



S.B. 158
123rd General Assembly
(As Introduced)

Sen. Shoemaker

BILL SUMMARY

- Generally requires townships and municipal corporations, pursuant to specified procedures, to commence forfeiture and sale proceedings against property on which is located buildings or other structures that have been declared insecure, unsafe, structurally defective, or unfit for human habitation and that have not been removed, repaired, or secured within a specified three-month period.
- Provides that sale proceedings conducted against property as a result of the owners' failure to remove, repair, or secure buildings or other structures on that property generally are to be conducted in the same manner as sale proceedings under the existing Tax Law.
- Removes provisions that permit townships and municipal corporations to remove, repair, or secure buildings or other structures that have been declared insecure, unsafe, structurally defective, or unfit for human habitation, and to recover the costs of that removal, repair, or securance from the property owners.

TABLE OF CONTENTS

Existing law	2
Authority to remove, repair, or secure buildings or other structures.....	2
Procedures for the removal, repair, or securance	2
Recovery of costs	3
Proceeds of fire insurance	4
Changes proposed by the bill	5
Overview.....	5
Requirement to commence forfeiture proceedings	6
Procedures for property owners' initial notification	6

Procedures for property owners' and lienholders' subsequent notification	7
Forfeiture procedures.....	7
Sale of forfeited property.....	11
Buyer's duty to remove, repair, or secure the building or other structure.....	11
Immunity for failure to commence a forfeiture proceeding	11
Fire insurance policy proceeds.....	11

CONTENT AND OPERATION

Existing law

Authority to remove, repair, or secure buildings or other structures

Townships. Under existing law, a board of township trustees is permitted, although not required, to remove, repair, or secure buildings or other structures that have been declared *insecure, unsafe, or structurally defective* by (1) a fire department under contract with the township, (2) the county building department, or (3) another authority responsible under the Building Standards Law for the enforcement of building regulations or the performance of building inspections in the township. The board also is permitted to remove, repair, or secure buildings or other structures that have been *declared unfit for human habitation* by the board of health of the general health district of which the township is a part. (Sec. 505.86(B).)

Municipal corporations. Under existing law, municipal corporations are permitted to provide for the inspection of buildings or other structures and to provide for the removal and repair of insecure, unsafe, or structurally defective buildings or other structures (sec. 715.26(B)).

Procedures for the removal, repair, or securance

Townships. At least 30 days before removing, repairing, or securing any building or other structure, a board of township trustees generally is required to give by *certified mail* notice of its intention to do so to the holders of legal or equitable liens of record upon the property on which the building or other structure is located (lienholders) and to the owners of record of the property. If an owner's address is unknown and cannot reasonably be ascertained, the board is permitted to publish the notice once in a newspaper of general circulation in the township. The property owners or the lienholders can enter into an agreement with the board to perform the removal, repair, or securance of the building or other structure. If the board determines that an emergency exists, the board is permitted to provide notice other than by certified mail and less than 30 days prior to removing, repairing, or securing the building or other structure. (Sec. 505.86(B).)

Municipal corporations. At least 30 days before removing or repairing any building, a municipal corporation generally is required to give by *certified mail* notice of its intention to do so to lienholders with respect to and the owners of record of the property. The property owners or the lienholders can enter into an agreement with the municipal corporation to perform the removal or repair of the building. If the municipal corporation determines that an emergency exists, it is permitted to provide notice other than by certified mail and less than 30 days prior to removing or repairing the building. (Sec. 715.26(B).)

Recovery of costs

Townships. Under existing law, a board of township trustees is permitted to collect the total costs of removing, repairing, or securing buildings or other structures by either of the following methods (sec. 505.86(C)):

(1) The board may have the clerk of the township certify the total costs, together with a proper description of the property, to the county auditor, who is required to enter the costs on the tax records. On and after the date of the entry, the costs are a lien upon the property. The costs are required to be collected in the same manner as other taxes and returned to the township general fund.

(2) The board may commence a civil action to recover the total costs from the owners of the property.

Those total costs include any costs incurred due to use of township employees, materials, or equipment, any costs arising out of contracts for labor, materials, or equipment, and costs of service of notice or publication (sec. 505.86(A)).

Municipal corporations. Under existing law, a municipal corporation is permitted to collect the total costs of removing, repairing, or securing *insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures, of making corrections of hazardous conditions, or of abating any nuisance*. The costs that may be recovered include costs incurred due to the use of employees, materials, or equipment of the municipal corporation, any costs arising out of contracts for labor, materials, or equipment, and costs of service of notice or publication. (Sec. 715.261--repealed by the bill.)

The total costs can be collected by either of the following methods (sec. 715.261(B)--repealed by the bill):

(1) The municipal corporation may have the clerk of its legislative authority certify the total costs, together with a proper description of the property, to the county auditor, who is required to enter the costs on the tax records. On and

after the date of the entry, the costs are a lien upon the property. The costs are required to be collected as other taxes and returned to the municipal corporation.

(2) The municipal corporation may commence a civil action to recover the total costs from the owners of the property.

If a municipal corporation fails to provide the requisite notice to the property owners or lienholders, the lien arising from the total costs' entry into the tax records is subordinate to any liens of prior record on the property (sec. 715.26(B)).

Proceeds of fire insurance

If (1) a fire insurance policy is in effect with respect to a building or other structure, (2) the loss agreed to between the insured and the insurance company is more than \$5,000, and (3) the loss is 60% or more of the aggregate limits of liability on all fire insurance policies covering the building or other structure, a board of township trustees or a municipal corporation is permitted to accept security payments and to follow specified statutory procedures (secs. 505.86(D) and 715.26(F)).

Under those procedures, when the loss agreed to between the insured and the insurance company equals or exceeds 60% of the aggregate limits of liability on all fire insurance policies covering the building or other structure, the insurance company generally is required to transfer from the insurance proceeds to the officer designated by the township or municipal corporation \$2,000 for each \$15,000, and each fraction of that amount, of a claim. But, if, at the time the loss is agreed to between the insured and the insurance company, the insured submits a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure, the insurance company is required to transfer from the insurance proceeds to the designated officer the amount specified in the estimate. The insured also may submit a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure after insurance proceeds have been transferred to the designated officer in the amount of \$2,000 for each \$15,000 of a claim; if the township or municipal corporation has not begun to remove, repair, or secure the building or other structure, the designated officer is required to return to the insured the amount of the transferred insurance proceeds that is in excess of the estimate. In order to take advantage of these procedures, a township or municipal corporation previously must have adopted a resolution, ordinance, or regulation authorizing the procedures and must have filed a certified copy of that resolution, ordinance, or regulation with the Superintendent of Insurance. (Sec. 3929.86(C).)

Upon receipt of insurance proceeds, the designated officer of a township or municipal corporation is required to place the proceeds in a separate fund to be used solely as security against the total costs of removing, repairing, or securing the building or other structure. The township or municipal corporation is required to contact the insured, certify that the insurance proceeds have been received, and notify the insured that the following procedures will be followed (sec. 3929.86(D)):

(1) The insurance proceeds will be returned to the insured no later than 60 days after the removal, repair, or securing of the building or other structure has been completed and the required proof of that completion has been received by the designated officer, provided that the township or municipal corporation has not incurred any costs for the removal, repair, or security.

(2) If the township or municipal corporation incurred such costs, the costs incurred must be paid from the fund. If excess insurance proceeds remain after the costs incurred have been so paid, the township or municipal corporation is required to transfer, no later than 60 days after all of those costs have been paid, the remaining proceeds to the insured.

(3) If the insurance proceeds are insufficient to pay the costs incurred for the removal, repair, or security, the township or municipal corporation may recover the additional costs by tax lien or civil action, as described above.

(4) The township or municipal corporation and the insured may enter into an agreement permitting the transfer of insurance proceeds to the insured if some other reasonable disposition of the damaged property is negotiated.

Changes proposed by the bill

Overview

The bill removes the authority of townships and municipal corporations to remove, repair, or secure buildings or other structures that are insecure, unsafe, structurally defective, or unfit for human habitation (secs. 505.86, 715.26, and 3929.86). Instead, it *generally requires townships and municipal corporations to commence forfeiture proceedings* against property on which those types of buildings or other structures are located, if the owners of the property or its lienholders do not remove, repair, or secure a building or other structure *within three months*.

Requirement to commence forfeiture proceedings

Townships. Under the bill, a board of township trustees generally is *required* to provide for the forfeiture of property in the township on which is located buildings or other structures that have been declared insecure, unsafe, or structurally defective by (1) a fire department under contract with the township, (2) the county building department, or (3) another authority responsible under the Building Standards Law for the enforcement of building regulations or the performance of building inspections in the township. The board also is generally required to provide for the forfeiture of property on which is located buildings or other structures that have been declared unfit for human habitation by the board of health of the general health district of which the township is a part. The board only must commence the forfeiture proceedings if the owners of the property do not remove, repair, or secure the building or other structure within three months after being notified (see below) or within an applicable shorter period of time if an emergency situation exists. (Sec. 505.86(B)(1).)

Municipal corporations. The bill generally requires a municipal corporation to provide for the forfeiture of property in the municipal corporation on which is located buildings or other structures that have been declared insecure, unsafe, or structurally defective by (1) its fire marshal or fire chief, or (2) the building inspector, the commissioner of buildings, or other authority responsible under the Building Standards Law for the enforcement of building regulations or the performance of building inspections in the municipal corporation. A municipal corporation also is generally required, under the bill, to provide for the forfeiture of property on which is located buildings or other structures that have been declared unfit for human habitation by the board of health of the city or general health district of which the municipal corporation is a part. The municipal corporation only must commence the forfeiture proceedings if the owners of the property do not remove, repair, or secure the building or other structure within three months after being notified (see below) or within an applicable shorter period of time if an emergency situation exists. (Sec. 715.26(B)(1).)

Procedures for property owners' initial notification

A board of township trustees or a municipal corporation generally is required to notify the owners of record of property on which a building or other structure is located, *by certified mail, return receipt requested*, that the building or other structure has been declared insecure, unsafe, structurally defective, or unfit for human habitation and must be removed, repaired, or secured within three months. If an emergency exists involving a hazardous condition, as determined by the board or municipal corporation, the board or municipal corporation may provide notice other than by certified mail, return receipt requested, and the notice

is permitted to specify a period of less than three months for the removal, repair, or securance. If an owner's address is unknown and cannot reasonably be ascertained, it is sufficient for the board or municipal corporation to *publish the notice* with respect to that owner once in a newspaper of general circulation in the township or municipal corporation. (Secs. 505.86(B)(2) and 715.26(B)(2).)

Procedures for property owners' and lienholders' subsequent notification

If the property owners do not remove, repair, or secure the building or other structure within three months, or within the applicable shorter period of time in case of an emergency, after the "initial notification," the board of township trustees or municipal corporation generally is required to provide 30 days' notice, *by certified mail, return receipt requested*, of the intention of the board or municipal corporation to begin proceedings for the forfeiture and sale of the property. This notice is required to be provided to both (1) the owners of record of the property and (2) the holders of legal or equitable liens of record upon the property. If an owner's address is unknown and cannot reasonably be ascertained, it is sufficient for the board or municipal corporation to *publish notice*, with respect to that owner, once in a newspaper of general circulation in the township or municipal corporation. If an emergency exists involving a hazardous condition, the board or municipal corporation is permitted to provide either 30 days' notice by certified mail, return receipt requested, or another type of notice of less than 30 days. The property owners or lienholders, after notification, may enter into an agreement with the board or municipal corporation to remove, repair, or secure the building or other structure. (Secs. 505.86(B)(3) and 715.26(B)(3).)

Forfeiture procedures

Overview. Under the bill, the forfeiture procedures for both townships and municipal corporations are nearly identical. The only difference between the township and municipal corporation forfeiture proceedings is that the township proceedings must be prosecuted by the county prosecuting attorney while the municipal corporation proceedings must be prosecuted by the municipal corporation's prosecutor.

Affidavit filed with the prosecuting attorney or prosecutor. If the building or other structure is not removed, repaired, or secured, or if an agreement to remove, repair, or secure it is not entered into with the property owners or lienholders, within 30 days, or the applicable shorter period of time in case of an emergency, after the giving of the "subsequent notification," the board of township trustees is required to file with the county prosecuting attorney, or the municipal corporation is required to file with its prosecutor, an affidavit specifying all of the following (secs. 505.86(B)(4) and 715.26(B)(4)):

(1) A description of the property on which is located the building or other structure that has been declared insecure, unsafe, structurally defective, or unfit for human habitation;

(2) A brief description of the reason the building or other structure was so declared;

(3) The authority responsible for so declaring the building or other structure;

(4) A copy of the notices sent to, and the return receipts received from, the property owners and, if a property owner's address is unknown and cannot reasonably be ascertained, a copy of the notices published in a newspaper of general circulation in the township or municipal corporation;

(5) A listing of the property owners and lienholders;

(6) The failure to remove, repair, or secure the building or other structure or to enter into an agreement to remove, repair, or secure it.

Filing a complaint in the court of common pleas. A county prosecuting attorney or municipal corporation prosecutor generally is required, upon receipt of such an affidavit and after having a title search conducted with respect to the property, to commence a proceeding for the forfeiture of the property on which the building or other structure is located. The prosecuting attorney generally must file, in the name of the board of township trustees, or the prosecutor generally must file, in the name of the municipal corporation, with the clerk of the court of common pleas a complaint that requests that the property identified in the affidavit be forfeited to the state. The prosecuting attorney or prosecutor generally then is required to prosecute the forfeiture proceeding to final judgment and satisfaction. (Secs. 505.86(B)(5)(a)(i) and (B)(5)(b) and 715.26(B)(5)(a)(i) and (B)(5)(b).) However, forfeiture proceedings are not to be so commenced if the building or other structure is removed, repaired, or secured, or if an agreement to remove, repair, or secure it is entered into, before forfeiture proceedings have been so commenced (secs. 505.86(B)(5)(a)(ii) and 715.26(B)(5)(a)(ii)).

Forfeiture proceedings conducted under the bill constitute "an action in rem" and are permitted to include any number of properties, although each property is required to be given a serial number and to be separately indexed and docketed by the clerk of the court. The complaint commencing a proceeding is required to contain all of the following (secs. 505.86(B)(5)(b) and 715.26(B)(5)(b)):

(1) The permanent parcel number, if any, of each property;

(2) The full street address of the property, when available;

(3) A description of the property and the reason the building or other structure on it was declared insecure, unsafe, structurally defective, or unfit for human habitation;

(4) The name and, if known, address of the last known owner of the property;

(5) The name and address of each lienholder and other person with an interest in the property identified in the title search.

It is sufficient for the prosecuting attorney or prosecutor to allege in the complaint that the affidavit required to be filed by the board of township trustees or the municipal corporation has been filed with respect to each property included in the complaint, without setting forth any other matter. The complaint is required to request that the court issue an order that *the property included in it be forfeited to the state and that the property be offered for sale* as provided in the Tax Law provisions for the sale of forfeited property. (Secs. 505.86(B)(5)(b) and 715.26(B)(5)(b).)

Notifying interested parties of pending forfeiture proceedings. Within 30 days after a complaint is filed, the clerk of the court is required to *publish a notice of forfeiture* once per week for three consecutive weeks in a newspaper of general circulation in the county or, if the property is located in a municipal corporation, in a newspaper of general circulation in the municipal corporation. The notice is required to include the complete legal description of the property, unless the county has adopted a permanent parcel number system. If a permanent parcel number system has been adopted, the notice is permitted to describe the parcel by its parcel number only, if the prosecuting attorney or municipal corporation prosecutor determines that the complete legal description is not necessary to provide interested parties with reasonable notice of the forfeiture proceeding. If the complete legal description is not published, however, the notice is required to indicate where the complete legal description may be obtained. (Secs. 505.86(B)(5)(c) and 715.26(B)(5)(c).)

In addition to publishing notice of the forfeiture proceeding, the clerk of the court also is required, within 30 days after the filing of the complaint and before the date of the final publication, to send a copy of the notice of forfeiture, *by ordinary mail*, to each person named in the complaint as the last known owner of the property or as being a lienholder or other person with an interest in the property. The clerk is required to enter the mailing upon the appearance docket. If the address of the last known owner is not stated in the complaint, the

prosecuting attorney or prosecutor is required to file an affidavit with the clerk stating that the address is unknown. (Secs. 505.86(B)(5)(c) and 715.26(B)(5)(c).)

Filing answers. Any person owning or claiming any right, title, or interest in, or lien upon, any property described in a forfeiture complaint is permitted to file an answer in the forfeiture proceeding. The answer is required to state (1) the nature and amount of the right, title, interest, or lien owned or claimed and (2) any defense or objection to the forfeiture of the property to the state. The answer must be filed in the office of the clerk of the court, and a copy of the answer is required to be served on the prosecuting attorney or municipal corporation prosecutor, not later than 28 days after the date of final publication of the notice of forfeiture. If no answer is filed within that 28-day period, a default judgment may be entered with respect to the relevant property. Any default judgment is valid and effective with respect to all persons owning or claiming any right, title, or interest in, or lien upon, that property. (Secs. 505.86(B)(5)(d) and 715.26(B)(5)(d).)

Court proceedings. A court of common pleas is required to dismiss a forfeiture proceeding with respect to any property on which the insecure, unsafe, structurally defective, or unfit-for-human-habitation building or other structure has been removed, repaired, or secured, or has become the subject of a removal, repair, or securance agreement, prior to the trial of the proceeding (secs. 505.86(B)(5)(e)(i) and 715.26(B)(5)(e)(i)).

At the trial of a forfeiture proceeding, the affidavit filed with the prosecuting attorney or municipal corporation prosecutor is prima-facie evidence of the existence on the property identified in it of an insecure, unsafe, structurally defective, or unfit-for-human-habitation building or other structure that was not removed, repaired, or secured within the required three-month or applicable shorter period of time. If an answer is filed with respect to a property in the complaint, the court is permitted, in its discretion, and is required, at the request of the person filing the answer, to sever the proceedings with respect to that property for trial purposes. In a judgment of forfeiture, the court is required to enter a finding with respect to each property included in the complaint. (Secs. 505.86(B)(5)(e)(ii) and 715.26(B)(5)(e)(ii).)

Sale of forfeited property

If a court of common pleas orders property to be forfeited under the bill's provisions, it is required to order that the property be sold in accordance with the Tax Law provisions for the sale of forfeited property. The property is required to be so sold for *no less than its fair market value*, as determined by the county auditor. If property that is so forfeited remains unsold after the county auditor closes an initial attempted sale, the county auditor may readvertise the property. If

it remains unsold after a second advertisement and attempted sale, the property is forfeited to the state. (Secs. 505.86(B)(5)(e)(ii), 715.26(B)(5)(e)(ii), and 5723.06(A)(1).) The actual conduct of such a forfeited property sale, the distribution of its proceeds, and other aspects of it generally are governed by the Tax Law provisions pertaining to the sale of forfeited property, without the need for amendment by the bill.

Buyer's duty to remove, repair, or secure the building or other structure

Any buyer of property that has been forfeited and sold due to the prior owners' failure to remove, repair, or secure an insecure, unsafe, structurally defective, or unfit-for-human-habitation building or other structure is required to immediately remove, repair, or secure that building or other structure (secs. 505.86(C) and 715.26(C)).

Immunity for failure to commence a forfeiture proceeding

A board of township trustees, a township, or a municipal corporation is not liable in damages in a civil action for any injury, death, or loss to person or property allegedly arising from the failure to commence a forfeiture proceeding against property on which is located a building or other structure declared insecure, unsafe, structurally defective, or unfit for human habitation (secs. 505.86(D) and 715.26(D)).

Fire insurance policy proceeds

If (1) a fire insurance policy is in effect with respect to a building or other structure, (2) the loss agreed to between the insured and the insurance company is more than \$5,000, and (3) the loss is 60% or more of the aggregate limits of liability on all fire insurance policies covering the building or other structure, a board of township trustees or a municipal corporation is permitted to accept security payments and to follow specified statutory procedures (secs. 505.86(E) and 715.26(A)(6)). Those procedures are identical to those described under "Existing law," above, with the major exception of the bill's repeal of references to a township's or municipal corporation's actual performance of removal, repair, or security work (sec. 3929.86(C) and (D)).

COMMENT

Due to the operation of home rule provisions of the Ohio Constitution, sections of the bill applicable to municipal corporations might be determined by Ohio courts to be unenforceable with respect to some or all municipal corporations (Ohio Constitution, Art. XVIII, Sections 3 and 7).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-22-99	pp. 649-650

S0158-I.123/rss