



Rep. Arthur L. Turner

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LRB095 15189 RLJ 50987 a

1 AMENDMENT TO HOUSE BILL 4385

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4385 by replacing  
3 everything after the enacting clause with the following:

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 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

1 provided by Division 5-25 of the Counties Code or its  
2 predecessor, the county board of that county may exercise those  
3 powers with regard to dangerous and unsafe buildings or  
4 uncompleted and abandoned buildings within the territory of any  
5 city, village, or incorporated town having less than 50,000  
6 population.

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

25 The hearing upon the application to the circuit court shall  
26 be expedited by the court and shall be given precedence over

1 all other suits. Any person entitled to bring an action under  
2 subsection (b) shall have the right to intervene in an action  
3 brought under this Section.

4 The cost of the demolition, repair, enclosure, or removal  
5 incurred by the municipality, by an intervenor, or by a lien  
6 holder of record, including court costs, attorney's fees, and  
7 other costs related to the enforcement of this Section, is  
8 recoverable from the owner or owners of the real estate or the  
9 previous owner or both if the property was transferred during  
10 the 15 day notice period and is a lien on the real estate; the  
11 lien is superior to all prior existing liens and encumbrances,  
12 except taxes, if, within 180 days after the repair, demolition,  
13 enclosure, or removal, the municipality, the lien holder of  
14 record, or the intervenor who incurred the cost and expense  
15 shall file a notice of lien for the cost and expense incurred  
16 in the office of the recorder in the county in which the real  
17 estate is located or in the office of the registrar of titles  
18 of the county if the real estate affected is registered under  
19 the Registered Titles (Torrens) Act.

20 The notice must consist of a sworn statement setting out  
21 (1) a description of the real estate sufficient for its  
22 identification, (2) the amount of money representing the cost  
23 and expense incurred, and (3) the date or dates when the cost  
24 and expense was incurred by the municipality, the lien holder  
25 of record, or the intervenor. Upon payment of the cost and  
26 expense by the owner of or persons interested in the property

1 after the notice of lien has been filed, the lien shall be  
2 released by the municipality, the person in whose name the lien  
3 has been filed, or the assignee of the lien, and the release  
4 may be filed of record as in the case of filing notice of lien.  
5 Unless the lien is enforced under subsection (c), the lien may  
6 be enforced by foreclosure proceedings as in the case of  
7 mortgage foreclosures under Article XV of the Code of Civil  
8 Procedure or mechanics' lien foreclosures. An action to  
9 foreclose this lien may be commenced at any time after the date  
10 of filing of the notice of lien. The costs of foreclosure  
11 incurred by the municipality, including court costs,  
12 reasonable attorney's fees, advances to preserve the property,  
13 and other costs related to the enforcement of this subsection,  
14 plus statutory interest, are a lien on the real estate and are  
15 recoverable by the municipality from the owner or owners of the  
16 real estate.

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

21 If the appropriate official of any municipality determines  
22 that any dangerous and unsafe building or uncompleted and  
23 abandoned building within its territory fulfills the  
24 requirements for an action by the municipality under the  
25 Abandoned Housing Rehabilitation Act, the municipality may  
26 petition under that Act in a proceeding brought under this

1 subsection.

2 (b) Any owner or tenant of real property within 1200 feet  
3 in any direction of any dangerous or unsafe building located  
4 within the territory of a municipality with a population of  
5 500,000 or more may file with the appropriate municipal  
6 authority a request that the municipality apply to the circuit  
7 court of the county in which the building is located for an  
8 order permitting the demolition, removal of garbage, debris,  
9 and other noxious or unhealthy substances and materials from,  
10 or repair or enclosure of the building in the manner prescribed  
11 in subsection (a) of this Section. If the municipality fails to  
12 institute an action in circuit court within 90 days after the  
13 filing of the request, the owner or tenant of real property  
14 within 1200 feet in any direction of the building may institute  
15 an action in circuit court seeking an order compelling the  
16 owner or owners of record to demolish, remove garbage, debris,  
17 and other noxious or unhealthy substances and materials from,  
18 repair or enclose or to cause to be demolished, have garbage,  
19 debris, and other noxious or unhealthy substances and materials  
20 removed from, repaired, or enclosed the building in question. A  
21 private owner or tenant who institutes an action under the  
22 preceding sentence shall not be required to pay any fee to the  
23 clerk of the circuit court. The cost of repair, removal,  
24 demolition, or enclosure shall be borne by the owner or owners  
25 of record of the building. In the event the owner or owners of  
26 record fail to demolish, remove garbage, debris, and other

1 noxious or unhealthy substances and materials from, repair, or  
2 enclose the building within 90 days of the date the court  
3 entered its order, the owner or tenant who instituted the  
4 action may request that the court join the municipality as a  
5 party to the action. The court may order the municipality to  
6 demolish, remove materials from, repair, or enclose the  
7 building, or cause that action to be taken upon the request of  
8 any owner or tenant who instituted the action or upon the  
9 municipality's request. The municipality may file, and the  
10 court may approve, a plan for rehabilitating the building in  
11 question. A court order authorizing the municipality to  
12 demolish, remove materials from, repair, or enclose a building,  
13 or cause that action to be taken, shall not preclude the court  
14 from adjudging the owner or owners of record of the building in  
15 contempt of court due to the failure to comply with the order  
16 to demolish, remove garbage, debris, and other noxious or  
17 unhealthy substances and materials from, repair, or enclose the  
18 building.

19 If a municipality or a person or persons other than the  
20 owner or owners of record pay the cost of demolition, removal  
21 of garbage, debris, and other noxious or unhealthy substances  
22 and materials, repair, or enclosure pursuant to a court order,  
23 the cost, including court costs, attorney's fees, and other  
24 costs related to the enforcement of this subsection, is  
25 recoverable from the owner or owners of the real estate and is  
26 a lien on the real estate; the lien is superior to all prior

1 existing liens and encumbrances, except taxes, if, within 180  
2 days after the repair, removal, demolition, or enclosure, the  
3 municipality or the person or persons who paid the costs of  
4 demolition, removal, repair, or enclosure shall file a notice  
5 of lien of the cost and expense incurred in the office of the  
6 recorder in the county in which the real estate is located or  
7 in the office of the registrar of the county if the real estate  
8 affected is registered under the Registered Titles (Torrens)  
9 Act. The notice shall be in a form as is provided in subsection  
10 (a). An owner or tenant who institutes an action in circuit  
11 court seeking an order to compel the owner or owners of record  
12 to demolish, remove materials from, repair, or enclose any  
13 dangerous or unsafe building, or to cause that action to be  
14 taken under this subsection may recover court costs and  
15 reasonable attorney's fees for instituting the action from the  
16 owner or owners of record of the building. Upon payment of the  
17 costs and expenses by the owner of or a person interested in  
18 the property after the notice of lien has been filed, the lien  
19 shall be released by the municipality or the person in whose  
20 name the lien has been filed or his or her assignee, and the  
21 release may be filed of record as in the case of filing a  
22 notice of lien. Unless the lien is enforced under subsection  
23 (c), the lien may be enforced by foreclosure proceedings as in  
24 the case of mortgage foreclosures under Article XV of the Code  
25 of Civil Procedure or mechanics' lien foreclosures. An action  
26 to foreclose this lien may be commenced at any time after the

1 date of filing of the notice of lien. The costs of foreclosure  
2 incurred by the municipality, including court costs,  
3 reasonable attorneys' fees, advances to preserve the property,  
4 and other costs related to the enforcement of this subsection,  
5 plus statutory interest, are a lien on the real estate and are  
6 recoverable by the municipality from the owner or owners of the  
7 real estate.

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

12 (c) In any case where a municipality has obtained a lien  
13 under subsection (a), (b), or (f), the municipality may enforce  
14 the lien under this subsection (c) in the same proceeding in  
15 which the lien is authorized.

16 A municipality desiring to enforce a lien under this  
17 subsection (c) shall petition the court to retain jurisdiction  
18 for foreclosure proceedings under this subsection. Notice of  
19 the petition shall be served, by certified or registered mail,  
20 on all persons who were served notice under subsection (a),  
21 (b), or (f). The court shall conduct a hearing on the petition  
22 not less than 15 days after the notice is served. If the court  
23 determines that the requirements of this subsection (c) have  
24 been satisfied, it shall grant the petition and retain  
25 jurisdiction over the matter until the foreclosure proceeding  
26 is completed. The costs of foreclosure incurred by the



1 municipality, including court costs, reasonable attorneys'  
2 fees, advances to preserve the property, and other costs  
3 related to the enforcement of this subsection, plus statutory  
4 interest, are a lien on the real estate and are recoverable by  
5 the municipality from the owner or owners of the real estate.  
6 If the court denies the petition, the municipality may enforce  
7 the lien in a separate action as provided in subsection (a),  
8 (b), or (f).

9 All persons designated in Section 15-1501 of the Code of  
10 Civil Procedure as necessary parties in a mortgage foreclosure  
11 action shall be joined as parties before issuance of an order  
12 of foreclosure. Persons designated in Section 15-1501 of the  
13 Code of Civil Procedure as permissible parties may also be  
14 joined as parties in the action.

15 The provisions of Article XV of the Code of Civil Procedure  
16 applicable to mortgage foreclosures shall apply to the  
17 foreclosure of a lien under this subsection (c), except to the  
18 extent that those provisions are inconsistent with this  
19 subsection. For purposes of foreclosures of liens under this  
20 subsection, however, the redemption period described in  
21 subsection (b) of Section 15-1603 of the Code of Civil  
22 Procedure shall end 60 days after the date of entry of the  
23 order of foreclosure.

24 (d) In addition to any other remedy provided by law, the  
25 corporate authorities of any municipality may petition the  
26 circuit court to have property declared abandoned under this

1 subsection (d) if:

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

5 (2) the property is unoccupied by persons legally in  
6 possession; and

7 (3) the property contains a dangerous or unsafe  
8 building for reasons specified in the petition.

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

15 The municipality, however, may proceed under this  
16 subsection in a proceeding brought under subsection (a) or (b).  
17 Notice of the petition shall be served in person or by  
18 certified or registered mail on all persons who were served  
19 notice under subsection (a) or (b).

20 If the municipality proves that the conditions described in  
21 this subsection exist and (i) the owner of record of the  
22 property does not enter an appearance in the action, or, if  
23 title to the property is held by an Illinois land trust, if  
24 neither the owner of record nor the owner of the beneficial  
25 interest of the trust enters an appearance, or (ii) if the  
26 owner of record or the beneficiary of a land trust, if title to

1 the property is held by an Illinois land trust, enters an  
2 appearance and specifically waives his or her rights under this  
3 subsection (d), the court shall declare the property abandoned.  
4 Notwithstanding any waiver, the municipality may move to  
5 dismiss its petition at any time. In addition, any waiver in a  
6 proceeding under this subsection (d) does not serve as a waiver  
7 for any other proceeding under law or equity.

8 If that determination is made, notice shall be sent in  
9 person or by certified or registered mail to all persons having  
10 an interest of record in the property, including tax purchasers  
11 and beneficial owners of any Illinois land trust having title  
12 to the property, stating that title to the property will be  
13 transferred to the municipality unless, within 30 days of the  
14 notice, the owner of record or ~~enters an appearance in the~~  
15 ~~action, or unless~~ any other person having an interest in the  
16 property files with the court a request to demolish the  
17 dangerous or unsafe building or to put the building in safe  
18 condition, or unless the owner of record enters an appearance  
19 and proves that the owner does not intend to abandon the  
20 property.

21 If the owner of record enters an appearance in the action  
22 within the 30 day period, but does not at that time file with  
23 the court a request to demolish the dangerous or unsafe  
24 building or to put the building in safe condition, or  
25 specifically waive his or her rights under this subsection (d),  
26 the court shall vacate its order declaring the property

1 abandoned if it determines that the owner of record does not  
2 intend to abandon the property. In that case, the municipality  
3 may amend its complaint in order to initiate proceedings under  
4 subsection (a), or it may request that the court order the  
5 owner to demolish the building or repair the dangerous or  
6 unsafe conditions of the building alleged in the petition or  
7 seek the appointment of a receiver or other equitable relief to  
8 correct the conditions at the property. The powers and rights  
9 of a receiver appointed under this subsection (d) shall include  
10 all of the powers and rights of a receiver appointed under  
11 Section 11-31-2 of this Code.

12 If a request to demolish or repair the building is filed  
13 within the 30 day period, the court shall grant permission to  
14 the requesting party to demolish the building within 30 days or  
15 to restore the building to safe condition within 60 days after  
16 the request is granted. An extension of that period for up to  
17 60 additional days may be given for good cause. If more than  
18 one person with an interest in the property files a timely  
19 request, preference shall be given to the owner of record if  
20 the owner filed a request or, if the owner did not, the person  
21 with the lien or other interest of the highest priority.

22 If the requesting party (other than the owner of record)  
23 proves to the court that the building has been demolished or  
24 put in a safe condition in accordance with the local safety  
25 codes within the period of time granted by the court, the court  
26 shall issue a quitclaim judicial deed for the property to the

1 requesting party, conveying only the interest of the owner of  
2 record, upon proof of payment to the municipality of all costs  
3 incurred by the municipality in connection with the action,  
4 including but not limited to court costs, attorney's fees,  
5 administrative costs, the costs, if any, associated with  
6 building enclosure or removal, and receiver's certificates.  
7 The interest in the property so conveyed shall be subject to  
8 all liens and encumbrances on the property. In addition, if the  
9 interest is conveyed to a person holding a certificate of  
10 purchase for the property under the Property Tax Code, the  
11 conveyance shall be subject to the rights of redemption of all  
12 persons entitled to redeem under that Act, including the  
13 original owner of record. If the requesting party is the owner  
14 of record and proves to the court that the building has been  
15 demolished or put in a safe condition in accordance with the  
16 local safety codes within the period of time granted by the  
17 court, the court shall dismiss the proceeding under this  
18 subsection (d).

19 If the owner of record has not entered an appearance and  
20 proven that the owner did not intend to abandon the property,  
21 and if ~~if~~ no person with an interest in the property files a  
22 timely request or if the requesting party fails to demolish the  
23 building or put the building in safe condition within the time  
24 specified by the court, the municipality may petition the court  
25 to issue a judicial deed for the property to the municipality.  
26 A conveyance by judicial deed shall operate to extinguish all

1 existing ownership interests in, liens on, and other interest  
2 in the property, including tax liens, and shall extinguish the  
3 rights and interests of any and all holders of a bona fide  
4 certificate of purchase of the property for delinquent taxes.  
5 Any such bona fide certificate of purchase holder shall be  
6 entitled to a sale in error as prescribed under Section 21-310  
7 of the Property Tax Code.

8 (e) Each municipality may use the provisions of this  
9 subsection to expedite the removal of certain buildings that  
10 are a continuing hazard to the community in which they are  
11 located.

12 If a residential or commercial building is 3 stories or  
13 less in height as defined by the municipality's building code,  
14 and the corporate official designated to be in charge of  
15 enforcing the municipality's building code determines that the  
16 building is open and vacant and an immediate and continuing  
17 hazard to the community in which the building is located, then  
18 the official shall be authorized to post a notice not less than  
19 2 feet by 2 feet in size on the front of the building. The  
20 notice shall be dated as of the date of the posting and shall  
21 state that unless the building is demolished, repaired, or  
22 enclosed, and unless any garbage, debris, and other hazardous,  
23 noxious, or unhealthy substances or materials are removed so  
24 that an immediate and continuing hazard to the community no  
25 longer exists, then the building may be demolished, repaired,  
26 or enclosed, or any garbage, debris, and other hazardous,

1 noxious, or unhealthy substances or materials may be removed,  
2 by the municipality.

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

5 (1) Cause to be sent, by certified mail, return receipt  
6 requested, a Notice to Remediate to all owners of record of  
7 the property, the beneficial owners of any Illinois land  
8 trust having title to the property, and all lienholders of  
9 record in the property, stating the intent of the  
10 municipality to demolish, repair, or enclose the building  
11 or remove any garbage, debris, or other hazardous, noxious,  
12 or unhealthy substances or materials if that action is not  
13 taken by the owner or owners.

14 (2) Cause to be published, in a newspaper published or  
15 circulated in the municipality where the building is  
16 located, a notice setting forth (i) the permanent tax index  
17 number and the address of the building, (ii) a statement  
18 that the property is open and vacant and constitutes an  
19 immediate and continuing hazard to the community, and (iii)  
20 a statement that the municipality intends to demolish,  
21 repair, or enclose the building or remove any garbage,  
22 debris, or other hazardous, noxious, or unhealthy  
23 substances or materials if the owner or owners or  
24 lienholders of record fail to do so. This notice shall be  
25 published for 3 consecutive days.

26 (3) Cause to be recorded the Notice to Remediate mailed

1           under paragraph (1) in the office of the recorder in the  
2           county in which the real estate is located or in the office  
3           of the registrar of titles of the county if the real estate  
4           is registered under the Registered Title (Torrens) Act.

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

9           If the building is not demolished, repaired, or enclosed,  
10          or the garbage, debris, or other hazardous, noxious, or  
11          unhealthy substances or materials are not removed, within 30  
12          days of mailing the notice to the owners of record, the  
13          beneficial owners of any Illinois land trust having title to  
14          the property, and all lienholders of record in the property, or  
15          within 30 days of the last day of publication of the notice,  
16          whichever is later, the corporate authorities shall have the  
17          power to demolish, repair, or enclose the building or to remove  
18          any garbage, debris, or other hazardous, noxious, or unhealthy  
19          substances or materials.

20          The municipality may proceed to demolish, repair, or  
21          enclose a building or remove any garbage, debris, or other  
22          hazardous, noxious, or unhealthy substances or materials under  
23          this subsection within a 120-day period following the date of  
24          the mailing of the notice if the appropriate official  
25          determines that the demolition, repair, enclosure, or removal  
26          of any garbage, debris, or other hazardous, noxious, or



1 unhealthy substances or materials is necessary to remedy the  
2 immediate and continuing hazard. If, however, before the  
3 municipality proceeds with any of the actions authorized by  
4 this subsection, any person with a legal or equitable interest  
5 in the property has sought a hearing under this subsection  
6 before a court and has served a copy of the complaint on the  
7 chief executive officer of the municipality, then the  
8 municipality shall not proceed with the demolition, repair,  
9 enclosure, or removal of garbage, debris, or other substances  
10 until the court determines that that action is necessary to  
11 remedy the hazard and issues an order authorizing the  
12 municipality to do so. If the court dismisses the action for  
13 want of prosecution, the municipality must send the objector a  
14 copy of the dismissal order and a letter stating that the  
15 demolition, repair, enclosure, or removal of garbage, debris,  
16 or other substances will proceed unless, within 30 days after  
17 the copy of the order and the letter are mailed, the objector  
18 moves to vacate the dismissal and serves a copy of the motion  
19 on the chief executive officer of the municipality.  
20 Notwithstanding any other law to the contrary, if the objector  
21 does not file a motion and give the required notice, if the  
22 motion is denied by the court, or if the action is again  
23 dismissed for want of prosecution, then the dismissal is with  
24 prejudice and the demolition, repair, enclosure, or removal may  
25 proceed forthwith.

26 Following the demolition, repair, or enclosure of a

1 building, or the removal of garbage, debris, or other  
2 hazardous, noxious, or unhealthy substances or materials under  
3 this subsection, the municipality may file a notice of lien  
4 against the real estate for the cost of the demolition, repair,  
5 enclosure, or removal within 180 days after the repair,  
6 demolition, enclosure, or removal occurred, for the cost and  
7 expense incurred, in the office of the recorder in the county  
8 in which the real estate is located or in the office of the  
9 registrar of titles of the county if the real estate affected  
10 is registered under the Registered Titles (Torrens) Act; this  
11 lien has priority over the interests of those parties named in  
12 the Notice to Remediate mailed under paragraph (1), but not  
13 over the interests of third party purchasers or encumbrancers  
14 for value who obtained their interests in the property before  
15 obtaining actual or constructive notice of the lien. The notice  
16 of lien shall consist of a sworn statement setting forth (i) a  
17 description of the real estate, such as the address or other  
18 description of the property, sufficient for its  
19 identification; (ii) the expenses incurred by the municipality  
20 in undertaking the remedial actions authorized under this  
21 subsection; (iii) the date or dates the expenses were incurred  
22 by the municipality; (iv) a statement by the corporate official  
23 responsible for enforcing the building code that the building  
24 was open and vacant and constituted an immediate and continuing  
25 hazard to the community; (v) a statement by the corporate  
26 official that the required sign was posted on the building,

1 that notice was sent by certified mail to the owners of record,  
2 and that notice was published in accordance with this  
3 subsection; and (vi) a statement as to when and where the  
4 notice was published. The lien authorized by this subsection  
5 may thereafter be released or enforced by the municipality as  
6 provided in subsection (a).

7 (f) The corporate authorities of each municipality may  
8 remove or cause the removal of, or otherwise environmentally  
9 remediate hazardous substances and petroleum products on, in,  
10 or under any abandoned and unsafe property within the territory  
11 of a municipality. In addition, where preliminary evidence  
12 indicates the presence or likely presence of a hazardous  
13 substance or a petroleum product or a release or a substantial  
14 threat of a release of a hazardous substance or a petroleum  
15 product on, in, or under the property, the corporate  
16 authorities of the municipality may inspect the property and  
17 test for the presence or release of hazardous substances and  
18 petroleum products. In any county having adopted by referendum  
19 or otherwise a county health department as provided by Division  
20 5-25 of the Counties Code or its predecessor, the county board  
21 of that county may exercise the above-described powers with  
22 regard to property within the territory of any city, village,  
23 or incorporated town having less than 50,000 population.

24 For purposes of this subsection (f):

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

1 (2) "abandoned" means;

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

4 (B) the property is unoccupied by persons legally  
5 in possession; and

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

9 (4) "hazardous substances" means the same as in Section  
10 3.215 of the Environmental Protection Act.

11 The corporate authorities shall apply to the circuit court  
12 of the county in which the property is located (i) for an order  
13 allowing the municipality to enter the property and inspect and  
14 test substances on, in, or under the property; or (ii) for an  
15 order authorizing the corporate authorities to take action with  
16 respect to remediation of the property if conditions on the  
17 property, based on the inspection and testing authorized in  
18 paragraph (i), indicate the presence of hazardous substances or  
19 petroleum products. Remediation shall be deemed complete for  
20 purposes of paragraph (ii) above when the property satisfies  
21 Tier I, II, or III remediation objectives for the property's  
22 most recent usage, as established by the Environmental  
23 Protection Act, and the rules and regulations promulgated  
24 thereunder. Where, upon diligent search, the identity or  
25 whereabouts of the owner or owners of the property, including  
26 the lien holders of record, is not ascertainable, notice mailed

1 to the person or persons in whose name the real estate was last  
2 assessed is sufficient notice under this Section.

3 The court shall grant an order authorizing testing under  
4 paragraph (i) above upon a showing of preliminary evidence  
5 indicating the presence or likely presence of a hazardous  
6 substance or a petroleum product or a release of or a  
7 substantial threat of a release of a hazardous substance or a  
8 petroleum product on, in, or under abandoned property. The  
9 preliminary evidence may include, but is not limited to,  
10 evidence of prior use, visual site inspection, or records of  
11 prior environmental investigations. The testing authorized by  
12 paragraph (i) above shall include any type of investigation  
13 which is necessary for an environmental professional to  
14 determine the environmental condition of the property,  
15 including but not limited to performance of soil borings and  
16 groundwater monitoring. The court shall grant a remediation  
17 order under paragraph (ii) above where testing of the property  
18 indicates that it fails to meet the applicable remediation  
19 objectives. The hearing upon the application to the circuit  
20 court shall be expedited by the court and shall be given  
21 precedence over all other suits.

22 The cost of the inspection, testing, or remediation  
23 incurred by the municipality or by a lien holder of record,  
24 including court costs, attorney's fees, and other costs related  
25 to the enforcement of this Section, is a lien on the real  
26 estate; except that in any instances where a municipality

1 incurs costs of inspection and testing but finds no hazardous  
2 substances or petroleum products on the property that present  
3 an actual or imminent threat to public health and safety, such  
4 costs are not recoverable from the owners nor are such costs a  
5 lien on the real estate. The lien is superior to all prior  
6 existing liens and encumbrances, except taxes and any lien  
7 obtained under subsection (a) or (e), if, within 180 days after  
8 the completion of the inspection, testing, or remediation, the  
9 municipality or the lien holder of record who incurred the cost  
10 and expense shall file a notice of lien for the cost and  
11 expense incurred in the office of the recorder in the county in  
12 which the real estate is located or in the office of the  
13 registrar of titles of the county if the real estate affected  
14 is registered under the Registered Titles (Torrens) Act.

15 The notice must consist of a sworn statement setting out  
16 (i) a description of the real estate sufficient for its  
17 identification, (ii) the amount of money representing the cost  
18 and expense incurred, and (iii) the date or dates when the cost  
19 and expense was incurred by the municipality or the lien holder  
20 of record. Upon payment of the lien amount by the owner of or  
21 persons interested in the property after the notice of lien has  
22 been filed, a release of lien shall be issued by the  
23 municipality, the person in whose name the lien has been filed,  
24 or the assignee of the lien, and the release may be filed of  
25 record as in the case of filing notice of lien.

26 The lien may be enforced under subsection (c) or by

1 foreclosure proceedings as in the case of mortgage foreclosures  
2 under Article XV of the Code of Civil Procedure or mechanics'  
3 lien foreclosures; provided that where the lien is enforced by  
4 foreclosure under subsection (c) or under either statute, the  
5 municipality may not proceed against the other assets of the  
6 owner or owners of the real estate for any costs that otherwise  
7 would be recoverable under this Section but that remain  
8 unsatisfied after foreclosure except where such additional  
9 recovery is authorized by separate environmental laws. An  
10 action to foreclose this lien may be commenced at any time  
11 after the date of filing of the notice of lien. The costs of  
12 foreclosure incurred by the municipality, including court  
13 costs, reasonable attorney's fees, advances to preserve the  
14 property, and other costs related to the enforcement of this  
15 subsection, plus statutory interest, are a lien on the real  
16 estate.

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

21 (g) In any case where a municipality has obtained a lien  
22 under subsection (a), the municipality may also bring an action  
23 for a money judgment against the owner or owners of the real  
24 estate in the amount of the lien in the same manner as provided  
25 for bringing causes of action in Article II of the Code of  
26 Civil Procedure and, upon obtaining a judgment, file a judgment

1     lien against all of the real estate of the owner or owners and  
2     enforce that lien as provided for in Article XII of the Code of  
3     Civil Procedure.

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

5             Section 99. Effective date. This Act takes effect upon  
6     becoming law.".