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Bill Analysis
Legislative Service Commission

S.B. 119

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(As Introduced)

Sens. Schuler, Schuring

BILL SUMMARY

- Modifies the tax-delinquent land reutilization program by authorizing municipal corporations, counties, and townships, known as "electing subdivisions," to prosecute nonproductive land tax foreclosures as a foreclosure and forfeiture action *in rem*, acquire the land through foreclosures before the land is offered at a tax sale, and retain the land or sell it at less than appraised market value.
- Revises the definition of "nonproductive land" to include occupied tax-delinquent land and to provide that a foreclosure proceeding does not have to be instituted against the land before it qualifies as nonproductive land.
- Requires that the foreclosure and forfeiture action be prosecuted by the electing subdivision's own attorneys, rather than by the county prosecutor.
- Establishes complaint, answer, and notice requirements for the foreclosure and forfeiture action created by the bill.
- Eliminates the requirements that electing subdivisions retain a publicly available inventory of reutilized property, keep records relating to the property, and sell the property within 15 years after its acquisition.
- Imposes a one-year limit on an agricultural real property owner's and a residential real property homeowner's option to obtain a delinquent tax installment payment contract.

CONTENT AND OPERATION

Acquiring nonproductive land under the current "land reutilization" program

(R.C. 5722.01 to 5722.04)

Current law authorizes municipal corporations, counties, and townships to implement a land reutilization program to "facilitate the effective reutilization of nonproductive land" situated within their boundaries by acquiring tax-delinquent land that constitutes nonproductive land, or tax-delinquent land that has been forfeited to the state that constitutes nonproductive land. Under current law, "nonproductive land" is tax-delinquent vacant land with respect to which a foreclosure or a foreclosure and forfeiture proceeding has been instituted, or tax-delinquent land with respect to which a foreclosure proceeding has been instituted and upon which there are no buildings or structures that are occupied, or upon which there are (1) unoccupied buildings or structures, but they are subject to condemnation proceedings by a township or municipal corporation for their demolition because of their unsafe condition, or (2) unoccupied buildings or structures and their acquisition by a municipal corporation, township, or county is necessary for the implementation of an effective land reutilization program.

A municipal corporation, county, or township may implement a land reutilization program by ordinance or resolution, certified copies of which are delivered to the county auditor, treasurer, and prosecutor, and the prosecutor compiles a list of tax-delinquent land in the electing subdivision with respect to which a foreclosure proceeding is pending, or the county auditor compiles a list of forfeited lands in the electing subdivision that have been forfeited to the state. The subdivision selects from the lists the nonproductive land it wishes to acquire. The nonproductive land is advertised and offered for sale at public auction, and if not sold for want of a minimum bid to cover the tax liens on the land and the subdivision's foreclosure expenses, the electing subdivision is deemed to have submitted the winning bid and the land is deemed sold to the subdivision under favorable terms, relative to a private buyer.

Acquiring nonproductive land under the bill's land reutilization program

Selecting nonproductive lands for acquisition

(R.C. 5722.01(B) and (D), 5722.02, and 5722.03)

The bill repeals the current procedures for acquiring delinquent lands and forfeited lands that are nonproductive land, and establishes a new land reutilization program whereby municipal corporations, counties, and townships (hereinafter, "electing subdivisions") may file foreclosure actions to obtain nonproductive land

as soon as a tax delinquency appears on the delinquent tax list, which is prepared in September after the closing of the second-half real property tax due date.¹ Unlike current law, the foreclosed property does not have to be offered for sale at public auction before it is offered to the electing subdivision.

To qualify as "nonproductive land" that an electing subdivision may select for foreclosure under the bill's procedure, a parcel of property must satisfy the following:

(1) It has been included at any time in a delinquent tax list or delinquent vacant land tax list;

(2) The delinquent taxes have not been paid, a delinquent tax installment payment contract is not in effect, and the parcel has not been redeemed;

(3) It is not included in the list of parcels selected for a tax certificate sale; and

(4) A foreclosure proceeding has not been instituted with respect to the parcel.

Unlike current law, nonproductive land under the bill does not have to have a foreclosure proceeding instituted against it or be unoccupied and free of buildings, or contain unoccupied, unsafe buildings, in order for a subdivision to select the land for the land reutilization program.

To select land under the bill, the electing subdivision must deliver copies of its ordinance or resolution to the county treasurer only, rather than to the treasurer, county auditor, and prosecutor as under current law. The county treasurer, not the county prosecutor, must compile and deliver to the electing subdivision a list of nonproductive lands within the subdivision's boundaries. The electing subdivision may select from that list the parcels it wishes to acquire and notifies the county treasurer of the selected parcels. If both a county and a township within the county select the same parcel, the subdivision that first notifies the county treasurer of its selection is the subdivision deemed to have selected the land for reutilization.

¹ Currently, foreclosure actions may not be filed for at least one year following preparation of the list.

Instituting the foreclosure and forfeiture action

(R.C. 323.31, 5721.25, 5722.01(F), and 5722.03(A); repeal of R.C. 323.77)

An electing subdivision has a cause of action under the bill to foreclose the state's lien for taxes upon any nonproductive land the subdivision selected, and to forfeit the fee simple interest in the land to the electing subdivision. An action may not be commenced if, before the complaint is filed, the nonproductive land has been redeemed. To redeem delinquent property, a person must pay all taxes, assessments, penalties, interest, and charges due and unpaid on the land and the costs incurred in any foreclosure proceeding, and must demonstrate that the property is in compliance with zoning regulations, land use restrictions, and building, health, and safety codes. Alternatively, a property owner may redeem property by entering into a delinquent tax installment payment contract with the county treasurer to pay delinquent or unpaid current taxes.

The foreclosure action under the bill must be prosecuted by the subdivision's own "legal representative," which is its law director or other legal advisor, or attorneys employed by the subdivision for that purpose, rather than by the county prosecutor, as under current law.

Under the bill, the action is instituted as an action *in rem*² against the parcel of nonproductive land in any court with jurisdiction, by filing a complaint with the clerk of the court of common pleas. Before filing the complaint, the legal representative must cause a title search to be conducted to identify any lienholders or other persons with interests in the parcel, as is required with current foreclosure proceedings.

Any number of parcels may be joined in one action.

The procedures governing notification of property owners, lienholders, and other interested parties, and their opportunity to answer the action, are substantially the same as those governing the existing delinquent tax foreclosure actions. Generally, this requires notice by newspaper publication and mailings. The notice and other forms are modified to reflect that any judgment against the property for delinquent taxes may result in the title to the property being vested in the subdivision instead of the property being offered for sale at auction.

² An action *in rem*, i.e. "against the thing," is an action instituted directly against property, taking no cognizance of the owner. A judgment resulting from such an action is against the property, regardless of who may own the property.

Transfer of nonproductive land to electing subdivision

(R.C. 5722.03(F))

Upon application to the court by the electing subdivision following entry of the judgment of foreclosure and forfeiture against nonproductive land, the court must issue a decree transferring fee simple interest in the land to the subdivision, and must issue an order directing the clerk to execute and file for recording a deed and to deliver the deed to the subdivision. The normal fee required by law for transferring and recording deeds must be paid by the subdivision. As under current law, upon the execution and recording of the deed, title to the nonproductive land is incontestable in the electing subdivision and free and clear of all liens and encumbrances, except those easements and covenants of record running with the land and created before the delinquent taxes or assessments for which the lien was foreclosed became due and payable. The title is not invalid because of any irregularity, informality, or omission of any proceedings under the land reutilization program or the delinquent land laws, or in any process of taxation, if the irregularity, informality, or omission does not abrogate any provision of that program or those laws or processes regarding notice to interested persons.

Electing subdivision's duties relating to nonproductive land

(R.C. 5722.06, 5722.07, and 5722.08; repeal of R.C. 5722.13)

Under current law (R.C. 5722.06), an electing subdivision acquiring nonproductive land must hold the property in a governmental capacity for the benefit of itself and the other taxing districts that are owed taxes. The subdivision must manage the property for a public purpose, compile and maintain a written inventory of such land, analyze uses for the land for its effective reutilization, plan for and use its best efforts to sell the land to fulfill the purposes of its land reutilization program, and establish and maintain records and accounts of all transactions, expenditures, and revenues relating to its land reutilization program.

Under the bill, the electing subdivision must only assume possession of nonproductive land acquired by it, hold the property in a governmental capacity, and manage the property for a public purpose in the manner the electing subdivision deems appropriate. The bill eliminates all the inventory, planning, sale, and recordkeeping requirements.

Current law (R.C. 5722.07) authorizes an electing subdivision to sell nonproductive land acquired by it, without competitive bidding, as part of its land reutilization program, but the land must be sold at not less than its fair market value. The subdivision may retain the land for public use, or sell, lease, or transfer

the land to another political subdivision for a consideration less than fair market value, but only with the approval of the taxing districts entitled to share in the proceeds from the sale. Current law (R.C. 5722.13) requires that nonproductive land acquired by an electing subdivision that is not sold within 15 years after acquisition must be offered for sale at public auction during the 16th year after acquisition.

The bill eliminates most of these requirements. Unlike current law, once the subdivision obtains title to the nonproductive land, it is under no obligation to sell it. But if the subdivision eventually does sell the land, it may sell it for any price; it does not have to sell the land for fair market value and it does not need the approval of the other taxing districts to do so.

Under current law (R.C. 5722.08), if the nonproductive land is sold, proceeds from the sale have to be distributed in the following order:

- (1) To the electing subdivision to reimburse it for its nonproductive land acquisition and maintenance expenses;
- (2) To reimburse school districts and other taxing districts for the costs of the foreclosure charged to them;
- (3) To school districts and other taxing districts for their proportionate share of the taxes owed to them;
- (4) Any remaining amount is retained by the electing subdivision to defray land reutilization costs.

The bill eliminates the distribution of proceeds under (2). As under current law, the net sale proceeds must be distributed to the school districts and various other taxing districts after deducting the electing subdivision's foreclosure costs and the cost of holding the property.

Conveyance of tax-delinquent land in lieu of foreclosure

(R.C. 5722.10)

Continuing law provides that an electing subdivision may accept a conveyance of delinquent land in lieu of foreclosure if the county auditor consents. The law requires the owners or electing municipal corporation or township to pay all expenses incurred by the county in connection with any foreclosure or foreclosure and forfeiture proceeding filed relative to the land; if the land is conveyed to the county as the electing subdivision, the owner may have to pay the costs.

The bill eliminates these requirements because the land is no longer required to be sold at a public sale.

Continuing law also provides that real property acquired by conveyance in lieu of foreclosure is not subject to foreclosure or forfeiture under the delinquent lands law (Chapter 5722.) or the forfeited lands law (Chapter 5723.). The bill adds that real property acquired in that manner also is not subject to foreclosure under another foreclosure law allowing the county treasurer to enforce a tax lien by a civil action similar to mortgage foreclosures.

Effect of nonproductive lands being selected for foreclosure and forfeiture

The bill provides that once property has been selected by an electing subdivision for foreclosure and forfeiture under the bill's procedures, no other forms of tax foreclosure actions may be brought against the land, including by sale of tax lien certificates; also, the land may not be acquired by a subdivision under a special alternative procedure as part of a redevelopment program (R.C. 5722.21).

Delinquent tax certificates

(R.C. 5721.13, 5721.14, and 5721.18)

If delinquent land or delinquent vacant land has been selected by an electing subdivision for foreclosure under the bill, a delinquent land or delinquent vacant land tax certificate must state that the land has been so selected. A prosecuting attorney may not institute any type of foreclosure proceeding if such a tax certificate so states.

Technical changes

(R.C. 5721.06, 5721.25, 5722.05, 5722.14, 5722.15, and 5723.06)

The bill makes changes to current law correcting references to nonproductive land being sold, since title to the land will be conveyed to the electing subdivision under the bill, rather than the land being sold at public auction.

The bill eliminates a provision that allows a person entitled to redeem tax-delinquent land to enter into a delinquent tax contract with the county treasurer after a foreclosure proceeding has been instituted, but before the filing of an entry of confirmation of sale.

The bill also removes references from current law regarding the electing subdivision giving notice to the county auditor of the nonproductive land it wishes

to acquire, since that section now specifies the forms of the complaint caption, notice of foreclosure and forfeiture, and notice to property owners to be used in the foreclosure and forfeiture action established by the bill.

The bill makes technical changes to the delinquent land and delinquent vacant land tax notices to reflect that not all lands are subject to foreclosure proceedings by the county auditor--under the bill, they could be subject to foreclosure proceedings by an electing subdivision.

Effective date of the nonproductive land foreclosure and forfeiture proceedings

(Section 3)

The bill provides that it applies only to foreclosure and forfeiture proceedings regarding nonproductive land selected by an electing subdivision on or after the bill's effective date. A resolution or ordinance duly adopted under the bill by an electing subdivision before the bill's effective date is valid as to all proceedings or actions undertaken under the bill on and after that effective date, except to the extent the resolution or ordinance is not substantively consistent with the amendments made by the bill. If the resolution or ordinance is not substantively consistent with those amendments, the legislative authority of the electing subdivision must amend the resolution or ordinance accordingly before undertaking any proceeding or action required or authorized by those amendments.

The bill provides that current land reutilization law (R.C. 5722.02 to 5722.15) as it existed immediately before the bill's effective date applies to any lawful proceedings commenced before, and in progress on, that effective date, and will continue to apply until those proceedings conclude or are terminated by the electing subdivision.

Delinquent tax contracts

(R.C. 323.31)

Current law permits the owner of agricultural land or a homeowner to enter into a delinquent tax contract to pay delinquent or unpaid current taxes, or both, in installments. The contract may be entered into at any time before foreclosure proceedings or collection proceedings for delinquent manufactured home taxes begin.

The bill requires owners to enter into a delinquent tax contract within one year after the delinquent land duplicate is delivered to the county treasurer, which is required to be delivered in September each year, or, in the case of a

manufactured or mobile home, within one year after delivery of the manufactured home tax list to the county treasurer, which is required to be delivered on or before January 15 each year. Generally, this has the effect of shortening the time allowed for entering into contracts, because tax foreclosure actions often do not begin within one year after the delinquent land duplicates are delivered.

HISTORY

ACTION	DATE
Introduced	03-20-07

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