tenant of real property
7 within 1200 feet in any direction of the building may institute
8 an action in circuit court seeking an order compelling the
9 owner or owners of record to demolish, remove garbage, debris,
10 and other noxious or unhealthy substances and materials from,
11 repair or enclose or to cause to be demolished, have garbage,
12 debris, and other noxious or unhealthy substances and materials
13 removed from, repaired, or enclosed the building in question. A
14 private owner or tenant who institutes an action under the
15 preceding sentence shall not be required to pay any fee to the
16 clerk of the circuit court. The cost of repair, removal,
17 demolition, or enclosure shall be borne by the owner or owners
18 of record of the building. In the event the owner or owners of
19 record fail to demolish, remove garbage, debris, and other
20 noxious or unhealthy substances and materials from, repair, or
21 enclose the building within 90 days of the date the court
22 entered its order, the owner or tenant who instituted the
23 action may request that the court join the municipality as a
24 party to the action. The court may order the municipality to
25 demolish, remove materials from, repair, or enclose the
26 building, or cause that action to be taken upon the request of

1 any owner or tenant who instituted the action or upon the
2 municipality's request. The municipality may file, and the
3 court may approve, a plan for rehabilitating the building in
4 question. A court order authorizing the municipality to
5 demolish, remove materials from, repair, or enclose a building,
6 or cause that action to be taken, shall not preclude the court
7 from adjudging the owner or owners of record of the building in
8 contempt of court due to the failure to comply with the order
9 to demolish, remove garbage, debris, and other noxious or
10 unhealthy substances and materials from, repair, or enclose the
11 building.

12 If a municipality or a person or persons other than the
13 owner or owners of record pay the cost of demolition, removal
14 of garbage, debris, and other noxious or unhealthy substances
15 and materials, repair, or enclosure pursuant to a court order,
16 the cost, including court costs, attorney's fees, and other
17 costs related to the enforcement of this subsection, is
18 recoverable from the owner or owners of the real estate and is
19 a lien on the real estate; the lien is superior to all prior
20 existing liens and encumbrances, except taxes, if, within 180
21 days after the repair, removal, demolition, or enclosure, the
22 municipality or the person or persons who paid the costs of
23 demolition, removal, repair, or enclosure shall file a notice
24 of lien of the cost and expense incurred in the office of the
25 recorder in the county in which the real estate is located or
26 in the office of the registrar of the county if the real estate

1 affected is registered under the Registered Titles (Torrens)
2 Act. The notice shall be in a form as is provided in subsection
3 (a). An owner or tenant who institutes an action in circuit
4 court seeking an order to compel the owner or owners of record
5 to demolish, remove materials from, repair, or enclose any
6 dangerous or unsafe building, or to cause that action to be
7 taken under this subsection may recover court costs and
8 reasonable attorney's fees for instituting the action from the
9 owner or owners of record of the building. Upon payment of the
10 costs and expenses by the owner of or a person interested in
11 the property after the notice of lien has been filed, the lien
12 shall be released by the municipality or the person in whose
13 name the lien has been filed or his or her assignee, and the
14 release may be filed of record as in the case of filing a
15 notice of lien. Unless the lien is enforced under subsection
16 (c), the lien may be enforced by foreclosure proceedings as in
17 the case of mortgage foreclosures under Article XV of the Code
18 of Civil Procedure or mechanics' lien foreclosures. An action
19 to foreclose this lien may be commenced at any time after the
20 date of filing of the notice of lien. The costs of foreclosure
21 incurred by the municipality, including court costs,
22 reasonable attorneys' fees, advances to preserve the property,
23 and other costs related to the enforcement of this subsection,
24 plus statutory interest, are a lien on the real estate and are
25 recoverable by the municipality from the owner or owners of the
26 real estate.

1 All liens arising under the terms of this subsection (b)
2 shall be assignable. The assignee of the lien shall have the
3 same power to enforce the lien as the assigning party, except
4 that the lien may not be enforced under subsection (c).

5 (c) In any case where a municipality has obtained a lien
6 under subsection (a), (b), or (f), the municipality may enforce
7 the lien under this subsection (c) in the same proceeding in
8 which the lien is authorized.

9 A municipality desiring to enforce a lien under this
10 subsection (c) shall petition the court to retain jurisdiction
11 for foreclosure proceedings under this subsection. Notice of
12 the petition shall be served, by certified or registered mail,
13 on all persons who were served notice under subsection (a),
14 (b), or (f). The court shall conduct a hearing on the petition
15 not less than 15 days after the notice is served. If the court
16 determines that the requirements of this subsection (c) have
17 been satisfied, it shall grant the petition and retain
18 jurisdiction over the matter until the foreclosure proceeding
19 is completed. The costs of foreclosure incurred by the
20 municipality, including court costs, reasonable attorneys'
21 fees, advances to preserve the property, and other costs
22 related to the enforcement of this subsection, plus statutory
23 interest, are a lien on the real estate and are recoverable by
24 the municipality from the owner or owners of the real estate.
25 If the court denies the petition, the municipality may enforce
26 the lien in a separate action as provided in subsection (a),

1 (b), or (f).

2 All persons designated in Section 15-1501 of the Code of
3 Civil Procedure as necessary parties in a mortgage foreclosure
4 action shall be joined as parties before issuance of an order
5 of foreclosure. Persons designated in Section 15-1501 of the
6 Code of Civil Procedure as permissible parties may also be
7 joined as parties in the action.

8 The provisions of Article XV of the Code of Civil Procedure
9 applicable to mortgage foreclosures shall apply to the
10 foreclosure of a lien under this subsection (c), except to the
11 extent that those provisions are inconsistent with this
12 subsection. For purposes of foreclosures of liens under this
13 subsection, however, the redemption period described in
14 subsection (b) of Section 15-1603 of the Code of Civil
15 Procedure shall end 60 days after the date of entry of the
16 order of foreclosure.

17 (d) In addition to any other remedy provided by law, the
18 corporate authorities of any municipality may petition the
19 circuit court to have property declared abandoned under this
20 subsection (d) if:

21 (1) the property has been tax delinquent for 2 or more
22 years or bills for water service for the property have been
23 outstanding for 2 or more years;

24 (2) the property is unoccupied by persons legally in
25 possession; and

26 (3) the property contains a dangerous or unsafe

1 building.

2 All persons having an interest of record in the property,
3 including tax purchasers and beneficial owners of any Illinois
4 land trust having title to the property, shall be named as
5 defendants in the petition and shall be served with process. In
6 addition, service shall be had under Section 2-206 of the Code
7 of Civil Procedure as in other cases affecting property.

8 The municipality, however, may proceed under this
9 subsection in a proceeding brought under subsection (a) or (b).
10 Notice of the petition shall be served by certified or
11 registered mail on all persons who were served notice under
12 subsection (a) or (b).

13 If the municipality proves that the conditions described in
14 this subsection exist and the owner of record of the property
15 does not enter an appearance in the action, or, if title to the
16 property is held by an Illinois land trust, if neither the
17 owner of record nor the owner of the beneficial interest of the
18 trust enters an appearance, the court shall declare the
19 property abandoned.

20 If that determination is made, notice shall be sent by
21 certified or registered mail to all persons having an interest
22 of record in the property, including tax purchasers and
23 beneficial owners of any Illinois land trust having title to
24 the property, stating that title to the property will be
25 transferred to the municipality unless, within 30 days of the
26 notice, the owner of record enters an appearance in the action,

1 or unless any other person having an interest in the property
2 files with the court a request to demolish the dangerous or
3 unsafe building or to put the building in safe condition.

4 If the owner of record enters an appearance in the action
5 within the 30 day period, the court shall vacate its order
6 declaring the property abandoned. In that case, the
7 municipality may amend its complaint in order to initiate
8 proceedings under subsection (a).

9 If a request to demolish or repair the building is filed
10 within the 30 day period, the court shall grant permission to
11 the requesting party to demolish the building within 30 days or
12 to restore the building to safe condition within 60 days after
13 the request is granted. An extension of that period for up to
14 60 additional days may be given for good cause. If more than
15 one person with an interest in the property files a timely
16 request, preference shall be given to the person with the lien
17 or other interest of the highest priority.

18 If the requesting party proves to the court that the
19 building has been demolished or put in a safe condition within
20 the period of time granted by the court, the court shall issue
21 a quitclaim judicial deed for the property to the requesting
22 party, conveying only the interest of the owner of record, upon
23 proof of payment to the municipality of all costs incurred by
24 the municipality in connection with the action, including but
25 not limited to court costs, attorney's fees, administrative
26 costs, the costs, if any, associated with building enclosure or

1 removal, and receiver's certificates. The interest in the
2 property so conveyed shall be subject to all liens and
3 encumbrances on the property. In addition, if the interest is
4 conveyed to a person holding a certificate of purchase for the
5 property under the Property Tax Code, the conveyance shall be
6 subject to the rights of redemption of all persons entitled to
7 redeem under that Act, including the original owner of record.

8 If no person with an interest in the property files a
9 timely request or if the requesting party fails to demolish the
10 building or put the building in safe condition within the time
11 specified by the court, the municipality may petition the court
12 to issue a judicial deed for the property to the municipality.
13 A conveyance by judicial deed shall operate to extinguish all
14 existing ownership interests in, liens on, and other interest
15 in the property, including tax liens, and shall extinguish the
16 rights and interests of any and all holders of a bona fide
17 certificate of purchase of the property for delinquent taxes.
18 Any such bona fide certificate of purchase holder shall be
19 entitled to a sale in error as prescribed under Section 21-310
20 of the Property Tax Code.

21 (e) Each municipality may use the provisions of this
22 subsection to expedite the removal of certain buildings that
23 are a continuing hazard to the community in which they are
24 located.

25 If a residential or commercial building is 3 stories or
26 less in height as defined by the municipality's building code,

1 and the corporate official designated to be in charge of
2 enforcing the municipality's building code determines that the
3 building is open and vacant and an immediate and continuing
4 hazard to the community in which the building is located, then
5 the official shall be authorized to post a notice not less than
6 2 feet by 2 feet in size on the front of the building. The
7 notice shall be dated as of the date of the posting and shall
8 state that unless the building is demolished, repaired, or
9 enclosed, and unless any garbage, debris, and other hazardous,
10 noxious, or unhealthy substances or materials are removed so
11 that an immediate and continuing hazard to the community no
12 longer exists, then the building may be demolished, repaired,
13 or enclosed, or any garbage, debris, and other hazardous,
14 noxious, or unhealthy substances or materials may be removed,
15 by the municipality.

16 Not later than 30 days following the posting of the notice,
17 the municipality shall do all of the following:

- 18 (1) Cause to be sent, by certified mail, return receipt
19 requested, a Notice to Remediate to all owners of record of
20 the property, the beneficial owners of any Illinois land
21 trust having title to the property, and all lienholders of
22 record in the property, stating the intent of the
23 municipality to demolish, repair, or enclose the building
24 or remove any garbage, debris, or other hazardous, noxious,
25 or unhealthy substances or materials if that action is not
26 taken by the owner or owners.

1 (2) Cause to be published, in a newspaper published or
2 circulated in the municipality where the building is
3 located, a notice setting forth (i) the permanent tax index
4 number and the address of the building, (ii) a statement
5 that the property is open and vacant and constitutes an
6 immediate and continuing hazard to the community, and (iii)
7 a statement that the municipality intends to demolish,
8 repair, or enclose the building or remove any garbage,
9 debris, or other hazardous, noxious, or unhealthy
10 substances or materials if the owner or owners or
11 lienholders of record fail to do so. This notice shall be
12 published for 3 consecutive days.

13 (3) Cause to be recorded the Notice to Remediate mailed
14 under paragraph (1) in the office of the recorder in the
15 county in which the real estate is located or in the office
16 of the registrar of titles of the county if the real estate
17 is registered under the Registered Title (Torrens) Act.

18 Any person or persons with a current legal or equitable
19 interest in the property objecting to the proposed actions of
20 the corporate authorities may file his or her objection in an
21 appropriate form in a court of competent jurisdiction.

22 If the building is not demolished, repaired, or enclosed,
23 or the garbage, debris, or other hazardous, noxious, or
24 unhealthy substances or materials are not removed, within 30
25 days of mailing the notice to the owners of record, the
26 beneficial owners of any Illinois land trust having title to

1 the property, and all lienholders of record in the property, or
2 within 30 days of the last day of publication of the notice,
3 whichever is later, the corporate authorities shall have the
4 power to demolish, repair, or enclose the building or to remove
5 any garbage, debris, or other hazardous, noxious, or unhealthy
6 substances or materials.

7 The municipality may proceed to demolish, repair, or
8 enclose a building or remove any garbage, debris, or other
9 hazardous, noxious, or unhealthy substances or materials under
10 this subsection within a 120-day period following the date of
11 the mailing of the notice if the appropriate official
12 determines that the demolition, repair, enclosure, or removal
13 of any garbage, debris, or other hazardous, noxious, or
14 unhealthy substances or materials is necessary to remedy the
15 immediate and continuing hazard. If, however, before the
16 municipality proceeds with any of the actions authorized by
17 this subsection, any person with a legal or equitable interest
18 in the property has sought a hearing under this subsection
19 before a court and has served a copy of the complaint on the
20 chief executive officer of the municipality, then the
21 municipality shall not proceed with the demolition, repair,
22 enclosure, or removal of garbage, debris, or other substances
23 until the court determines that that action is necessary to
24 remedy the hazard and issues an order authorizing the
25 municipality to do so. If the court dismisses the action for
26 want of prosecution, the municipality must send the objector a

1 copy of the dismissal order and a letter stating that the
2 demolition, repair, enclosure, or removal of garbage, debris,
3 or other substances will proceed unless, within 30 days after
4 the copy of the order and the letter are mailed, the objector
5 moves to vacate the dismissal and serves a copy of the motion
6 on the chief executive officer of the municipality.
7 Notwithstanding any other law to the contrary, if the objector
8 does not file a motion and give the required notice, if the
9 motion is denied by the court, or if the action is again
10 dismissed for want of prosecution, then the dismissal is with
11 prejudice and the demolition, repair, enclosure, or removal may
12 proceed forthwith.

13 Following the demolition, repair, or enclosure of a
14 building, or the removal of garbage, debris, or other
15 hazardous, noxious, or unhealthy substances or materials under
16 this subsection, the municipality may file a notice of lien
17 against the real estate for the cost of the demolition, repair,
18 enclosure, or removal within 180 days after the repair,
19 demolition, enclosure, or removal occurred, for the cost and
20 expense incurred, in the office of the recorder in the county
21 in which the real estate is located or in the office of the
22 registrar of titles of the county if the real estate affected
23 is registered under the Registered Titles (Torrens) Act; this
24 lien has priority over the interests of those parties named in
25 the Notice to Remediate mailed under paragraph (1), but not
26 over the interests of third party purchasers or encumbrancers

1 for value who obtained their interests in the property before
2 obtaining actual or constructive notice of the lien. The notice
3 of lien shall consist of a sworn statement setting forth (i) a
4 description of the real estate, such as the address or other
5 description of the property, sufficient for its
6 identification; (ii) the expenses incurred by the municipality
7 in undertaking the remedial actions authorized under this
8 subsection; (iii) the date or dates the expenses were incurred
9 by the municipality; (iv) a statement by the corporate official
10 responsible for enforcing the building code that the building
11 was open and vacant and constituted an immediate and continuing
12 hazard to the community; (v) a statement by the corporate
13 official that the required sign was posted on the building,
14 that notice was sent by certified mail to the owners of record,
15 and that notice was published in accordance with this
16 subsection; and (vi) a statement as to when and where the
17 notice was published. The lien authorized by this subsection
18 may thereafter be released or enforced by the municipality as
19 provided in subsection (a).

20 (f) The corporate authorities of each municipality may
21 remove or cause the removal of, or otherwise environmentally
22 remediate hazardous substances and petroleum products on, in,
23 or under any abandoned and unsafe property within the territory
24 of a municipality. In addition, where preliminary evidence
25 indicates the presence or likely presence of a hazardous
26 substance or a petroleum product or a release or a substantial

1 threat of a release of a hazardous substance or a petroleum
2 product on, in, or under the property, the corporate
3 authorities of the municipality may inspect the property and
4 test for the presence or release of hazardous substances and
5 petroleum products. In any county having adopted by referendum
6 or otherwise a county health department as provided by Division
7 5-25 of the Counties Code or its predecessor, the county board
8 of that county may exercise the above-described powers with
9 regard to property within the territory of any city, village,
10 or incorporated town having less than 50,000 population.

11 For purposes of this subsection (f):

12 (1) "property" or "real estate" means all real
13 property, whether or not improved by a structure;

14 (2) "abandoned" means;

15 (A) the property has been tax delinquent for 2 or
16 more years;

17 (B) the property is unoccupied by persons legally
18 in possession; and

19 (3) "unsafe" means property that presents an actual or
20 imminent threat to public health and safety caused by the
21 release of hazardous substances; and

22 (4) "hazardous substances" means the same as in Section
23 3.215 of the Environmental Protection Act.

24 The corporate authorities shall apply to the circuit court
25 of the county in which the property is located (i) for an order
26 allowing the municipality to enter the property and inspect and

1 test substances on, in, or under the property; or (ii) for an
2 order authorizing the corporate authorities to take action with
3 respect to remediation of the property if conditions on the
4 property, based on the inspection and testing authorized in
5 paragraph (i), indicate the presence of hazardous substances or
6 petroleum products. Remediation shall be deemed complete for
7 purposes of paragraph (ii) above when the property satisfies
8 Tier I, II, or III remediation objectives for the property's
9 most recent usage, as established by the Environmental
10 Protection Act, and the rules and regulations promulgated
11 thereunder. Where, upon diligent search, the identity or
12 whereabouts of the owner or owners of the property, including
13 the lien holders of record, is not ascertainable, notice mailed
14 to the person or persons in whose name the real estate was last
15 assessed is sufficient notice under this Section.

16 The court shall grant an order authorizing testing under
17 paragraph (i) above upon a showing of preliminary evidence
18 indicating the presence or likely presence of a hazardous
19 substance or a petroleum product or a release of or a
20 substantial threat of a release of a hazardous substance or a
21 petroleum product on, in, or under abandoned property. The
22 preliminary evidence may include, but is not limited to,
23 evidence of prior use, visual site inspection, or records of
24 prior environmental investigations. The testing authorized by
25 paragraph (i) above shall include any type of investigation
26 which is necessary for an environmental professional to

1 determine the environmental condition of the property,
2 including but not limited to performance of soil borings and
3 groundwater monitoring. The court shall grant a remediation
4 order under paragraph (ii) above where testing of the property
5 indicates that it fails to meet the applicable remediation
6 objectives. The hearing upon the application to the circuit
7 court shall be expedited by the court and shall be given
8 precedence over all other suits.

9 The cost of the inspection, testing, or remediation
10 incurred by the municipality or by a lien holder of record,
11 including court costs, attorney's fees, and other costs related
12 to the enforcement of this Section, is a lien on the real
13 estate; except that in any instances where a municipality
14 incurs costs of inspection and testing but finds no hazardous
15 substances or petroleum products on the property that present
16 an actual or imminent threat to public health and safety, such
17 costs are not recoverable from the owners nor are such costs a
18 lien on the real estate. The lien is superior to all prior
19 existing liens and encumbrances, except taxes and any lien
20 obtained under subsection (a) or (e), if, within 180 days after
21 the completion of the inspection, testing, or remediation, the
22 municipality or the lien holder of record who incurred the cost
23 and expense shall file a notice of lien for the cost and
24 expense incurred in the office of the recorder in the county in
25 which the real estate is located or in the office of the
26 registrar of titles of the county if the real estate affected

1 is registered under the Registered Titles (Torrens) Act.

2 The notice must consist of a sworn statement setting out
3 (i) a description of the real estate sufficient for its
4 identification, (ii) the amount of money representing the cost
5 and expense incurred, and (iii) the date or dates when the cost
6 and expense was incurred by the municipality or the lien holder
7 of record. Upon payment of the lien amount by the owner of or
8 persons interested in the property after the notice of lien has
9 been filed, a release of lien shall be issued by the
10 municipality, the person in whose name the lien has been filed,
11 or the assignee of the lien, and the release may be filed of
12 record as in the case of filing notice of lien.

13 The lien may be enforced under subsection (c) or by
14 foreclosure proceedings as in the case of mortgage foreclosures
15 under Article XV of the Code of Civil Procedure or mechanics'
16 lien foreclosures; provided that where the lien is enforced by
17 foreclosure under subsection (c) or under either statute, the
18 municipality may not proceed against the other assets of the
19 owner or owners of the real estate for any costs that otherwise
20 would be recoverable under this Section but that remain
21 unsatisfied after foreclosure except where such additional
22 recovery is authorized by separate environmental laws. An
23 action to foreclose this lien may be commenced at any time
24 after the date of filing of the notice of lien. The costs of
25 foreclosure incurred by the municipality, including court
26 costs, reasonable attorney's fees, advances to preserve the

1 property, and other costs related to the enforcement of this
2 subsection, plus statutory interest, are a lien on the real
3 estate.

4 All liens arising under this subsection (f) shall be
5 assignable. The assignee of the lien shall have the same power
6 to enforce the lien as the assigning party, except that the
7 lien may not be enforced under subsection (c).

8 (g) In any case where a municipality has obtained a lien
9 under subsection (a), the municipality may also bring an action
10 for a money judgment against the owner or owners of the real
11 estate in the amount of the lien in the same manner as provided
12 for bringing causes of action in Article II of the Code of
13 Civil Procedure and, upon obtaining a judgment, file a judgment
14 lien against all of the real estate of the owner or owners and
15 enforce that lien as provided for in Article XII of the Code of
16 Civil Procedure.

17 (Source: P.A. 91-162, eff. 7-16-99; 91-177, eff. 1-1-00;
18 91-357, eff. 7-29-99; 91-542, eff. 1-1-00; 91-561, eff. 1-1-00;
19 92-16, eff. 6-28-01; 92-574, eff. 6-26-02; 92-681, eff. 1-1-03;
20 revised 2-18-03.)