

SB9 ENGROSSED



1 SB9
2 65NR33-2
3 By Senator Coleman-Madison
4 RFD: County and Municipal Government
5 First Read: 06-Feb-24
6 PFD: 03-Jan-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to Class 1 municipalities; to authorize Class 1 municipalities to enforce local and state building maintenance regulations by judicial in rem foreclosure of municipal code enforcement and nuisance abatement liens on certain property; and to authorize Class 1 municipalities to recover the amount of unpaid municipal code and nuisance abatement liens and the cost of municipal code enforcement upon the court-ordered sale of certain property.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For purposes of this act, the following terms have the following meanings:

(1) INTERESTED PARTY. Any of the following:

- a. The person who last appears as owner of a particular real property in the office of the judge of probate's property records.
- b. The current mortgagee of record of the real property or assignee of record of the mortgagee.
- c. The current holder of a beneficial interest in a deed of trust recorded against the real property.
- d. A tax certificate holder.
- e. A tax sale purchaser that holds a deed of purchase



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29 in accordance with Section 40-10-29, Code of Alabama 1975.

30 f. A tax lien purchaser that holds a tax lien
31 certificate in accordance with Section 40-10-187, Code of
32 Alabama 1975.

33 g. Any party having an interest in the real property,
34 in whole or in part, legal or equitable, in severalty or as
35 tenant in common, whose identity and address is reasonably
36 ascertainable from the records of the Class 1 municipality or
37 records maintained in the county office of the judge of
38 probate or as revealed by a full title search, consisting of
39 60 years or more.

40 h. An interested party shall not include the holder of
41 the benefit of an easement that burdens the real property, the
42 holder of the benefit or burden of a real covenant that
43 burdens the real property, or the holder of the benefit of a
44 utility easement that burdens the real property.

45 (2) MINIMUM BID PRICE. The price that equals the
46 redemption amount.

47 (3) MUNICIPAL CODE LIEN. Any lien that has been levied
48 against real property by a Class 1 municipality due to the
49 nonpayment of any fine, penalty, abatement cost, assessment,
50 or enforcement cost incurred by a Class 1 municipality related
51 to the enforcement of state or local housing and building
52 codes or a lien arising from the abatement of nuisances by the
53 Class 1 municipality. The term shall apply only to those liens
54 that arise out of a failure to comply with any of the
55 following or from the failure to comply with a Class 1
56 municipality's ordinances enacted pursuant to the authority



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57 granted in any of the following:

58 a. Article 2 of Chapter 40 of Title 11, Code of Alabama
59 1975.

60 b. Sections 11-47-117 and 11-47-118, Code of Alabama
61 1975.

62 c. Sections 11-47-130, 11-47-131, and 11-47-140, Code
63 of Alabama 1975.

64 d. Chapter 53 of Title 11, Code of Alabama 1975.

65 e. Chapter 53B of Title 11, Code of Alabama 1975.

66 f. Article 4 of Chapter 67 of Title 11, Code of Alabama
67 1975.

68 g. Section 45-37A-53, Code of Alabama 1975.

69 (4) MUNICIPAL CODE LIEN PAYOFF. An amount equal to the
70 sum of the following:

71 a. The principal amount of a municipal code lien.

72 b. Interest accrued at the rate of six percent per
73 annum from the date the municipal code lien was filed in the
74 judge of probate's office unless a different rate and date of
75 accrual is specified by statute.

76 c. Any fees or costs incurred in the collection of a
77 lien under this act including, without limitation, the cost of
78 title examinations and publication of notices.

79 d. Any attorney fees, filing fees, and court costs
80 incurred in a judicial in rem foreclosure proceeding under
81 this act.

82 e. Any other penalties authorized under state law or
83 pursuant to an ordinance enacted by a Class 1 municipality.

84 (5) OWNER-OCCUPIED. Real property that is lawfully



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85 occupied as a principal residence of the owner of record or of
86 a family member of a deceased individual who was the owner of
87 record at the time of his or her death, and that is any of the
88 following:

89 a. A homestead as provided in Section 40-9-19, Code of
90 Alabama 1975.

91 b. Exempt from ad valorem taxation under Sections
92 40-9-19.1, 40-9-20, or 40-9-21, Code of Alabama 1975.

93 c. Eligible for, but not yet granted, either of the
94 designations set forth in paragraph a. or b.

95
96 (6) REDEMPTION AMOUNT. The sum of the following:

97 a. The full amount of the municipal code lien payoff
98 for each municipal code lien on which a Class 1 municipality
99 is seeking to foreclose under this act.

100 b. Any tax payoff that may be applicable to the
101 property on which the Class 1 municipality is seeking to
102 foreclose under this act.

103 (7) TAX CERTIFICATE HOLDER. Any of the following:

104 a. A tax sale purchaser that holds a certificate of
105 purchase pursuant to Section 40-10-19, Code of Alabama 1975.

106 b. The state, in the event that it has accepted and
107 recorded a certificate of purchase obtained at a tax sale
108 pursuant to Section 40-10-20, Code of Alabama 1975.

109 c. A county, in the event that a tax lien not sold at a
110 tax lien auction of real property situated in the county is
111 retained by the county pursuant to Section 40-10-199, Code of
112 Alabama 1975.



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113 d. Any party to which a certificate of purchase
114 obtained at a tax sale has been assigned pursuant to Section
115 40-10-21, Code of Alabama 1975.

116 e. The purchaser or assignee of a tax lien certificate
117 as provided in Section 40-10-187, Code of Alabama 1975.

118 (8) TAX PAYOFF. All amounts necessary to satisfy any
119 claims for delinquent taxes assessed against the real property
120 on which a Class 1 municipality is seeking to foreclose under
121 this act. These amounts shall include all of the following:

122 a. If the taxes associated with the property are
123 delinquent pursuant to Sections 40-11-4 or 11-51-2, Code of
124 Alabama 1975, but the property has not yet been sold for
125 taxes, then the full amount of delinquent taxes, costs, fees,
126 and charges due to the county tax collector pursuant to
127 Section 40-5-8, Code of Alabama 1975.

128 b. If the property has been sold to the state for
129 taxes, then those amounts required for redemption as provided
130 in Sections 40-10-83, 40-10-120, 40-10-121, and 40-10-122,
131 Code of Alabama 1975, except that when a Class 1 municipality
132 is the prevailing bidder, the tax payoff amount shall be the
133 lesser of these amounts or the amount provided by Section
134 40-10-132(a)(2), Code of Alabama 1975.

135 c. If the property has been sold for taxes to a party
136 other than the state, then those amounts required for
137 redemption as provided in Sections 40-10-83, 40-10-120,
138 40-10-121, and 40-10-122, Code of Alabama 1975.

139 d. If a tax lien has been sold by a county pursuant to
140 Section 40-10-182, Code of Alabama 1975, then the amount



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141 required for redemption pursuant to Section 40-10-193, Code of
142 Alabama 1975.

143 (9) TAXES. The taxes assessed against real property by
144 either the state, the county, or a Class 1 municipality in
145 which the real property is situated which are delinquent
146 pursuant to Sections 40-11-4 or 11-51-2, Code of Alabama 1975,
147 as of the date a proceeding under this act is commenced or at
148 any time before final resolution of the same and shall include
149 any taxes assessed against real property that are unpaid from
150 any previous year and any amounts required for redemption
151 pursuant to Sections 40-10-83, 40-10-120, 40-10-193, or
152 11-51-23, Code of Alabama 1975. As provided in Section
153 11-51-6, Code of Alabama 1975, a lien for taxes shall be
154 superior to all other liens, including municipal code liens.

155 Section 2. (a) This act applies only to Class 1
156 municipalities.

157 (b) This act shall not apply to owner-occupied
158 property.

159 Section 3. (a) Notwithstanding any law to the contrary,
160 any fees, penalties, and abatement costs imposed against real
161 property for abatement of nuisances or violations of a Class 1
162 municipality's housing and building codes adopted pursuant to
163 state law, other than owner-occupied property, may be enforced
164 in rem as a lien pursuant to this act.

165 (b) Unless otherwise specified by law, municipal code
166 liens may be filed in the judge of probate's office for the
167 county where the real property is situated.

168 (c) Every municipal code lien shall be superior to all



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169 other liens except those liens for taxes pursuant to Section
170 11-51-6, Code of Alabama 1975.

171 Section 4. (a) A Class 1 municipality may proceed with
172 judicial in rem foreclosures of municipal code liens in
173 accordance with this act by enacting an ordinance of the
174 governing body of the Class 1 municipality where the real
175 property is situated, which ordinance shall be sufficient
176 authority for use of this act by the Class 1 municipality to
177 enforce its municipal code liens.

178 (b) The ordinance of a Class 1 municipality authorizing
179 and approving the use of this act shall set forth all of the
180 following:

181 (1) The initial effective date for application of these
182 procedures.

183 (2) If the Class 1 municipality elects not to apply
184 these procedures to all real properties as of the same initial
185 effective date, it shall specify all of the following:

186 a. Which real properties are subject to these
187 procedures.

188 b. The order in which the real properties shall be
189 subject to these procedures.

190 c. The time and manner of determining paragraphs a. and
191 b.

192 (3) The explicit exclusion of owner-occupied properties
193 from the application of the judicial in rem foreclosure
194 procedures authorized under this act.

195 (4) Any other matters related to code enforcement that
196 the Class 1 municipality designates for administrative



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197 regulation.

198 (c) The provisions of a Class 1 municipality ordinance
199 and administrative regulations issued pursuant to the
200 ordinance shall not conflict with Sections 5 through 8 of this
201 act.

202 (d) Proceedings in accordance with this act are
203 intended solely to enforce the municipal code lien for real
204 property subject to the lien and shall not constitute an
205 action for personal liability of the owner or owners of the
206 real property to which the lien applies.

207 (e) The rights and remedies provided in this act are
208 available solely to the governmental entities authorized by
209 law to enforce municipal ordinances and shall not extend to
210 any nongovernmental transferee of municipal code liens.

211 (f) A Class 1 municipality that has adopted the
212 provisions of this act by ordinance and that seeks to enforce
213 a municipal code lien through the sale of real property shall
214 utilize the judicial in rem proceedings authorized under this
215 act as the sole remedy for the enforcement through the sale of
216 real property.

217 (g) The enforcement proceedings authorized under this
218 act may be initiated only by a Class 1 municipality.

219 (h) A municipal code lien shall not include any lien
220 that has previously been certified to the tax collector of the
221 county for inclusion on the property tax bill associated with
222 the real property, such as those liens certified pursuant to
223 Section 11-67-66 or Section 45-37A-53, Code of Alabama 1975,
224 or any other applicable local act.



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225 Section 5. (a) (1) After a municipal code lien has been
226 recorded with the office of the judge of probate for the
227 county in which the real property is situated, the governing
228 body of a Class 1 municipality may identify by resolution
229 those properties on which to commence a judicial in rem
230 foreclosure pursuant to this act, provided, however, that
231 those properties the Class 1 municipality identifies as
232 owner-occupied shall not be subject to judicial in rem
233 foreclosure.

234 (2) A Class 1 municipality shall not file a petition
235 for judicial in rem foreclosure pursuant to this act for a
236 period of six months following the date upon which the
237 municipal code lien is recorded in the office of the judge of
238 probate. A petition for judicial in rem foreclosure may
239 include any other municipal code lien that has been filed
240 against the subject property prior to the date the petition is
241 filed. After enforcement proceedings have commenced, the
242 enforcement proceedings may be amended to include any
243 subsequently arising municipal code liens and, if applicable,
244 any taxes.

245 (b) If the property on which a Class 1 municipality is
246 seeking to foreclose is subject to taxes, then at least 60
247 days prior to the filing of the petition the Class 1
248 municipality shall notify all other taxing entities within the
249 jurisdiction of the Class 1 municipality and the state of its
250 intention to file a petition for judicial in rem foreclosure
251 of the real property on which a municipal code lien exists.
252 Upon notification, the county tax collector shall provide the



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253 tax payoff amount.

254 (c) A Class 1 municipality shall initiate an action to
255 foreclose a code enforcement lien pursuant to this act by
256 filing a petition with the clerk of the circuit court for the
257 judicial circuit in which the real property is situated. The
258 petition shall be substantially identical in form and content
259 to the form provided in subsection (j). The case shall be
260 docketed in the circuit court by the clerk where it shall be a
261 preferred case. The circuit court in which a petition is filed
262 under this subsection shall immediately set the date, time,
263 and place for a hearing on the petition.

264 (d) Upon filing the petition, a Class 1 municipality
265 shall record an appropriate lis pendens in the office of the
266 judge of probate of the county in which the real property is
267 situated. The lis pendens shall include all of the following
268 information pertaining to the real property:

- 269 (1) The legal description.
270 (2) The tax identification number of the real property.
271 (3) The street address if available.
272 (4) A statement that the property is subject to
273 judicial in rem foreclosure proceedings under this act.

274 (5) A statement that those proceedings may extinguish
275 any legal interests in the property.

276 (e) The petition shall be filed against the real
277 property to which the recorded municipal code lien pertains
278 and shall provide all of the following pertaining to the real
279 property:

- 280 (1) The identity of the Class 1 municipality.



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- 281 (2) A legal description.
- 282 (3) The tax identification number of the property.
- 283 (4) The street address if available.
- 284 (5) A description of the municipal code lien that is
285 being foreclosed.
- 286 (6) The principal amount of the municipal code lien and
287 any applicable interest and penalties.
- 288 (7) The principal amount of any additional municipal
289 code liens against the property and any applicable interest
290 and penalties in accordance with subsection (a).
- 291 (8) The year or years for which the taxes are
292 delinquent, if any.
- 293 (9) The principal amount of the taxes and any interest
294 and penalties.
- 295 (10) The tax payoff amount.
- 296 (11) A statement that upon final sale in accordance
297 with this section and payment of any applicable tax payoff
298 amount, an interested party's rights of redemption under
299 Chapter 10 of Title 40, Chapter 51 of Title 11, Section
300 11-53B-10, or Section 11-48-54, Code of Alabama 1975, shall be
301 extinguished.
- 302 (12) The names and addresses of all interested parties
303 to whom copies of the petition shall be sent pursuant to
304 subsection (f).
- 305 (13) A deraignment of title for a period of at least 60
306 years before filing the complaint, unless the court otherwise
307 directs, setting forth the book and page of the records where
308 any instrument affecting the title may be recorded.

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309 (f) (1) A Class 1 municipality shall mail copies of the
310 petition by both certified mail, return receipt requested, and
311 by regular mail to all interested parties whose identities and
312 addresses are reasonably ascertainable.

313 (2) Copies of the petition shall also be mailed by
314 first-class mail to the real property address to the attention
315 of the occupants of the property, if any.

316 (3) In addition, notice shall be physically posted on
317 the real property and shall include the following statement:
318 "THIS PROPERTY IS SUBJECT TO A JUDICIAL IN REM FORECLOSURE
319 ACTION AND MAY BE TRANSFERRED TO [NAME OF CLASS 1
320 MUNICIPALITY] OR ANOTHER PARTY. PERSONS WITH INFORMATION
321 REGARDING THE CURRENT OWNER OF THE PROPERTY ARE REQUESTED TO
322 CONTACT [NAME OF CLASS 1 MUNICIPALITY]."

323 (g) If a Class 1 municipality finds reason to believe
324 that the real property is owner-occupied after the filing of
325 the petition, the Class 1 municipality shall immediately seek
326 dismissal of its petition.

327 (h) Within 30 days after filing the petition, a Class 1
328 municipality shall cause a notice of the filing to be
329 published once each week for three consecutive weeks in a
330 newspaper of general circulation in the county in which the
331 property is located. The notice shall specify the name and
332 address of the Class 1 municipality and the following
333 pertaining to the real property:

- 334 (1) The legal description.
- 335 (2) The tax identification number.
- 336 (3) The street address if available.



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337 (4) A description of any applicable municipal code lien
338 that is being foreclosed.

339 (5) The principal amount of any municipal code lien and
340 any interest and penalties.

341 (6) The applicable period of tax delinquency, if any.

342 (7) The principal amount of taxes, if any.

343 (8) Upon deposit by the court of any tax payoff amounts
344 with the appropriate parties, any rights of redemption
345 accorded to interested parties under Chapter 10 of Title 40,
346 Chapter 51 of Title 11, Section 11-53B-10, or Section
347 11-48-54, Code of Alabama 1975, are extinguished.

348 (9) The date and place of the filing of the petition.

349 (i) If the identity of some or all of the individuals
350 who may have an interest in the real property are unknown, or
351 if they are minors or individuals of unsound mind, the court
352 shall appoint a guardian ad litem to represent and defend the
353 interests of the unknown, minors, or incompetent parties in
354 the action.

355 (j) The municipality, by ordinance, may adopt forms to
356 implement and administer this section.

357 Section 6. (a)(1) A Class 1 municipality shall request
358 that a judicial hearing on the petition occur not earlier than
359 30 days nor later than 90 days following the filing of the
360 petition.

361 (2) At the judicial hearing, any interested party shall
362 have the right to be heard and to contest the delinquency of
363 the municipal code lien, the adequacy of the proceedings, the
364 classification of the real property as owner-occupied, and the



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365 amount of the tax payoff.

366 (b) If the court determines that the information set
367 forth in the petition is accurate, the court shall render its
368 judgment and shall order all of the following:

369 (1) The municipal code lien is delinquent.

370 (2) The amounts of any additional municipal code liens
371 and taxes described in the petition are delinquent.

372 (3) Proper notice has been given to all interested
373 parties.

374 (4) The property is not owner-occupied.

375 (5) The property as described in the petition be sold
376 in accordance with the provisions of this act.

377 (6) The sale shall become final and binding immediately
378 after the sale is conducted in accordance with Section 8.

379 (c) The order of the court shall provide that the real
380 property be sold free and clear of all liens, claims, and
381 encumbrances other than all of the following:

382 (1) Rights of redemption provided under federal law.

383 (2) Taxes assessed against the property that are due
384 but not yet delinquent as of the date of the court's order.

385 (3) Any easement that burdens the property, any real
386 covenant that burdens the property, and any utility easement
387 that benefits the property as of the date of the filing of the
388 municipal code lien on which the Class 1 municipality is
389 seeking to foreclose under this act.

390 (d) If at any point in the proceedings the court
391 determines that the real property is owner-occupied, then the
392 Class 1 municipality shall seek immediate dismissal of the

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393 proceedings.

394 Section 7. (a) At any point prior to the conclusion of
395 the sale described in Section 8(a), any interested party may
396 redeem the real property from the sale by payment of the
397 redemption amount. Payment shall be made to the Class 1
398 municipality. Following receipt of the redemption payment, the
399 Class 1 municipality shall file for dismissal of the
400 proceedings.

401 (b) In the event that the owner of the real property
402 pays the redemption amount, the proceedings shall be
403 dismissed, and the rights and interests of all interested
404 parties shall remain unaffected.

405 (c) In the event of a redemption payment by any
406 interested party other than the owner, the party making the
407 payment shall possess a lien on the real property for the full
408 amount of the payment, which lien shall have the same priority
409 as the municipal code lien described in Section 3(c). The
410 lienholder shall have the right to enforce the lien as
411 permitted to the holder of any lien under existing law. The
412 lienholder shall not otherwise succeed to the rights of the
413 Class 1 municipality or tax certificate holder.

414 Section 8. (a) Following the hearing and order of the
415 court in accordance with Section 7, the court shall cause a
416 sale of the real property to be advertised and conducted by
417 the court in a manner similar to the procedure described in
418 Section 40-10-15, Code of Alabama 1975. The sale shall not
419 occur earlier than 45 days following the date of the order of
420 the court.



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421 (b) (1) Except as otherwise authorized by law, the
422 minimum bid price for the sale of the real property shall be
423 the redemption amount.

424 (2)a. In the absence of any bid higher than the minimum
425 bid price, the court or its designee shall bid in for the
426 property on behalf of the Class 1 municipality or its designee
427 in an amount equal to the minimum bid price, causing the Class
428 1 municipality to become the purchaser at the sale pursuant to
429 Section 7.

430 b. A bid in on behalf of the Class 1 municipality or
431 its designee shall be tendered as a credit bid for the portion
432 of the minimum bid price equal to the municipal code lien
433 payoff. If the minimum bid price bid in by the Class 1
434 municipality includes a tax payoff amount, the Class 1
435 municipality shall tender the amount of the tax payoff to the
436 court, which, together with the municipal code lien payoff,
437 shall satisfy the full amount of the minimum bid price.

438
439 (c) Payment of the winning bid shall be due immediately
440 after the sale is conducted. The proceeds of the foreclosure
441 sale shall be distributed in the following manner:

442 (1) If the purchaser is a party other than the Class 1
443 municipality, the court or its designee shall deposit with the
444 Class 1 municipality the amount of the proceeds equal to the
445 municipal code lien payoff, less any costs incurred or fees
446 charged by the office of the judge of probate.

447 (2) If the purchaser is the Class 1 municipality, then
448 the Class 1 municipality shall tender to the court an amount



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449 equal to any costs incurred by the court that are included in
450 the amount of the municipal code lien payoff.

451 (3) If the minimum bid price includes a tax payoff
452 amount, the court shall deposit the amounts paid with the
453 appropriate parties in accordance with Sections 40-5-10,
454 40-10-128, 40-10-129, and 40-10-193, Code of Alabama 1975, and
455 any applicable local laws.

456 (4) In the event that the foreclosure sale price
457 exceeds the minimum bid price, the surplus shall be
458 distributed by the court to the interested parties, including
459 the owner, as their interests appear and in the order of
460 priority in which their interests exist.

461 (d) Upon deposit by the court of any tax payoff amounts
462 with the appropriate parties as described in subdivision
463 (d) (3), any and all rights of redemption accorded to
464 interested parties under Chapter 10 of Title 40, Chapter 51 of
465 Title 11, Section 11-53B-10, or Section 11-48-54, Code of
466 Alabama 1975, are extinguished.

467 (e) From and after the moment of the sale, the sale
468 shall be final and binding.

469 (f) Within 90 days following the date of the sale, the
470 court shall cause to be executed a deed to the real property
471 identified in the petition. Upon execution, the court shall
472 cause the deed to be recorded with the office of the judge of
473 probate.

474 (g) Within 90 days following the date of the sale, the
475 Class 1 municipality shall file a report of the sale with the
476 clerk of the circuit court, which report shall identify



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477 whether a sale took place, the foreclosure sale price, and the
478 identity of the purchaser.

479 (h) The municipality by ordinance, may adopt forms to
480 implements and administer this section.

481 Section 9. This act shall become effective on October
482 1, 2024.



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485 Senate

486 Read for the first time and referred03-Jan-24
487 to the Senate committee on County
488 and Municipal Government
489
490 Read for the second time and placed06-Mar-24
491 on the calendar:
492 0 amendments
493
494 Read for the third time and passed04-Apr-24
495 as amended
496 Yeas 24
497 Nays 1
498 Abstains 2
499

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501 Patrick Harris,
502 Secretary.
503