



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 294

126th General Assembly
(As Introduced)

Reps. Kilbane, Miller, Seitz, Trakas, Latta, Wolpert, C. Evans, Reidelbach, Faber, Cassell, Kearns, Brown, Carano, Hartnett, Bocchieri, Perry, Healy, Buehrer

BILL SUMMARY

- Provides that in lieu of utilizing the remedies under existing law to enforce the state's lien for real estate taxes, a county board of revision may, at the election of the county treasurer taken upon the treasurer's own initiative or upon a resolution of the board of county commissioners, dispose of abandoned land in the county by public auction and otherwise foreclose that lien upon the abandoned land, and prescribes the procedures for that manner of enforcing the lien.
- Authorizes the county treasurer or county board of revision, from the delinquent tax list and delinquent vacant land list compiled under existing law, to identify and compile a list of abandoned parcels of land suitable for disposition under the bill, certify that list, adopt a resolution declaring that the abandoned lands must be offered for sale by public auction, and certify a copy of the resolution to the county prosecuting attorney.
- If a copy of the resolution is certified to the prosecuting attorney as described in the preceding dot point, requires the county treasurer or designee to cause a title search to be conducted to identify any lienholders or other persons having an ownership or other security interest in the land appearing on the list of abandoned parcels.
- Upon completion of that title search, requires the prosecuting attorney to file with the clerk of the court of common pleas of the county a petition for foreclosure of each parcel of land appearing on the list of abandoned parcels and the equity of redemption on each parcel, requires the clerk to promptly mail notice of the sale to be based upon the foreclosure to the last known address of the land's record owner and any other person

having an ownership or security interest in the land, and prescribes the content of the notice and the manner of service of filed papers associated with the case.

- Requires the county board of revision to conduct a final hearing on the merits at which the record owner or another person having an ownership interest in the land may plead only that the taxes, assessments, penalties, interest, costs, attorney's fees, and other charges shown on the notice to be due and outstanding have been paid.
- At the final hearing on the merits, authorizes a lienholder or another person having a security interest in the abandoned land to plead that the taxes, assessments, penalties, interest, costs, attorney's fees, and other charges shown on the notice to be due and outstanding have been paid or that the land should be removed from the list of abandoned parcels in order to preserve the lienholder's or other person's security interest.
- If a county treasurer or a county board of revision adopts a resolution of tax delinquency as described in the second dot point above and certifies a copy of the resolution to the prosecuting attorney and if the "impositions" (delinquent taxes, assessments, penalties, interest, costs, attorney's fees, and other permissible charges against abandoned land) against a parcel of abandoned land on the list of abandoned parcels exceed 1½ times the fair market value of that parcel as shown by the latest valuation by the county auditor, prescribes requirements for a notice to, and a hearing by, the board of revision for the purpose of determining the valuation of the land that is the subject of the petition for foreclosure and whether or not the parcel must be removed from the list of abandoned parcels based on whether the impositions exceed or do not exceed 1½ times the land's valuation.
- Requires the county board of revision to conduct a hearing upon notice if an owner, lienholder, or other person having an ownership or security interest in the parcel of abandoned land that is the subject of the notice of sale upon a petition for foreclosure files a petition with the board and provides that if the petition asserts that the impositions against the parcel of abandoned land shown by the notice to be due and outstanding have been paid in full, the only question to be considered at the hearing is whether all impositions against the parcel have in fact been paid in full.

- If a lienholder or another person having a security interest in the abandoned land, other than the owner, files a petition as described in the preceding dot point and requests that the parcel of land be removed from the list of abandoned parcels and not disposed of as provided in the bill in order to preserve the petitioner's security interest, requires the county board of revision to approve the petition upon a finding that the sale of the parcel would jeopardize the petitioner's ability to enforce the security interest or to otherwise preserve the security interest.
- If the county board of revision approves a petition as described in the two preceding paragraphs, requires the board to remove the abandoned land from the list of abandoned parcels and, if the board does not approve such a petition, requires the board, after conducting a hearing, to proceed with the final hearing on the merits and file its decision on the petition for foreclosure with the clerk of court.
- Provides that a parcel of abandoned land that is to be disposed of under the bill must be disposed of and offered for sale at a public auction and specifies the procedures for conducting the public auction, including the requirement that to qualify as a bidder, a person must provide to the sheriff conducting the auction a written acknowledgment that the land offered for sale is to be conveyed in fee simple to the successful bidder subject to the condition subsequent that the purchaser, and the purchaser's heirs or successors or assigns must occupy the land after the sale; that a breach of that condition may cause the land to be forfeited or to revert to the county, a nonprofit organization, or a municipal corporation or township pursuant to procedures in the bill; and that if the land is so forfeited or reverted, the county is not liable for any damages arising from the forfeiture or reversion.
- Permits the county treasurer to reject the sale of abandoned land to any person who is delinquent in the payment of certain specified taxes and requires the county treasurer to reject the sale to any person who is delinquent in the payment of property taxes on any parcel in the county or to any person with a specified relationship or association with the person delinquent in the payment of property taxes.
- Requires that if the purchase of the abandoned land is for less than the sum of the impositions against the land and the costs apportioned to the land, upon certification of the deficiency by the county treasurer, the

prosecuting attorney must seek a deficiency judgment by civil action against the owner of record of the land immediately before the sale.

- If the land is not sold at a public auction as described above, authorizes the county board of revision to either dispose of the land at a subsequent public auction or in a foreclosure proceeding and provides that upon petition from any nonprofit organization or any municipal corporation or township in which the land is located, in lieu of offering the land for sale at a subsequent public auction, the board may certify to the sheriff that it has entered an adjudication of foreclosure and forfeiture against the land and must include instructions in the certification to the sheriff to convey the land to the specified nonprofit organization, municipal corporation, or township.
- Specifies the manner of apportioning the costs of the proceedings with respect to abandoned lands offered for sale by public auction and paying all expenses assessed in connection with the proceedings.
- Provides that the right of redemption forever terminates upon the confirmation of the sale of the land by public auction by resolution of the board of revision and filing a copy of the resolution upon the docket of the clerk of court or, in the case of a transfer of the land to a nonprofit organization or to a municipal corporation or township, upon the filing with, and docketing by, the clerk of court of a copy of the board of revision's resolution certifying the entry of an adjudication of foreclosure and forfeiture of the land and instructing the sheriff to convey the land.
- Provides that if a municipal corporation or township that is an "electing subdivision," prior to the filing by the prosecuting attorney of a petition for foreclosure, has given the county treasurer written notice that it seeks to acquire any parcel of abandoned land from the list of abandoned parcels and if the land is not sold at public auction for want of a minimum bid, the electing subdivision must be deemed to have submitted the winning bid at the auction and the land must be deemed to have been sold to the electing subdivision for no consideration other than the costs of the proceedings under the bill or the agreed upon costs.
- Authorizes any party who is aggrieved in any of the board of revision proceedings to file, upon a final order of foreclosure, an appeal of any issue decided in the proceeding.



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CONTENT AND OPERATION

General authority regarding disposition of abandoned land

The bill provides that in lieu of utilizing the remedies available under R.C. 323.25 to 323.28 (see **COMMENT 1**) or under R.C. Chapter 5721. (Delinquent Lands Law), 5722. (Land Reutilization Program Law), or 5723. (Forfeited Lands Law), a county board of revision created under R.C. 5715.01 may, at the election of the county treasurer taken upon the treasurer's own initiative or upon the request of the board of county commissioners, expressed by resolution, dispose of "abandoned land" in the county by public auction in the manner prescribed by the

bill and otherwise foreclose the state's lien for real estate taxes upon the abandoned land. The "clerk of court" of the county and the county treasurer may promulgate procedural rules, not inconsistent with the bill's provisions, for practice forms, forms of notice for hearings and notice to parties, fees, publication, and other procedures customarily within the clerk's official purview and duties. (R.C. 323.66, 1st par.) (See "Definitions," below, for definitions of the terms in quotation marks.)

Clerk of court's duties

In addition to all other duties and functions provided by law, the clerk of court under the bill must provide summons and notice of hearings, maintain an official case file, docket all proceedings, and tax as costs all necessary actions in connection therewith in furtherance of the foreclosure of abandoned land under the bill. The county treasurer or board of revision must file with the clerk of court all resolutions and adjudications of the treasurer or board, and the clerk must docket all resolutions and adjudications so filed by the treasurer or board. Those resolutions and adjudications do not become effective until docketed by the clerk. (R.C. 323.66, 2nd par.)

List of abandoned parcels

The bill authorizes the county treasurer or county board of revision for a county, from the delinquent tax list and delinquent vacant land tax lists compiled under R.C. 5721.03 regarding land in the county, to identify and compile a list of the parcels that the treasurer or board determines to be abandoned land suitable for disposition under the bill. If a treasurer or board of revision compiles such a list, the treasurer or board must certify the list of the abandoned land within the county and maintain the certified list. (R.C. 323.67(A).)

Resolution of tax delinquency

If a county treasurer or county board of revision compiles a list of parcels that the treasurer or board determines to be abandoned land suitable for disposition under the bill (hereafter, "list of abandoned parcels") and certifies the list as described above, the treasurer or board may declare by resolution: (1) that the delinquent taxes, interest, penalties, and charges levied on the abandoned lands on the list are uncollectible and that the restoration of the abandoned lands to the tax list is of sufficient public interest to justify the expeditious foreclosure of the state's lien for the delinquent taxes, and (2) that the abandoned lands for those reasons must be offered for sale by public auction pursuant to the bill. The treasurer or board of revision must certify a copy of any such adopted resolution to the prosecuting attorney of the county served by the treasurer or board. (R.C. 323.67(B).)

Title search

If a county treasurer or a county board of revision adopts a resolution as described above and certifies a copy of the resolution to the prosecuting attorney, the treasurer or treasurer's designee must cause a title search to be conducted for the purpose of identifying any lienholders or other persons having an ownership or other security interest in abandoned land appearing on the list of abandoned parcels. The treasurer or designee must conduct a title search for each parcel of abandoned land appearing on the list.

Notwithstanding R.C. 5301.252 (see **COMMENT 2**), an affidavit of a type described in that section is *not* considered a lien or encumbrance on the abandoned land, and the recording of such an affidavit is not to serve in any way to impede bona fide purchaser status of any purchaser of any abandoned land sold at public auction under the bill or of any other recipient of lands transferred under the bill. However, any affiant who records an affidavit pursuant to R.C. 5301.252 must be given notice and summons under the bill in the same manner as any lienholder. (R.C. 323.68(A)(1).)

Petition for foreclosure

Upon the completion of the title search described above, the prosecuting attorney must file with the clerk of court a petition for the foreclosure of each parcel of abandoned land appearing on the list of abandoned parcels and the equity of redemption on each parcel. The petition must name all parties having any interest of record in the abandoned property that was discovered in the title search. (R.C. 323.68(A)(2), 1st par.)

Notice of sale

The clerk promptly must mail notice of the sale to be based upon the foreclosure, by certified mail, return receipt requested, to the last known address of the record owner of the abandoned land and to the last known address of each lienholder or other person having an ownership or security interest identified by the title search (R.C. 323.68(A)(2), 1st par.).

Contents of notice. The above notice must inform the addressee of the following: (1) that delinquent taxes stand charged against the abandoned land, (2) that the land will be sold at public auction if not redeemed by the owner or other person, (3) that the sale will occur at a date, time, and place, and in the manner, prescribed in the bill, (4) that the owner or other person may redeem the land by paying the total of the delinquent taxes, assessments, penalties, interest, costs, attorney's fees, and other charges against the land within 30 days after the date on which the notice is mailed or may file within 30 days after the date the notice is

mailed a petition with the county board of revision requesting a hearing on the foreclosure, (5) that the case is being prosecuted by the county treasurer and board of revision for the county in which the abandoned land is located, (6) the name, address, and telephone number of the board of revision before which the action is pending, (7) the board of revision case number for the action, which must be maintained in the official docket of the clerk of court, and (8) that all subsequent pleadings, petitions, and papers associated with the case and filed by any interested party or the board of revision must be filed with the clerk of court and will become part of the case file for the board of revision. (R.C. 323.68(A)(2), 2nd par.)

Service of process

The filing party must serve any notice of summons and petition, subsequent pleadings, petitions, or papers associated with the case and filed with the clerk of court upon all parties of record, in accordance with Rules 4 and 5 of the Rules of Civil Procedure. Any inadvertent noncompliance with those rules does not serve to defeat or terminate the proceeding, or subject the proceeding to dismissal, as long as notice or service of filed papers is shown by clear and convincing evidence or is acknowledged by the party charged with notice or service. The board of revision may conduct evidentiary hearings on the sufficiency of process, service of process, or sufficiency of service of papers in any proceeding. Other than the notice and service provisions contained in Civil Rules 4 and 5, the Rules of Civil Procedure are not applicable to the proceedings of the board of revision. Board of revision practice must be in accordance with the practice and rules of the board that are promulgated from time to time by the board and are not inconsistent with the bill. (R.C. 323.68(A)(2), 3rd par.)

Final hearing on the merits

The board of revision must conduct a final hearing on the merits not sooner than 30 days nor later than 80 days after the petition for foreclosure is filed. At the final hearing, the record owner or another person having an ownership interest in the abandoned land may plead *only* that the taxes, assessments, penalties, interest, costs, attorney's fees, and other charges shown by the notice to be due and outstanding have been paid. At the final hearing, a lienholder or another person having a security interest in the abandoned land may plead that the taxes, assessments, penalties, interest, and other charges shown by the notice to be due and outstanding have been paid or, subject to the provisions described in "**Impositions based on valuation of abandoned land**," below, that the abandoned land should be removed from the list and not disposed of as provided in the bill, in order to preserve the lienholder's or other person's security interest in the land. (R.C. 323.68(A)(2), 4th par.)

Impositions based on valuation of abandoned land

If a county treasurer or a county board of revision adopts a resolution of tax delinquency as described in "**Resolution of tax delinquency**," above, and certifies a copy of the resolution to the prosecuting attorney and if the "impositions" (see "**Definitions**," below) against a parcel of abandoned land appearing on the list of abandoned parcels *exceed* 1½ times the fair market value of that parcel as currently shown by the latest valuation by the auditor of the county, then the prosecuting attorney must notify the county board of revision in writing by filing a notice with the clerk of court that, in the prosecuting attorney's opinion, based on the auditor's then-current valuation of the parcel of abandoned land, the impositions against that parcel exceed 1½ times the fair market value of that parcel. The prosecuting attorney must send this notice not later than 14 days before the conduct of the final hearing as described in "**Owner's or lienholder's petition**," below. After its receipt of the notice, the board of revision must schedule a hearing on the question of the *valuation* of the abandoned land that is the subject of the petition for foreclosure filed as described above. The board of revision must give notice of the hearing in accordance with the provisions described in "**Notice of sale**" and "**Service of process**," above. In addition to determining the valuation of the abandoned land, the board of revision at the hearing also may adjudicate the ultimate disposition of the case as described in "**Owner's or lienholder's petition**," below, if the notice of the hearing specifies that the hearing may adjudicate that ultimate disposition. (R.C. 323.68(B).)

Hearing on valuation

At a hearing held on the question of the valuation of the abandoned land as described above, *all* of the following apply (R.C. 323.68(B)):

(1) If the lienholder files with and supplies the board of revision a good faith appraisal from a licensed professional appraiser and shows by a preponderance of the evidence that the impositions against the parcel of abandoned land *do not exceed* 1½ times the fair market value of that parcel as determined by the auditor's then-current valuation of that parcel, then that abandoned land must be removed from the list of abandoned parcels. The board of revision must conduct a hearing as described above under "**Final hearing on the merits**," and must make a factual finding as to whether the impositions against the parcel of abandoned land do not exceed 1½ times the fair market value of that parcel as determined by the auditor's then-current valuation of that parcel.

(2) If the board of revision determines at the hearing that the impositions against the parcel are *in excess* of 1½ times the fair market value of that parcel as determined by the auditor's then-current valuation of that parcel, the board must not order that the parcel be removed from the list of abandoned parcels and may

proceed to hear and adjudicate the case as described in "Owner's or lienholder's petition; hearing," below.

(3) If the board of revision determines at the hearing that the impositions against the parcel are *not in excess* of 1½ times the fair market value of that parcel as determined by the auditor's then-current valuation of that parcel, the board must order that the parcel be removed from the list of abandoned parcels, *provided that*, if the lienholder requests a hearing and does not supply the board with a true and accurate appraisal within the time and in the manner as described above, the parcel must not be removed from the list.

The bill provides that any parcel of abandoned land that is not removed from the list of abandoned parcels in accordance with paragraph (1) or (3), above, must be disposed of as prescribed in the bill (R.C. 323.68(C)).

Owner's or lienholder's petition

Owner's or lienholder's petition; hearing

The bill provides that if, within 30 days after the notice is mailed as described in "Notice of sale," above, regarding abandoned land, *the owner, lienholder, or other person having an ownership or security interest* in the parcel of abandoned land files a petition with the county board of revision, the board must schedule a hearing for a date not sooner than 30 days, and not later than 90 days, after the board receives the petition. Upon scheduling the hearing, the board must notify the petitioner and all interested parties of the date, time, and place of the hearing. The board of revision must conduct the hearing. (R.C. 323.69(A).)

If an owner, lienholder, or other person timely files a petition as described in the preceding paragraph and the petition asserts that the impositions against the parcel of abandoned land shown by the notice to be due and outstanding have been paid in full, the *only question* to be considered at the hearing is whether those impositions have in fact been paid in full. If the owner, lienholder, or other person shows by a preponderance of the evidence that all impositions against the parcel have been paid, the board of revision must remove the parcel of abandoned land from the list of abandoned parcels, and that land must not be offered for sale under the bill. If the owner, lienholder, or other person fails to appear, or appears and fails to show by a preponderance of the evidence that all impositions against the parcel have been paid, the board of revision must issue a finding specifying that the county treasurer or a designee of the treasurer must proceed as described below under "Public auction." (R.C. 323.69(B).)

Petition to preserve security interest

If a lienholder or another person having a security interest in the abandoned land, *other than the owner*, files a petition as described above and requests that the parcel of land be removed from the list of abandoned parcels and not disposed of as provided in the bill, in order to preserve the petitioner's security interest, the county board of revision must approve the petition if the board finds that sale of the parcel of land under the bill would jeopardize the lienholder's or other person's ability to enforce the security interest or to otherwise preserve the lienholder's or other person's security interest. The board of revision may approve the petition without conducting a hearing but cannot disapprove the petition unless and until a hearing is held on the petition and the board makes a finding based on the available and submitted evidence of the parties. If the board of revision approves the petition without a hearing, the board must file the decision with the clerk of court, and the clerk must send a notice of the decision to the petitioner by ordinary mail. In order for a lienholder or other person having a security interest to show for purposes of this provision that the parcel of abandoned land should be removed from the list in order "to preserve the petitioner's security interest," the lienholder or other person must show by a preponderance of the evidence as described in "**Impositions based on valuation of abandoned land**," above, that the impositions against the parcel of abandoned land *do not exceed* 1½ times the fair market value of the abandoned land as determined by the auditor's then-current valuation of that parcel. (R.C. 323.69(C).)

Approval of petition

If a petition as described above in "**Owner's or lienholder's petition; hearing**" or "**Petition to preserve security interest**" is filed and the county board of revision approves the petition, regardless of whether a hearing is conducted, the board must send notice of its approval to the prosecuting attorney of the county and must remove the abandoned land from the list of abandoned parcels. Thereafter, the land cannot be disposed of by sale pursuant to the bill unless the owner, lienholder, or other person who filed the petition first consents to proceedings under the bill by filing written notice with the board. If an owner, lienholder, or other person so consents, the proceedings may recommence with the reentry of the land on the list and the conducting of a new title search as described above. (R.C. 323.69(D), 1st par.)

Disapproval of petition

If the board of revision does not approve a petition for foreclosure as described above or a petition described under "**Owner's or lienholder's petition; hearing**" or "**Petition to preserve security interest**," above, after conducting a hearing, the board must proceed with the final hearing described in "**Final hearing**

on the merits," above, and file its decision on the petition for foreclosure with the clerk of court. The clerk must send written notice of the decision to the petitioner by certified mail, return receipt requested. The board of revision must certify its decision on the petition to the prosecuting attorney of the county and issue a finding that the county treasurer or treasurer's designee must proceed as described in "**Public auction**," below. (R.C. 323.69(D), 2nd par.)

Disposition of abandoned land

A parcel of abandoned land that is to be disposed of under the bill must be disposed of at a public auction scheduled and conducted as described below (R.C. 323.70(A)).

Public auction

At least 21 days prior to the date of the public auction, the county treasurer, clerk of court, or sheriff of the county must advertise the public auction in a newspaper of general circulation in the county in which the land is located. The advertisement must include the following: (1) the street address, if available, of the abandoned land to be sold at the public auction, (2) the date, time, and place of the auction, (3) the permanent parcel number of the land if a permanent parcel number system is in effect in the county as provided in R.C. 319.28, and (4) a notice stating all of the following: (a) that the abandoned land is to be sold subject to the terms of the bill and (b) the condition that the purchaser and the purchaser's heirs or successors or assigns must after the sale occupy the land and that a breach of that condition may cause the purchaser's or the purchaser's heir's, successor's, or assign's interest in the land to be forfeited to the county, a "nonprofit organization," (see "**Definitions**," below) or a municipal corporation or township as described below in "**Disposition by subsequent public auction or foreclosure**." (R.C. 323.70(A).)

Bidding. The sheriff of the county or sheriff's designee must conduct the public auction at which the abandoned land will be offered for sale. To qualify as a bidder, a person must provide to the sheriff on a form provided by the sheriff a written acknowledgment of the following: (1) that the abandoned land being offered for sale is to be conveyed in fee simple to the successful bidder subject to the condition subsequent that the purchaser, and the purchaser's heirs or successors or assigns, must after the sale occupy the land, (2) that a breach of that condition may cause the land to be forfeited or to otherwise revert to the county, a nonprofit organization, or a municipal corporation or township as described below in "**Disposition by subsequent public auction or foreclosure**," and (3) that, if the land is so forfeited or reverted, the county is not liable for any damages arising from the forfeiture or reversion. The form must state the minimum occupancy requirements as described in "**Rules**," below. The sheriff of the county or a

designee of the sheriff must begin the bidding at the greater of 25% of fair market value as currently shown by the county auditor's latest valuation or the total of the impositions against the abandoned land plus the costs apportioned to the land as described in the first paragraph in "Costs of proceedings," below. The abandoned land must be sold to the highest bidder. The county sheriff or designee may reject any and all bids not meeting the minimum bid requirement specified in this provision. (R.C. 323.70(B)(1).)

Rules

The bill requires the county treasurer to promulgate rules consistent with the bill's provisions that set minimum standards for occupancy of the land as described below in "Definitions," and the procedures for recovery of abandoned land in the event the purchaser, or the purchaser's heirs or successors or assigns, fail to occupy the land as prescribed in the bill (R.C. 323.70(B)(2)).

Purchase by successful bidder

Except as otherwise permitted as described below in "Disposition by subsequent public auction or foreclosure," the successful bidder at a public auction conducted as described above must pay the sheriff of the county or sheriff's designee a deposit of at least 10% of the purchase price in cash, or by bank draft, official bank check, or corporate or personal check, at the time of the public auction and must pay the balance of the purchase price to the county treasurer within 30 days after the day on which the auction was held. Notwithstanding R.C. 321.261 (payments to the Delinquent Tax and Assessment Collection Fund from taxes collected), with respect to abandoned land foreclosed pursuant to the bill, from the total proceeds arising from the sale of that land, the *greater* of 20% of such proceeds, or the amount necessary as described in paragraph (2) in "Costs of proceedings," below, to reimburse the Delinquent Tax and Assessment Collection Fund for the costs paid from the Fund with respect to the abandoned land sold at the public auction, must be deposited to the credit of that Fund. The balance of the proceeds, if any, must be distributed to the appropriate political subdivisions and other taxing units in proportion to their respective claims for taxes, assessments, interest, and penalties on the land. (R.C. 323.70(C).)

Upon the sale of abandoned land pursuant to the above provisions, the fee simple interest in the land of the owner must be conveyed to the purchaser. The conveyance is free and clear of any encumbrances attaching before the sale and free and clear of any liens for taxes, except for federal tax liens and covenants and easements of record attaching before the sale. The conveyance is subject to the condition subsequent that the purchaser, and the purchaser's heirs or successors or assigns, must occupy the land and, upon breach of that condition, the fee simple

interest may be forfeited or otherwise revert to the county, a nonprofit organization, or a municipal corporation or township as described in "**Disposition by subsequent public auction or foreclosure**," below. If the fee simple interest is so forfeited or reverted, the county is *not liable* to the purchaser or to the purchaser's heirs or successors or assigns for any damages allegedly arising from the forfeiture or reversion. (R.C. 323.70(D).)

Rejection of sale

The county treasurer may reject the sale of abandoned land to any person delinquent in the payment of taxes levied by or pursuant to R.C. Chapter 307., 322., 324., 5737., 5739., 5741., or 5743. or any other real property taxing provision of the Revised Code. The county treasurer must reject the sale of abandoned land to any person delinquent in the payment of property taxes on any parcel in the county or to a member of any of the following classes of parties connected to that person: (1) a member of that person's immediate family, (2) any other person with a power of attorney appointed by that person, (3) a sole proprietorship owned by that person or a member of that person's immediate family, or (4) a partnership, trust, business trust, corporation, association, or other entity in which that person or a member of that person's immediate family owns or controls directly or indirectly any beneficial or legal interest. (R.C. 323.70(E).)

Deficiency

If the purchase of abandoned land sold pursuant to public auction under the above provisions is for less than the sum of the impositions against the abandoned land and the costs apportioned to the land as described in the first paragraph in "**Costs of proceedings**," below, the county treasurer may certify the deficiency to the prosecuting attorney of the county. Upon the certification, the prosecuting attorney, by civil action, must seek a deficiency judgment in the name of the county treasurer against the person who was the owner of record of the abandoned land immediately before the sale. The proceeds of the deficiency judgment must be disposed of as described above in "**Purchase by successful bidder**." (R.C. 323.70(F).)

Disposition by subsequent public auction or foreclosure

If a public auction is held for abandoned land pursuant to the above provisions but the land is not sold at the public auction, the county board of revision may dispose of the abandoned land in a *subsequent public auction* or in a foreclosure proceeding.

The abandoned land offered for sale at public auction as described above but not sold at the auction may be offered, at the *discretion* of the county board of

revision, at a subsequent public auction occurring within six months after the public auction at which it first is offered. The minimum bid at an auction under this provision must be the lesser of 20% of fair market value as currently shown by the county auditor's latest valuation, or the sum of the impositions against the abandoned land plus the costs apportioned to the land as described in the first paragraph in "Costs of proceedings," below. (R.C. 323.71(A) and (B).)

Upon certification from the sheriff that the abandoned land was offered for sale as described in "Public auction," above, and as required by law but was not purchased, and upon petition to the county board of revision from any nonprofit organization or any municipal corporation or township in which the land is located that is made at the time described in this paragraph, *in lieu* of offering the land for sale at a subsequent public auction, the board of revision may certify to the sheriff that it has entered an adjudication of foreclosure and forfeiture against the abandoned land. The petition to a board of revision from a nonprofit organization or a municipal corporation or township must be received prior to, during, or after the auction but not later than 60 days after the date on which the land was offered for sale. The certification by the board of revision must include instructions to the sheriff to convey the land to the specified nonprofit organization, municipal corporation, or township for the costs of disposing of the abandoned land as described in "Costs of proceedings," below, or, if any negotiated price has been agreed to between the county treasurer and the nonprofit organization, the municipal corporation, or the township, for that negotiated price as certified by the board of revision to the sheriff.

Upon receipt of the certification and payment, the sheriff must transfer by sheriff's deed the owner's fee simple interest in, and to, the abandoned land. If abandoned land is transferred as described in this paragraph, the county treasurer may waive, but is not required to waive, some or all of the impositions against the abandoned land or costs apportioned to the land as described in the first paragraph in "Costs of proceedings," below, if the treasurer determines, in the treasurer's reasonable discretion, that the transfer of the abandoned property will result in the property being occupied. Abandoned land disposed of by transfer to a nonprofit organization, municipal corporation, or township must be conveyed with the condition subsequent described in the second paragraph in "Purchase by successful bidder," above. (R.C. 323.71(C).)

Costs of proceedings

The bill requires the county treasurer to apportion the costs of the proceedings with respect to abandoned lands offered for sale by public auction as described above among those lands either equally or in proportion to the fair market values of the lands. The costs of the proceedings include the costs of conducting the title search, notifying owners or other persons required to be

notified of the pending sale, advertising the sale, and any other costs incurred by the county board of revision, county treasurer, prosecuting attorney, or county sheriff in performing their duties under the bill. (R.C. 323.72(A).)

All expenses assessed in connection with proceedings under the bill may be paid as they are incurred, in the following manners (R.C. 323.72(B)):

(1) If the abandoned land in question is purchased at public auction, from the purchaser of the abandoned land;

(2) In the case of abandoned land transferred to a nonprofit organization or a municipal corporation or township pursuant to "**Disposition by subsequent public auction or foreclosure**," above, from either of the following: (a) from the Delinquent Tax and Assessment Collection Fund created under R.C. 321.261, and reimbursed from the proceeds of the sale as described in the first paragraph in "**Purchase by successful bidder**," above, or (b) in the reasonable discretion of the county treasurer, from the nonprofit organization or the municipal corporation or township, whichever is applicable, by mutual agreement between the organization or subdivision and the treasurer.

Termination of right of redemption

Upon the sale of abandoned land at public auction pursuant to the bill or the certification by the county board of revision to the sheriff to transfer abandoned land to a nonprofit organization or a municipal corporation or township as described above in "**Disposition by subsequent public auction or foreclosure**," the right of redemption forever terminates upon the occurrence of whichever of the following is applicable (R.C. 323.73):

(1) In the case of a sale of the land at public auction, upon the confirmation of the sale by resolution of the county board of revision and the filing of a copy of the resolution upon the docket of the clerk of court;

(2) In the case of a transfer of the land to a nonprofit organization or to a municipal corporation or township, upon the filing with, and docketing by, the clerk of court of a copy of the resolution of the county board of revision certifying the entry of an adjudication of foreclosure and forfeiture of the land and instructing the sheriff to convey the land.

Electing subdivision

The bill provides that if, prior to the filing by the prosecuting attorney of a petition to foreclose on abandoned land as described above in "**Petition for foreclosure**," a municipal corporation or township that is an "electing

subdivision"¹ has given the county treasurer notice in writing that it seeks to acquire any parcel of abandoned land from the list of abandoned lands certified, or to be certified, by the county board of revision or county treasurer as described above in "List of abandoned parcels," and if any such parcel of abandoned land identified by parcel number by the electing subdivision is offered for sale pursuant to the bill but is not sold for want of a minimum bid, the electing subdivision that identified that parcel of abandoned land must be deemed to have submitted the winning bid at the auction and the parcel of abandoned land must be deemed to have been sold to the electing subdivision for no consideration other than the costs described in the first paragraph in "Costs of proceedings," above, or those costs to which the electing subdivision and the county treasurer mutually agree. The conveyance is deemed confirmed, and the right of redemption forever terminated, upon the filing with the clerk of court of the resolution of the board of revision certifying the entry of an adjudication of foreclosure and forfeiture of the land and instructing the sheriff to so convey the land. (R.C. 323.74.)

Appeal

The bill authorizes any party who is aggrieved in any of the proceedings of the county board of revision under the bill to file, upon a final order of foreclosure, an appeal of any issue decided in the proceeding. An appeal upon a final order of foreclosure but prior to confirmation of any sale or confirmation of any agreement to transfer to a nonprofit organization, a municipal corporation, or a township may be filed in the court of common pleas pursuant to the General Appeals Law (R.C. Chapter 2505.) and the Appeals from Orders of Administrative Officers Law (R.C. Chapter 2506.). An appeal after confirmation of any sale or confirmation of any agreement to transfer to a nonprofit organization or political subdivision must be filed not later than 14 days after the date on which the order of confirmation is filed with the clerk of court. The court does not have jurisdiction to hear any appeal filed after the expiration of that 14-day period. If the 14th day after the date on which the confirmation is filed with the clerk of court falls upon a weekend or official holiday during which the court is closed, then the filing must be made on the next day the court is open for business. (R.C. 323.75.)

Definitions

The bill defines the following terms (R.C. 323.65):

¹ "Electing subdivision" means a municipal corporation that has enacted an ordinance or a township or county that has adopted a resolution pursuant to R.C. 5722.02 for purposes of adopting and implementing the procedures set forth in R.C. 5722.02 to 5722.15 (Land Reutilization Program). (R.C. 323.74(A) by reference to R.C. 5722.01.)

(1) Except as otherwise provided below, "abandoned land" means delinquent lands or delinquent vacant lands, whichever is applicable, including any improvements on the lands, that are not "occupied" (see definition below in paragraph (6)) and that first appeared on the delinquent tax list compiled under R.C. 5721.03 at whichever of the following times is applicable:

(a) In the case of lands with structures or improvements affixed on the lands, at least two years prior to the year in which the county treasurer or the county board of revision makes the certification described in "List of abandoned parcels," above, that the lands are abandoned land suitable for disposition under the bill;

(b) In the case of "agricultural lands," (see definition below in paragraph (2)) at least four years prior to the year in which the county treasurer or the county board of revision makes the certification described in "List of abandoned parcels," above, that the lands are abandoned land suitable for disposition under the bill.

(2) "Agricultural land" means lands legally existing on the agricultural real estate tax duplicate, as prescribed in R.C. 5713.33.

(3) "Clerk of court" means the clerk of the court of common pleas of the county in which specified abandoned land is located.

(4) "Delinquent lands" and "delinquent vacant lands" have the same meanings as in R.C. 5721.01.²

(5) "Impositions" means delinquent taxes, assessments, penalties, interest, costs, attorney's fees, and other permissible charges against abandoned land.

² R.C. 5721.01(A) defines "delinquent lands" as all lands upon which delinquent taxes, as defined in R.C. 323.01 (see next sentence), remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to R.C. 321.24(C) and "delinquent vacant lands" as all lands that have been delinquent lands for at least five years and that are unimproved by any dwelling. R.C. 323.01(E) defines "delinquent taxes" as: (a) any taxes charged against an entry on the general tax list and duplicate of real and public utility property that were charged against an entry on such list and duplicate for a prior tax year and any penalties and interest charged against such taxes, and (b) any current taxes charged on the general tax list and duplicate of real and public utility property that remain unpaid after the last day prescribed for payment of the second installment of such taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against such taxes.

(6)(a) "Occupy" or "occupied," with respect to a parcel of abandoned land, means, subject to paragraphs (b) to (d), below, any of the following: (i) to physically inhabit as a dwelling any building, structure, land, or other improvement that is subject to taxation and is located on the parcel, (ii) to actively conduct a trade or business on the parcel by the owner, a tenant, or another party occupying the parcel pursuant to a lease or other legal authority, which party is actually conducting the trade or business on or in the building, structure, land, or other improvement, subject to taxation, or (iii) the occupancy, as defined in R.C. 5722.01(F),³ of the parcel.

(b) Subject to the definition of "abandoned land," above, in the case of vacant land that has no permanent structure or improvement affixed on the land, the land is deemed not occupied for purposes of paragraph (6)(a), above, if the land has been certified delinquent for two or more years.

(c) For purposes of paragraph (6)(a), above, it is prima facie evidence and a rebuttable presumption that may be rebutted to the county treasurer or county board of revision that abandoned land is not occupied if, at the time the county treasurer or board of revision makes the certification described in "List of abandoned parcels," above, that the land is abandoned land suitable for disposition under the bill, *all* of the following apply: (i) the abandoned land is not agricultural land, and it has been certified delinquent for two or more years, (ii) at the time of the inspection of the abandoned land by the county treasurer, the treasurer's designee, or the county, municipal corporation, or township in which the abandoned land is located, no person, trade, or business inhabits, or is visibly present from an exterior inspection of, the abandoned land, (iii) no utility connections, including, but not limited to, water, sewer, natural gas, or electric connections, service the abandoned land, and no such utility connections are actively being billed by and paid to any utility provider regarding the abandoned land, and (iv) a county, municipal corporation, or township duly certifies, pursuant to the applicable building code or other authority in that county, municipal corporation, or township, that the abandoned land is vacant or abandoned.

(d) For purposes of paragraph (6)(a), above, it is prima facie evidence and a rebuttable presumption that may be rebutted to the county treasurer or county board of revision that abandoned land is not occupied if the abandoned land is boarded up or otherwise sealed because, immediately prior to being boarded up or sealed, it was deemed by a political subdivision pursuant to its municipal, county, state, or federal authority to be open, vacant, or vandalized and the land is certified delinquent for two or more years.

³ R.C. 5722.01(F) defines "occupancy" as the actual, continuous, and exclusive use and possession of a parcel by a person having a lawful right to such use and possession.

Nothing in paragraphs (6)(c) or (d), above, constitutes, or shall be construed as constituting, a set of criteria or requirements for establishing abandonment, or the absence of occupancy, of property.

(7) "Nonprofit organization" means any organization that is organized or incorporated under the Nonprofit Corporation Law (R.C. Chapter 1702.) and to which both of the following apply: (a) the organization is in good standing under law at the time the county treasurer or county board of revision makes the certification described in "List of abandoned parcels," above, that the land is abandoned land suitable for disposition under the bill and has remained in good standing uninterrupted for at least the five years immediately preceding the time of that certification, and (b) as of the time the county treasurer or county board of revision makes the certification that the land is abandoned land suitable for disposition under the bill, the organization has received from the county, municipal corporation, or township in which the abandoned land is located official authority or agreement to accept the owner's fee simple interest in the abandoned land and to the abandoned land being foreclosed, and that official authority or agreement had been filed with the county treasurer or county board of revision in the form that will reasonably confirm the county's, municipal corporation's, or township's assent to transfer the land under the bill.

COMMENT

1. R.C. 323.25 provides that when taxes charged against an entry on the tax duplicate, or any part of such taxes, are not paid within 60 days after delivery of the delinquent land duplicate to the county treasurer as prescribed by R.C. 5721.011, the county treasurer must enforce the lien for such taxes by civil action in the treasurer's official capacity as treasurer, for the sale of such premises, in the court of common pleas of the county in the same way mortgage liens are enforced. R.C. 323.25 to 323.28 prescribe the procedures for that enforcement of the lien for taxes and the sale of the premises to pay for the taxes, assessments, penalties, interest, and charges due.

2. R.C. 5301.252(A) provides that an affidavit stating facts relating to specified matters that may affect the title to real estate in this state, made by any person having knowledge of the facts or competent to testify concerning them in open court, may be recorded in the office of the county recorder in the county in which the real estate is situated. When so recorded, such affidavit, or a certified copy, is evidence of the facts stated, insofar as those facts affect title to real estate.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-07-05	p. 909

H0294-I-126.doc/jc

