

Regular Session, 2012

SENATE BILL NO. 265

BY SENATOR MORRELL

PUBLIC SFTY/CORRECT DEPT. Authorizes the state fire marshal to condemn and order demolition or removal of certain buildings and structures located in a parish or municipality. (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 33:4769 and to enact R.S. 40:1563(L) and Subpart E of Part III
3 of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised
4 of R.S. 40:1651 through 1658, relative to condemnation of buildings and structures;
5 to authorize the state fire marshal to condemn and order demolition or removal of
6 certain buildings and structures in parishes and municipalities; to provide certain
7 procedures, terms, and conditions; to provide for notice of condemnation hearing;
8 to provide for service of notice; to provide for appeal process; to provide for costs
9 and fees attributed to demolition or removal of a building or structure; to provide for
10 repairs of the building or structure; to provide for funding; to provide for liens; and
11 to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 33:4769 is hereby amended and reenacted to read as follows:

14 §4769. State funding; lien; enforcement

15 A. Any parish or municipality may obtain funding from the Louisiana
16 Blighted Property Reclamation Revolving Loan Fund, as created by R.S. 33:4770,
17 for the purposes of maintenance, repair, removal, or demolition of dangerous

1 structures pursuant to the purposes and provisions of this Subpart or Subpart E of
2 Part III of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950.

3 B. If the parish or municipality receives funding from the Louisiana Blighted
4 Property Reclamation Revolving Loan Fund for the purposes of maintenance, repair,
5 removal, or demolition of a dangerous structure pursuant to this Subpart or Subpart
6 E of Part III of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950,
7 then the privilege and lien established pursuant to R.S. 33:4766 or R.S. 40:1656
8 shall be in favor of the Louisiana Housing Finance Agency as administrator of the
9 fund. The Louisiana Housing Finance Agency is authorized to charge an
10 administrative fee of no more than one-half of one percent of each loan.

11 C. The parish or municipality shall enforce the privileges and liens
12 established in favor of the Louisiana Housing Finance Agency pursuant to the
13 provisions of this Subpart or Subpart E of Part III of Chapter 7 of Title 40 of the
14 Louisiana Revised Statutes of 1950. Any funds recovered from the enforcement of
15 a privilege and lien in favor of the Louisiana Housing Finance Agency shall be
16 refunded to the Louisiana Blighted Property Reclamation Revolving Loan Fund.

17 Section 2. R.S. 40:1563(L) and Subpart E of Part III of Chapter 7 of Title 40 of the
18 Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1651 through 1658 are
19 hereby enacted to read as follows:

20 §1563. Powers and duties generally; use of deputies; responsibilities of local
21 governing authorities with fire prevention bureaus; open structures
22 and process structures; fees

23 * * *

24 L. The state fire marshal is authorized to condemn and cause to be
25 demolished or removed or repaired any building or structure within a parish
26 or municipality, when such building or structure is in a dilapidated and
27 dangerous condition that endangers the public welfare, pursuant to the
28 procedures set forth in Subpart E of this Part.

* * *

SUBPART E. REMOVAL OR REPAIR OF DANGEROUS STRUCTURES
IN PARISHES AND MUNICIPALITIES; AUTHORITY OF STATE FIRE
MARSHAL

§1651. Condemnation of buildings or structures by the state fire marshal

The state fire marshal may condemn and cause to be demolished or removed any building or structure within a parish or municipality, when such building or structure is in a dilapidated and dangerous condition that endangers the public welfare.

§1652. Notice to owner; hearing; notice filed with recorder of mortgages binds transferees

A.(1) Before the state fire marshal may condemn any building or structure, there shall be a written report recommending the demolition or removal of the building or structure signed by the state fire marshal or other person authorized to act in such matters for the office of the state fire marshal. Once the report is signed, the state fire marshal shall thereupon serve notice on the owner of the building or structure requiring him to show cause at a hearing before the state fire marshal why the building or structure should not be condemned or ordered closed until repaired in compliance with orders of the state fire marshal. The date and hour of the hearing shall be stated in the notice which shall be served at least ten days prior to the date of the hearing, except in case of grave public emergency as provided in Subsection C of this Section.

(2)(a) The notice may be served by mailing it via the United States Postal Service, by certified mail, return receipt requested, to the owner at the owner's last known address or by first class mail.

(b) Service by certified mail shall be considered personal service if the certified return receipt or the return form is signed by the addressee. Service by certified mail shall be considered domiciliary service if the certified return receipt or the return form is signed by anyone other than the addressee.

1 (c) If the certified mail is returned for failure to obtain a signature on
2 the return receipt form or returned due to refusal of delivery, service may be
3 accomplished by first class mail, with a certificate of mailing. Service by first
4 class mail in accordance with this Subparagraph shall be considered personal
5 service and is effective when mailed.

6 (d) When notice is served by first class mail, with a certificate of mailing,
7 notice shall be considered received on the seventh day after mailing.

8 (3) The notice may also be served by the state fire marshal or any of his
9 deputies, and the state fire marshal or his deputy shall make return of the
10 service as in ordinary cases.

11 B. If the owner is absent from the state or unrepresented therein, then
12 the notice shall be served upon the occupant of the condemned building or
13 structure, if any, and also upon an attorney at law appointed by the state fire
14 marshal where the building or structure is located to represent the absentee
15 owner. Domiciliary service may be made as in ordinary cases. Appointment of
16 such an attorney shall be in the same manner and in accordance with the
17 provisions of the Code of Civil Procedure for unrepresented defendants.

18 C. In case of grave public emergency where the condition of the building
19 or structure is such as to cause possible immediate loss or damage to person or
20 property, the state fire marshal may condemn the building or structure after
21 twenty-four hours notice served upon the owner, or his agent, or the occupant
22 and attorney at law appointed to represent the absentee owner. Any such notice
23 may be attached to an external door or entrance of the premises and shall have
24 the same effect as delivery to or personal service on the owner, occupant, or
25 attorney at law appointed to represent the absentee owner.

26 D.(1) Any notice served pursuant to this Section shall be filed by the state
27 fire marshal with the recorder of mortgages where the property is located. Once
28 filed, said notice shall be deemed notice to all subsequent transferees. Any
29 transferee of such property takes the property subject to all recorded liens,

1 mortgages, and notices thereunto pertaining.

2 (2) For purposes of any type of funding assistance being sought by the
3 building or structure owner, any notice served pursuant to this Section shall be
4 de facto proof that the building or structure is more than fifty percent damaged.

5 §1653. Decision of state fire marshal; order to demolish or repair

6 A. After the hearing, if, in the opinion of the state fire marshal the facts
7 justify it, an order shall be entered condemning the building and ordering that
8 it be demolished or removed by the owner or the parish or municipal governing
9 authority within one hundred eighty days.

10 B. The decision and order of the state fire marshal shall be in writing and
11 shall be final unless appealed from within five days as provided in R.S. 40:1654.

12 §1654. Appeal from decision

13 A.(1) The owner, occupant, agent, or other representative of the owner
14 of a building or structure may appeal from the decision of the state fire marshal
15 to the district court having jurisdiction over the property within five days of the
16 decision. The appeal shall be made by the filing of a suit against the state fire
17 marshal, setting forth the reasons why the decision or order of the state fire
18 marshal is illegal or improper, and the issue shall be tried de novo and by
19 preference in the district court. This action shall be considered a summary
20 proceeding in accordance with the Code of Civil Procedure.

21 (2) Where a grave public emergency has been declared by the state fire
22 marshal, the owner, occupant, agent, or other representative of the owner of the
23 building or structure who desires to prevent the demolition or removal thereof
24 must file his petition within forty-eight hours of the decision of the state fire
25 marshal and must, at the time of the filing of the petition, furnish such bond as
26 may be fixed by the district judge to cover any damage that may be caused by
27 the condition of the building or structure.

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

§1655. Compliance with decision; demolition by parish or municipality where owner fails to comply; notice; assistance of national guard

A. In the event the owner or occupant of the building or structure fails to appeal therefrom within the legal delays provided herein, pursuant to the order of the state fire marshal, either the owner or the parish or municipal governing authority shall demolish or remove the condemned building or structure within one hundred eighty days. Neither the state fire marshal nor the parish president, police jury, or mayor nor the parish or municipality shall be liable in damages for such action.

B. Prior to the demolition or removal of the building or structure by the parish or municipality, the parish president, police jury, mayor, or some official designated by the appropriate authority shall serve notice on the owner, or his agent, and on the occupant of the building, if any, or upon the attorney at law appointed to represent the minor, interdict, or absentee owner, giving the time when work shall begin to demolish or remove the building or structure.

C. The parish or municipal governing authority or the state fire marshal may request and the adjutant general may assign, subject to the approval of the governor, national guard personnel and equipment to assist in the removal and demolition of condemned buildings and structures. The provisions of this Subsection shall be applicable when the budget for the demolition and removal of condemned buildings or structures has been expended by a governing authority of a parish or municipality. However, the request shall be accompanied by documentation that all procedural protections and substantive restraints have been adhered to by the state fire marshal.

D. In the event all procedural protections and substantive restraints have been adhered to by the parish or municipal governing authority or the state fire marshal, the parish or municipality and their personnel, the state fire marshal, his employees, or representatives and the national guard and their personnel shall not be liable to the owner of the building or structure for any

1 damages sustained resulting from the demolition of the building or structure.

2 §1656. Lien and privilege for cost of demolition and removal ordered by the

3 state fire marshal; interest; attorney fees

4 A.(1) The parish or municipality may have a privilege and lien upon an
5 immovable and its improvements, and the owner is personally liable for the cost
6 to the parish or municipality of demolishing or removing, or both, a building or
7 other structure situated upon the immovable or improvements, and all attorney
8 fees incurred by the parish or municipality in connection with such demolition
9 or removal ordered by the state fire marshal.

10 (2) The state fire marshal may have a privilege and lien upon an
11 immovable and its improvements, and the owner is personally liable for the
12 costs incurred by the state fire marshal in connection with the demolition or
13 removal order he issues.

14 B. The privilege and lien shall be preserved and enforced only after the
15 owner has failed, after notification by the parish or municipality or the state fire
16 marshal and after reasonable opportunity to be heard, to pay the costs incurred
17 by the parish or municipality or the state fire marshal within ninety days.

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

25 D.(1) After the ninety day period provided for in Subsection B of this
26 Section has lapsed, the privilege and lien shall be enforced by ordinary process
27 in the district court having jurisdiction of the immovable within three years
28 after it is perfected.

29 (2) Alternatively, the privilege and lien may be enforced by assessing the

amount of the privilege and lien against the immovable, being collected as a tax against the immovable, being collected as any ordinary property tax lien to be assessed against the property; the lien and privilege may be collected in the manner fixed for collection of taxes and shall be subject to the same civil penalties for delinquencies. After the parish or municipality or the state fire marshal have incurred such costs as constitute the lien and privilege on the property, the parish president, police jury, mayor, or the state fire marshal may send the attested bill of said costs and expenses which constitute the lien and privilege to the director of administration or tax assessor of the parish in which the property is situated, who shall add the amount of the bill to the next tax bill of the owner. The lien obtained by the parish or municipality or the state fire marshal pursuant to proper notification and filing shall include not only the costs provided for in Subsection A of this Section but shall include all attorney fees and all costs of court incurred in the locating of the owner, the notification of the owner, and the enforcement and collection of the amount secured by the lien against the immovable and the improvements.

(3) If authorized by law, the parish or municipality or the state fire marshal may also recover interest on the amounts secured by the lien. The interest shall not exceed the rate of legal interest provided in R.S. 9:3500 and shall be computed from the date of recordation of the lien until paid. The privilege and lien of the parish or municipality or the state fire marshal shall prime all other liens or privileges against the property filed after the notice to the owner to show cause is filed with the recorder of mortgages pursuant to R.S. 40:1652(D), regardless of the date on which the lien and privilege of the parish or municipality or the state fire marshal are perfected, except that the lien and privilege of the parish or municipality or the state fire marshal will not prime other tax liens against the property.

E. The lien of the parish or municipality or the state fire marshal shall not be cancelled until after payment of all amounts, including costs, attorney

1 fees, and interest.

2 F. In addition to the lien and enforcement procedures authorized under
3 this Section, the parish or municipality or the state fire marshal has a cause of
4 action against the owner personally for the costs incurred by the parish or
5 municipality or the state fire marshal, if such owner is not indigent and has the
6 ability to pay a judgment obtained by the state. Such action may be brought by
7 ordinary proceeding in any court of competent jurisdiction.

8 G.(1) If property, which may be subject to a lien and privilege granted
9 in favor of a parish or municipality or the state fire marshal under this Section,
10 is owned in indivision and the owners in indivision, with their proportionate
11 share in the property, are listed separately by the tax assessor on the ad valorem
12 tax roll for the parish or municipality, then the parish or municipality or the
13 state fire marshal shall notify each owner in indivision of his liability under this
14 Section.

15 (2) Upon failure of each owner in indivision to pay his proportionate
16 share of the charges incurred under this Section, that part of the property for
17 which the charges are not paid shall be subject to a lien and privilege in favor
18 of the parish or municipality or the state fire marshal as provided in this
19 Section.

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

1 (4) Notice of the lien and privilege required herein shall be made upon
2 the owners in indivision at their actual address or the last known address listed
3 on the tax rolls of the parish.

4 §1657. Attorney to represent absentee, minor, or interdict

5 In the event the building or structure is unoccupied and its owner is
6 absent from the state and unrepresented therein, or in the event the building is
7 owned by a minor who has no tutor or an interdict who has no curator, the state
8 fire marshal shall seek to have an attorney appointed to represent such owner,
9 minor, or interdict. Appointment of such an attorney shall be in the same
10 manner and in accordance with the provisions of the Code of Civil Procedure
11 for unrepresented defendants.

12 §1658. Alternative to demolition; repair by municipality or parish or state fire
13 marshal

14 (A)(1) Notwithstanding any other provision of law to the contrary, the
15 governing authority for the parish or municipality or the state fire marshal
16 may, as an alternative to demolition or removal as provided in this Subpart,
17 instead make the necessary repairs to correct the defects in a condemned
18 building or structure within its jurisdiction within a certain time delay.

19 (2) Once the order for demolition or removal is issued by the state fire
20 marshal and the delay for a legal appeal has run, or an appeal has been denied,
21 and when in the discretion of the parish or municipal governing authority
22 repair will restore the building or structure to a state of usefulness to the
23 community, the governing authority for the parish or municipality or the state
24 fire marshal may, as an alternative to demolition or removal, make the
25 necessary repairs to correct the defects in a condemned building or structure
26 within its jurisdiction. The parish or municipality shall have ninety days to
27 make the necessary repairs to correct the defects in a condemned building or
28 structure within its jurisdiction. If the repairs are not completed within ninety
29 days, the governing authority for the parish or municipality may request one

sixty-day extension and one thirty-day emergency extension to complete the repairs necessary to correct the defects in a condemned building or structure within its jurisdiction. Each request shall be submitted in writing to the state fire marshal, and after review, the fire marshal may grant the request.

(3) If the repairs are not made within the time prescribed in Paragraph (A)(2) of this Section, the parish or the municipal governing authority or the state fire marshal shall have the building or structure demolished or removed pursuant to the order issued by the state fire marshal.

(B) The cost of repairs made pursuant to this Subsection and a ten percent penalty thereon shall be reimbursed by the owner of the condemned property, and such costs and penalty shall operate as a lien and privilege on the property in favor of the parish or municipality or the state fire marshal. Until such time as the costs and penalty have been paid, the parish or municipal governing authority or the state fire marshal may lease such property and apply all revenue received to the amount owed by the owner and to the necessary maintenance of the structure.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Present law creates the Louisiana Blighted Property Reclamation Revolving Loan Fund and allows any parish or municipality to obtain funding from the fund for the purposes of maintenance, repair, removal, or demolition of dangerous structures pursuant to the law governing the removal of dangerous structures in the parishes and municipalities.

Proposed law retains present law and allows parishes and municipalities who are directed by the state fire marshal to demolish or remove buildings or structures to receive funding from the fund.

Present law provides for duties of the state fire marshal.

Proposed law provides that the state fire marshal may condemn and cause to be demolished or removed any building or structure within a parish or municipality when it is in a dilapidated and dangerous condition that endangers the public welfare.

Proposed law provides that before the state fire marshal may condemn any building or structure, there shall be a written report recommending the demolition or removal of the building or structure signed by the state fire marshal or other person authorized to act in such matters for the office of the state fire marshal.

Proposed law requires that service of the notice of a hearing to be conducted by the state fire marshal must be made upon the owner of the building or structure and provides for methods of service upon the owner.

Proposed law provides that if the owner is absent from the state or unrepresented therein, then the notice shall be served upon the occupant of the condemned building or structure, if any, and also upon an attorney at law appointed by the state fire marshal where the property is located to represent the absentee.

Proposed law provides for an expedited procedure when the condition of the building may cause possible immediate loss or damage to person or property.

Proposed law provides that any notice served must be filed by the state fire marshal with the recorder of mortgages where the property is located. Once the notice is filed, it is considered notice to all subsequent transferees.

Proposed law states that for the purposes of funding assistance sought by the owner of the building or structure, the notice served pursuant to proposed law shall be de facto proof that the building or structure is more than 50 % damaged.

Proposed law provides that after the hearing, if the state fire marshal finds that the facts justify condemnation of a building or structure, an order shall be entered condemning the building and ordering that it be demolished or removed by the owner or the parish or municipal governing authority within a certain delay.

Proposed law requires that such findings of the state fire marshal must be in writing and will be final unless appealed within five days as provided by proposed law.

Proposed law gives the owner, occupant, agent, or other representative of the owner five days to appeal from the decision of the state fire marshal. Such appeal must be made in the district court having jurisdiction over the property. The appeal must be made by filing the suit against the state fire marshal and must set forth the reasons why the decision or order of the state fire marshal is illegal or improper.

Proposed law gives the owner, occupant, agent, or other representative of the owner of the building or structure 48 hours to appeal the decision of the state fire marshal when such decision is based on the declaration of a grave public emergency. The petitioner must furnish a bond, set by the district judge, to cover any damage that may be caused by the condition of the building.

Proposed law provides that in the event the owner or occupant of the building or structure fails to appeal within the legal delays, the owner or the parish or municipal governing authority will demolish or remove the condemned building or structure. Neither the state fire marshal, the parish president, police jury, or mayor nor the parish or municipality shall be liable for damages.

Proposed law provides that the parish or municipal governing authority will have 180 days to demolish or remove the condemned building or structure.

Proposed law provides that the parish or municipal governing authority must serve notice on the owner, or his agent, and the occupant of the building or structure, if any, or on the attorney appointed to represent the minor, interdict, or absentee owner, giving the time when work shall begin upon the demolition or removal of the building or structure.

Proposed law provides that the parish or municipal governing authority and the state fire marshal may request, under limited circumstances, and the adjutant general may assign, subject to the approval of the governor, national guard personnel and equipment to assist in the removal or demolition of the condemned building or structure.

Proposed law provides that if all procedural protections are followed and substantive restraints are adhered to by the governing authority and the national guard, the governing authority and the national guard shall not be liable for any damages sustained from the demolition of the building or structure.

Proposed law provides that the parish or municipality or the state fire marshal may have a privilege and lien upon an immovable and its improvements, and the owner is personally liable to the parish or municipal governing authority or the state fire marshal for certain cost.

Proposed law provides that the privilege shall be preserved and enforced only after the owner has failed to pay the costs and fees incurred by the parish or municipality or state fire marshal within 90 days.

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

Proposed law provides that after the 90 day period provided for in proposed law has lapsed, the privilege and lien shall be enforced by ordinary process in the district court having jurisdiction of the immovable within three years after it is perfected.

Proposed law provides that the privilege and lien may be enforced by assessing the amount of the privilege and lien against the immovable, being collected as a tax against the immovable, being collected as any ordinary property tax lien to be assessed against the property; the lien and privilege may be collected in the manner fixed for collection of taxes and shall be subject to the same civil penalties for delinquencies.

Proposed law provides that after the parish or municipality or state fire marshal has incurred such costs as constitute the lien and privilege on the property, the parish president, police jury, mayor, or the state fire marshal may send the attested bill of the costs and expenses which constitute the lien and privilege to the director of administration or tax assessor of the parish in which the property is located, who shall add the amount of the bill to the next tax bill of the owner. The lien obtained by the parish or municipality or state fire marshal pursuant to proper notification and filing shall include not only the costs provided for proposed law but shall include all attorney fees and all costs of court incurred in the locating of the owner, the notification of the owner, and the enforcement and collection of the amount secured by the lien against the immovable and the improvements.

Proposed law provides that if authorized by law, the parish or municipality may also recover interest on the amounts secured by the lien. The interest shall not exceed the rate of legal interest and shall be computed from the date of recordation of the lien until paid.

Proposed law mandates that privilege and lien of the parish or municipality or state fire marshal prime all other liens or privileges against the property filed after the notice to the owner to show cause is filed with the recorder of mortgages, regardless of the date on which the lien and privilege of the parish or municipality is perfected, except that the lien and privilege of the parish or municipality or state fire marshal will not prime other tax liens against the property.

Proposed law prohibits cancellation of the lien of the parish or municipality or state fire marshal until after payments of all amounts, including costs, attorney fees, and interest are paid.

Proposed law provides in addition to the lien and enforcement procedures provided for in proposed law, the parish or municipality or state fire marshal has a cause of action against

the owner personally for the costs incurred by the parish or municipality, if such owner is not indigent and has the ability to pay a judgment obtained by the state. Such action may be brought by ordinary proceeding in any court of competent jurisdiction.

Proposed law provides for procedure if the condemned building or structure is owned in indivision.

Proposed law provides that an attorney must be appointed if certain circumstances exist and such appointed shall be made by the parish president, police jury, or mayor. Proposed law provides that the appointed attorney shall be paid a reasonable fee to be taxed as costs.

Proposed law provides that notwithstanding any other provision of law to the contrary, the governing authority for the parish or municipality or state fire marshal may, as an alternative to demolition or removal, make the necessary repairs to correct the defects in a condemned building or structure within its jurisdiction within a certain time delay. Proposed law authorizes the state fire marshal, upon request from the governing authority, to grant one 60 day extension and one 30 day emergency extension.

Effective August 1, 2012.

(Amends R.S. 33:4769; adds R.S. 40:1563(L) and 1651-1658)