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Bill Analysis
Legislative Service Commission

S.B. 277
127th General Assembly
(As Introduced)

Sens. Stivers, Seitz, D. Miller, Kearney

BILL SUMMARY

- Provides that the environmental or housing division of the municipal court, where established, has jurisdiction over actions regarding nuisance property, that the environmental or housing division has exclusive original jurisdiction to make findings and orders pertaining to nuisance properties, and that the environmental or housing division may, in certain specified cases, proceed to foreclose all liens and all vested and contingent rights and proceed to render judgments and make findings and orders between the parties.
- Provides that a municipal corporation has a cause of action to foreclose liens upon a nuisance property in the municipal corporation.
- Allows the municipal corporation to notify the taxing authority of each taxing unit in which the nuisance property is located that the municipal corporation is proceeding to foreclose the lien and provides the requirements for the notice and the procedure for submitting a response.
- Allows the taxing authority of a taxing unit and a municipal corporation to enter into an agreement whereby the taxing authority consents in advance to release the taxing authority's claim on distributions of delinquent or unpaid taxes and assessments charged against nuisance properties in the taxing unit's territory and waives its right to prior notice and response and provides the requirements for the information that must be contained in the agreement.

CONTENT AND OPERATION

Municipal court--housing and environmental divisions

Background

R.C. 1901.011 creates a housing division in the Cleveland Municipal Court and the Toledo Municipal Court and creates an environmental division in the Franklin County Municipal Court. These divisions generally have exclusive jurisdiction within the territory of the court in any civil or criminal action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to premises used or intended for use as a place of human habitation, buildings, structures, or any other real property subject to any such code, ordinance, or regulation, and, except in the environmental division of the Franklin County Municipal Court, in any civil action commenced pursuant to R.C. Chapter 1923. (Forcible Entry and Detainer Law) or 5321. (Landlord and Tenant Law) or R.C. 5303.03 to 5303.07 (action for recovery of real property). These divisions also generally have exclusive jurisdiction within the territory of the court in any civil action as described in R.C. 3767.41(B)(1) that relates to a public nuisance. (R.C. 1901.181(A)(1).)

Operation of the bill

The bill provides that, in addition to jurisdiction granted in R.C. Chapter 1901. (Municipal Court Law), the environmental or housing division, where established, of the municipal court has jurisdiction within its territory in all of the following actions or proceedings and to perform all of the following functions (R.C. 1901.185):

(1) To hear actions arising under R.C. 3767.50 (see "Foreclosure of liens upon nuisance property," below);

(2) In any action authorized by R.C. 3767.50, the environmental or housing division of the municipal court, where established, must exercise exclusive original jurisdiction to make findings and orders pertaining to nuisance properties.

(3) When in aid of execution of a judgment of the environmental or housing division of the municipal court rendered pursuant to R.C. 3767.50, in actions for the foreclosure of a mortgage on real property given to secure the payment of money, or the enforcement of a specific lien for money or other encumbrance or charge on real property, when the real property is situated within the territory, and, in those cases, the environmental or housing division may proceed to foreclose all liens and all vested and contingent rights and proceed to

render judgments, and make findings and orders, between the parties, in the same manner and to the same extent as in similar cases in the court of common pleas.

Foreclosure of liens upon nuisance property

The bill provides that a municipal corporation, in addition to any other remedy authorized by law, has a cause of action to foreclose liens upon a nuisance property located in the municipal corporation. The environmental or housing division of the municipal court has exclusive original jurisdiction of the action. To maintain the action, it is not necessary for the municipal corporation to have a lien of its own upon the property. Rather, it is sufficient for the municipal court to allege that, because of the continuing existence of conditions causing the property to be nuisance property, the owner has defaulted on the terms of any agreement giving rise to a lien for failure to maintain the property, and then to marshal and plead for foreclosure of any or all outstanding liens upon the nuisance property. The municipal corporation cannot marshal a lien held by the United States, by this state, or by a political subdivision other than itself, or a lien vested by a tax certificate held under R.C. 5721.30 to 5721.43. The municipal corporation must join as a party to the action a lienholder whose lien is being marshaled and must notify the lienholder party that the municipal corporation is proceeding to foreclose the lien under R.C. 3767.50 and that the lienholder party may abate the nuisance. If a lienholder party abates the nuisance within 45 days after the party is served with notice of the foreclosure action, the municipal court must move to dismiss the action. (R.C. 3767.50(B).)

Judicial sale

In a judicial sale of a nuisance property that is ordered as a result of the foreclosure action, the priority of distribution of the proceeds from the sale cannot be altered because the municipal corporation marshaled and foreclosed on one or more liens. Rather, proceeds from the sale must be distributed according to the priorities otherwise established by law. (R.C. 3767.50(B).)

Notification of foreclosure to the taxing authority

With respect to any nuisance property that is or may be subject to an action under R.C. 3767.50, the municipal corporation may notify the taxing authority of each taxing unit in which the nuisance property is located that the municipal corporation is proceeding to foreclose the lien under R.C. 3767.50. The notice must state that the taxing authority may preserve its claim on any distributions of delinquent or unpaid taxes and assessments charged against the property and arising from the judicial sale proceeds by responding in writing to the municipal corporation within a period of time to be specified in the notice. The written response must be certified by the taxing authority or by the fiscal officer or other

person authorized by the taxing authority to respond. If such a response is received by the municipal corporation within the specified time, or if such a notice is not provided, the taxing authority's claim on distributions of delinquent or unpaid taxes and assessments charged against the property and payable from the proceeds of the judicial sale must be preserved and must be disposed of in the priority and manner otherwise prescribed by law. If such a notice is provided and the response is not received within the specified time, the taxing authority's claim on the delinquent or unpaid taxes and assessments is extinguished, the lien for such taxes is satisfied and discharged to the extent of that claim, and the property may be sold at judicial sale free and clear of such lien to that extent, unless the successful bidder at the judicial sale is a lienholder of the property. If the successful bidder is a lienholder of the property, the lien for all delinquent or unpaid taxes and assessments charged against the property must continue until discharged as otherwise provided by law. (R.C. 3767.50(C)(1).)

Agreement between taxing authority and municipal corporation

The taxing authority of a taxing unit and a municipal corporation may enter into an agreement whereby the taxing authority consents in advance to release the taxing authority's claim on distributions of delinquent or unpaid taxes and assessments charged against nuisance properties in the taxing unit's territory and waives its right to prior notice and response under R.C. 3767.50(C)(1), described above. The agreement must provide for any terms and conditions on the release of such claim as are mutually agreeable to the taxing authority and municipal corporation, including any option vesting in the taxing authority the right to revoke its release with respect to any nuisance property before the release becomes effective, and the manner in which notice of such revocation shall be effected. (R.C. 3767.50(C)(2).)

Definitions

The bill provides the following definitions for the purposes of R.C. 3767.50 (R.C. 3767.50(A)):

(1) "Nuisance property" means a building, premises, real estate, or an appurtenance thereto that is vacant and meets any of the following:

(a) It is out of compliance with any applicable building, housing, air pollution, sanitation, health, fire, zoning, or safety code or it is a blighted parcel as defined in R.C. 1.08.

(b) Real property taxes remain unpaid on the property at the time the county auditor delivers the duplicate of the delinquent land list to the county treasurer under R.C. 5721.011.

(c) The existence of a nuisance or public nuisance on the property has been admitted or established in a civil action under R.C. 3767.03 or 3767.41 and the property owner has failed to abate the nuisance or public nuisance as otherwise required under R.C. Chapter 3767.

(d) The property was used or occupied by a criminal gang on more than two occasions within a one-year period to engage in a pattern of criminal gang activity.

(e) The property is used in violation of R.C. Chapter 2915. (gambling laws).

(2) "Owner" means any of the following:

(a) The owner of record as shown on the current tax list of the county auditor.

(b) The mortgage holder of record, if any, as shown in the mortgage records of the county recorder.

(c) A person who has a freehold or lesser estate in the premises.

(d) A mortgagee or vendee in possession who evidences charge, care, or control of the premises, including, but not limited to, a person to whom the sheriff has issued a deed for the premises after a judicial sale regardless of whether the deed has been recorded.

(e) A person who has charge, care, or control of the premises as agent, executor, administrator, assignee, receiver, trustee, guardian, or lessee.

(f) A person who holds the person's self out to be in charge, care, or control of the premises as evidenced by the negotiation of written or oral lease agreements for the premises, the collection of rents for the premises, the performance of maintenance or repairs on the premises, or the authorization of others to perform maintenance or repairs on the premises.

COMMENT

R.C. 3767.01 defines "nuisance" as any of the following:

(1) That which is defined and declared by statutes to be a nuisance;

(2) Any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued, or exists, or any place, in or upon which lewd, indecent, lascivious, or obscene films or plate negatives, film or plate positives,

films designed to be projected on a screen for exhibition films, or glass slides either in negative or positive form designed for exhibition by projection on a screen, are photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown, and the personal property and contents used in conducting and maintaining any such place for any such purpose. R.C. Chapter 3767. does not affect any newspaper, magazine, or other publication entered as second class matter by the post office department.

(3) Any room, house, building, boat, vehicle, structure, or place where beer or intoxicating liquor is manufactured, sold, bartered, possessed, or kept in violation of law and all property kept and used in maintaining the same, and all property designed for the unlawful manufacture of beer or intoxicating liquor and beer or intoxicating liquor contained in the room, house, building, boat, structure, or place, or the operation of such a room, house, building, boat, structure, or place as described in this provision where the operation of that place substantially interferes with public decency, sobriety, peace, and good order. "Violation of law" includes, but is not limited to, sales to any person under the legal drinking age as prohibited in R.C. 4301.22(A) or 4301.69(A) and any violation of R.C. 2913.46 or 2925.03.

HISTORY

ACTION	DATE
Introduced	01-22-08

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