



Sen. Cristina Castro

Filed: 5/24/2018

10000HB5201sam002

LRB100 18632 AWJ 40621 a

1 AMENDMENT TO HOUSE BILL 5201

2 AMENDMENT NO. _____. Amend House Bill 5201, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Counties Code is amended by adding Sections
6 3-5010.8, 5-41065, and 5-43043 as follows:

7 (55 ILCS 5/3-5010.8 new)

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

10 (a) Legislative findings. The General Assembly finds that
11 expired mechanics liens on residential property, which cloud
12 title to property, are a rapidly growing problem throughout the
13 State. In order to address the increase in expired mechanics
14 liens and, more specifically, those that have not been released
15 by the lienholder, a recorder may establish a process to demand
16 and refer mechanics liens that have been recorded but not

1 litigated or released in accordance with the Mechanics Lien Act
2 to an administrative law judge for resolution or demand that
3 the lienholder commence suit or forfeit the lien.

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

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

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

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

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

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

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

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

1 acres or less that is improved with a single-family residence.
2 If a declaration of condominium ownership provides for
3 individually owned and transferable parking units,
4 "residential property" does not include the parking unit of a
5 specified residential condominium unit unless the parking unit
6 is included in the legal description of the property against
7 which the mechanics lien is recorded.

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

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

1 records, the owner may request that the recorder proceed with a
2 referral or serve a Demand to Commence Suit.

3 For the purposes of this Section, a recorder shall
4 determine a lien is an expired lien if the lien is unenforced
5 (if a suit to enforce the lien has not been commenced by the
6 lienholder or a counterclaim has not been filed (within 2 years
7 after the completion date of the contract as specified in the
8 recorded mechanics lien, the completion of extra or additional
9 work, or furnishing of extra or additional material under
10 Section 9 of the Mechanics Lien Act; if a completion date is
11 not specified in the recorded lien, then the work completion
12 date shall be deemed the date of recording of the mechanics
13 lien) and if an automatic stay under Section 362(a) of the
14 United States Bankruptcy Code does not prohibit a suit or
15 counterclaim to foreclose.

16 (e) Demand to Commence Suit. Upon receipt of an owner's
17 confirmation that the lien is not involved in pending
18 litigation and a request for the recorder to serve a Demand to
19 Commence Suit, the recorder shall serve a Demand to Commence
20 Suit on the lienholder of the expired lien as provided in
21 Section 34 of the Mechanics Lien Act. A recorder may request
22 that the Secretary of State assist in providing registered
23 agent information or obtain information from the Secretary of
24 State's registered business database when the recorder seeks to
25 serve a Demand to Commence suit on the lienholder. Upon
26 request, the Secretary of State, or his or her designee, shall

1 provide the last known address or registered agent information
2 for a lienholder who is incorporated or doing business in the
3 State. The recorder must record a copy of the Demand to
4 Commence suit in the grantor's index or the grantee's index
5 identifying the mechanics lien and include the corresponding
6 document number and the date of demand. The recorder may, at
7 his or her discretion, notify the Secretary of State regarding
8 a Demand to Commence suit determined to involve a company,
9 corporation, or business registered with that office.

10 When the lienholder commences a suit or files an answer
11 within 30 days or the lienholder records a release of lien with
12 the county recorder as required by subsection (a) of Section 34
13 of the Mechanics Lien Act, then the demand and referral process
14 is completed for the recorder for that property. If service
15 under this Section is responded to consistent with Section 34
16 of the Mechanics Lien Act, the recorder may not proceed under
17 subsection (f). If no response is received consistent with
18 Section 34 of the Mechanics Lien Act, the recorder may proceed
19 under subsection (f).

20 (f) Referral. Upon receipt of an owner's confirmation that
21 the lien is not involved in pending litigation and a request
22 for the recorder to proceed with a referral, the recorder
23 shall: (i) file the Notice of Referral with the county's code
24 hearing unit; (ii) identify and notify the lienholder by
25 telephone, if available, of the referral and send a copy of the
26 Notice of Referral by certified mail to the lienholder using

1 information included in the recorded mechanics lien or the last
2 known address or registered agent received from the Secretary
3 of State or obtained from the Secretary of State's registered
4 business database; (iii) send a copy of the Notice of Referral
5 by mail to the physical address of the property owner
6 associated with the lien; and (iv) record a copy of the Notice
7 of Referral in the grantor's index or the grantee's index
8 identifying the mechanics lien and include the corresponding
9 document number. The Notice of Referral shall clearly identify
10 the person, persons, or entity believed to be the owner,
11 assignee, successor, or beneficiary of the lien. The recorder
12 may, at his or her discretion, notify the Secretary of State
13 regarding a referral determined to involve a company,
14 corporation, or business registered with that office.

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

25 If the recorder shows by clear and convincing evidence that
26 the lien in question is an expired lien, the administrative law

1 judge shall rule the lien is forfeited under Section 34.5 of
2 the Mechanics Lien Act and that the lien no longer affects the
3 chain of title of the property in any way. The judgment shall
4 be forwarded to all parties identified in this subsection. Upon
5 receiving judgment of a forfeited lien, the recorder shall,
6 within 5 business days, record a copy of the judgment in the
7 grantor's index or the grantee's index.

8 If the administrative law judge finds the lien is not
9 expired, the recorder shall, no later than 5 business days
10 after receiving notice of the decision of the administrative
11 law judge, record a copy of the judgment in the grantor's index
12 or the grantee's index.

13 A decision by an administrative law judge is reviewable
14 under the Administrative Review Law, and nothing in this
15 Section precludes a property owner or lienholder from
16 proceeding with a civil action to resolve questions concerning
17 a mechanics lien.

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

21 (g) Final administrative decision. The recorder's decision
22 to refer a mechanics lien or serve a Demand to Commence Suit is
23 a final administrative decision that is subject to review under
24 the Administrative Review Law by the circuit court of the
25 county where the real property is located. The standard of
26 review by the circuit court shall be consistent with the

1 Administrative Review Law.

2 (h) Liability. A recorder and his or her employees or
3 agents are not subject to personal liability by reason of any
4 error or omission in the performance of any duty under this
5 Section, except in the case of willful or wanton conduct. The
6 recorder and his or her employees or agents are not liable for
7 the decision to refer a lien or serve a Demand to Commence
8 Suit, or failure to refer or serve a Demand to Commence Suit,
9 of a lien under this Section.

10 (i) Private actions; use of demand and referral process.
11 Nothing in this Section precludes a private right of action by
12 any party with an interest in the property affected by the
13 mechanics lien or a decision by the code hearing unit. Nothing
14 in this Section requires a person or entity who may have a
15 mechanics lien recorded against his or her property to use the
16 mechanics lien demand and referral process created by this
17 Section.

18 A lienholder or property owner may remove a matter in the
19 referral process to the circuit court at any time prior to the
20 final decision of the administrative law judge by delivering a
21 certified notice of the suit filed in the circuit court to the
22 administrative law judge. Upon receipt of the certified notice,
23 the administrative law judge shall dismiss the matter without
24 prejudice. If the matter is dismissed due to removal, then the
25 demand and referral process is completed for the recorder for
26 that property. If the circuit court dismisses the removed

1 matter without deciding on whether the lien is expired and
2 without prejudice, the recorder may reinstitute the demand and
3 referral process under subsection (d).

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

5 (55 ILCS 5/5-41065 new)

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

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

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

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

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

23 (55 ILCS 5/5-43043 new)

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

1 adjudication.

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

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

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

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

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

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

20 Sec. 34. Notice to commence suit.

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

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

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

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

12 (770 ILCS 60/34.5 new)

13 Sec. 34.5. Mechanics lien administrative adjudication.

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

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