96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3564

Introduced 2/10/2010, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Municipal Code. In provisions concerning sanitation code violations, provides that a violation notice and report form shall state that if compliance cannot be completed prior to the hearing date, then the respondent shall provide to the sanitation inspector a proposed date by which the violations will be corrected. Provides that, if a municipality gives notice of a sanitation violation by mail, then the municipality shall send a copy of the violation notice and report form to the address appearing on the property tax records. Provides that it is an affirmative defense to a sanitation code violation if the property or portion of the property where the violation occurred is under the control of a lessee or contract buyer responsible for maintaining the property and the leasehold interest or agreement for deed is being terminated. In provisions concerning nuisance liens for (i) cutting and removing neglected weeds, grass, trees, and bushes, (ii) controlling pests, (iii) removing infected trees, and (iv) removing garbage and refuse, defines "reasonable notice" of a nuisance violation. Includes refuse in the provisions concerning the removal of garbage from private property located within the municipality. In provisions authorizing municipalities to provide pest-control activities on private property located within the municipality, removes undesirable arthropods and mice from the definition of "pests". Makes other changes. Effective immediately.

LRB096 19010 RLJ 34399 b

FISCAL NOTE ACT MAY APPLY

A BILL FOR

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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 Sections 11-19.2-4, 11-19.2-5, 11-19.2-7, 11-20-7,
6 11-20-8, 11-20-12, 11-20-13, and 11-20-15.1 as follows:

7 (65 ILCS 5/11-19.2-4) (from Ch. 24, par. 11-19.2-4) Sec. 11-19.2-4. Instituting code hearing proceedings. When 8 9 a sanitation inspector observes or otherwise discovers a code violation, he or she shall note the violation on a violation 10 notice and report form, indicating the name and address of the 11 respondent, if known, the name, address and State vehicle 12 registration number of the waste hauler who deposited the 13 14 waste, if applicable, the type and nature of the violation, the date and time the violation was observed, the names of 15 16 witnesses to the violation, and the address of the location or 17 property where the violation is observed.

18 The violation notice and report form shall contain a file 19 number and a hearing date noted by the sanitation inspector in 20 the blank spaces provided for that purpose on the form. <u>The</u> 21 <u>violation notice and report form shall state that if the</u> 22 <u>respondent cannot comply with the violation notice and report</u> 23 <u>form prior to the hearing date, then the respondent shall</u> - 2 - LRB096 19010 RLJ 34399 b

provide to the sanitation inspector a proposed date by which 1 2 the violations will be corrected. The violation notice and 3 report form shall state that failure to appear at the hearing on the date indicated may result in a determination of 4 5 liability for the cited violation and the imposition of fines 6 and assessment of costs as provided by the applicable municipal ordinance. The violation notice and report form shall also 7 state that upon a determination of liability and the exhaustion 8 9 or failure to exhaust procedures for judicial review, any 10 unpaid fines or costs imposed will constitute a debt due and 11 owing the municipality.

12 A copy of the violation notice and report form shall be 13 served upon the respondent either personally or by first class 14 mail, postage prepaid, or by certified mail, and sent to the 15 address of the respondent and to the address that appears on 16 the property tax records. If the municipality has an ordinance 17 requiring all or certain property owners to register with the municipality, service may be made on the respondent property 18 owner by mailing the violation notice and report to the owner's 19 20 address registered with the municipality. If the name of the respondent property owner cannot be ascertained or if service 21 22 on such respondent cannot be made by mail, service may be made 23 on the respondent property owner by posting a copy of the violation notice and report form in a prominent place upon the 24 25 property where the violation is found, not less than 10 days 26 before the hearing is scheduled.

- 3 - LRB096 19010 RLJ 34399 b

1 (Source: P.A. 86-1364.)

SB3564

(65 ILCS 5/11-19.2-5) (was 65 ILCS 5/19.2-5) 2 3 Sec. 11-19.2-5. Subpoenas - Defaults. At any time prior to 4 the hearing date the hearing officer assigned to hear the case 5 may, at the request of the sanitation inspector or the attorney 6 for the municipality, or the respondent or his or her attorney, 7 issue subpoenas directing witnesses to appear and give 8 testimony at the hearing. If on the date set for hearing the 9 respondent or his or her attorney fails to appear and the 10 sanitation inspector provides evidence of respondent's receipt 11 of notice, the hearing officer may find the respondent in 12 default and shall proceed with the hearing and accept evidence relating to the existence of a code violation. 13

14 (Source: P.A. 95-331, eff. 8-21-07.)

15 (65 ILCS 5/11-19.2-7) (from Ch. 24, par. 11-19.2-7)

16 Sec. 11-19.2-7. Hearing - Evidence. The hearing officer shall preside at the hearing, shall hear testimony and accept 17 any evidence relevant to the existence or non-existence of a 18 code violation upon the property indicated. The sanitation 19 20 inspector's signed violation notice and report form shall be 21 prima facie evidence of the existence of the code violation 22 described therein. It is an affirmative defense to a code 23 violation under this Division if the property or portion of the property where the violation occurred is under the control of a 24

lessee or contract buyer responsible for maintaining the property and the leasehold interest or agreement for deed is being terminated. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized under this Division.

6 (Source: P.A. 86-1364.)

7 (65 ILCS 5/11-20-7) (from Ch. 24, par. 11-20-7)

8 Sec. 11-20-7. Cutting and removal of neglected weeds,
9 grass, trees, and bushes.

10 (a) The corporate authorities of each municipality may 11 provide for the removal of nuisance greenery from any parcel of 12 private property within the municipality if the owners of that 13 parcel, after reasonable notice, refuse or neglect to remove 14 the nuisance greenery. The municipality may collect, from the 15 owners of that parcel, the reasonable removal cost.

16 (b) The municipality's removal cost under this Section is a 17 lien upon the underlying parcel in accordance with Section 18 11-20-15.

19 (c) For the purpose of this Section:

20 "Removal of nuisance greenery" or "removal activities" 21 means the cutting of weeds or grass <u>if the height exceeds the</u> 22 <u>limit established by the municipality</u>, the trimming of <u>damaged</u> 23 trees <u>that may fall on adjacent property</u> or bushes <u>that</u> 24 <u>encroach on adjacent property</u>, and the removal of nuisance 25 bushes or trees <u>that are located within 18 inches of the</u> - 5 - LRB096 19010 RLJ 34399 b

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SB3564

foundation of a building or a fence.

2 "Removal cost" means the total cost of the removal 3 activity.

"Reasonable notice" means that a copy of a violation notice 4 5 shall be served upon the property owner (i) personally or (ii) by first class mail, postage prepaid, or by certified mail and 6 sent to the address of the property owner and the address 7 appearing on the property tax records. If the name of the 8 9 property owner cannot be ascertained or if service on the owner 10 cannot be made by mail, service may be made on the owner by 11 posting a copy of the violation notice in a prominent place 12 upon the property where the violation occurred.

(d) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

The provisions of this subsection (d), other than this 18 sentence, are inoperative upon certification by the Secretary 19 20 of the Illinois Department of Financial and Professional after consultation with the 21 Regulation, United States 22 Department of Housing and Urban Development, that the Mortgage 23 Electronic Registration System program is effectively registering substantially all mortgaged residential properties 24 located in the State of Illinois, is available for access by 25 26 all municipalities located in the State of Illinois without SB3564 - 6 - LRB096 19010 RLJ 34399 b

charge to them, and such registration includes the telephone
 number for the mortgage servicer.

3 (Source: P.A. 95-183, eff. 8-14-07; 96-462, eff. 8-14-09; 4 96-856, eff. 3-1-10.)

5 (65 ILCS 5/11-20-8) (from Ch. 24, par. 11-20-8)

Sec. 11-20-8. Pest extermination; liens.

7 (a) The corporate authorities of each municipality may 8 provide pest-control activities on any parcel of private 9 property in the municipality if, after reasonable notice, the 10 owners of that parcel refuse or neglect to prevent the ingress 11 of pests to their property or to exterminate pests on their 12 property. The municipality may collect, from the owners of the 13 underlying parcel, the reasonable removal cost.

14 (b) The municipality's removal cost under this Section is a 15 lien upon the underlying parcel in accordance with Section 16 11-20-15.

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(c) For the purpose of this Section:

18 "Pests" means undesirable arthropods (including certain insects, spiders, mites, ticks, and related organisms), wood 19 20 infesting organisms, rats, mice, and other obnoxious 21 undesirable animals, but does not include a feral cat, a 22 "companion animal" as that term is defined in the Humane Care for Animals Act (510 ILCS 70/), "animals" as that term is 23 24 defined in the Illinois Diseased Animals Act (510 ILCS 50/), or 25 animals protected by the Wildlife Code (520 ILCS 5/).

"Pest-control activity" means the extermination of pests
 or the prevention of the ingress of pests.

3 "Removal cost" means the total cost of the pest-control 4 activity.

"Reasonable notice" means that a copy of a violation notice 5 6 shall be served upon the property owner (i) personally or (ii) 7 by first class mail, postage prepaid, or by certified mail and sent to the address of the property owner and the address 8 9 appearing on the property tax records. If the name of the 10 property owner cannot be ascertained or if service on the owner 11 cannot be made by mail, service may be made on the owner by 12 posting a copy of the violation notice in a prominent place 13 upon the property where the violation occurred.

(d) In the case of an abandoned residential property as defined in Section 11-20-15.1, the municipality may elect to obtain a lien for the removal cost pursuant to Section 17 11-20-15.1, in which case the provisions of Section 11-20-15.1 shall be the exclusive remedy for the removal cost.

19 The provisions of this subsection (d), other than this 20 sentence, are inoperative upon certification by the Secretary of the Illinois Department of Financial and Professional 21 22 Regulation, after consultation with the United States 23 Department of Housing and Urban Development, that the Mortgage 24 Electronic Registration System program is effectively 25 registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by 26

SB3564 - 8 - LRB096 19010 RLJ 34399 b

1 all municipalities located in the State of Illinois without 2 charge to them, and such registration includes the telephone 3 number for the mortgage servicer.

4 (Source: P.A. 96-462, eff. 8-14-09; 96-856, eff. 3-1-10.)

5 (65 ILCS 5/11-20-12) (from Ch. 24, par. 11-20-12)

Sec. 11-20-12. Removal of infected trees.

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7 The corporate authorities of each municipality may (a) 8 provide for the removal of elm trees infected with Dutch elm disease or ash trees infected with the emerald ash borer 9 10 (Agrilus planipennis Fairmaire) from any parcel of private 11 property within the municipality if (i) public lands within the 12 municipality are subject to a similar standard for removal and 13 (ii) the owners of that parcel, after reasonable notice, refuse 14 or neglect to remove the infected trees. The municipality may 15 collect, from the owners of the parcel, the reasonable removal 16 cost.

(b) The municipality's removal cost under this Section is a lien upon the underlying parcel in accordance with Section 19 11-20-15.

(c) For the purpose of this Section, "removal cost" meansthe total cost of the removal of the infected trees.

22 (c-5) For the purpose of this Section, "reasonable notice" 23 means that a copy of a violation notice shall be served upon 24 the property owner (i) personally or (ii) by first class mail, 25 postage prepaid, or by certified mail and sent to the address

of the property owner and the address appearing on the property tax records. If the name of the property owner cannot be ascertained or if service on the owner cannot be made by mail, service may be made on the owner by posting a copy of the violation notice in a prominent place upon the property where the violation occurred.

7 (d) In the case of an abandoned residential property as 8 defined in Section 11-20-15.1, the municipality may elect to 9 obtain a lien for the removal cost pursuant to Section 10 11-20-15.1, in which case the provisions of Section 11-20-15.1 11 shall be the exclusive remedy for the removal cost.

12 The provisions of this subsection (d), other than this 13 sentence, are inoperative upon certification by the Secretary 14 of the Illinois Department of Financial and Professional 15 Regulation, after consultation with the United States 16 Department of Housing and Urban Development, that the Mortgage 17 Registration System is effectively Electronic program registering substantially all mortgaged residential properties 18 located in the State of Illinois, is available for access by 19 20 all municipalities located in the State of Illinois without charge to them, and such registration includes the telephone 21 22 number for the mortgage servicer.

23 (Source: P.A. 95-183, eff. 8-14-07; 96-462, eff. 8-14-09; 24 96-856, eff. 3-1-10.)

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(65 ILCS 5/11-20-13) (from Ch. 24, par. 11-20-13)

Sec. 11-20-13. Removal of garbage, <u>refuse</u>, debris, and graffiti.

(a) The corporate authorities of each municipality may
provide for the removal of garbage, debris, and graffiti from
any parcel of private property within the municipality if the
owner of that parcel, after reasonable notice, refuses or
neglects to remove the garbage, <u>refuse as defined in Section</u>
<u>11-19-2</u>, <u>debris</u>, and graffiti. The municipality may collect,
from the owner of the parcel, the reasonable removal cost.

10 (b) The municipality's removal cost under this Section is a 11 lien upon the underlying parcel in accordance with Section 12 11-20-15.

13 (c) This amendatory Act of 1973 does not apply to any 14 municipality which is a home rule unit.

15 (d) For the purpose of this Section, "removal cost" means 16 the total cost of the removal of garbage and <u>refuse</u> debris. The 17 term "removal cost" does not include any cost associated with 18 the removal of graffiti.

(d-5) For the purpose of this Section, "reasonable notice" 19 20 means that a copy of a violation notice shall be served upon the property owner (i) personally or (ii) by first class mail, 21 22 postage prepaid, or by certified mail and sent to the address 23 of the property owner and the address appearing on the property 24 tax records. If the name of the property owner cannot be 25 ascertained or if service on the owner cannot be made by mail, service may be made on the owner by posting a copy of the 26

1 violation notice in a prominent place upon the property where 2 the violation occurred.

3 (e) In the case of an abandoned residential property as 4 defined in Section 11-20-15.1, the municipality may elect to 5 obtain a lien for the removal cost pursuant to Section 6 11-20-15.1, in which case the provisions of Section 11-20-15.1 7 shall be the exclusive remedy for the removal cost.

8 The provisions of this subsection (e), other than this 9 sentence, are inoperative upon certification by the Secretary 10 of the Illinois Department of Financial and Professional 11 Regulation, after consultation with the United States 12 Department of Housing and Urban Development, that the Mortgage 13 Registration Electronic System program is effectivelv 14 registering substantially all mortgaged residential properties located in the State of Illinois, is available for access by 15 16 all municipalities located in the State of Illinois without 17 charge to them, and such registration includes the telephone number for the mortgage servicer. 18

19 (Source: P.A. 96-462, eff. 8-14-09; 96-856, eff. 3-1-10.)

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(65 ILCS 5/11-20-15.1)

21 Sec. 11-20-15.1. Lien for costs of removal, securing, and 22 enclosing on abandoned residential property.

(a) If the municipality elects to incur a removal cost
pursuant to subsection (d) of Section 11-20-7, subsection (d)
of Section 11-20-8, subsection (d) of Section 11-20-12, or

1 subsection (e) of Section 11-20-13, or a securing or enclosing 2 cost pursuant to Section 11-31-1.01 with respect to an 3 abandoned residential property, then that cost is a lien upon 4 the underlying parcel of that abandoned residential property. 5 This lien is superior to all other liens and encumbrances, 6 except tax liens and as otherwise provided in this Section.

7 (b) To perfect a lien under this Section, the municipality 8 must, within one year after the cost is incurred for the 9 activity, file notice of the lien in the office of the recorder 10 in the county in which the abandoned residential property is 11 located or, if the abandoned residential property is registered 12 under the Torrens system, in the office of the Registrar of 13 Titles of that county, a sworn statement setting out:

14 (1) a description of the abandoned residential15 property that sufficiently identifies the parcel;

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(2) the amount of the cost of the activity;

17 (3) the date or dates when the cost for the activity18 was incurred by the municipality; and

(4) a statement that the lien has been filed pursuant
to subsection (d) of Section 11-20-7, subsection (d) of
Section 11-20-8, subsection (d) of Section 11-20-12,
subsection (e) of Section 11-20-13, or Section 11-31-1.01,
as applicable.

If, for any abandoned residential property, the municipality engaged in any activity on more than one occasion during the course of one year, then the municipality may

1 combine any or all of the costs of each of those activities 2 into a single notice of lien.

(c) To enforce a lien pursuant to this Section, 3 the municipality must maintain contemporaneous records that 4 include, at a minimum: (i) a dated statement of finding by the 5 6 municipality that the property for which the work is to be 7 performed has become abandoned residential property, which 8 shall include (1) the date when the property was first known or 9 observed to be unoccupied by any lawful occupant or occupants, 10 (2) a description of the actions taken by the municipality to 11 contact the legal owner or owners of the property identified on 12 the recorded mortgage, or, if known, any agent of the owner or owners, including the dates such actions were taken, and (3) a 13 14 statement that no contacts were made with the legal owner or owners or their agents as a result of such actions, (ii) a 15 16 dated certification by an authorized official of the 17 municipality of the necessity and specific nature of the work to be performed, (iii) a copy of the agreement with the person 18 19 or entity performing the work that includes the legal name of 20 the person or entity, the rate or rates to be charged for performing the work, and an estimate of the total cost of the 21 22 work to be performed, (iv) detailed invoices and payment 23 vouchers for all payments made by the municipality for such 24 work, and (v) a statement as to whether the work was engaged 25 through a competitive bidding process, and if so, a copy of all 26 proposals submitted by the bidders for such work.

- 14 - LRB096 19010 RLJ 34399 b

A lien under this Section shall be enforceable 1 (d) 2 exclusively at the hearing for confirmation of sale of the 3 abandoned residential property that is held pursuant to subsection (b) of Section 15-1508 of the Code of Civil 4 5 Procedure and shall be limited to a claim of interest in the proceeds of the sale and subject to the requirements of this 6 7 Section. Any mortgagee who holds a mortgage on the property, or 8 any beneficiary or trustee who holds a deed of trust on the 9 property, may contest the lien or the amount of the lien at any 10 time during the foreclosure proceeding upon motion and notice 11 in accordance with court rules applicable to motions generally. 12 Grounds for forfeiture of the lien or the superior status of the lien granted by subsection (a) of this Section shall 13 14 include, but not be limited to, a finding by the court that: 15 (i) the municipality has not complied with subsection (b) or 16 (c) of this Section, (ii) the scope of the work was not 17 reasonable under the circumstances, (iii) the work exceeded the authorization for the work to be performed under subsection (a) 18 Section 11-20-7, subsection (a) of Section 11-20-8, 19 of 20 subsection (a) of Section 11-20-12, subsection (a) of Section subsection (a) of Section 11-31-1.01, 21 11-20-13, or as 22 applicable, or (iv) the cost of the services rendered or 23 materials provided was not commercially reasonable. Forfeiture of the superior status of the lien otherwise granted by this 24 25 Section shall not constitute a forfeiture of the lien as a 26 subordinate lien.

1 (e) Upon payment of the amount of a lien filed under this 2 Section by the mortgagee, servicer, owner, or any other person, 3 the municipality shall release the lien, and the release may be 4 filed of record by the person making such payment at the 5 person's sole expense as in the case of filing notice of lien.

6 (f) Notwithstanding any other provision of this Section, a 7 municipality may not file a lien pursuant to this Section for 8 activities performed pursuant to Section 11-20-7, Section 11-20-8, Section 11-20-12, Section 11-20-13, or 9 Section 10 11-31-1.01, if: (i) the mortgagee or servicer of the abandoned 11 residential property has provided notice to the municipality 12 that the mortgagee or servicer has performed or will perform 13 the remedial actions specified in the notice that the municipality otherwise might perform pursuant to subsection 14 (d) of Section 11-20-7, subsection (d) of Section 11-20-8, 15 16 subsection (d) of Section 11-20-12, subsection (e) of Section 17 11-20-13, or Section 11-31-1.01, provided that the remedial actions specified in the notice have been performed or are 18 performed or initiated in good faith within 30 days of such 19 notice; or (ii) the municipality has provided notice to the 20 21 mortgagee or servicer of a problem with the property requiring 22 the remedial actions specified in the notice that the 23 municipality otherwise would perform pursuant to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, 24 25 subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, and the mortgagee or servicer 26

has performed or performs or initiates in good faith the remedial actions specified in the notice within 30 days of such notice.

(g) This Section and subsection (d) of Section 11-20-7,
subsection (d) of Section 11-20-8, subsection (d) of Section
11-20-12, subsection (e) of Section 11-20-13, or Section
11-31-1.01 shall apply only to activities performed, costs
incurred, and liens filed after the effective date of this
amendatory Act of the 96th General Assembly.

10 (h) For the purposes of this Section and subsection (d) of 11 Section 11-20-7, subsection (d) of Section 11-20-8, subsection 12 (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or 13 Section 11-31-1.01:

"Abandoned residential property" means any type 14 of 15 permanent residential dwelling unit, including detached single 16 family structures, and townhouses, condominium units and 17 multifamily rental apartments covering the entire property, and manufactured homes treated under Illinois law as real 18 19 estate and not as personal property, that has been unoccupied 20 by any lawful occupant or occupants for at least 90 days and 21 utility service is not active making the property 22 uninhabitable, and for which after such 90 day period, the 23 municipality has made good faith efforts to contact the legal 24 owner or owners of the property identified on the recorded 25 mortgage, or, if known, any agent of the owner or owners, and 26 no contact has been made. A property for which the municipality

has been given notice of the order of confirmation of sale 1 2 pursuant to subsection (b-10) of Section 15-1508 of the Code of 3 Civil Procedure or a property where renovation has occurred within the 30-day period before the municipality incurred the 4 5 removal cost shall not be deemed to be an abandoned residential property for the purposes of subsection (d) of Section 11-20-7, 6 7 subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, and Section 8 9 11-31-1.01 of this Code.

"MERS program" means the nationwide Mortgage Electronic 10 11 Registration System approved by Fannie Mae, Freddie Mac, and 12 Ginnie Mae that has been created by the mortgage banking industry with the mission of registering every mortgage loan in 13 the United States to lawfully make information concerning each 14 residential mortgage loan and the property securing it 15 16 available by Internet access to mortgage originators, 17 servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title 18 19 companies, insurers, investors, county recorders, units of 20 local government, and consumers.

(i) Any entity or person who performs a removal, securing, or enclosing activity pursuant to the authority of a municipality under subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or Section 11-31-1.01, may, in its, his, or her own name, file a lien

pursuant to subsection (b) of this Section and appear in a 1 2 foreclosure action on that lien pursuant to subsection (d) of 3 this Section in the place of the municipality, provided that the municipality shall remain subject to subsection (c) of this 4 5 Section, and such party shall be subject to all of the provisions in this Section as if such party were 6 the 7 municipality.

8 If prior to subsection (d) of Section 11-20-7, (j) 9 subsection (d) of Section 11-20-8, subsection (d) of Section 10 11-20-12, and subsection (e) of Section 11-20-13 becoming 11 inoperative a lien is filed pursuant to any of those 12 subsections, then the lien shall remain in full force and 13 effect after the subsections have become inoperative, subject to all of the provisions of this Section. If prior to the 14 15 repeal of Section 11-31-1.01 a lien is filed pursuant to 16 Section 11-31-1.01, then the lien shall remain in full force 17 and effect after the repeal of Section 11-31-1.01, subject to all of the provisions of this Section. 18

19 (Source: P.A. 96-856, eff. 3-1-10.)

20 Section 99. Effective date. This Act takes effect upon 21 becoming law.

	SB3564	- 19 - LRB096 19010 RLJ 34399 b
1		INDEX
2	Statutes amend	led in order of appearance
3	65 ILCS 5/11-19.2-4	from Ch. 24, par. 11-19.2-4
4	65 ILCS 5/11-19.2-5	was 65 ILCS 5/19.2-5
5	65 ILCS 5/11-19.2-7	from Ch. 24, par. 11-19.2-7
6	65 ILCS 5/11-20-7	from Ch. 24, par. 11-20-7
7	65 ILCS 5/11-20-8	from Ch. 24, par. 11-20-8
8	65 ILCS 5/11-20-12	from Ch. 24, par. 11-20-12
9	65 ILCS 5/11-20-13	from Ch. 24, par. 11-20-13
10	65 ILCS 5/11-20-15.1	