



Aida S. Montano

Bill Analysis

Legislative Service Commission

H.B. 422

124th General Assembly
(As Introduced)

Reps. Flowers, Raga, Wolpert, Roman, Webster, Lendrum, White, Allen, Hartnett, Otterman, Strahorn, Sullivan

BILL SUMMARY

- In execution sales of lands and tenements, sales of water improvements to satisfy a lien for the payment of water improvement bonds, sales of escheated real property, and petitions to sell real property discharged of the right of dower of an insane person, replaces generally the requirement of an appraisal of the real property by freeholders who are residents of the county in which the real property is located with an appraisal by a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure.
- Provides that appraisers directed by a court upon foreclosure sales of certain mortgaged real property must be disinterested third parties who are certificate holders or licensees under the Real Estate Appraisers Law acting within the scope of certification or licensure.
- Replaces the requirement of an appraisal of the property of an insolvent railroad company in receivership that is subject to a judicial sale by commissioners who have the qualifications of freeholders with an appraisal by a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure.

CONTENT AND OPERATION

Background law

R.C. Chapter 4763. (Real Estate Appraisers Law) prescribes the requirements and procedures for the certification, licensing, and registration of real

estate appraisers by the Superintendent of the Division of Real Estate and Professional Licensing. Following are definitions of the types of real estate appraisers who are subject to certification and licensing under that Law (R.C. 4763.01(K), (L), and (M)):

"State-certified general real estate appraiser" means any person who satisfies the certification requirements of that Law relating to the appraisal of all types of real property and who holds a current and valid certificate or renewal certificate issued to the person pursuant to that Law.

"State-certified residential real estate appraiser" means any person who satisfies the certification requirements only relating to the appraisal of one to four units of single-family residential real estate without regard to transaction value or complexity and who holds a current and valid certificate or renewal certificate issued to the person pursuant to that Law.

"State-licensed residential real estate appraiser" means any person who satisfies the licensure requirements of that Law relating to the appraisal of noncomplex one-to-four unit single-family residential real estate having a transaction value of less than \$1 million and complex one-to-four unit single-family residential real estate having a transaction value of less than \$250,000 and who holds a current and valid license or renewal license issued to the person pursuant to that Law.

"Certified or licensed real estate appraisal" means an appraisal prepared and reported by a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure and as a disinterested third party (R.C. 4763.01(N)).

Overview of the bill

The bill replaces generally the use of *freeholders* (see **COMMENT**) who are residents of the county to appraise real property that is subject to a judicial sale or execution sale with the use of a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure.

Sale of lands on execution

Under the existing Execution of Judgments Law, when execution is levied upon lands and tenements, the officer who makes the levy must *call an inquest of three disinterested freeholders, residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view. They forthwith must return to such*

officer, *under their hands*, an estimate of the *real* value of the property *in money*. (R.C. 2329.17.)

The bill modifies existing law by replacing the above provision pertaining to an inquest of three disinterested freeholders with the provision that when execution is levied upon lands and tenements, the officer who makes the levy *must arrange for an appraisal of the property by a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure*. The party *must promptly prepare and submit* (instead of *they (freeholders) must return under their hands*) to the officer *an appraisal that includes* (added by the bill) an estimate of the *value of the property* (instead of *real value of the property in money*). (R.C. 2329.17.)

Sale of foreclosed property

Existing law

Under the Judgments Law, when a mortgage is foreclosed or a specific lien enforced, a sale of the property must be ordered. If the real property to be sold is in one or more tracts, the court may order the officer who makes the sale to subdivide, appraise, and sell them in parcels, or sell any one of the tracts as a whole.

When the mortgaged property is situated in more than one county, the court may order the sheriff or master of each county to make sale of the property in the sheriff's or master's county, or may direct one officer to sell the whole. When it consists of a single tract, the court may direct that it be sold as one tract or in separate parcels, and must direct whether *appraisers* are to be selected for each county or *one set* for all and whether publication of the sale is to be made in all the counties, or in one county only. (R.C. 2323.07.)

Operation of the bill

The bill modifies existing law by providing that when the mortgaged property consists of a single tract, the court may direct that it be sold as one tract or in separate parcels, and must direct whether *an appraiser* (instead of *appraisers*) is to be selected for each county or *one appraiser* (instead of *one set*) for all and whether publication of the sale is to be made in all the counties, or in one county only. The bill further provides that such appraisers must be disinterested third parties who are certificate holders or licensees under the Real Estate Appraisers Law acting within the scope of certification or licensure. (R.C. 2323.07.)

Liens for payment of water improvement bonds

Existing law

Under the Water Improvements Law, the owners of bonds issued for the construction, alteration, or enlargement of certain water improvements have a lien for the payment of the principal and interest of those bonds upon any dam, reservoir, storage basin, or other improvements, or any part thereof, with the appurtenances belonging to them, constructed by the Chief of the Division of Water of the Department of Natural Resources with the funds derived from the sale of those bonds. If default is made in the payment of the interest on any of those bonds for three or more successive years, or if bonds, aggregating in par value not less than 10% of the total amount of the bonds then outstanding are not paid at maturity, then all of the bonds, both principal and interest, become due and payable, and the owners of any of the bonds, aggregating in par value not less than 10% of the total amount of the bonds then outstanding, may institute proceedings to foreclose the lien against the state in the court of common pleas of the county in which is located any of the improvements, constructed, altered, or enlarged out of the proceeds of the sale of the bonds.

The court has jurisdiction of the action with full power to foreclose the lien and to make an order to the sheriff of the county, acting as a master commissioner, directing the sheriff to make a sale of the improvements or part thereof at not less than 2/3 of their appraised value, and upon such terms and in manner and form as provided for in the order, and to pay the proceeds of the sale to the clerk of the court of common pleas.

Upon the making of an order by the court for the sale of the improvements, and before they are offered for sale by the sheriff, the court must appoint *three* disinterested appraisers, one of whom must be a water-works or hydraulic engineer with at least five years' experience in the practice of the engineer's profession, and *two* of whom must be *freeholders residing in the county in which any of the improvements are located*. The appraisers must appraise the improvements and, within the time fixed by the court, must file the appraisal in writing with the clerk. (R.C. 1523.10, 1st, 2nd, 3rd, and 5th paragraphs.)

Operation of the bill

The bill modifies the number and types of appraisers as described above. It provides that upon the making of an order by the court for the sale of the improvements, and before they are offered for sale by the sheriff, the court must appoint *two* (instead of *three*) disinterested appraisers, one of whom must be a water-works or hydraulic engineer with at least five years' experience in the practice of the engineer's profession, and *one* of whom must be a *certificate holder*

or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure. (R.C. 1523.10, 5th paragraph.)

Attachment proceedings--fees of appraisers

Under existing law, in all cases in which an attachment is issued, the *freeholders required to be called* by the sheriff to appraise property must be allowed such fees for their services as the court directs.

The bill instead provides that in all cases in which an attachment is issued, the *certificate holders and licensees under the Real Estate Appraisers Law who are requested* by the sheriff to appraise property must be allowed such fees for their services as the court directs. (R.C. 311.19.)

Disposition of escheated real property

Existing law

Under the Descent and Distribution Law, the county auditor generally must take possession of real property escheated to the state that is located in the auditor's county and outside the incorporated area of a city. The auditor must take possession in the name of the state and sell the property at public auction, at the county seat of the county, to the highest bidder, after having given 30 days' notice of the intended sale in a newspaper published within the county.

On the application of the auditor, the court of common pleas must *appoint three disinterested freeholders of the county to appraise* the real property. The *freeholders* are governed by the same rule as appraisers in sheriffs' or administrators' sales. The auditor must sell the property at not less than 2/3 of its appraised value and may sell it for cash or for 1/3 cash and the balance in equal annual payments, the deferred payments to be amply secured. Upon payment of the whole consideration, the auditor must execute a deed to the purchaser, in the name and on behalf of the state. The proceeds of the sale must be paid by the auditor to the county treasurer. (R.C. 2105.09(A).)

Operation of the bill

The bill modifies the appraisal procedure in current law. It provides that on the application of the auditor, the court of common pleas must *arrange for an appraisal of the real property by a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure* (instead of *appoint three disinterested freeholders of the county to appraise* the real property). The *party* is governed by the same rule as appraisers in sheriffs' or administrators' sales. (R.C. 2105.09(A).)

Petition to discharge land of the right of dower of an insane person

Existing law

Under the Real Property Law, a person owning real property in Ohio, encumbered by the contingent or vested right of dower of an insane person, may apply, by petition to the court of common pleas of the county in which the real estate, or any part of the real estate, is situated, making defendants to the petition the insane person and the spouse and guardian, if the insane person has either or both, for leave to sell any part of the real property, discharged and unencumbered of the contingent or vested right of dower. The court must appoint a committee of six competent *men* (or *persons* if gender neutralized), of whom at least three are physicians, who, under oath, must inquire into the insanity of the person, and hear testimony to be produced by the spouse or guardian, or, if there is no guardian, by a guardian ad litem to be appointed in the action. (R.C. 5305.18--not in the bill.)

If the committee unanimously reports that the person having a contingent or vested right of dower, in its opinion, is permanently insane, the court of common pleas must *appoint three judicious freeholders to appraise* the real estate described in the petition, *whether or not such real estate is in one or several counties*. The *freeholders* must report in writing the value of each tract. (R.C. 5305.19.)

Operation of the bill

The bill modifies the type of appraisers described in "*Existing law*," above, and provides that if the committee unanimously reports that the person having a contingent or vested right of dower, in its opinion, is permanently insane, the court of common pleas *must arrange for an appraisal* of the real estate described in the petition *by a disinterested third party who is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure*. The *party* must report in writing the value of each tract. (R.C. 5305.19.)

Judicial sale of railroads

Existing law

Under the existing Railroad Sales Law, the real and personal property, roadbed, right of way, fixtures, and franchises of a railroad company in Ohio that has not completed, nor conveyed by deed of trust or mortgage, any part of its railroad, that is insolvent, and whose property is in the hands of a receiver appointed by a court of competent jurisdiction, may be sold at judicial sale, and title thereto, with all the rights, liberties, faculties, and franchises, passes by such sale, and vests in the purchaser as fully as they had been possessed, exercised, and enjoyed by the company. The receiver must file in the court a petition for the sale

and cause notice to be published in accordance with that Law. (R.C. 4969.12 and 4969.13--not in the bill.)

On proof of the publication of the notice required by the Railroad Sales Law, and being satisfied that a sale is necessary to pay the indebtedness of the company, the court must order the sale of that railroad, roadbed, rights of way, property, and franchises, on such terms of payment as it deems proper. The court must issue its order to the receiver commanding that the receiver cause them to be appraised by *commissioners*, selected by the court, skilled in the construction and value of such roadbeds as *they may be called upon to appraise, having the qualifications of a freeholder, not less than three in number, and consisting of at least one from each county in which any part of the roadbed is situated*. Such proceedings must be had under the order as are provided in sales of real estate made by judicial order in other cases, so far as they are applicable. (R.C. 4969.14.)

Operation of the bill

Under the bill, on proof of the publication of the notice required by the Railroad Sales Law, and being satisfied that a sale is necessary to pay the indebtedness of the company, the court must order the sale of the railroad, roadbed, rights of way, property, and franchises as provided in that Law, on such terms of payment as it deems proper, and issue its order to the receiver commanding that the receiver cause them to be appraised by *a disinterested third party* (instead of *commissioners*), selected by the court, skilled in the construction and value of such roadbeds as *may be necessary to appraise and is a certificate holder or licensee under the Real Estate Appraisers Law acting within the scope of certification or licensure* (instead of *having the qualifications of a freeholder, not less than three in number, and consisting of at least one from each county in which any part of the roadbed is situated*) (R.C. 4969.14).

COMMENT

A freeholder is one who possesses a "freehold," which means an estate in land held in fee simple, in fee tail, or for a term of life (*Black's Law Dictionary*, 7th Edition, 1999).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0422-I.124/jc	10-25-01	p. 997

