



**Am. Sub. H.B. 294**

126th General Assembly  
(As Passed by the House)

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**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 adjudicate the foreclosure of abandoned land in the county and its disposition by public auction or by conveyance under the bill and foreclose the state's lien for real estate taxes upon the abandoned land or the lien of a person holding a tax certificate ("certificate holder"), as the case may be.
- Provides that for the purpose of efficiently and promptly implementing the bill's provisions, the prosecuting attorney of the county, the county treasurer, the clerk of court, and the sheriff of the county may adopt rules for procedures customarily within the purview and duties of the applicable county official.
- Authorizes the county treasurer or a certificate holder to use the delinquent tax list and delinquent vacant land list to identify and compile a list of abandoned parcels of land suitable for disposition under the bill.
- Authorizes the county treasurer to declare that the delinquent taxes and charges on the lands identified from the delinquent tax list and delinquent vacant land list are uncollected, the restoration of the lands to the tax list is of sufficient public interest to justify expeditious foreclosure of the tax lien, and the abandoned lands must be offered for sale by public auction or otherwise conveyed pursuant to the bill.

- Requires that title searches be conducted on abandoned land identified for sale by auction or other conveyance.
- Upon completion of the title search, authorizes the prosecuting attorney, representing the county treasurer, or the certificate holder to file a complaint for the foreclosure of each parcel of land appearing on the appropriate list of abandoned parcels and the equity of redemption on each parcel, requires the clerk to mail notice of the proceedings to the land's record owner and to any other person having a legal or equitable ownership interest 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 "impositions" (delinquent taxes, assessments, penalties, interest, costs, reasonable attorney's fees of a certificate holder, applicable and permissible costs of the county prosecuting attorney, and other permissible charges against abandoned land) shown on the notice to be due and outstanding have been paid.
- At any time up to the final hearing on the merits, authorizes a lienholder or another person having a security interest in the abandoned land to plead that the impositions 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 the impositions against a parcel of abandoned land on the list of abandoned parcels exceed the fair market value of that parcel, authorizes the prosecuting attorney or certificate holder to notify the board of revision of that excess for the purpose of determining the valuation of the land and whether or not the parcel may be removed from the list of abandoned parcels based on whether the impositions exceed or do not exceed the land's valuation.
- Provides that, if the board of revision finds that the impositions do not exceed the parcel's fair market value, the board is not required to dismiss the complaint for foreclosure or to remove the parcel from the list of abandoned parcels if it determines that the restoration of the abandoned land to the tax duplicate remains of sufficient public interest to justify

adjudicating the case and lists the factors that the board may consider in making its determination.

- Requires the county board of revision to conduct a hearing if an owner, lienholder, or other person having interest or security interest in the parcel of abandoned land that is the subject of the proceedings 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 those 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 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, authorizes the county board of revision to approve the petition upon a finding that the sale or other conveyance 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, 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 complaint for foreclosure with the clerk of court.
- Provides that, generally, 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.
- Requires the county board of revision to reject the sale of abandoned land to any person who is delinquent in the payment of certain specified taxes and 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 at public auction of the abandoned land is for less than the sum of the impositions against the land and the costs apportioned to the land, all liens for taxes due at the time the deed is

transferred to the purchaser following the sale and liens subordinate to liens for taxes are deemed satisfied and discharged.

- If the board of revision finds that the total impositions against the abandoned land are greater than the land's fair market value, authorizes the board to order the property foreclosed and, without an appraisal or sheriff's sale, order the sheriff to execute a deed to the certificate holder or to a community development organization, municipal corporation, or township.
- If the land is not sold at a public auction as described above, authorizes the county board of revision to order the disposition of the abandoned land at a subsequent public auction or, upon petition from a community development organization, municipal corporation, or township in which the land is located, order the sheriff to convey the land to the community development organization, municipal corporation, or township.
- Provides that upon conveyance of the land, all liens for taxes due at the time the deed is transferred and liens subordinate to liens for taxes are deemed satisfied and discharged.
- Requires the county treasurer to apportion the costs of the proceedings with respect to abandoned lands offered for sale by public auction among those lands either equally or in proportion to their fair market values and specifies the manners of paying all costs assessed in connection with the proceedings.
- Provides for the permanent termination of common law and statutory rights of redemption upon sale by auction or other conveyance.
- Provides that if a municipal corporation or township that is an "electing subdivision" 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 is deemed to have submitted the winning bid at the auction, and the land is 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 to any proceeding instituted under the bill who is aggrieved in any of the board of revision proceedings to file an appeal in

the court of common pleas, which appeal may include issues raised and adjudicated in the board of revision's proceedings as well as other issues pertinent to the subject property that are raised for the first time on appeal.

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## TABLE OF CONTENTS

General authority regarding disposition of abandoned land .....	5
Clerk of court's duties .....	6
List of abandoned parcels.....	6
Resolution of tax delinquency.....	6
Title search.....	7
Complaint for foreclosure.....	7
Notice of proceedings and potential sale.....	8
Service of process.....	8
Final hearing on the merits.....	9
Impositions based on valuation of abandoned land .....	9
Owner's or lienholder's petition .....	11
Owner's or lienholder's petition; hearing.....	11
Petition to preserve security interest.....	12
Approval of petition.....	12
Disapproval of petition.....	12
Disposition of abandoned land.....	13
Public auction .....	13
Sheriff's deed without sheriff's sale.....	15
Disposition by subsequent public auction or other conveyance.....	15
Costs of proceedings .....	16
Recording of deed.....	16
Termination of right of redemption.....	17
Electing subdivision.....	17
Appeal .....	18
Definitions .....	19

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## CONTENT AND OPERATION

### *General authority regarding disposition of abandoned land*

The bill provides that in lieu of utilizing existing remedies (see **COMMENT 1**), a county board of revision created under R.C. 5715.01 may do either of the following: (1) upon the treasurer's initiative, expressed by resolution, adjudicate the foreclosure of abandoned land in the county and its disposition by public auction or by conveyance in the manner prescribed by the bill and foreclose



the state's lien for real estate taxes upon the abandoned land, or (2) upon the complaint of a certificate holder, adjudicate the foreclosure of abandoned land in the county and its disposition by public auction or by conveyance in the manner prescribed by the bill and foreclose the lien of the certificate holder held under R.C. 5721.30 to 5721.43. For the purpose of efficiently and promptly implementing the bill's provisions, the prosecuting attorney of the county, the county treasurer, the clerk of court of the county, and the sheriff of the county 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 official purview and duties of the prosecuting attorney, treasurer, clerk, or sheriff, whichever is applicable. (R.C. 323.66(A) and (B), 1st para.) (See *Definitions*," below, for definitions of key terms.)

### *Clerk of court's duties*

In addition to all of the clerk of court's existing duties and functions, the clerk of court under the bill, in the same manner as in civil actions, 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 board of revision must file with the clerk of court all resolutions and adjudications of the board, and the clerk must docket and journalize all resolutions and adjudications so filed by the board. The clerk may utilize the court's existing journal or maintain a separate journal for purposes of the bill. The resolutions and adjudications of the board of revision do not become effective until journalized by the clerk. (R.C. 323.66(B), 2nd para.)

### *List of abandoned parcels*

The bill authorizes the county treasurer or a certificate holder, from the delinquent tax list and delinquent vacant land tax lists compiled under R.C. 5721.03 (see **COMMENT 2**) regarding land in the county, to identify and compile a list of the parcels that the treasurer or certificate holder determines to be abandoned land suitable for disposition under the bill. The identification of a parcel as abandoned land suitable for disposition under the bill may be determined by an affidavit executed by a duly authorized officer of the municipal corporation or township in which the parcel is located and directed to the county treasurer. (R.C. 323.67(A).)

### *Resolution of tax delinquency*

If a county treasurer compiles a list of parcels that the treasurer determines to be abandoned land suitable for disposition under the bill (hereafter, "list of

abandoned parcels"), the treasurer may declare by resolution: (1) that the delinquent taxes, interest, penalties, and charges levied on the abandoned lands on the list are uncollected 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 or otherwise conveyed pursuant to the bill. The treasurer must certify a copy of any such adopted resolution to the prosecuting attorney of the county served by the treasurer. (R.C. 323.67(B).)

### **Title search**

If a county treasurer adopts a resolution for the foreclosure of abandoned land and certifies a copy of the resolution to the prosecuting attorney, the prosecuting attorney must conduct a title search for the purpose of identifying any lienholders or other persons having a legal or equitable ownership interest or other security interest in land appearing on the list of abandoned parcels. If a certificate holder compiles a list of the parcels that the certificate holder determines to be abandoned land under the bill, the certificate holder must cause a title search to be conducted for the purpose of identifying any lienholders or other persons having a legal or equitable ownership interest or other security interest in land appearing on the list.

Notwithstanding R.C. 5301.252 (see **COMMENT 3**), 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).)

### **Complaint for foreclosure**

Upon the completion of the title search, the prosecuting attorney, representing the county treasurer, or the certificate holder may file with the clerk of court a complaint for the foreclosure of each parcel of land appearing on the list of abandoned parcels and the equity of redemption<sup>1</sup> on each such parcel. The complaint 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 para.)

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<sup>1</sup> "Redemption" refers to a property owner's right to restore title free and clear of a lien by performing the lien obligation.

### **Notice of proceedings and potential sale**

The clerk promptly must mail notice of the proceedings and of the potential of 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 a legal or equitable ownership interest or security interest identified by the title search (R.C. 323.68(A)(2), 1st para.).

**Contents of notice.** The 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 or otherwise disposed of 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 impositions (see "**Definitions**," below) 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 prosecuting attorney of the county in the name of the county treasurer for the county in which the abandoned land is located or by a certificate holder, whichever is applicable;
- (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 file and 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 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 para.)

### **Service of process**

The filing party must serve any subsequent pleadings, petitions, or papers associated with the case and filed with the clerk of court upon all parties of record, in accordance with the notice and service provisions prescribed in 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 actual notice or service of filed papers is shown by a preponderance of the 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 the Rules of Civil Procedure, 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 that are not inconsistent with the bill. (R.C. 323.68(A)(2), 3rd para.)

### **Final hearing on the merits**

After service of notice of summons and complaint, the board of revision must conduct a final hearing on the merits not sooner than 30 days nor later than 180 days after the service of notice of summons and complaint has been perfected. At any time up to the final hearing, the record owner or another person having an ownership interest in the abandoned land may plead *only* that the impositions shown by the notice to be due and outstanding have been paid. At any time up to the final hearing, a lienholder or another person having a security interest in the abandoned land may plead that the impositions 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 of abandoned parcels 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 para.)

### **Impositions based on valuation of abandoned land**

If a county treasurer 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 or a certificate holder complies a list of abandoned parcels and if the impositions against a parcel of land appearing on the list of abandoned parcels *exceed* the fair market value of the parcel as currently shown by the latest valuation by the auditor of the county in which the land is located, then the prosecuting attorney or the certificate holder, whichever the case may be, may notify the county board of revision in writing by filing a notice with the clerk of court that, in the prosecuting attorney's or certificate holder's opinion, based on the auditor's then-current valuation of the parcel of abandoned land, the impositions against that parcel exceed the fair market value of that parcel. The prosecuting attorney or certificate holder must send this notice not later than 14 days before the final hearing as described in "**Final hearing on the merits**," above. After its receipt of the notice, the board of revision must schedule a hearing on the

question of the *valuation* of the abandoned land. The board of revision must give notice of the hearing in accordance with the provisions described in "Notice of proceedings and potential 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)(1).)

If a lienholder files with and supplies the board of revision with 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* the fair market value of that parcel as determined by the auditor's then-current valuation of that parcel, then that abandoned land may be removed from the list of abandoned parcels. The board of revision must conduct a hearing and must make a factual finding as to whether the impositions against the parcel of abandoned land do not exceed the fair market value of the parcel. If the board finds that the impositions do not exceed the fair market value of the parcel, the board is not required to dismiss the complaint for foreclosure or remove the parcel from the list of abandoned parcels if it determines that the restoration of the abandoned land to the tax duplicate remains of sufficient public interest to justify adjudicating the case under the bill. In making its determination, the board may consider any of the following:

- (1) The period of time in which the parcel has been tax delinquent;
- (2) The likelihood of payment of the tax delinquency;
- (3) The interest in the parcel by, or the input of, any affected municipal corporation, township, or community development organization;
- (4) The existence of any land reutilization or development plan;<sup>2</sup> or
- (5) Any other factors or testimony that the board determines will more expeditiously cause the abandoned land to be restored to the tax duplicate.

If the board of revision determines at the hearing that the impositions against the parcel are *not in excess* of the fair market value of that parcel as determined by the auditor's then-current valuation of the parcel, the board may order that the parcel be removed from the list of abandoned parcels, *provided that*, if the lienholder requests a hearing and either does not appear at the hearing or

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<sup>2</sup> *Continuing law authorizes counties, cities, and townships to establish programs under which they acquire nonproductive delinquent lands for the purpose of managing, maintaining, and developing the lands for public purposes (R.C. Chapter 5722.).*

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.

If the board of revision determines at the hearing that the impositions against the parcel are *in excess* of the fair market value of that parcel as determined by the auditor's then-current valuation of the parcel, the board may 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. (R.C. 323.68(B)(2), (3), and (4).)

The bill provides that any parcel of abandoned land that is not removed from the list of abandoned parcels must be disposed of as prescribed in the bill. Notwithstanding any provision in the bill to the contrary, for purposes of determining in any proceeding under the bill whether the total of the impositions against the abandoned land are greater than the fair market value of the abandoned land, it is prima-facie evidence and a rebuttable presumption that may be rebutted to the board of revision that the auditor's then-current valuation of that abandoned land is the fair market value of the land (R.C. 323.68(C) and (D)).

### **Owner's or lienholder's petition**

#### **Owner's or lienholder's petition; hearing**

The bill provides that if, within 30 days after notice of the proceedings and potential sale is mailed, the owner, lienholder, or other person having a legal or equitable ownership interest 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 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 or otherwise conveyed 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 proceed as described below under "**Public auction**" and "**Sheriff's deed without sheriff's sale.**" (R.C. 323.69(B).)

### **Petition to preserve security interest**

If a lienholder or another person other than the owner having a security interest in the abandoned land files a petition and requests that the parcel of land be removed from the list of abandoned parcels and not disposed of in order to preserve the petitioner's security interest, the county board of revision may approve the petition if the board finds that sale or other conveyance 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, by board of revision order, without conducting a hearing but cannot disapprove the petition unless and until a hearing is held on the petition and the board makes a ruling 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 make a minimum showing 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* 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 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 or the certificate holder, whoever filed the complaint for foreclosure, and must remove the abandoned land from the list of abandoned parcels. Thereafter, the land cannot be disposed of by sale or otherwise conveyed 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. (R.C. 323.69(D), 1st para.)

### **Disapproval of petition**

If the board of revision does not remove the abandoned land from the list of abandoned parcels or does not approve a petition after conducting a hearing, the board must proceed with the final hearing and file its decision on the complaint for foreclosure with the clerk of court. The clerk must send written notice of the



decision to the parties by ordinary mail or by certified mail, return receipt requested. If the board of revision renders a decision ordering the foreclosure and forfeiture of the parcel of abandoned land, the parcel must be disposed of as described in "**Public auction**" and "**Sheriff's deed without sheriff's sale**," below. (R.C. 323.69(D), 2nd para.)

### **Disposition of abandoned land**

Except as described below in "**Sheriff's deed without sheriff's sale**," 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 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; and
- (4) A notice stating that the abandoned land is to be sold subject to the terms of the bill. (R.C. 323.70(A).)

**Bidding.** The sheriff 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 that the abandoned land being offered for sale is to be conveyed in fee simple to the successful bidder. At the auction, the sheriff or designee must begin the bidding at an amount equal to 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 sheriff or designee may reject any and all bids not meeting the minimum bid requirements specified in this provision. (R.C. 323.70(B).)

**Purchase by successful bidder.** Except as otherwise permitted as described below in "**Disposition by subsequent public auction or other conveyance**," the successful bidder at a public auction conducted as described above must pay the



sheriff or designee a deposit of at least 10% of the purchase price in cash, or by bank draft or official bank 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. From the total proceeds arising from the sale, 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, the fee simple interest in the land of the owner must be conveyed to the purchaser. That conveyance is free and clear of any liens and encumbrances of the parties named in the complaint for foreclosure 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 (R.C. 323.70(D)).

**Rejection of sale.** The board of revision must reject the sale of abandoned land to any person delinquent in the payment of any tax levied on real property or its transfer. The board of revision 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).)

**Liens deemed satisfied.** If the purchase of abandoned land sold at public auction 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, upon the sale, all liens for taxes due at the time the deed of the property is transferred to the purchaser following the sale and liens subordinate to liens for taxes are deemed satisfied and discharged (R.C. 323.70(F)).

**Sheriff's deed without sheriff's sale**

If the board of revision finds that the total of the impositions against the abandoned land are greater than the fair market value of the abandoned land, the board may order the property foreclosed and, without an appraisal or sheriff's sale, order the sheriff to execute a deed to the certificate holder or to a community development organization, municipal corporation, or township, whichever is applicable, as described below in "**Disposition by subsequent public auction or other conveyance**." Upon such conveyance, all liens for taxes due at the time the deed of the property is transferred to the certificate holder, community development organization, municipal corporation, or township following the conveyance and liens subordinate to liens for taxes are deemed satisfied and discharged. (R.C. 323.70(G).)

**Disposition by subsequent public auction or other conveyance**

If a public auction is held for abandoned land but the land is not sold at the public auction, the county board of revision may order the disposition of the abandoned land as described below.

The abandoned land offered for sale at public auction 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 60 days after the public auction at which it first is offered. The minimum bid at an auction under this provision must be the lesser of 50% 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 at a subsequent public auction but was not purchased, and upon petition to the county board of revision from any community development organization or any municipal corporation or township in which the land is located that is made at the time described in this paragraph, the board of revision, by resolution, may certify to the sheriff that it has entered an adjudication of foreclosure and forfeiture against the abandoned land and order the sheriff to dispose of the abandoned land as described in this and the next paragraph. The petition to a board of revision from a community development organization or a municipal corporation or township in which the land is located must be received at any time from the date the complaint for foreclosure is filed but not later than 60 days after the date on which the land was first offered for sale. The order by the board of revision must include instructions to the sheriff to convey the land to the specified community development 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 community development 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. 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. Upon the conveyance as described above, all liens for taxes due at the time the deed of the property is transferred to the community development organization, municipal corporation, or township following the conveyance and liens subordinate to liens for taxes are deemed satisfied and discharged. (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 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, clerk of court, prosecuting attorney, or county sheriff in performing their duties under the bill. (R.C. 323.72(A).)

All costs 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 community development organization or a municipal corporation or township, from either of the following: (a) from the Delinquent Tax and Assessment Collection Fund, or (b) in the reasonable discretion of the county treasurer, from the community development organization or the municipal corporation or township, whichever is applicable, by mutual agreement between the organization or subdivision and the treasurer.

### Recording of deed

If a parcel of abandoned land is sold or otherwise transferred pursuant to the bill, the officer who conducted the sale or made the transfer may collect a



recording fee from the purchaser or transferee of the parcel at the time of the sale or transfer and must prepare the deed conveying title to the parcel. That officer is authorized to record on behalf of that purchaser or transferee the deed conveying title to the parcel, notwithstanding that the deed may not actually have been delivered to the purchaser or transferee prior to the recording of the deed. Upon confirmation of that sale or transfer, the deed is deemed delivered to the purchaser or transferee of the parcel. (R.C. 323.72(C).)

### **Termination of right of redemption**

Upon the sale of abandoned land at public auction or the order by the county board of revision to the sheriff to transfer abandoned land to a community development organization or a municipal corporation or township any common law or statutory 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 with the clerk of court who must enter it upon the journal of the court or a separate journal;

(2) In the case of a transfer of the land to a community development organization or to a municipal corporation or township, upon the filing with 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 order to the sheriff to convey the land in fee simple to the community development organization, municipal corporation, or township, which the clerk must enter upon the journal of the court or a separate journal;

(3) In the case of a conveyance of the land to a certificate holder or to a community development organization, municipal corporation, or township, upon the filing with 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 and the order to the sheriff to convey the land to the certificate holder, community development organization, municipal corporation, or township, which the clerk must enter upon the journal of the court or a separate journal.

### **Electing subdivision**

The bill provides that if, at any time from the date the complaint for foreclosure is filed but not later than 60 days after the date on which the land was first offered for sale, a municipal corporation or township that is an electing

subdivision<sup>3</sup> has given the county treasurer notice in writing that it seeks to acquire any parcel of abandoned land from the list of abandoned lands compiled by the county treasurer 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 is deemed to have submitted the winning bid at the auction and the parcel of abandoned land is deemed to have been sold to the electing subdivision for no consideration other than the costs described in "Costs of proceedings," above, or those costs to which the electing subdivision and the county treasurer mutually agree. The conveyance is confirmed, and any common law or statutory right of redemption forever terminated, upon the filing with the clerk of court of a copy of the resolution of the board of revision certifying the entry of an adjudication of foreclosure and forfeiture of the land and the order to the sheriff to convey the land in fee simple to the electing subdivision, which the clerk must enter upon the journal of the court or a separate journal. (R.C. 323.74.)

### Appeal

The bill authorizes any party to any proceeding instituted pursuant to the bill who is aggrieved in any of the proceedings of the county board of revision under the bill to file an appeal in the court of common pleas pursuant to the general Appellate Procedure Act (R.C. Chapter 2505.) and the Little Administrative Procedure Act (R.C. Chapter 2506.), upon a final order of foreclosure and forfeiture by the board of revision. A final order of foreclosure and forfeiture is deemed to occur upon confirmation of any sale or upon confirmation of any transfer to a community development organization, a municipal corporation, or a township under the bill. The appeal is *de novo* and may include issues raised or adjudicated in the proceedings before the board of revision as well as other issues that are raised for the first time on appeal and that are pertinent to the property that is the subject of those proceedings.

An appeal must be filed not later than 14 days after the date on which the order of confirmation of the sale or of the transfer to a community development organization, a municipal corporation, or a township is filed with and journalized by 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

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<sup>3</sup> "Electing subdivision" means a county, city, or township that has established a program for acquiring nonproductive delinquent lands for the purpose of managing, maintaining, and developing the lands for public purposes (R.C. 323.74(A) by reference to R.C. 5722.01).

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) 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) 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 other than agricultural lands, at any time after the county auditor makes the certification of tax delinquency under R.C. 5721.03 (hereafter "certification of tax delinquency") (see **COMMENT 2**);

(b) In the case of "agricultural lands," (see definition below) at any time after two years after the county auditor makes the certification of tax delinquency.

(2) "Agricultural land" means lands legally existing on the agricultural real estate tax duplicate.

(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.<sup>4</sup>

(5) "Impositions" means delinquent taxes, assessments, penalties, interest, costs, reasonable attorney's fees of a certificate holder, applicable and permissible costs of the prosecuting attorney of a county, and other permissible charges against abandoned land.

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<sup>4</sup> R.C. 5721.01(A) defines "delinquent lands" as all lands upon which delinquent taxes remain unpaid at the time a settlement of taxes is made between the county treasurer and auditor 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 the list and duplicate for a prior tax year and any penalties and interest charged against the 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 the taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against the 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 that 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),<sup>5</sup> 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.

(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 auditor makes the certification of tax delinquency, the abandoned land is not agricultural land, and one or more of the following apply: (i) at the time of the inspection of the abandoned land by 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, or (ii) no utility connections, including, but not limited to, water, sewer, natural gas, or electric connections, service the abandoned land, and no utility connections are actively being billed by and paid to any utility provider regarding the abandoned land.

(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.

(7) "Community development 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 auditor makes the certification of tax

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<sup>5</sup> 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 that use and possession.

delinquency and has remained in good standing uninterrupted for at least the two years immediately preceding the time of that certification, and (b) as of the time the county auditor makes the certification of tax delinquency, the organization has received from the county, municipal corporation, or township in which the abandoned land is located official authority or agreement by a duly authorized officer of that county, municipal corporation, or township 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 to that community development organization under the bill.

(8) "Certificate holder" means a person who has acquired a tax certificate. Under continuing law, county treasurers may identify certain parcels of land on which delinquent taxes are owed and sell the state's first lien on that property to private parties who may foreclose on the property (R.C. 5721.30 to 5721.46). The sale of that lien is evidenced by a tax certificate.

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## 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 the taxes by civil action in the treasurer's official capacity as treasurer, for the sale of the 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. Alternative procedures are prescribed in R.C. 5721.14 and 5721.18.

2. R.C. 5721.03 (not in the bill) requires a county auditor to compile a delinquent tax list consisting of all lands on the delinquent land list on which taxes have become delinquent at the close of the collection period immediately preceding the making of the delinquent land list under R.C. 5721.011. The auditor also must compile a delinquent vacant land tax list of all delinquent vacant lands prior to the institution of any foreclosure and forfeiture actions against delinquent vacant lands. The auditor must cause the delinquent tax list and the delinquent vacant land tax list, if one is compiled, to be published twice within 60 days after the delivery of the delinquent land duplicate to the county treasurer, in a newspaper of general circulation in the county. For purposes of instituting proceedings under R.C. 5721.18 to foreclose the state's lien, land is first certified

delinquent on the date of the certification of the delinquent land list containing that land.

3. 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 an affidavit, or a certified copy, is evidence of the facts stated, insofar as those facts affect title to real estate.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-07-05
Reported, H. Civil & Commercial Law	12-14-05
Passed House (89-5)	01-11-06

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