

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

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

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

22 "Mechanics lien" and "lien" are used interchangeably in
23 this Section.

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

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

6 "Recording" and "filing" are used interchangeably in this
7 Section.

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

11 "Residential property" means real property improved with
12 not less than one nor more than 4 residential dwelling units; a
13 residential condominium unit, including, but not limited to,
14 the common elements allocated to the exclusive use of the
15 condominium unit that form an integral part of the condominium
16 unit and any parking unit or units specified by the declaration
17 to be allocated to a specific residential condominium unit; or
18 a single tract of agriculture real estate consisting of 40
19 acres or less that is improved with a single-family residence.
20 If a declaration of condominium ownership provides for
21 individually owned and transferable parking units,
22 "residential property" does not include the parking unit of a
23 specified residential condominium unit unless the parking unit
24 is included in the legal description of the property against
25 which the mechanics lien is recorded.

26 (c) Establishment of a mechanics lien demand and referral

1 process. After a public hearing, a recorder in a county with a
2 code hearing unit may adopt rules establishing a mechanics lien
3 demand and referral process for residential property. A
4 recorder shall provide public notice 90 days before the public
5 hearing. The notice shall include a statement of the recorder's
6 intent to create a mechanics lien demand and referral process
7 and shall be published in a newspaper of general circulation in
8 the county and, if feasible, be posted on the recorder's
9 website and at the recorder's office or offices.

10 (d) Notice of Expired Lien. If a recorder determines, after
11 review by legal staff or counsel, that a mechanics lien
12 recorded in the grantor's index or the grantee's index is an
13 expired lien, the recorder shall serve a Notice of Expired Lien
14 by certified mail to the last known address of the owner. The
15 owner or legal representative of the owner of the residential
16 property shall confirm in writing his or her belief that the
17 lien is not involved in pending litigation and, if there is no
18 pending litigation, as verified and confirmed by county court
19 records, the owner may request that the recorder proceed with a
20 referral or serve a Demand to Commence Suit.

21 For the purposes of this Section, a recorder shall
22 determine a lien is an expired lien if the lien is unenforced
23 (if a suit to enforce the lien has not been commenced by the
24 lienholder or a counterclaim has not been filed (within 2 years
25 after the completion date of the contract as specified in the
26 recorded mechanics lien, the completion of extra or additional

1 work, or furnishing of extra or additional material under
2 Section 9 of the Mechanics Lien Act; if a completion date is
3 not specified in the recorded lien, then the work completion
4 date shall be deemed the date of recording of the mechanics
5 lien) and if an automatic stay under Section 362(a) of the
6 United States Bankruptcy Code does not prohibit a suit or
7 counterclaim to foreclose.

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 expired 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 lienholder records a release of lien with
4 the county recorder as required by subsection (a) of Section 34
5 of the Mechanics Lien Act, then the demand and referral process
6 is completed for the recorder for that property. If service
7 under this Section is responded to consistent with Section 34
8 of the Mechanics Lien Act, the recorder may not proceed under
9 subsection (f). If no response is received consistent with
10 Section 34 of the Mechanics Lien Act, the recorder may proceed
11 under subsection (f).

12 (f) Referral. Upon receipt of an owner's confirmation that
13 the lien is not involved in pending litigation and a request
14 for the recorder to proceed with a referral, the recorder
15 shall: (i) file the Notice of Referral with the county's code
16 hearing unit; (ii) identify and notify the lienholder by
17 telephone, if available, of the referral and send a copy of the
18 Notice of Referral by certified mail to the lienholder using
19 information included in the recorded mechanics lien or the last
20 known address or registered agent received from the Secretary
21 of State or obtained from the Secretary of State's registered
22 business database; (iii) send a copy of the Notice of Referral
23 by mail to the physical address of the property owner
24 associated with the lien; and (iv) record a copy of the Notice
25 of Referral in the grantor's index or the grantee's index
26 identifying the mechanics lien and include the corresponding

1 document number. The Notice of Referral shall clearly identify
2 the person, persons, or entity believed to be the owner,
3 assignee, successor, or beneficiary of the lien. The recorder
4 may, at his or her discretion, notify the Secretary of State
5 regarding a referral determined to involve a company,
6 corporation, or business registered with that office.

7 No earlier than 30 business days after the date the
8 lienholder is required to respond to a Demand to Commence Suit
9 under Section 34 of the Mechanics Lien Act, the code hearing
10 unit shall schedule a hearing to occur at least 30 days after
11 sending notice of the date of hearing. Notice of the hearing
12 shall be provided by the county recorder, by and through his or
13 her representative, to the filer, or the party represented by
14 the filer, of the expired lien, the legal representative of the
15 recorder of deeds who referred the case, and the last owner of
16 record, as identified in the Notice of Referral.

17 If the recorder shows by clear and convincing evidence that
18 the lien in question is an expired lien, the administrative law
19 judge shall rule the lien is forfeited under Section 34.5 of
20 the Mechanics Lien Act and that the lien no longer affects the
21 chain of title of the property in any way. The judgment shall
22 be forwarded to all parties identified in this subsection. Upon
23 receiving judgment of a forfeited lien, the recorder shall,
24 within 5 business days, record a copy of the judgment in the
25 grantor's index or the grantee's index.

26 If the administrative law judge finds the lien is not

1 expired, the recorder shall, no later than 5 business days
2 after receiving notice of the decision of the administrative
3 law judge, record a copy of the judgment in the grantor's index
4 or the grantee's index.

5 A decision by an administrative law judge is reviewable
6 under the Administrative Review Law, and nothing in this
7 Section precludes a property owner or lienholder from
8 proceeding with a civil action to resolve questions concerning
9 a mechanics lien.

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

13 (g) Final administrative decision. The recorder's decision
14 to refer a mechanics lien or serve a Demand to Commence Suit is
15 a final administrative decision that is subject to review under
16 the Administrative Review Law by the circuit court of the
17 county where the real property is located. The standard of
18 review by the circuit court shall be consistent with the
19 Administrative Review Law.

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

1 of a lien under this Section.

2 (i) Private actions; use of demand and referral process.
3 Nothing in this Section precludes a private right of action by
4 any party with an interest in the property affected by the
5 mechanics lien or a decision by the code hearing unit. Nothing
6 in this Section requires a person or entity who may have a
7 mechanics lien recorded against his or her property to use the
8 mechanics lien demand and referral process created by this
9 Section.

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

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

23 (55 ILCS 5/5-41065 new)

24 Sec. 5-41065. Mechanics lien demand and referral
25 adjudication.

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

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

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

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

16 (55 ILCS 5/5-43043 new)

17 Sec. 5-43043. 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 Section 10. The Mechanics Lien Act is amended by changing
10 Section 34 and adding Section 34.5 as follows:

11 (770 ILCS 60/34) (from Ch. 82, par. 34)

12 Sec. 34. Notice to commence suit.

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

22 (b) A written demand under this Section must contain the
23 following language in at least 10 point bold face type:
24 "Failure to respond to this notice within 30 days after

1 receipt, as required by Section 34 of the Mechanics Lien Act,
2 shall result in the forfeiture of the referenced lien."

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

4 (770 ILCS 60/34.5 new)

5 Sec. 34.5. Mechanics lien administrative adjudication.

6 (a) Notwithstanding any other provision in this Act, a
7 county's code hearing unit may adjudicate the validity of a
8 mechanics lien under Section 3-5010.8 of the Counties Code. If
9 the recorder shows by clear and convincing evidence that the
10 lien being adjudicated is an expired lien, the administrative
11 law judge shall rule the lien is forfeited under this Act and
12 that the lien no longer affects the chain of title of the
13 property in any way.

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