

Regular Session, 2008

ACT No. 601

HOUSE BILL NO. 934

BY REPRESENTATIVES TEMPLET, BALDONE, BILLIOT, BURFORD, BURRELL, CARMODY, CHAMPAGNE, CONNICK, DIXON, ELLINGTON, GALLOT, GUINN, HENDERSON, HINES, HOFFMANN, GIROD JACKSON, LAFONTA, LEGER, LIGI, LOPINTO, LORUSSO, MARCHAND, MILLS, NOWLIN, PEARSON, SMILEY, JANE SMITH, PATRICIA SMITH, TUCKER, WADDELL, WILLMOTT, AND WOOTON

1 AN ACT

2 To amend and reenact R.S. 33:4761 through 4768 and to enact R.S. 33:4769 and 4770,
3 relative to the removal of dangerous structures; to provide relative to the
4 establishment of and procedures for the enforcement of certain liens and privileges;
5 to provide for applicability to parishes and municipalities; to provide relative to
6 funding from the state; to create the Louisiana Blighted Property Reclamation
7 Revolving Loan Fund; to provide for applicability to the Louisiana Housing Finance
8 Agency; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 33:4761 through 4768 are hereby amended and reenacted and R.S.
11 33:4769 and 4770 are hereby enacted to read as follows:

12 SUBPART D. REMOVAL OF DANGEROUS STRUCTURES

13 IN PARISHES AND MUNICIPALITIES GENERALLY

14 §4761. Condemnation of buildings by all parishes and municipalities ~~except New~~
15 ~~Orleans and Shreveport~~

16 The governing authority of any parish or municipality, ~~the city of New~~
17 ~~Orleans and the city of Shreveport excepted~~, may condemn and cause to be
18 demolished or removed any building or structure within the parish or municipality
19 when it is in a dilapidated and dangerous condition which endangers the public
20 welfare.

1 §4762. Notice to owner; hearing; notice filed with recorder of mortgages binds
 2 transferees

3 A. Before the parish or municipal governing authority may condemn any
 4 building or structure, there must be submitted to it a written report recommending
 5 the demolition or removal of the building signed by some parish or city official or
 6 other person authorized to act in such matters for the parish or municipality. The
 7 parish president, police jury, mayor, or chief executive shall thereupon serve notice
 8 on the owner of the building or structure requiring him to show cause at a meeting
 9 of the governing authority, regular or special, why the building or structure should
 10 not be condemned. The date and hour of the meeting shall be stated in the notice
 11 which shall be served at least ten days prior to the date of the hearing, except in case
 12 of grave public emergency as hereinafter provided. The notice may be served by
 13 registered or certified mail, postage prepaid, addressed to the owner at his last known
 14 address. The notice may also be served by the marshal of the municipality or by any
 15 sheriff or deputy sheriff or constable having jurisdiction and power to serve legal
 16 process where the owner of the building or structure is found in the state of
 17 Louisiana, and the officer shall make return of the service as in ordinary cases.

18 B. If the owner is absent from the state or unrepresented therein, then the
 19 notice shall be served upon the occupant of the condemned building or structure, if
 20 any, and also upon an attorney at law appointed by the parish president, police jury,
 21 mayor, or chief executive to represent the absentee. Domiciliary service may be
 22 made as in ordinary cases.

23 C. In case of grave public emergency where the condition of the building is
 24 such as to cause possible immediate loss or damage to person or property, the parish
 25 or municipal governing authority may condemn the building after twenty-four hours
 26 notice served upon the owner or his agent or the occupant and attorney at law
 27 appointed to represent the absentee owner.

28 D. Any notice served pursuant to this Section shall be filed by the
 29 appropriate parish or municipal governing authority with the recorder of mortgages
 30 where the property is located. Once filed, said notice shall be deemed notice to all

1 subsequent transferees. Any transferee of such property takes the property subject
2 to all recorded liens, mortgages, and notices thereunto pertaining.

3 §4763. Decision of parish or municipal governing authority; order to demolish or
4 repair

5 A. After the hearing, if, in the opinion of the parish or municipal governing
6 authority the facts justify it, an order shall be entered condemning the building and
7 ordering that it be demolished or removed within a certain delay. If repairs will
8 correct the dilapidated, dangerous, or unsafe condition, the parish or municipal
9 governing authority may grant the owner the option of making such repairs, but in
10 such a case the general nature or extent of the repairs to be made, the time thereof,
11 and the defects to be corrected shall be specified in the decision of the governing
12 body.

13 B. The decision and order of the parish or municipal governing authority
14 shall be in writing and shall be final unless appealed from within five days as
15 hereinafter provided.

16 §4764. Appeal from decision

17 The owner, occupant, agent, or other representative of the owner may appeal
18 from the decision of the parish or municipal governing authority to the district court
19 having jurisdiction over the property. The appeal shall be made by the filing of a suit
20 against the parish or municipality, setting forth the reasons why the decision or order
21 of the governing body is illegal or improper, and the issue shall be tried de novo and
22 by preference in the district court. Where a grave public emergency has been
23 declared by the parish or municipal governing authority, the owner of the building
24 who desires to prevent the demolition or removal thereof must file his petition within
25 forty-eight hours and must, at the time of the filing of the petition, furnish such bond
26 as may be fixed by the district judge to cover any damage that might be caused by
27 the condition of the building.

28 Either party may appeal from the judgment of the district court as in other
29 cases.

1 E. In the event all procedural protections and substantive restraints have been
 2 adhered to by the parish or municipal governing authority, the parish or municipality
 3 and their personnel and the national guard and their personnel shall not be liable to
 4 the owner of the building, structure, or public nuisance for any damages sustained
 5 resulting from the demolition of the building, structure, or public nuisance.

6 §4766. Lien and privilege for cost of demolition, removal, and maintenance by
 7 parish or municipality; interest; attorney fees

8 A. The parish or municipality has a privilege and lien upon an immovable
 9 and its improvements, and the owner is personally liable for:

10 (1) The cost to the parish or municipality of maintenance of the immovable
 11 or improvements; and

12 (2) The cost to the parish or municipality of demolishing or removing, or
 13 both, a building or other structure situated upon the immovable or improvements,
 14 and all attorney fees incurred by the parish or municipality in connection with such
 15 demolition or removal.

16 B. "Maintenance" shall include but not be limited to grass cutting, weed
 17 abatement, and trash and garbage removal.

18 C. The privilege and lien shall be preserved and enforced only after the
 19 owner has refused, after notification by the parish or municipality and reasonable
 20 opportunity to be heard, to pay the costs incurred by the parish or municipality.

21 D. The privilege and lien shall be preserved by the filing and recording of
 22 an affidavit signed by the parish president, police jury, mayor of the municipality,
 23 or his designee in the mortgage office of the parish in which the immovable is
 24 situated. The affidavit shall include a description of the property sufficient to
 25 reasonably identify the immovable and a statement of facts listing the approximate
 26 cost or costs incurred by the parish or municipality.

27 E.(1) The privilege and lien shall be enforced by ordinary process in the
 28 district court having jurisdiction of the immovable within three years after it is
 29 perfected. Alternatively, the privilege and lien may be enforced by assessing the
 30 amount of the privilege and lien against the immovable as a tax against the

1 immovable, to be enforced and collected as any ordinary property tax lien to be
 2 assessed against the property; said lien and privilege may be collected in the manner
 3 fixed for collection of taxes and shall be subject to the same civil penalties for
 4 delinquencies. After the ~~city~~ parish or municipality has incurred such costs as
 5 constitute the lien and privilege on the property, the parish president, police jury,
 6 mayor, ~~and/or~~ any director of any community development department of the ~~city~~
 7 parish or municipality may send an attested bill of said costs and expenses which
 8 constitute the lien and privilege to the director of administration, who shall add the
 9 amount of said bill to the next tax bill of the owner. The lien obtained by the ~~city~~
 10 parish or municipality pursuant to proper notification and filing shall include not
 11 only the costs provided for in Subsection A of this Section but shall include all
 12 ~~attorney's fees and/or~~ attorney fees and all costs of court incurred in the locating of
 13 the owner, the notification of the owner, and the enforcement and collection of the
 14 amount secured by the lien against the immovable and the improvements.

15 (2) If authorized by parish or municipal ordinance, the parish or municipality
 16 may also recover interest on the amounts secured by the lien. The interest shall not
 17 exceed the rate of legal interest provided in ~~Civil Code Article 2924~~ R.S. 9:3500 and
 18 shall be computed from the date of recordation of the lien until paid. The ~~city's~~
 19 privilege and lien of the parish or municipality shall prime all other liens or
 20 privileges against the property filed after the notice to the owner to show cause is
 21 filed with the recorder of mortgages pursuant to R.S. 33:4762(D), regardless of the
 22 date on which the ~~city's~~ lien and privilege of the parish or municipality is perfected,
 23 except that the ~~city's~~ lien and privilege of the parish or municipality will not prime
 24 other tax liens against the property.

25 F. The lien of the parish or municipality shall not be cancelled until after
 26 payment of all amounts, including costs, attorney fees, and interest.

27 G. In addition to the lien and enforcement procedures authorized under this
 28 Section, the parish or municipality has a cause of action against the owner personally
 29 for the costs incurred by the parish or municipality, if such owner is not indigent and

1 has the ability to pay a judgment obtained by the parish or municipality. Such action
2 may be brought by ordinary proceeding in any court of competent jurisdiction.

3 H.(1) If property, which may be subject to a lien and privilege granted in
4 favor of a parish or municipality under this Section, is owned in indivision and the
5 owners in indivision, with their proportionate share in the property, are listed
6 separately by the tax assessor on the ad valorem tax roll for the parish or
7 municipality, then the parish or municipality shall notify each owner in indivision
8 of his liability under this Section.

9 (2) Upon failure of each owner in indivision to pay his proportionate share
10 of the charges incurred under this Section, that part of the property for which the
11 charges are not paid shall be subject to a lien and privilege in favor of the parish or
12 municipality as provided in this Section.

13 (3) Notwithstanding the provisions of Subsection F of this Section to the
14 contrary, upon payment by an owner in indivision of his proportionate share listed
15 on the ad valorem tax roll for the parish or municipality of the charges, attorney fees,
16 and interest incurred under this Section, and after certification of such proportionate
17 interest by the assessor, the lien and privilege granted under this Section shall be
18 removed from the proportionate interest of the paying owner in indivision. If
19 outstanding charges levied under this Section are added to the annual ad valorem tax
20 bill, the proportionate payment by the paying owner in indivision shall be reflected
21 on the bill, and his interest in the property free of such charge shall be distinguished
22 on the tax bill.

23 (4) Notice of the lien and privilege required herein shall be made upon the
24 owners in indivision at their actual address or the last known address listed ~~to~~ on the
25 tax rolls of the parish.

26 * * *

27 §4767. Attorney to represent absentee, minor, or interdict

28 In the event the building or structure is unoccupied and its owner is absent
29 from the state and unrepresented therein, or in the event the building is owned by a
30 minor who has no tutor or an interdict who has no curator, the parish president,

1 police jury, or mayor shall appoint an attorney at law to represent the absentee,
 2 minor, or interdict upon whom the notices and other proceedings provided in this
 3 Subpart may be served. The attorney shall be paid a reasonable fee to be taxed as
 4 cost.

5 §4768. Alternative to demolition; repair by municipality

6 A.(1) Notwithstanding any other provision of law to the contrary, the parish
 7 or municipal governing authority ~~of the city of Baton Rouge, the governing authority~~
 8 ~~of the city of Lafayette, or the governing authority of the city of Lake Charles,~~ as an
 9 alternative to demolition or removal, may make the repairs necessary to correct the
 10 defects in a condemned structure within its jurisdiction.

11 (2) The parish or municipal governing authority may take such action only
 12 after a demolition or removal order has been issued and the delay for a legal appeal
 13 has run, or an appeal has been denied, and when in the discretion of the parish or
 14 municipal governing authority such action will restore the structure to a state of
 15 usefulness to the community.

16 (3) The decision of the parish or municipal governing authority to repair the
 17 structure may be appealed in the same manner as provided in R.S. 33:4764.

18 B. The costs of repairs made pursuant to Subsection A and a ten percent
 19 penalty thereon shall be reimbursed by the owner of the condemned property, and
 20 such costs and penalty shall operate as a lien and privilege on the property in favor
 21 of the parish or municipality. Until such time as the costs and penalty have been
 22 paid, the parish or municipal governing authority may lease such property and apply
 23 all revenue received to the amount owed by the owner and to the necessary
 24 maintenance of the structure.

25 §4769. State funding; lien; enforcement

26 A. Any parish or municipality may obtain funding from the Louisiana
 27 Blighted Property Reclamation Revolving Loan Fund, as created by R.S. 33:4770,
 28 for the purposes of maintenance, repair, removal, or demolition of dangerous
 29 structures pursuant to the purposes and provisions of this Subpart.

1 B. If the parish or municipality receives funding from the Louisiana Blighted
 2 Property Reclamation Revolving Loan Fund for the purposes of maintenance, repair,
 3 removal, or demolition of a dangerous structure pursuant to this Subpart, then the
 4 privilege and lien established pursuant to R.S. 33:4766 shall be in favor of the
 5 Louisiana Housing Finance Agency as administrator of the fund. The Louisiana
 6 Housing Finance Agency is authorized to charge an administrative fee of no more
 7 than one-half of one percent of each loan.

8 C. The parish or municipality shall enforce the privileges and liens
 9 established in favor of the Louisiana Housing Finance Agency pursuant to the
 10 provisions of this Subpart. Any funds recovered from the enforcement of a privilege
 11 and lien in favor of the Louisiana Housing Finance Agency shall be refunded to the
 12 Louisiana Blighted Property Reclamation Revolving Loan Fund.

13 §4770. Creation of the Louisiana Blighted Property Reclamation Revolving Loan
 14 Fund; administration of fund

15 A. There is hereby established in the state treasury, as a special fund, the
 16 Louisiana Blighted Property Reclamation Revolving Loan Fund, hereafter referred
 17 to as the "fund", which shall be maintained and operated by the Louisiana Housing
 18 Finance Agency.

19 B.(1) The source of monies deposited into the fund shall be any monies
 20 appropriated annually by the legislature including federal funds, donations, gifts,
 21 loan payments, or grants and other monies which may be provided by law. The
 22 monies in the fund shall be appropriated, administered, and used solely for the
 23 purposes of maintenance, repair, removal, or demolition of dangerous structures in
 24 Louisiana pursuant to the provisions of this Subpart. All unexpended and
 25 unencumbered monies in the fund at the end of the fiscal year shall remain in the
 26 fund. Monies in the fund shall be invested by the state treasurer in the same manner
 27 as monies in the state general fund, and interest earned on the investment of monies
 28 shall be credited to the fund.

29 (2) Money in, credited to the account of, or to be received by the fund may
 30 be used:

1 (a) To make loans from the fund at or below market interest rates.

2 (b) To provide assistance to parishes or municipalities.

3 (c) To fund other programmatic activities of the agency to develop and
4 operate the revolving loan program.

5 C. On the first day of July of each year, the agency shall determine the
6 balance of monies in the fund which are available for the making of loans during that
7 fiscal year. Such monies shall be allocated as follows:

8 (1) An amount equal to one-third of the total monies available that fiscal year
9 shall be reserved for the making of loans to municipalities with a population greater
10 than or equal to thirty thousand and to parishes with a population greater than or
11 equal to one hundred thousand.

12 (2) An amount of money equal to one-third of the total monies available that
13 fiscal year shall be reserved for the making of loans to municipalities with a
14 population greater than five thousand but less than thirty thousand and parishes with
15 a population greater than thirty thousand but less than one hundred thousand.

16 (3) An amount of money equal to one-third of the total monies available that
17 fiscal year shall be reserved for the making of loans to municipalities with a
18 population less than or equal to five thousand and to parishes with a population less
19 than or equal to thirty thousand.

20 D. The fund shall be administered by the agency, which is authorized to
21 enter into contracts and other agreements in connection with the operation of the
22 fund. The agency shall maintain full authority for the operation of the fund in
23 accordance with applicable federal and state law.

24 E. Prior to making a loan, the agency shall determine that the applicant has
25 the ability to repay the loan. Further, the agency may require security for loans made
26 pursuant to this Subpart.

27 F. The agency is authorized to adopt rules and regulations in accordance with
28 the Administrative Procedure Act to implement the provisions of this Subpart. These
29 rules shall include but not be limited to:

30 (1) Eligibility requirements of the entity and properties.

- 1 (2) Criteria for ranking and selecting applicants.
- 2 (3) Procedures for making and repaying loans.
- 3 (4) Requirement of security for loans to eligible applicants.
- 4 (5) Establishment of procedures for interest rates on loans.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____