

# HB5829



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5829

by Rep. Donald L. Moffitt

### SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-31-1

from Ch. 24, par. 11-31-1

Amends the Illinois Municipal Code. Provides that the corporate authorities may petition the circuit court to have property declared abandoned if the corporate authorities of the municipality have abated a code violation found on the property more than 3 times within a 12 month period.

LRB098 19146 JLK 54298 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 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  
17 provided by Division 5-25 of the Counties Code or its  
18 predecessor, the county board of that county may exercise those  
19 powers with regard to dangerous and unsafe buildings or  
20 uncompleted and abandoned buildings within the territory of any  
21 city, village, or incorporated town having less than 50,000  
22 population.

23 The corporate authorities shall apply to the circuit court

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

18 The hearing upon the application to the circuit court shall  
19 be expedited by the court and shall be given precedence over  
20 all other suits. Any person entitled to bring an action under  
21 subsection (b) shall have the right to intervene in an action  
22 brought under this Section.

23 The cost of the demolition, repair, enclosure, or removal  
24 incurred by the municipality, by an intervenor, or by a lien  
25 holder of record, including court costs, attorney's fees, and  
26 other costs related to the enforcement of this Section, is

1 recoverable from the owner or owners of the real estate or the  
2 previous owner or both if the property was transferred during  
3 the 15 day notice period and is a lien on the real estate; the  
4 lien is superior to all prior existing liens and encumbrances,  
5 except taxes, if, within 180 days after the repair, demolition,  
6 enclosure, or removal, the municipality, the lien holder of  
7 record, or the intervenor who incurred the cost and expense  
8 shall file a notice of lien for the cost and expense incurred  
9 in the office of the recorder in the county in which the real  
10 estate is located or in the office of the registrar of titles  
11 of the county if the real estate affected is registered under  
12 the Registered Titles (Torrens) Act.

13       The notice must consist of a sworn statement setting out  
14 (1) a description of the real estate sufficient for its  
15 identification, (2) the amount of money representing the cost  
16 and expense incurred, and (3) the date or dates when the cost  
17 and expense was incurred by the municipality, the lien holder  
18 of record, or the intervenor. Upon payment of the cost and  
19 expense by the owner or persons interested in the property  
20 after the notice of lien has been filed, the lien shall be  
21 released by the municipality, the person in whose name the lien  
22 has been filed, or the assignee of the lien, and the release  
23 may be filed of record as in the case of filing notice of lien.  
24 Unless the lien is enforced under subsection (c), the lien may  
25 be enforced by foreclosure proceedings as in the case of  
26 mortgage foreclosures under Article XV of the Code of Civil

1 Procedure or mechanics' lien foreclosures. An action to  
2 foreclose this lien may be commenced at any time after the date  
3 of filing of the notice of lien. The costs of foreclosure  
4 incurred by the municipality, including court costs,  
5 reasonable attorney's fees, advances to preserve the property,  
6 and other costs related to the enforcement of this subsection,  
7 plus statutory interest, are a lien on the real estate and are  
8 recoverable by the municipality from the owner or owners of the  
9 real estate.

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

14 If the appropriate official of any municipality determines  
15 that any dangerous and unsafe building or uncompleted and  
16 abandoned building within its territory fulfills the  
17 requirements for an action by the municipality under the  
18 Abandoned Housing Rehabilitation Act, the municipality may  
19 petition under that Act in a proceeding brought under this  
20 subsection.

21 (b) Any owner or tenant of real property within 1200 feet  
22 in any direction of any dangerous or unsafe building located  
23 within the territory of a municipality with a population of  
24 500,000 or more may file with the appropriate municipal  
25 authority a request that the municipality apply to the circuit  
26 court of the county in which the building is located for an

1 order permitting the demolition, removal of garbage, debris,  
2 and other noxious or unhealthy substances and materials from,  
3 or repair or enclosure of the building in the manner prescribed  
4 in subsection (a) of this Section. If the municipality fails to  
5 institute an action in circuit court within 90 days after the  
6 filing of the request, the owner or tenant of real property  
7 within 1200 feet in any direction of the building may institute  
8 an action in circuit court seeking an order compelling the  
9 owner or owners of record to demolish, remove garbage, debris,  
10 and other noxious or unhealthy substances and materials from,  
11 repair or enclose or to cause to be demolished, have garbage,  
12 debris, and other noxious or unhealthy substances and materials  
13 removed from, repaired, or enclosed the building in question. A  
14 private owner or tenant who institutes an action under the  
15 preceding sentence shall not be required to pay any fee to the  
16 clerk of the circuit court. The cost of repair, removal,  
17 demolition, or enclosure shall be borne by the owner or owners  
18 of record of the building. In the event the owner or owners of  
19 record fail to demolish, remove garbage, debris, and other  
20 noxious or unhealthy substances and materials from, repair, or  
21 enclose the building within 90 days of the date the court  
22 entered its order, the owner or tenant who instituted the  
23 action may request that the court join the municipality as a  
24 party to the action. The court may order the municipality to  
25 demolish, remove materials from, repair, or enclose the  
26 building, or cause that action to be taken upon the request of

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

12 If a municipality or a person or persons other than the  
13 owner or owners of record pay the cost of demolition, removal  
14 of garbage, debris, and other noxious or unhealthy substances  
15 and materials, repair, or enclosure pursuant to a court order,  
16 the cost, including court costs, attorney's fees, and other  
17 costs related to the enforcement of this subsection, is  
18 recoverable from the owner or owners of the real estate and is  
19 a lien on the real estate; the lien is superior to all prior  
20 existing liens and encumbrances, except taxes, if, within 180  
21 days after the repair, removal, demolition, or enclosure, the  
22 municipality or the person or persons who paid the costs of  
23 demolition, removal, repair, or enclosure shall file a notice  
24 of lien of the cost and expense incurred in the office of the  
25 recorder in the county in which the real estate is located or  
26 in the office of the registrar of the county if the real estate

1 affected is registered under the Registered Titles (Torrens)  
2 Act. The notice shall be in a form as is provided in subsection  
3 (a). An owner or tenant who institutes an action in circuit  
4 court seeking an order to compel the owner or owners of record  
5 to demolish, remove materials from, repair, or enclose any  
6 dangerous or unsafe building, or to cause that action to be  
7 taken under this subsection may recover court costs and  
8 reasonable attorney's fees for instituting the action from the  
9 owner or owners of record of the building. Upon payment of the  
10 costs and expenses by the owner of or a person interested in  
11 the property after the notice of lien has been filed, the lien  
12 shall be released by the municipality or the person in whose  
13 name the lien has been filed or his or her assignee, and the  
14 release may be filed of record as in the case of filing a  
15 notice of lien. Unless the lien is enforced under subsection  
16 (c), the lien may be enforced by foreclosure proceedings as in  
17 the case of mortgage foreclosures under Article XV of the Code  
18 of Civil Procedure or mechanics' lien foreclosures. An action  
19 to foreclose this lien may be commenced at any time after the  
20 date of filing of the notice of lien. The costs of foreclosure  
21 incurred by the municipality, including court costs,  
22 reasonable attorneys' fees, advances to preserve the property,  
23 and other costs related to the enforcement of this subsection,  
24 plus statutory interest, are a lien on the real estate and are  
25 recoverable by the municipality from the owner or owners of the  
26 real estate.



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

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

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

1 (b), or (f).

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

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

17 (d) In addition to any other remedy provided by law, the  
18 corporate authorities of any municipality may petition the  
19 circuit court to have property declared abandoned under this  
20 subsection (d) if:

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

24 (2) the property is unoccupied by persons legally in  
25 possession; ~~and~~

26 (3) the property contains a dangerous or unsafe

1 building for reasons specified in the petition; and -

2 (4) the property is not being maintained, as evidenced  
3 by the fact that the corporate authorities of the  
4 municipality have abated a code violation on the property,  
5 as defined under Division 31.1 of this Article, more than 3  
6 times within a 12 month period.

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

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

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

1 subsection (d), the court shall declare the property abandoned.  
2 Notwithstanding any waiver, the municipality may move to  
3 dismiss its petition at any time. In addition, any waiver in a  
4 proceeding under this subsection (d) does not serve as a waiver  
5 for any other proceeding under law or equity.

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

18 If the owner of record enters an appearance in the action  
19 within the 30 day period, but does not at that time file with  
20 the court a request to demolish the dangerous or unsafe  
21 building or to put the building in safe condition, or  
22 specifically waive his or her rights under this subsection (d),  
23 the court shall vacate its order declaring the property  
24 abandoned if it determines that the owner of record does not  
25 intend to abandon the property. In that case, the municipality  
26 may amend its complaint in order to initiate proceedings under

1 subsection (a), or it may request that the court order the  
2 owner to demolish the building or repair the dangerous or  
3 unsafe conditions of the building alleged in the petition or  
4 seek the appointment of a receiver or other equitable relief to  
5 correct the conditions at the property. The powers and rights  
6 of a receiver appointed under this subsection (d) shall include  
7 all of the powers and rights of a receiver appointed under  
8 Section 11-31-2 of this Code.

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

19 If the requesting party (other than the owner of record)  
20 proves to the court that the building has been demolished or  
21 put in a safe condition in accordance with the local safety  
22 codes within the period of time granted by the court, the court  
23 shall issue a quitclaim judicial deed for the property to the  
24 requesting party, conveying only the interest of the owner of  
25 record, upon proof of payment to the municipality of all costs  
26 incurred by the municipality in connection with the action,

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

16 If the owner of record has not entered an appearance and  
17 proven that the owner did not intend to abandon the property,  
18 and if no person with an interest in the property files a  
19 timely request or if the requesting party fails to demolish the  
20 building or put the building in safe condition within the time  
21 specified by the court, the municipality may petition the court  
22 to issue a judicial deed for the property to the municipality.  
23 A conveyance by judicial deed shall operate to extinguish all  
24 existing ownership interests in, liens on, and other interest  
25 in the property, including tax liens, and shall extinguish the  
26 rights and interests of any and all holders of a bona fide

1 certificate of purchase of the property for delinquent taxes.  
2 Any such bona fide certificate of purchase holder shall be  
3 entitled to a sale in error as prescribed under Section 21-310  
4 of the Property Tax Code.

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

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

26 Not later than 30 days following the posting of the notice,

1 the municipality shall do all of the following:

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

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

23 (3) Cause to be recorded the Notice to Remediate mailed  
24 under paragraph (1) in the office of the recorder in the  
25 county in which the real estate is located or in the office  
26 of the registrar of titles of the county if the real estate



1 is registered under the Registered Title (Torrens) Act.

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

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

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

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

23 Following the demolition, repair, or enclosure of a  
24 building, or the removal of garbage, debris, or other  
25 hazardous, noxious, or unhealthy substances or materials under  
26 this subsection, the municipality may file a notice of lien

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

1 notice was published. The lien authorized by this subsection  
2 may thereafter be released or enforced by the municipality as  
3 provided in subsection (a).

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

21 For purposes of this subsection (f):

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

24 (2) "abandoned" means;

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

1 (B) the property is unoccupied by persons legally  
2 in possession; and

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

6 (4) "hazardous substances" means the same as in Section  
7 3.215 of the Environmental Protection Act.

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

26 The court shall grant an order authorizing testing under

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

19 The cost of the inspection, testing, or remediation  
20 incurred by the municipality or by a lien holder of record,  
21 including court costs, attorney's fees, and other costs related  
22 to the enforcement of this Section, is a lien on the real  
23 estate; except that in any instances where a municipality  
24 incurs costs of inspection and testing but finds no hazardous  
25 substances or petroleum products on the property that present  
26 an actual or imminent threat to public health and safety, such

1 costs are not recoverable from the owners nor are such costs a  
2 lien on the real estate. The lien is superior to all prior  
3 existing liens and encumbrances, except taxes and any lien  
4 obtained under subsection (a) or (e), if, within 180 days after  
5 the completion of the inspection, testing, or remediation, the  
6 municipality or the lien holder of record who incurred the cost  
7 and expense shall file a notice of lien for the cost and  
8 expense incurred in the office of the recorder in the county in  
9 which the real estate is located or in the office of the  
10 registrar of titles of the county if the real estate affected  
11 is registered under the Registered Titles (Torrens) Act.

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

23 The lien may be enforced under subsection (c) or by  
24 foreclosure proceedings as in the case of mortgage foreclosures  
25 under Article XV of the Code of Civil Procedure or mechanics'  
26 lien foreclosures; provided that where the lien is enforced by

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

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

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



1 (Source: P.A. 95-331, eff. 8-21-07; 95-931, eff. 1-1-09.)