



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 610

129th General Assembly  
(As Introduced)

Rep. Stautberg

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## BILL SUMMARY

- Modifies current law prohibiting any party, attorney, or person interested in an action from being appointed receiver except by consent of the parties by providing that the consent be of all of the parties to the case and all other persons holding a recorded ownership interest in or financial lien on the property that is subject to the proceeding.
- Specifically authorizes a receiver to establish or maintain accounts with any public utility in the receiver's name as receiver under the rules that may be adopted by the Public Utilities Commission.
- Specifically authorizes a receiver to enter into contracts, including sale, lease, or construction contracts and contracts for the completion of construction work, and requires that funds expended in entering or performing the contracts be taxed as court costs or otherwise treated as a priority administrative expense of the proceeding.
- Specifies that a receiver may make transfers of real or personal property free and clear of liens or encumbrances after notice to persons who have a recorded ownership or financial interest in the property to be transferred and requires that liens or other interests be transferred in the same order of priority to the proceeds of the transfer.
- Specifically authorizes a receiver, in accordance with a court order to sell or dispose of real property, to sell the property at a public or private sale, enter into a long- or short-term lease, or make other reasonable arrangements as approved by the court.
- Provides the procedure to be followed upon the conclusion of the sale of real property by a receiver, including a procedure for the court's confirmation of the sale if it finds that the sale is in conformity with its order to sell and a procedure for the

property owner's right to redeem the property from sale prior to its confirmation by the court.

- Modifies the laws pertaining to attachment proceedings and the examination of a judgment debtor in proceedings in aid of execution to provide that a receiver appointed in those proceedings, under the control of the appointing judge, may exercise the same powers specified in the bill and in existing law.

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## CONTENT AND OPERATION

### Appointment of receiver

Under the Receivership Law, a receiver may be appointed by the Supreme Court or a justice of that Court, the court of appeals or a judge of that court in the district, the court of common pleas or a judge of that court in the county, or the probate court, in causes pending in those courts respectively, in specific types of cases under the Law and in all cases in which receivers have been appointed by the usages of equity.<sup>1</sup> Current law prohibits the appointment of certain persons as a receiver. The bill modifies current law as described in this paragraph (modified language is italicized). It prohibits any party, attorney, or person interested in an action from being appointed receiver *in the action* except by consent of *all of the parties to the case and all other persons holding a recorded ownership interest in or financial lien on the property that is subject to the proceeding*. No person except a resident of Ohio can be appointed or act as receiver of a (the bill deletes "railroad or other") corporation, *partnership, limited liability company, or other entity created under the laws of this state*. *In selecting a receiver, priority consideration must be afforded to any of the qualified persons nominated by the party seeking the receivership. No nomination of qualified persons for the receivership is binding upon the court.*<sup>2</sup>

### Powers of receiver

The Receivership Law also specifies the powers of receivers. The bill modifies these powers by providing that, under the control of the court that appointed the receiver, the receiver may do any of the following (modified language is italicized):<sup>3</sup>

- (1) Bring and defend actions in the receiver's own name as receiver;
- (2) Take and keep possession of *real or personal* property;

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<sup>1</sup> R.C. 2735.01, not in the bill.

<sup>2</sup> R.C. 2735.02.

<sup>3</sup> R.C. 2735.04(A).

(3) Receive rents and collect, compound for, and compromise demands;

(4) *Establish or maintain accounts with any "public utility" (see "Definitions," below) in the receiver's name as receiver under the rules that may be adopted by the Public Utilities Commission (PUCO);*

(5) *Generally enter into contracts, including, but not limited to, contracts of sale, lease, or construction and contracts for the completion of construction work;*

(6) *Make transfers of real or personal property free and clear of liens or encumbrances after appropriate notice to persons who have a recorded ownership or financial interest in the property to be transferred, including, but not limited to, lienholders;*

(7) Generally do any acts respecting the *real or personal* property that the court authorizes.

### **Power to enter into contracts**

The bill requires that any funds that are expended by the receiver in entering into or performing contracts under paragraph (5), above, including those for the completion of construction work authorized by the court, be taxed as court costs or otherwise treated as a priority administrative expense of the proceeding. The court may from time to time require an additional deposit to cover that administrative expense by the party that sought the receivership or by all parties likely to be directly benefited by the construction work.<sup>4</sup>

### **Power to make transfers of property**

The bill provides that if a receiver transfers real or personal property as described in paragraph (6), above, the liens or other interests of persons in the property must be transferred in the same order of priority to the proceeds received from the transfer of it.<sup>5</sup>

Under the bill, in the exercise of a receiver's authority described above in paragraph (6) and in accordance with the court's order to sell or otherwise dispose of real property, the receiver may sell real property at a public or private sale, enter into a long- or short-term lease, or make other reasonable arrangements as approved by the court. At the conclusion of the sale of real property by a receiver and on careful examination of the proceedings of the sale, if the court finds that the sale was made in conformity with its order to sell, it must, within 30 days of the date of the sale, confirm

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<sup>4</sup> R.C. 2735.04(B).

<sup>5</sup> R.C. 2735.04(C).

the sale and direct the clerk of the court to make an entry on the journal that the court is satisfied of the legality of the sale and that the receiver make to the purchaser a deed for the real property sold. Nothing in this provision prevents the court from staying the confirmation of the sale to permit the property owner time to redeem the property or for any other reason that the court determines is equitable. In those instances, the sale must be confirmed within 30 days after the termination of any stay of confirmation.<sup>6</sup>

The receiver who made the sale as described in the preceding paragraph must require the purchaser to pay within 30 days of the confirmation of the sale the balance, if any, due on the purchase price of the real property sold. At any time before the confirmation of the sale, the property owner may redeem it from sale by depositing with the clerk of the court the amount for which the property was sold, with all costs, including poundage, and interest at a reasonable rate per annum set by the court on the purchase money from the date of the sale to the time of the deposit, except that if a judgment creditor is the purchaser, the interest is at that rate on the excess above the judgment creditor's claim. Upon the redemption of the property, the court must make an order setting aside the sale, apply the deposit to the amount of the purchase price of the property and costs, and award the applicable interest to the purchaser. The clerk of the court must transmit to the receiver the purchase money paid for the property and the interest awarded under this provision.<sup>7</sup>

### **Proceedings in aid of execution**

Under current law, in proceedings for the examination of a judgment debtor concerning the debtor's property, income, or other means of satisfying a judgment, the judge by order may appoint the sheriff of the proper county or other suitable person a receiver of the property of the judgment debtor. The judge also, by order, may forbid a transfer, or other disposition of or interference with, the property of the judgment debtor not exempt by law. The bill provides that, under the control of the judge who appointed a receiver and except as ordered by the judge as described in the preceding sentence, the receiver may do any of the acts described above under "**Powers of receiver.**"<sup>8</sup>

### **Attachment proceedings**

Continuing law provides that an attachment against the property, other than personal earnings, of a defendant may be had in a civil action for the recovery of

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<sup>6</sup> R.C. 2735.04(D)(1).

<sup>7</sup> R.C. 2735.04(D)(2) and (3).

<sup>8</sup> R.C. 2333.22.

money, at or after its commencement, upon any one of specified statutory grounds.<sup>9</sup> On application of the plaintiff and for good cause shown, a court may appoint a receiver who must take an oath and give a bond as is provided in other cases.<sup>10</sup> Current law requires the appointed receiver to take possession of all notes, due bills, books of account, accounts, and other evidences of debt that have been taken by the levying officer as the property of the defendant in attachment and proceed to settle and collect them. For that purpose, the receiver may commence and maintain actions in the receiver's own name as receiver but no right of defense in the action can be impaired or affected. The bill provides that, under the control of the court that appointed the receiver, the receiver may do any of the acts described above in "**Powers of receiver.**"<sup>11</sup>

## Definitions

The bill defines the following terms:<sup>12</sup>

(1) "Public utility" means any retail supplier of electric, gas, water, or related services or of sewage disposal service, including, but not limited to, an "electric light company," "gas company," "natural gas company," "water-works company," "heating or cooling company," "sewage disposal system company," municipal corporation, "cooperative," provider of "competitive retail electric service," or provider of "competitive retail natural gas service."

(2) Under continuing law, any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:<sup>13</sup>

(a) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within Ohio, including supplying electric transmission service for electricity delivered to Ohio consumers, but excluding a regional transmission organization approved by the federal Energy Regulatory Commission;

(b) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within Ohio or when engaged in the

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<sup>9</sup> R.C. 2715.01(A), not in the bill.

<sup>10</sup> R.C. 2715.20, not in the bill.

<sup>11</sup> R.C. 2715.21.

<sup>12</sup> R.C. 2735.05(E).

<sup>13</sup> R.C. 4905.03(C), (D), (E), (G), (H), and (M), not in the bill.

business of supplying artificial gas to gas companies or to natural gas companies in Ohio, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within Ohio is not thereby a gas company;

(c) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a PUCO-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, causes the producer or gatherer to be a natural gas company.

(d) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within Ohio;

(e) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within Ohio for heating or cooling purposes;

(f) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within Ohio.

(3) "Cooperative" means an entity that is owned and operated exclusively by and solely for its customers to provide electric, gas, water, or sewage disposal service and includes an electric cooperative. "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.<sup>14</sup>

(4) "Competitive retail electric service" means a component of retail electric service that is competitive, i.e., if the service component is competitive pursuant to a

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<sup>14</sup> By reference to R.C. 4928.01(A)(5), not in the bill.

declaration by a provision of the Revised Code or pursuant to an order of the PUCO authorized under R.C. 4928.04(A).<sup>15</sup>

(5) "Competitive retail natural gas service" means any retail natural gas service that may be competitively offered to consumers in Ohio as a result of revised schedules approved under R.C. 4929.29(C), a rule or order adopted or issued by the PUCO under R.C. Chapter 4905., or an exemption granted by the PUCO under R.C. 4929.04 to 4929.08.<sup>16</sup>

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## HISTORY

| ACTION     | DATE |
|------------|------|
| Introduced | ---  |

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<sup>15</sup> By reference to R.C. 4928.01(A)(4) and (B), not in the bill.

<sup>16</sup> By reference to R.C. 4929.01(J), not in the bill.

