

SB1114



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1114

Introduced 2/5/2019, by Sen. Melinda Bush

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1121

Amends the Counties Code. Provides that if a county finds that an imminent hazard to the public health or safety exists arising from an unfit condition which requires immediate action to protect the public health or safety, it may bring an action, without bond, for immediate injunctive relief, including causing the removal of unhealthy or unsafe accumulations or concentrations of the following: garbage; organic materials in an active state of decomposition, including, but not limited to, carcasses, food waste, or other spoiled or rotting materials; human or animal waste; debris; or other hazardous, noxious, or unhealthy substances or materials from a structure or property. Provides that a county may file a notice of lien for the cost and expense of actions taken.

LRB101 04096 AWJ 49104 b

A BILL FOR

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 changing Section
5 5-1121 as follows:

6 (55 ILCS 5/5-1121)

7 Sec. 5-1121. Demolition, repair, or enclosure.

8 (a) The county board of each county may demolish, repair,
9 or enclose or cause the demolition, repair, or enclosure of
10 dangerous and unsafe buildings or uncompleted and abandoned
11 buildings within the territory of the county, but outside the
12 territory of any municipality, and may remove or cause the
13 removal of garbage, debris, and other hazardous, noxious, or
14 unhealthy substances or materials from those buildings. If a
15 township within the county makes a formal request to the county
16 board as provided in Section 85-50 of the Township Code that
17 the county board commence specified proceedings under this
18 Section with respect to property located within the township
19 but outside the territory of any municipality, then, at the
20 next regular county board meeting occurring at least 10 days
21 after the formal request is made to the county board, the
22 county board shall either commence the requested proceedings or
23 decline to do so (either formally or by failing to commence the

1 proceedings within 60 days after the request) and shall notify
2 the township board making the request of the county board's
3 decision. In any county having adopted, by referendum or
4 otherwise, a county health department as provided by Division
5 5-25 of the Counties Code or its predecessor, the county board
6 of any such county may upon a formal request by the city,
7 village, or incorporated town demolish, repair or cause the
8 demolition or repair of dangerous and unsafe buildings or
9 uncompleted and abandoned buildings within the territory of any
10 city, village, or incorporated town having a population of less
11 than 50,000.

12 The county board shall apply to the circuit court of the
13 county in which the building is located (i) for an order
14 authorizing action to be taken with respect to a building if
15 the owner or owners of the building, including the lien holders
16 of record, after at least 15 days' written notice by mail to do
17 so, have failed to commence proceedings to put the building in
18 a safe condition or to demolish it or (ii) for an order
19 requiring the owner or owners of record to demolish, repair, or
20 enclose the building or to remove garbage, debris, and other
21 hazardous, noxious, or unhealthy substances or materials from
22 the building. It is not a defense to the cause of action that
23 the building is boarded up or otherwise enclosed, although the
24 court may order the defendant to have the building boarded up
25 or otherwise enclosed. Where, upon diligent search, the
26 identity or whereabouts of the owner or owners of the building,

1 including the lien holders of record, is not ascertainable,
2 notice mailed to the person or persons in whose name the real
3 estate was last assessed and the posting of such notice upon
4 the premises sought to be demolished or repaired is sufficient
5 notice under this Section.

6 The hearing upon the application to the circuit court shall
7 be expedited by the court and shall be given precedence over
8 all other suits.

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

25 The notice must consist of a sworn statement setting out
26 (1) a description of the real estate sufficient for its

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

21 All liens arising under this subsection (a) shall be
22 assignable. The assignee of the lien shall have the same power
23 to enforce the lien as the assigning party, except that the
24 lien may not be enforced under subsection (b).

25 If the appropriate official of any county determines that
26 any dangerous and unsafe building or uncompleted and abandoned

1 building within its territory fulfills the requirements for an
2 action by the county under the Abandoned Housing Rehabilitation
3 Act, the county may petition under that Act in a proceeding
4 brought under this subsection.

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

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

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

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

16 (c) In addition to any other remedy provided by law, the
17 county board of any county may petition the circuit court to
18 have property declared abandoned under this subsection (c) if:

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

22 (2) the property is unoccupied by persons legally in
23 possession; and

24 (3) the property contains a dangerous or unsafe
25 building.

26 All persons having an interest of record in the property,

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

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

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

17 If that determination is made, notice shall be sent by
18 certified or registered mail to all persons having an interest
19 of record in the property, including tax purchasers and
20 beneficial owners of any Illinois land trust having title to
21 the property, stating that title to the property will be
22 transferred to the county unless, within 30 days of the notice,
23 the owner of record enters an appearance in the action, or
24 unless any other person having an interest in the property
25 files with the court a request to demolish the dangerous or
26 unsafe building or to put the building in safe condition.

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

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

15 If the requesting party proves to the court that the
16 building has been demolished or put in a safe condition within
17 the period of time granted by the court, the court shall issue
18 a quitclaim judicial deed for the property to the requesting
19 party, conveying only the interest of the owner of record, upon
20 proof of payment to the county of all costs incurred by the
21 county in connection with the action, including but not limited
22 to court costs, attorney's fees, administrative costs, the
23 costs, if any, associated with building enclosure or removal,
24 and receiver's certificates. The interest in the property so
25 conveyed shall be subject to all liens and encumbrances on the
26 property. In addition, if the interest is conveyed to a person

1 holding a certificate of purchase for the property under the
2 Property Tax Code, the conveyance shall be subject to the
3 rights of redemption of all persons entitled to redeem under
4 that Act, including the original owner of record.

5 If no person with an interest in the property files a
6 timely request or if the requesting party fails to demolish the
7 building or put the building in safe condition within the time
8 specified by the court, the county may petition the court to
9 issue a judicial deed for the property to the county. A
10 conveyance by judicial deed shall operate to extinguish all
11 existing ownership interests in, liens on, and other interest
12 in the property, including tax liens.

13 (d) Each county may use the provisions of this subsection
14 to expedite the removal of certain buildings that are a
15 continuing hazard to the community in which they are located.

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

1 building may be demolished, repaired, or enclosed, or any
2 garbage, debris, and other hazardous, noxious, or unhealthy
3 substances or materials may be removed, by the county.

4 Not later than 30 days following the posting of the notice,
5 the county shall do both of the following:

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

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

1 A person objecting to the proposed actions of the county
2 board may file his or her objection in an appropriate form in a
3 court of competent jurisdiction.

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

15 The county may proceed to demolish, repair, or enclose a
16 building or remove any garbage, debris, or other hazardous,
17 noxious, or unhealthy substances or materials under this
18 subsection within a 120-day period following the date of the
19 mailing of the notice if the appropriate official determines
20 that the demolition, repair, enclosure, or removal of any
21 garbage, debris, or other hazardous, noxious, or unhealthy
22 substances or materials is necessary to remedy the immediate
23 and continuing hazard. If, however, before the county proceeds
24 with any of the actions authorized by this subsection, any
25 person has sought a hearing under this subsection before a
26 court and has served a copy of the complaint on the chief

1 executive officer of the county, then the county shall not
2 proceed with the demolition, repair, enclosure, or removal of
3 garbage, debris, or other substances until the court determines
4 that that action is necessary to remedy the hazard and issues
5 an order authorizing the county to do so.

6 Following the demolition, repair, or enclosure of a
7 building, or the removal of garbage, debris, or other
8 hazardous, noxious, or unhealthy substances or materials under
9 this subsection, the county may file a notice of lien against
10 the real estate for the cost of the demolition, repair,
11 enclosure, or removal within 180 days after the repair,
12 demolition, enclosure, or removal occurred, for the cost and
13 expense incurred, in the office of the recorder in the county
14 in which the real estate is located or in the office of the
15 registrar of titles of the county if the real estate affected
16 is registered under the Registered Titles (Torrens) Act. The
17 notice of lien shall consist of a sworn statement setting forth
18 (i) a description of the real estate, such as the address or
19 other description of the property, sufficient for its
20 identification; (ii) the expenses incurred by the county in
21 undertaking the remedial actions authorized under this
22 subsection; (iii) the date or dates the expenses were incurred
23 by the county; (iv) a statement by the official responsible for
24 enforcing the building code that the building was open and
25 vacant and constituted an immediate and continuing hazard to
26 the community; (v) a statement by the official that the

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

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

16 (f) In addition to any other remedy provided by law, if a
17 county finds that an imminent hazard to the public health or
18 safety exists arising from an unfit condition which requires
19 immediate action to protect the public health or safety, it
20 may, without any administrative procedure to bond, bring an
21 action for immediate injunctive relief to require that action
22 be taken as the court may deem necessary to meet the emergency,
23 including causing the removal of unhealthy or unsafe
24 accumulations or concentrations of the following: garbage;
25 organic materials in an active state of decomposition
26 including, but not limited to, carcasses, food waste, or other

1 spoiled or rotting materials; human or animal waste; debris; or
2 other hazardous, noxious, or unhealthy substances or materials
3 from a structure or property. Notwithstanding any other
4 provision of this Code, the order shall be effective
5 immediately. The court may issue an ex parte order and shall
6 schedule a hearing on the matter no later than 3 calendar days,
7 excluding weekends and holidays, from the date of the
8 injunction. A county may file a notice of lien for the cost and
9 expense of actions taken under this subsection as provided in
10 subsection (a).

11 (Source: P.A. 97-549, eff. 8-25-11; 98-138, eff. 8-2-13.)