



S.B. 182

125th General Assembly
(As Introduced)

Sen. Schuring

BILL SUMMARY

- Establishes an expedited, nonjudicial procedure for delinquent tax foreclosures against long-delinquent real property.
- Directs the net proceeds of the sale of the property to the school district where the property is located.

CONTENT AND OPERATION

Foreclosing delinquent real property taxes--current law

(R.C. 323.25 to 323.28, Chapters 5721. and 5723.)

Under current law, there are five distinct statutory procedures for foreclosing liens on real property to enforce the collection of delinquent property taxes. Which procedure is followed in a particular foreclosure case depends on the circumstances, the desired outcomes, and the preferences of the county officer prosecuting the case. All five procedures aim ultimately to recover delinquent taxes by forcing the sale of the property, if necessary, after affording the owner or other interested party an opportunity to redeem the property by paying the delinquency. One element shared by all of the existing procedures is that a judicial proceeding and judgment are required before the sale of the property may proceed.

New foreclosure procedure for abandoned land

(R.C. 323.71)

The bill authorizes a sixth procedure that does not require any judicial proceeding or judgment. The new procedure applies only to real property that has a delinquent tax charge against it that is at least ten years old. The bill defines that

property as "abandoned land," but the term is not limited to land alone; it also refers to buildings, structures, or other improvements on land.

Initiating the procedure

(R.C. 323.72 and 323.721)

The new procedure is initiated by the county budget commission and the board of county commissioners.¹ The county budget commission may compile a list of parcels of abandoned land that the commission finds to be suitable for foreclosure under the new procedure, and certify the list to the board of county commissioners. The board of county commissioners then may adopt a resolution declaring the delinquent taxes on the property to be uncollectible, and the restoration of the property to the tax list "to be of such public interest as to justify the expeditious foreclosure" of the tax lien.² To proceed with the expedited foreclosure procedure, the board must certify copies of the resolution and the list to the county auditor and the county treasurer.

Title search, notification, hearing

(R.C. 323.722 and 323.723)

Within 30 days after the county treasurer receives a copy of the resolution and the list, the treasurer must conduct a title search to identify any persons holding a lien on any of the listed abandoned land or having some other ownership or security interest in it. When the title search is completed, the county treasurer must mail a notice to the last known owner of the abandoned land (as shown in the property records) and to the last known address of any other such persons that are discovered by the search. The notice must be mailed by certified mail, return receipt requested (for proof of delivery). The notice must inform those persons of the delinquency and of the impending sale of the property at public auction. It also must inform them of their right to redeem the property by paying the delinquent taxes within 30 days and of their right to petition for a hearing on the foreclosure action. The bill permits a petitioner only to assert that the taxes and

¹ *The county budget commission is composed of the county auditor, county treasurer, and county prosecuting attorney. By initiative petition, county electors may call for the establishment of two additional public members to be elected at large in the county. (R.C. 5705.27.)*

² *For the sake of brevity, references in this analysis to "delinquent taxes" should be understood to include penalties and interest charged because of the delinquency, as well as other charges that might be levied against the property, such as costs of the proceedings (e.g., mailings and publication of notices).*

other charges shown to be due have been paid. The petition must be filed with the county treasurer within 30 days after the notice is mailed, and in the manner prescribed in the notice.

If a person receiving such a notice does not redeem the property by paying the delinquent taxes or does not file a petition before the filing deadline, the property must be offered for sale. If the person files a petition before the deadline, the county treasurer must notify the budget commission, and the commission must schedule a hearing to be held before it within 60 days after the petition is received. The commission must inform the petitioner of the hearing date. At the hearing, the only question to be considered is whether the delinquent taxes have been paid. If the petitioner shows by a preponderance of the evidence that the taxes have been paid in full, the property must be removed from the abandoned land list and may not be sold at public auction. If the petitioner fails to show that the taxes have been paid in full, the commission must issue a finding that the property is to be sold.

Sale of abandoned land

(R.C. 323.724, 323.725, 323.726, and 323.727)

If abandoned land is not redeemed by the payment of the delinquent taxes and a petition is not filed before the deadline, or if the county budget commission issues a finding that the property is to be sold, the county treasurer must offer the property for sale to the adjoining property owners before offering it for sale at public auction. The offer price must be at least 75% of the property's fair market value, plus any expenses associated with the foreclosure procedure. If more than one of the adjoining property owners bids at least that price, the property must be sold to the highest bidder. Otherwise, the property must be sold at public auction.

At least 30 days before a public auction is held, the county treasurer must advertise the auction in a newspaper of general circulation in the county. The advertisement must show the property's street address (if it is available) and the property's permanent parcel number (if such numbers are used in the county). The auction must be conducted by the county treasurer (or a designee). The bidding must begin at 75% of the fair market value, plus the expenses of the foreclosure procedure. The property generally must be sold to the highest bidder who bids at least that price. But, the county treasurer may reject any or all bids. If the property is not sold at the auction, it may be offered for sale at a later auction if the board of county commissioners allows.



Use of sale proceeds

(R.C. 323.726)

Proceeds from the sale of abandoned land must be applied first to paying expenses related to the sale. The remaining proceeds must be paid to the school district where the property is located.

Terms and conditions of the sale

(R.C. 323.726 and 323.728)

Payment of purchase price and required plan. At the time of a public auction, the winning bidder must pay to the county treasurer a deposit of at least 10% of the purchase price in cash or by a personal or certified check; the balance is due within 30 days. The winning bidder also must submit to the county treasurer within that 30-day period a written plan describing any activities to be undertaken to improve the property--such as construction, demolition, rehabilitation, and maintenance--and estimated dates for beginning and completing those activities and for making the property suitable for occupation. The bill requires that the property be suitable for occupation within 24 months after the sale becomes final. Once the county treasurer accepts the plan, it becomes an agreement by the winning bidder to fulfill the activities described in it.

The county treasurer must retain the deed to the property until the treasurer considers the plan to have been fulfilled. If the winning bidder does not fulfill the plan within 24 months after the sale becomes final, the bidder forfeits all interest in the property to the county, and the county treasurer must offer the property for sale again. The county is not liable to the bidder for any damages incurred as a result of the forfeiture.

Rejection of a sale. The county treasurer may reject the sale of abandoned land if the winning bidder does not properly pay the deposit or balance of the purchase price, does not properly submit a plan, or submits a plan that does not provide satisfactory assurance that the property will be suitable for occupation within the 24-month period. If the sale is rejected, the county treasurer must send a written notice to the winning bidder by certified mail, return receipt requested. Any part of the purchase price already paid by the bidder is forfeited to the county as liquidated damages.

Nature of the transfer. Abandoned land sold under the bill's provisions is transferred free of tax liens and any encumbrances that attached before the sale, except any federal tax liens or covenants and easements that attached before the sale.

Deficiency judgment

(R.C. 323.726)

If the purchase price paid for abandoned land does not cover the delinquent taxes charged against the property and the expenses of the foreclosure procedure, the county treasurer is permitted to certify the deficiency to the prosecuting attorney. The prosecuting attorney then must prosecute a civil action to recover the deficiency by seeking a judgment against the person shown on the property records to be the owner of the property immediately before the sale.

Prohibited purchasers

(R.C. 323.726)

The county treasurer may refuse to sell abandoned land to anyone delinquent in the payment of any of the following taxes: sales or use taxes, cigarette or tobacco taxes, county real estate transfer taxes, county utilities services taxes, or grain handling taxes.

The county treasurer must not sell abandoned land to anyone who owes any *delinquent real property taxes* on any parcel in the county or to the following classes of persons connected to such a delinquent taxpayer: a member of the taxpayer's immediate family, a person with a power of attorney for the taxpayer who subsequently transfers the parcel to the taxpayer, a sole proprietorship owned by the taxpayer or by a member of the taxpayer's immediate family, or a trust or organization the majority of which is owned or controlled by the taxpayer or a member of the taxpayer's immediate family (including partnerships, corporations, business trusts, or associations).

HISTORY

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