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## Bill Analysis

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Andrew Little, Attorney

CORRECTED VERSION\*

### SUMMARY

#### Executions against Property Law

- Permits a county, in a tax foreclosure, to provide an affidavit to the court describing the property, the charges due and unpaid, and stating that the amount has been certified to the county prosecuting attorney as delinquent in order to prove that the tax foreclosure is warranted.
- Requires abandoned land to be forfeited to the state, and not a political subdivision, school district, or a county land reutilization corporation (CLRC), if unsold through a specified number of foreclosure sales.

#### Expedited Foreclosure on Abandoned Land Law

- Changes the time at which land is presumed unoccupied, and thus abandoned if it is also tax delinquent, from the time the county auditor certifies the delinquent lands list, to, instead, the time the prosecutor files the complaint in the foreclosure action.
- Authorizes the county prosecutor to hire outside counsel to conduct the foreclosure proceedings.
- Authorizes the board of revision to adopt rules necessary to administer its case that are not irreconcilably inconsistent with the Tax Commissioner's rules.
- Permits a county board of revision to transfer a foreclosure action to a court if upon the preponderance of the evidence provided by the parties the property is not abandoned.

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\* Adds an analysis comment.

- Eliminates the ability of a person with a security interest in a property subject to the expedited foreclosure proceeding to file a pleading with the board of revision that in order to preserve the person's security interest, the property should not be disposed of and the case should be transferred to a court.
- Requires that 10% of the total proceeds of a property sold at an auction to be deposited into the county treasurer's and county prosecutor's Delinquent Tax and Assessment Collection Funds and, if a CLRC is operating in the county, an additional 10% of the total proceeds must be deposited into the county land reutilization corporation fund.
- Requires property not sold at an auction after the first sale to be forfeited to the state and disposed of as prescribed under the Forfeited Lands Law.
- Changes the timeframe that an electing subdivision or CLRC must request title to the abandoned land from any time between the date the complaint for foreclosure is filed and 60 days after the date the land was first offered for sale to any time prior to the adjudication of foreclosure.
- Requires a CLRC that receives an abandoned property, either through an auction or transfer, to record its own deed with the county recorder, instead of the prosecuting attorney, county treasurer, or officer recording the deed.
- Expands an aggrieved party's right to appeal a board of revision's decision by allowing an appeal within 14 days of "any other final order," which is an addition to existing events triggering appeal rights and obligations.
- Specifies under what circumstances a board of revision can vacate a final order of foreclosure and forfeiture and any other order.

### **Delinquent Land Law**

- Requires property not sold pursuant to the original order of sale, to be forfeited to the state.

### **Foreclosure and forfeiture of delinquent vacant lands**

- Eliminates a proceeding under current law that permits both a foreclosure and forfeiture as one procedure for delinquent vacant land and eliminates provisions related to the delinquent vacant lands tax list.

### **Changes applicable to all tax foreclosure proceedings**

- Eliminates a condition that in order to commence a tax foreclosure proceeding the delinquent tax list must be published within a certain prescribed time.
- Specifies that the county auditor can, at any time, correct any errors on a delinquent tax list that is published electronically.
- Permits a CLRC, county, municipality, or township to enter a property subject to a tax foreclosure proceeding in which the property is determined to be nonproductive land or

abandoned land to inspect for environmental, health, or safety purposes, or for the presence of nuisance conditions.

- Authorizes electronic publication as an alternative to newspaper publication for tax foreclosure proceedings and tax delinquency notices, as well as proceedings under the Forfeited Lands Law, and sets standards and conditions for such publications.
- Revises the timeframe in which a person can enter into a delinquent tax contract with the county treasurer to any time prior to an adjudication of foreclosure, instead of before the filing of an entry of confirmation of sale or before the expiration of the alternative redemption period.
- Reduces the duration the county treasurer must hold on to excess funds for an owner that are remaining from a tax foreclosure sale, from three years to two years.
- Allows a county commissioner or CLRC to request that 5% of delinquent taxes collected in a county be directed to a county land reutilization corporation, as county treasurers may request under continuing law.

### **County Land Reutilization Program Law**

- Expands the scope of the land reutilization program to include real property otherwise acquired by an electing subdivision, including a CLRC.
- Removes the priority right of acquisition of a municipal corporation and a township when a CLRC acquires property in a transaction other than a tax foreclosure proceeding.
- Specifies that a provision of law protecting the validity of an electing subdivision's title to nonproductive property when it is sold under the CLRP Law to an electing subdivision, also applies to transfers and sales to an electing subdivision under the Expedited Foreclosure on Abandoned Land Law, the Forfeited Lands Law, and transfers under the CLRP Law.
- Eliminates the recording fee for electing subdivisions who buy or acquire nonproductive property under the CLRP Law or the Expedited Foreclosure on Abandoned Land Law.
- Eliminates a requirement that political subdivisions with a land reutilization program, *other than a CLRC*, study, analyze, and evaluate potential uses for property acquired as part of the program to effectively reutilize it.
- Eliminates the requirement that the property an electing subdivision acquires pursuant to its program be sold for at least the fair market value and that approval be obtained before the property is sold for less than fair market value, and instead permits sales that promote the property's effective reutilization.
- Revises how the proceeds of the sale must be applied and distributed when an electing subdivision, other than a CLRC, sells any land reutilization program property.
- Removes the authority of an electing subdivision to establish taxing district committees and neighborhood advisory committees.

- Eliminates the requirement that an electing subdivision keep taxing districts having an interest in the taxes and related amounts on the real property it acquires as part of the land reutilization program, informed concerning the program's administration.
- Specifies that an electing subdivision may accept a conveyance in lieu of foreclosure of tax delinquent property from the property owners, regardless of whether a tax foreclosure proceeding has been filed against the property.
- Eliminates a requirement that if an electing subdivision acquires property pursuant to the CLRP Law and does not sell or transfer the property within 15 years, the electing subdivision must offer that property for sale and if not sold, it may be disposed of or retained for any lawful purpose without further application of the CLRP Law.
- Expands a CLRC's ability to acquire tax delinquent property for redevelopment free and clear of tax liens by eliminating a requirement that they obtain consent from taxing districts with an interest in the taxes.
- Expands and revises funding sources for the County Land Reutilization Fund, such as from the proceeds from the forfeited land sales, sales under the Expedited Foreclosure on Abandoned Land Law, and real property taxes.
- Exempts CLRCs from sales and other taxes, the Underground Storage Tank and Corrective Action Program, and Prevailing Wage Law.
- Exempts electronic records of an economic development corporation, when it is acting as an agent of a political subdivision, and CLRCs, at all times, in proprietary databases or applications from the Public Records Law.

## **Forfeited Lands Law**

- Eliminates a provision specifying that, after receiving certification from the sheriff that a property has failed to sell at foreclosure sale, the court must notify the political subdivision and school district in which the property is located, and any CLRC in the county, and offer to forfeit the property to the political subdivision, school district, or corporation, or to an electing subdivision. Instead requires that the court or board order the property forfeited to the state.
- Provides that counties and their officers or employees are not liable for damages, or subject to equitable remedies, for violation of a variety of environmental laws, in connection with property forfeited to the state under the Forfeited Land Law.
- Grants county auditors more discretion in determining when to offer forfeited lands for sale and allows the sales to occur at locations other than the courthouse.
- Allows CLRCs to prevent a forfeited property from being offered at a sale of forfeited lands by requesting it not be offered, but only once per property every three years, coinciding with the CLRCs' right to request that those properties be transferred to them.
- Increases the amount of proceeds from the sale of forfeited lands that are directed to the county prosecutor's and treasurer's Delinquent Tax and Assessment Collection

Funds from 10% to 30% and directs 10% of the proceeds to the County Land Reutilization Corporation Fund for the county, provided such a corporation is operating there.

## **Nuisance buildings**

- Authorizes a board of township trustees to contract with a CLRC to act as the board's agent in connection with the removal, repair, or securing of buildings that have been declared insecure, unsafe, or structurally defective by a fire department or a building department, or buildings that have been declared to be nuisance properties.
- Revises provisions relating to how a municipal corporation or its agent CLRC can collect the costs related to the abatement of the nuisance property.
- Extends the redemption period to prior to the journalization of the confirmation of sale, instead of within ten days after the entry of the decree of foreclosure, when a municipal corporation pursues a foreclosure action to recover costs for the nuisance abatement.

## **EPA asbestos demolition or renovation project fees**

- Prohibits the state, a municipality, or other political subdivision from charging an owner or operator fees other than the schedule fees in statute in connection with the notification of an asbestos demolition or renovation project.

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## DETAILED ANALYSIS

### Overview – tax foreclosures and forfeitures

The bill revises the procedures by which unpaid real property taxes and related costs are recovered by the state and the property returned to productive use. To understand the bill’s changes to these provisions, it is necessary to understand a little bit about how taxes are collected or determined delinquent, the types of foreclosure proceedings available, and a key aspect of all foreclosure actions called “the equity of redemption.” Those will be discussed here, before the discussion of the bill’s changes.

This analysis uses a number of technical terms throughout. If the term is used in only one location, it is interwoven into the discussion. But, for definitions that are used repeatedly throughout the analysis, the definitions are located in a single **Definitions** section at the end of the analysis.

## Tax lists

Under continuing law, every year, each county auditor is required to compile a general tax list and general duplicate of all the real and public utility property in the county. Those lists must contain specific information about each property, its owner, and its value.

The general duplicate is, as the name suggests, simply a duplicate of the general tax list. The auditor retains the general tax list and delivers the general duplicate to the county treasurer.<sup>1</sup> The county treasurer is responsible for collecting the taxes listed on the duplicate and settling with the county auditor (in other words, paying the auditor the money that was collected) at various times throughout the year. Immediately after the annual August 10 settlement, the county auditor must compile a list and duplicate of all delinquent lands in the county, a delinquent land list, in substantially the same form as the general tax list and duplicate.

At the time of making the delinquent land list, the county auditor must also compile a delinquent tax list consisting of all property 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 (the collection period ending on August 10 of the year the list is made). This is the key distinction between the delinquent land list and the delinquent tax list. The delinquent land list contains all land for which taxes are unpaid, the delinquent tax list contains only land on which taxes have recently become unpaid.<sup>2</sup>

The delinquent tax list is the basis for most tax foreclosure proceedings. Existing law, eliminated by the bill, also requires the auditor to compile a delinquent vacant land tax list of all delinquent vacant land prior to any foreclosure or foreclosure and forfeiture actions involving those lands. The bill repeals this requirement and eliminates a particular foreclosure and forfeiture proceeding for delinquent vacant lands.<sup>3</sup>

## Tax foreclosure proceedings

Unpaid taxes on real property create a lien on the property, giving the governmental entity holding the lien several options to recover the money owed. As unpaid taxes sometimes coexist with other problems, such as blight, the lien also provides the governmental entity the ability to address these concurrent problems. These options include:

- The treasurer seeking foreclosure in court – the county treasurer pursuing a foreclosure, in the same way that a mortgage lien is foreclosed (*foreclosure as on a mortgage*). When taxes charged against an entry on the tax duplicate, or any part of those taxes, are not paid within 60 days after delivery of the delinquent land duplicate to the county treasurer, the county treasurer must seek the sale of the property to enforce the lien for

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<sup>1</sup> R.C. 319.28(A), not in the bill.

<sup>2</sup> R.C. 321.24, not in the bill; R.C. 5721.01, 5721.011, and 5721.03.

<sup>3</sup> R.C. 5721.03(A) and 5721.14, repealed.



the taxes. One of the ways the county treasurer may do that is through a civil action to foreclose the state's lien for taxes in the same way mortgage liens are foreclosed.<sup>4</sup>

- For *abandoned property*, the county prosecutor, as requested by the treasurer or other appropriate plaintiff, filing a foreclosure action before the county board of revision, under *the Expedited Foreclosure on Abandoned Land Law*.<sup>5</sup>
- The county prosecutor, on his or her own initiative, bringing a foreclosure action under *the Delinquent Land Law* in a court or the county board of revision.<sup>6 7</sup>

When referred to, either individually or collectively, each of these three types of proceedings will be called a “**tax foreclosure proceeding.**”

Once a tax foreclosure proceeding is initiated, then the property generally is offered for sale, with a minimum bid being statutorily determined. If the property does not sell for want of a minimum bid, the property might be forfeited to the state, a political subdivision, or a County Land Reutilization Corporation (CLRC). This can be accomplished through the use of several different laws:

- The County Land Reutilization Program Law (CLRP Law) (R.C. Chapter 5722);
- The Delinquent Land Law (R.C. 5721);
- The Delinquent Vacant Land Law (R.C. 5721.14) (repealed by the bill);
- The Forfeited Land Law (R.C. Chapter 5723).

In addition, the state may sell its right to the taxes owed via a tax certificate. The person, including a CLRC, that purchases or otherwise acquires a tax certificate is called a **certificate holder**. As a result of acquiring a tax certificate, the certificate holder obtains the state's first lien on the property and may exercise the state's right to foreclose on the property through a tax foreclosure proceeding.<sup>8</sup>

### **The equity of redemption**

When property is ordered sold to satisfy a debt, including a tax debt, related to the property, it is sold “at foreclosure.” The term “foreclosure” refers to the foreclosure of the debtor's right to prevent the sale by paying the amount due. That right is called “the equity of redemption,” a longstanding tenet of law. Once the equity of redemption is foreclosed, the debtor no longer has the right to retain the property being sold by paying the amount due.<sup>9</sup> The

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<sup>4</sup> R.C. 323.25.

<sup>5</sup> R.C. 323.66(A) and 323.69(A).

<sup>6</sup> R.C. 5721.18.

<sup>7</sup> R.C. 5721.01(A)(1).

<sup>8</sup> R.C. 5721.30 and 5721.37; R.C. 5721.35, not in the bill.

<sup>9</sup> R.C. 2329.33, not in the bill, and *Black's Law Dictionary*, 11<sup>th</sup> Edition.

bill, and the analysis, will refer at various times to a tax debtor's right to redeem the property for some amount of time before or after a foreclosure sale. This is itself a referral to the equity of redemption.

## Foreclosure as on a mortgage

One option a county has to recover taxes owed on real property is to foreclose on the property in the same manner as delinquent mortgages are foreclosed on. Continuing law expressly permits the treasurer to initiate a foreclosure action, using the same process as in mortgage foreclosure actions, when taxes charged against an entry on the **delinquent tax list** are not paid within 60 days after delivery of the list to the county treasurer.<sup>10</sup> In such a foreclosure action, the county must prove that taxes on the property are owed, the amount of the taxes owed, and that the taxes are unpaid. Under continuing law, a certified copy of the entry on the tax duplicate acts as prima facie evidence (evidence that is sufficient to establish a fact or raise a presumption) of the allegations and the validity of the taxes. The bill adds an additional method of establishing prima facie evidence: an affidavit from the county treasurer or deputy treasurer describing the property and the amounts of the taxes, assessments, charges, interest, and penalties due and unpaid, and stating that the county auditor has certified the amount to the county treasurer as delinquent.<sup>11</sup>

Under existing law, property ordered to be sold but remaining unsold for want of bidders after being offered for sale on either one or two separate occasions, depending on whether the land is abandoned or not, must be forfeited to the state or to a political subdivision, school district, or a CLRC. Abandoned land must be forfeited if unsold after the first sale. The bill removes the option for the land to be forfeited to a political subdivision, school district, or a CLRC. Instead, if not sold for want of bidders, the bill requires that the land be forfeited to the state.<sup>12</sup>

## Expedited Foreclosure on Abandoned Land Law

### Overview

If the land at question is abandoned land (see "**Definitions**," below), another option is for a tax foreclosure proceeding brought before the county board of revision, under the Expedited Foreclosure on Abandoned Land Law. Each county has a board of revision, created by state law, to hear complaints regarding property's tax valuation, classification, and assessment. Those boards have been given other powers by statute at various times, such as the power to hear tax foreclosure actions on abandoned land.

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<sup>10</sup> R.C. 323.25.

<sup>11</sup> R.C. 323.26, and *Black's Law Dictionary*, 11<sup>th</sup> Edition.

<sup>12</sup> R.C. 323.28(D).

## Status as unoccupied

To be subject to the Expedited Foreclosure on Abandoned Land Law, the property must be **abandoned land** – delinquent lands that are unoccupied and that have been on the county’s abandoned land list or the delinquent tax list for specified periods of time. To qualify as **unoccupied**, property must meet one or more conditions, such as there is no inhabited building on the property or no business is being conducted on the property.

Under current law, it is prima facie evidence and a rebuttable presumption that the property is unoccupied if at the time the county auditor certifies the delinquent lands list that the property is not agricultural land and two or more of the following apply.

- At the time of the inspection of the property by the local government, no person or business inhabits or is visibly present from an exterior inspection of the property.
- No utility connections service the property, or no such utility connections are actively being billed for the property.
- The property or any improvement on it is boarded up or otherwise sealed because it was found by a political subdivision to be open, vacant, or vandalized.
- The property or improvement is, upon visible inspection, insecure, vacant, or vandalized.

The bill changes the time at which this status must occur from the time the county auditor certifies the delinquent lands list to the time the prosecutor files the complaint in the foreclosure action.

## County board of revision rules

County boards of revision are authorized to adopt rules necessary to administer their cases. The bill expands this rulemaking authority to include rules regarding motions and loosening the standard through which the rules are judged against the Ohio Tax Commissioner’s rules. Under current law, a board of revision’s rules must be consistent with the Tax Commissioner’s rules, under the bill they must not be “irreconcilably inconsistent.”<sup>13</sup>

## Prosecuting attorney and designated counsel

Tax foreclosures before boards of revision are filed by the county prosecutor on behalf of the county treasurer, CLRC, or certificate holder. The bill authorizes the prosecuting attorney to hire outside counsel to initiate these proceedings on behalf of those same parties (the rest of this analysis will continue to refer to the county prosecutor, but mentions of the prosecutor will also apply to designated counsel if the bill becomes law).<sup>14</sup>

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<sup>13</sup> R.C. 323.66(B).

<sup>14</sup> R.C. 323.69(A) and (B) and 323.691(A); R.C. 323.68, by reference, not in the bill.

## Service of process

After the prosecuting attorney files a complaint for foreclosure before a board of revision, the clerk of courts is required to serve notice of the proceeding on the property owner and each lienholder or other person with a recorded legal or equitable ownership or security interest in the property. With two exceptions, the bill does not change these provisions. The first change addresses the notice's explanation of the equity of redemption (that is the property owner's right to retain the property by paying the impositions against the property by a certain time). Current law simply requires the notice to inform the property owner that property owner's right to redeem the property by paying the impositions. The bill adds that the redemption must be "otherwise in accordance with section 323.25 of the Revised Code," which is the section of law that generally discusses the county treasurer's tax foreclosure obligations.

Under that section, between the filing of a civil foreclosure action but before the applicable redemption period expires, a person entitled to redeem the property may do so by paying the county treasurer an amount sufficient, as determined by the court of board of revision, to pay the taxes, assessments, penalties, interest, and charges then due and unpaid, and the costs incurred in the civil action (this includes most, but not all, of the same items as the definition of "impositions" applied in cases before a board of revision (see "**Definitions**," below)) but also requires the redeeming party to demonstrate that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes. This compliance requirement appears to be the primary change affected by this language.

The second change removes a requirement that the notice include the name of the county board of revision hearing the case, though the address and telephone number for the board must still be provided. As a practical matter, the effect of this change is unclear, as the complaint will likely display the name of the board of revision.<sup>15</sup>

## Transfer to court

Continuing law permits the board to transfer the case to a court either by the motion of the owner, county prosecutor, or the board's own motion. The bill changes the standard for making this type of transfer. Under current law, the board may transfer the case on its own motion if it determines that, given the complexity of the case or other circumstances, a court would be a more appropriate forum for the action. The bill would allow the board to transfer the case on its own motion upon a determination, supported by a preponderance of the evidence provided by the parties, that the property is not abandoned land. Continuing law also allows a board of county revision to transfer a case upon a motion by the property's record owner or the county prosecutor representing the county treasurer.<sup>16</sup>

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<sup>15</sup> R.C. 323.69(B)(1).

<sup>16</sup> R.C. 323.69(E) and 323.691(A)(1).

When a board of revision orders a case before it transferred to a court, the county prosecuting attorney has 28 days after the order is journalized to file a notice of transfer and dismissal with the clerk of court and with the court to which the case was transferred. This deadline is unchanged by the bill. If the county prosecuting attorney does not file the notice of transfer within 28 days, or earlier upon the motion of the prosecuting attorney, court, or board, current law deems the complaint “to have been dismissed without prejudice” by both the court and the board (without prejudice means the complaint can be refiled). The bill instead permits the complaint to be dismissed without prejudice, and eliminates a provision that allows motions requesting an earlier deadline.<sup>17</sup>

### **Motions and hearings**

Under continuing law, a board of revision must hold a final hearing on the merits of a complaint no sooner than 30 days after the complaint is served on the necessary parties.<sup>18</sup> Additional motions and hearings may occur, though.

#### **Motion regarding amounts due, service of process, and property status**

At any time after a complaint is filed under the Expedited Foreclosure on Abandoned Land Law, and before a decree of foreclosure is entered, continuing law allows the record owner or other person with an ownership interest to plead “only”:

- That the impositions due have been paid in full or are invalid or inapplicable;
- That there are issues pertaining to service of process;
- That the property is not abandoned land.

These provisions are unchanged by the bill.

Under current law, at any time before the decree of foreclosure is filed, a person with a security interest of record in the abandoned land may plead either:

- That the impositions shown by the notice to be due and outstanding have been paid in full;
- That, in order to preserve a security interest in the property, the abandoned land should not be disposed of under the Expedited Foreclosure on Abandoned Land Law, and should instead be transferred to a court.

The bill eliminates the second option for those holding security interests.<sup>19</sup>

For the remaining motions, the board must schedule a hearing 30 to 90 days after receiving the motion, and consider only the amount and validity of the impositions, whether the impositions have been paid, and, if applicable, any issues with service of process or whether

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<sup>17</sup> R.C. 323.691(A), (B), and (D).

<sup>18</sup> R.C. 323.70(A).

<sup>19</sup> R.C. 323.72(A) to (D).

the property is abandoned. If the owner or other person who filed the motion shows by a preponderance of the evidence that all impositions against the parcel have been paid, continuing law requires the board to dismiss the complaint. Otherwise, continuing law requires the board to both proceed with the final hearing (which may be consolidated with the hearing on these motions) and proceed as under R.C. 323.73, which addresses the procedure for a resulting foreclosure sale.<sup>20</sup>

### **Motions regarding the property's value**

Before a final hearing, the board of revision hearing the case may determine whether the impositions against the property exceed its fair market value. The determination may come on the board's own motion or through a hearing requested by the property owner or a person with a lien against the property.

Under continuing law, the market value as determined by the county auditor is rebuttably presumed to be the fair market value against which the board compares the amount of impositions against the property. That presumption applies whether an appraisal has been conducted, and the bill adds that it also applies regardless of what the actual fair market value may be. Also under continuing law, if the board is considering the question upon a request from the owner or lienholder, that request must be made at least seven days before the final hearing and be accompanied by a good faith appraisal from a licensed appraiser. The burden is on the owner or lienholder to demonstrate, by a preponderance of the evidence that the impositions do not exceed the auditor's assigned market value.

Under existing law, if the board determines that the impositions exceed the value of the property, the board, at the final hearing on the complaint may order the property foreclosed and, without an appraisal or public auction, order the sheriff to execute a deed to the certificate holder or CLRC upon whose behalf the complaint was filed, or to a community development organization, school district, municipal corporation, county, or township. The liens for taxes *due* at the time the deed is transferred are deemed satisfied and discharged. The bill instead deems the taxes *attached* at the time of the applicable transfer satisfied and discharged. Under continuing law, property taxes for each year attach to property (i.e., they become a lien on the property) on January 1 of that year.<sup>21</sup>

### **Auction, deposit, and proceeds**

When a board of revision enters an order of foreclosure, unless an exception applies (see "**Motions regarding the property's value**," above) the property will be offered for sale at public sheriff's auction. Continuing law establishes rules relating to advertisement of the sale, which the bill expands to permit electronic notice (see "**Electronic notice**," below). At the auction, the bidding begins at an amount equal to the impositions against the property, plus the costs apportioned to the property (see "**Apportionment of costs**," below). The

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<sup>20</sup> R.C. 323.72(A) and (B).

<sup>21</sup> R.C. 323.71 and 323.73(G); R.C. 323.11, not in the bill.

property is sold to the highest bidder, though the sheriff may reject bids that do not meet the minimum bid requirements.

If there is a successful bidder at the auction, continuing law requires the bidder at auction to pay the sheriff a deposit of at least 10% of the purchase price at the time of the auction, and must pay the balance within 30 days. Before the successful bidder pays the deposit, the sheriff *may* notify the successful bidder that failure to pay the balance is considered a default and the deposit will be retained as payment for the costs associated with a future public auction. Under current law, this notice must be given for the sale to be rejected due to default. Under the bill, default must be declared regardless of whether the sheriff provides this notice. After the sale, the property owner has an opportunity to redeem the property. After the end of the redemption period, the board confirms the sale.

Existing law requires that from the total proceeds arising from the sale, transfer, or redemption, 20% must be deposited to the county's Delinquent Tax and Assessment Collection Fund to reimburse the fund for costs for the transfer, redemption, or sale of the property. Up to half of that money may be used by the treasurer for community development, nuisance abatement, foreclosure prevention, demolition, and related services or distributed to a CLRC. The bill instead requires that 10% of the proceeds be deposited into the county treasurer's Delinquent Tax and Assessment Collection Fund, and that another 10% be deposited into the county prosecutor's fund of the same name (both funds are created under continuing law, unaffected by the bill). Additionally, if a CLRC is operating in the county, 10% of the total proceeds must be deposited into the County Land Reutilization Corporation Fund that is created under continuing law.

Under continuing law, the remaining balance of proceeds, if any, are distributed to the appropriate political subdivisions and other taxing units in proportion to their respective claims against the property.

Under existing law, when property is offered for sale pursuant to the Expedited Foreclosure on Abandoned Land Law, but is not sold, and if an electing subdivision or CLRC requests title to the abandoned land any time from the date the complaint for foreclosure is filed to 60 days after the date on which the land was first offered for sale. The electing subdivision or CLRC will acquire the land as if it "appeared at the sale and submitted the winning bid at the auction." The bill changes the timeframe the request must be given to any time *prior to the adjudication of foreclosure*.<sup>22</sup>

### **Apportionment of costs**

The county may bundle multiple properties into a single proceeding before the board of revision. When those properties are sold, the county treasurer or prosecutor must apportion amongst the properties the costs of the proceedings, including the title search, notifying persons, and advertising the sale.

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<sup>22</sup> R.C. 323.77(B).

Under current law, the apportionment must be of actual identified costs, apportioned equally or in proportion to the fair market values of the properties. Under the bill, the apportionment must be according to actual identified and advanced costs expended by the county treasurer or prosecutor, or in proportion to the percentage of which each of their costs bears to the total costs.

If a parcel of abandoned land is sold or otherwise transferred, the officer who conducted the sale or made the transfer, the prosecuting attorney, or the county treasurer may collect a recording fee from the purchaser or transferee and prepare the deed. That officer or the prosecuting attorney or treasurer is authorized to record the deed on behalf of that purchaser or transferee. Under the bill, these officers do not have the authority to record a deed transferred to a CLRC.<sup>23</sup>

## Appeals

Any aggrieved party to a proceeding before the county board of revision under the Expedited Foreclosure on Abandoned Land Law may file an appeal in the court of common pleas upon a final order by the board. Under continuing law, the appeal must be filed not later than 14 days after a statutorily specified date. These dates are:

1. The date on which the order of confirmation of the sale is filed with and journalized by the clerk of court;
2. In the case of a direct transfer to a certificate holder, community development organization, CLRC, municipal corporation, county, or township, the date on which an order of transfer or conveyance is first filed with and journalized by the clerk of court.

The bill adds a third date – the date on which any other final order is filed and journalized with the clerk of court.

Under the bill, after the expiration of the 14-day period, the board of revision is permitted to vacate a final order only for:

- A failure to perfect service of summons and complaint upon an interest holder of record at the time of the filing, shown by clear and convincing evidence;
- A final order relating to a CLRC as prescribed in the Land Reutilization Program Law;
- A motion of the county prosecuting attorney or designated counsel hired by the prosecuting attorney for any reason justifying relief from the judgment.

Aside from these three reasons stated in the bill, motions to vacate or reconsider final orders after the 14-day period may not be used as substitutes for an appeal. Such motions or their equivalent must not be considered by the board of revision, except for the purpose of denying such motions.<sup>24</sup>

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<sup>23</sup> R.C. 323.73(C) and 323.75(A) and (C).

<sup>24</sup> R.C. 323.79.



## **Repealed – disposition of abandoned land not sold at auction**

The bill repeals provisions regarding subsequent sales or transfer of the property offered for sale pursuant to the Expedited Foreclosure on Abandoned Land Law. Under those provisions, a public auction is held for abandoned land, but the property is not sold at the public auction, the county board of revision may order the disposition of the property by order the sale or transfer of the property.

The sheriff may offer the property for sale in any usual and customary manner. The minimum bid in the subsequent public auction is the lesser of 50% of the county auditor's latest valuation of the property or the sum of the impositions against the property plus the apportioned costs.

A community development organization or any school district, municipal corporation, county, or township in which the property is located also may request that title to the property be transferred. This request may be made after the filing of the complaint and before 60 days after the land was first offered for sale. The request must include a representation that the entity will protect the land from further unreasonable deterioration, but if the requester is a subdivision that has elected to create a CLRC, the representation is deemed to have been given. The board may require payment of a negotiated price or the costs of disposing of the property.<sup>25</sup> In conjunction with this repeal, the bill provides that land not sold at the first foreclosure sale is forfeited to the state and disposed of pursuant to the Forfeited Lands Law (see "**Forfeited Lands Law**," below).

## **Delinquent Land Law**

A third option to recover the unpaid taxes is for the county prosecuting attorney, on his or her own initiative, to commence a foreclosure action under the Delinquent Land Law. Properties subject to foreclosure under this law appear on delinquent land tax certificates prepared by the county auditor. A certificate is prepared for each property appearing on a delinquent land list and remaining delinquent one year after (current law allows a master list to be prepared, instead of individual certificates, but the bill repeals that allowance).

The certificates are filed with the county prosecutor who then may initiate foreclosure proceedings. Under current law, the proceedings differ depending on whether the land is merely delinquent for a year or is delinquent vacant land. The bill makes minor changes to the proceedings for delinquent land, and repeals a separate procedure for delinquent vacant land.<sup>26</sup>

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<sup>25</sup> R.C. 323.74, repealed, with conforming changes in R.C. 323.65(G), 323.71, 323.73, 323.75, 323.76, and 1721.10, and 5722.031.

<sup>26</sup> R.C. 5721.13(A) and (C).

## Foreclosure on delinquent land

The disposition procedures for property that has been foreclosed upon as delinquent mortgages are foreclosed on (see “**Foreclosure as on a mortgage,**” above) and the Delinquent Land Law are similar. A notable difference between these methods of foreclosure are the party bringing them, the treasurer initiates a foreclosure as mortgages are foreclosed upon and the prosecutor initiates actions under the Delinquent Land Law. The time within which the cases may be brought also differ. The prosecutor cannot bring a foreclosure action on his or her own initiative until one year after the delinquent tax list is published, and cannot initiate the case if the treasurer already has. Recall that the treasurer is required to initiate a foreclosure action within 60 days of that publication.<sup>27</sup>

Under current law, if the property is not sold pursuant to the original order of sale in an action brought by the prosecutor under the Delinquent Land Law, the court, in its discretion, may order the property to be advertised and offered for sale at a subsequent foreclosure sale, and the court may direct the property to be appraised and fix a minimum price for which it may be sold. The bill removes the court’s ability to order a subsequent sale and instead provides that property not sold pursuant to the original order of sale must be forfeited to the state.<sup>28</sup>

## Foreclosure and forfeiture of delinquent vacant lands – repealed

Under current law, **delinquent vacant lands** are lands that have been delinquent lands for at least a year and that are not improved by a dwelling. The bill eliminates an existing alternative foreclosure and forfeiture procedure for delinquent vacant lands and the related delinquent vacant lands tax list.

Under current law, the auditor must compile a **delinquent vacant land tax list** of all delinquent vacant lands prior to the institution of any foreclosure and forfeiture actions or any foreclosure actions against delinquent vacant land. The law does not require the auditor to create this list, only to create the list prior to foreclosure on delinquent vacant lands may be initiated by the county prosecutor. If the list is prepared, it must be prepared at the time the delinquent tax list is prepared.

Twenty-eight days after final publication of a delinquent vacant land tax list (a date that will occur within 60 days of the delinquent tax duplicate is certified to the county auditor), the county auditor must make a tax certificate for each property on the list, or a master list of those properties. Generally, on receipt of a delinquent vacant land tax certificate or a master list of delinquent vacant tracts, a county prosecuting attorney is required to institute a foreclosure proceeding or a foreclosure and forfeiture proceeding. The foreclosure and forfeiture proceeding is available only to delinquent vacant lands, and they are *in rem* proceedings, meaning the lawsuit is actually filed against the property and not the owner. Existing law establishes forms for the complaint, public notices, and notices to persons with an interest in

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<sup>27</sup> R.C. 323.25, 5721.13(A), 5721.17(A), and 5721.18(A).

<sup>28</sup> R.C. 5721.19(C)(3).

the property, and specific rules for the conduct of proceedings. Multiple properties may be joined in one action, although they may be severed in certain circumstances.

If no answer is filed regarding the complaint within 28 days after the date of the final public notice, the prosecuting attorney may obtain a default judgment regarding the property. At the trial, the delinquent vacant land tax certificate or master list of delinquent vacant tracts is prima facie evidence of the amount and validity of the amounts due and unpaid on the property.

The conveyance by the owner of property subject to a proceeding at any time after the date of public notice but before the date of a judgment of foreclosure and forfeiture does not nullify the county's right to proceed with the action.

In its judgment of foreclosure and forfeiture, the court must enter a finding with respect to the property of the amount owed and the costs incurred in the proceeding that are due and unpaid. The court must order the property to be sold pursuant to the Forfeited Land Law, without appraisal, for not less than the lesser of: (1) the fair market value of the property plus the costs incurred in the proceeding, or (2) the total amount of the finding entered by the court, including all amounts owed prior to the journalization of the order of forfeiture plus the costs incurred in the proceeding. But, if the purchaser is the most recent owner of record or a person connected to the owner, the minimum sales price must be the second amount.

The procedures specific to delinquent vacant lands are repealed under the bill, and those lands are treated as delinquent lands for purposes of enforcing tax liens.<sup>29</sup>

## **Changes applicable to all tax foreclosure proceedings**

### **Delinquent tax list corrections**

Current law requires the auditor to review the first publication of each delinquent tax list for accuracy and completeness and allows the auditor to correct any error appearing in the list in the second newspaper publication. The bill leaves that authority in place, and grants the auditor authority to correct errors at any time if the list is published electronically.<sup>30</sup> (See "**Electronic notice**," below).

### **Inspection of the property**

Under a new provision of law, added by the bill, in any tax foreclosure proceeding in which the property being foreclosed upon is determined to be nonproductive land or abandoned land (see "**Definitions**," below), a CLRC, county, municipality, or township

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<sup>29</sup> R.C. 5721.01, 5721.03, 5721.14, repealed, 5721.15, repealed, and 5721.16, repealed, and conforming changes in R.C. 319.48, 319.54, 323.25, 323.28(E), 323.31(A)(3) and (7), 323.33, 323.65, 323.67, 323.69, 323.72(D), 5721.01, 5721.02, 5721.03, 5721.04, 5721.06, 5721.13, 5721.17, 5721.18, 5721.19, 5721.192, 5721.26, 5721.30, 5721.32, 5721.33, 5721.37, 5722.01, 5722.04, 5722.10, 5722.21, 5723.01(B), 5723.03, 5723.05, 5723.06, 5723.10, and 5723.18.

<sup>30</sup> R.C. 5721.03(B)(4).

(inspecting entity) may enter the property and assess it for environmental, health, or safety purposes or for the presence of nuisance conditions.

Before entering the property, the inspecting entity must file a notice with the court or board of revision that is hearing the proceeding. The notice must state the date or dates the inspecting entity intends to inspect the property. For parties who answered the complaint or responded as required after service by publication, the inspecting entity must include a certificate of service with the notice attesting that the notice has been served upon those parties. Upon the filing and service of the notice, the inspecting party may enter into or upon the property for a period of 14 days after the notice and service is complete, but only on weekdays between 8:30 a.m. and 5:00 p.m. Upon completion of an inspection, the inspecting entity must secure the property in a manner at least as secure as the property was secured at the time of entry.

The inspection authority to enter the property terminates upon any of the following: (1) dismissal of the action, (2) one or more owners of title of record appearing in the foreclosure action and asserting that the property is occupied, (3) any date provided by the court or board of revision, or (4) sale of the property at a sheriff's sale and the sale's confirmation.

While the foreclosure case is pending, entry into or upon the property does not require a search warrant and does not constitute a civil or criminal trespass. In addition, an inspecting entity is not liable for constructive eviction or unlawful entry. The inspecting entity is immune under the Political Subdivision Sovereign Immunity Law from civil liability to third parties on account of the inspection of property. Finally, entry for inspection purposes does not constitute the exercise of dominion or control over the property, nor the right to exercise dominion or control.<sup>31</sup>

### **Electronic notice**

The bill authorizes electronic publication as an alternative to newspaper publication for tax foreclosure proceedings as well as proceedings under the Forfeited Lands Law.<sup>32</sup>

### **Electronic publication as an alternative to newspaper publication**

Under the bill, a **government agency** (county clerk of courts, county treasurer, county auditor, county prosecutor, county sheriff, board of county commissioners or county executive, or CLRC) required to publish a legal notice in one or more newspapers for a purpose associated with the collection or enforcement of real or personal property taxes may satisfy that requirement by causing the required legal notice to be electronically published on a notice website instead of a newspaper.<sup>33</sup> A **notice website** is a website maintained by a government

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<sup>31</sup> R.C. 5721.183.

<sup>32</sup> R.C. 5721.182(B)(1), with conforming changes in R.C. 323.25, 323.69(C), 323.73(A), 5721.03(B), 5721.18, 5721.19, and 5723.05.

<sup>33</sup> R.C. 5721.182(A)(2) and (B)(1).

agency, or by a third party under a contract with the agency, that is contained within an agency's official website, and that contains links to the legal notices electronically published by the agency.<sup>34</sup>

Proof of publication of an electronically published legal notice for the purpose of complying with public notice requirements is satisfied and deemed conclusive upon the submission of an affidavit, certification, or other attestation by any person required to provide the same in the same manner as required had the notice been published in a newspaper or as otherwise provided in Civil Rule 4. When a government agency is authorized or directed by a statute or court of competent jurisdiction to make sales of real property in a tax foreclosure proceeding, the agency, unless otherwise specifically directed or authorized by law, before making the sale, may give notice of the time and place of the sale by publishing the notice on the agency's notice website.<sup>35</sup>

### **Types of notices and contents of notices**

The type of notice that may be electronically published may include notice of:

- Tax delinquencies;
- Tax foreclosure sheriff's sale;
- Service of notice and summons;
- Any process upon unknown defendants under Civil Rule 4 or defendants who cannot be found whenever a government agency is required by law to publish a legal notice in one or more newspapers.

In order to serve the parties required to be served by publication, the electronic publication must contain or provide substantially the same information required had the legal notice been published in a newspaper. If the notice is associated with a tax foreclosure court action, the notice must contain all of the following:

- The case number of the tax foreclosure proceeding;
- The name of the plaintiff;
- The name of at least one of the defendants;
- The parcel number of the property being foreclosed upon.<sup>36</sup>

### **Links to the notice website**

The bill requires a government agency's official website to prominently display a link to the notice website, which must be an index web page containing the list of the current legal

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<sup>34</sup> R.C. 5721.182(A)(4) and (5) and (J)(1).

<sup>35</sup> R.C. 5721.182(B), (H), and (I).

<sup>36</sup> R.C. 5721.182(B)(1) and (3).

notices of the agency with links to the full text of those notices. The official website with a link to the notice website, as well as the notice website itself, must contain an email link or address to submit communication to the government agency if any legal notice is inaccessible or the legal notice is substantially deficient. The government agency must respond to any such communications, and the government agency must store and archive the communications and responses for at least three years. In addition, the government agency must designate an official to be responsible for electronic publications and post that official's name and contact information on the notice website.

Government agencies may agree amongst themselves which one or more is to serve as the government agency that will serve as the official website and notice website provider. When a government agency serves as a government agency for which other government agencies publish required legal notices, that agency may charge the other agencies a reasonable fee that may be taxed as costs in the tax foreclosure proceeding. In the case of posting notice of summons and complaint, or in the case of bulk postings, the government agencies must mutually agree on an amount, which must be between \$200 and \$1,000 per notice.

Finally, the county prosecutor, county treasurer, county auditor, county sheriff, county clerk of courts, and CLRC must provide access to the electronic notice through a link on their official websites.<sup>37</sup> It is unclear whether this requirement is independent of the ability of government agencies to join together as described in the preceding paragraph.

### **Duration of postings**

As a general rule, a legal notice must remain available on the notice website at least until the last posting date required by law has expired or until the event described in a notice has taken place, whichever occurs later. But, if an electronically published legal notice is inaccessible for 25% or more of the publication time frame provided by law, the legal notice must be electronically published for the entirety of that time frame beginning anew from the day on which the access to the notice is restored, and the action for which the legal notice is required must be delayed accordingly.

Aside from the general rule, the bill sets some specific duration rules. For example, for foreclosure proceedings instituted under the Delinquent Lands Law, if service by publication is necessary, publication must be made once a week for three consecutive weeks in a newspaper of general circulation; service is complete at the expiration of three weeks after the date of the first publication. The bill alternatively permits service by publication to be completed by electronic publication for 14 days.<sup>38</sup>

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<sup>37</sup> R.C. 5721.182(C), (D), (G), and (J).

<sup>38</sup> R.C. 5721.18, 5721.182(E) and (F), and 5721.19.

## Ending electronic notice

Subject to the provisions described in “**Duration of postings**,” above, a government agency desiring to terminate providing the electronic posting of legal notices may do so only upon publishing a 60-day notice on its existing official website, and publishing, within that 60-day time period, the notice for three weeks in a paper of general circulation in the county. At the expiration of the 60-day time period, the government agency may terminate electronic posting of legal notices.<sup>39</sup>

## Auditor’s fee

The bill increases the fees that the county auditor charges in relation to real estate transfers. Under current law, the auditor charges \$5 for deeds of land sold for taxes, to be paid by the purchaser. The bill increases this fee to \$45.<sup>40</sup>

## Redeeming delinquent land

Delinquent land may be redeemed, avoiding a transfer as a result of a tax proceeding, in a variety of circumstances under continuing law:

- Before tax foreclosure proceedings have been instituted, the delinquent land may be redeemed by tendering to the county treasurer an amount sufficient to pay the amounts owed, and the costs incurred in any tax foreclosure proceeding instituted against the real property.
- After a tax foreclosure proceeding has been instituted, but before the filing of an entry of confirmation of sale pursuant to the proceeding or before the expiration of the alternative redemption period, if applicable, any person entitled to redeem the land may do so by (1) tendering an amount sufficient to pay the amounts owed, and the costs incurred in the proceeding and (2) demonstrating that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes.
- *After a tax foreclosure proceeding has been instituted, but before the filing of an entry of confirmation of sale pursuant to the proceeding or before the expiration of the alternative redemption period, if applicable, any person entitled to redeem the land who has not previously defaulted on a delinquent tax contract (a contract by which the amounts owed are paid in installments over several years) with respect to that delinquent land may enter into a delinquent tax contract with the county treasurer for the payment of the amounts owed, together with the costs incurred in the proceeding, upon demonstrating that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes.*

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<sup>39</sup> R.C. 5721.182(K).

<sup>40</sup> R.C. 319.54(G)(1).



The bill revises this third route by expanding the ability to enter into delinquent tax contracts. Under the bill, a person may enter into the contract *at any time prior to an adjudication of foreclosure*. In addition, the bill clarifies that the redeeming person must be (1) a person who owns agricultural real property or owns and occupies residential real property or a manufactured or mobile home that does not have an outstanding tax lien certificate or judgment of foreclosure against it, or (2) a person who is a vendee of such property under a purchase agreement or land contract and who occupies the property.

The execution of a delinquent tax contract does not stop the prosecution of the proceeding to judgment, and the contract may be terminated if the property is not in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes during the term of the contract. If the property is not in compliance, or if payments are not made when due, the property may be sold or otherwise disposed of.<sup>41</sup>

### **Residue of moneys from the sale or foreclosure of lands**

Under continuing law, changed in part by the bill, any money left over from the sale of foreclosed property remaining to the owner on the order of distribution, and that is unclaimed by the owner within 60 days from its receipt, must be paid into the county treasury and be charged separately to the county treasurer by the county auditor, in the name of the supposed owner. This does not apply to cases where the property is transferred without sale to a municipal corporation, township, county, community development organization, or CLRC pursuant to the alternative redemption period procedures. Under existing law, the treasurer must retain the excess money left over from the sale in the treasury for the proper owner for three years. If it is not claimed by the owner within three years, the excess is forfeited to the Delinquent Tax and Assessment Collection Fund or if the county has a County Land Reutilization Corporation Fund, then it will go in that fund. The bill reduces the duration the treasurer must hold on to the excess funds for the owner, from three years to two years.<sup>42</sup>

### **Delinquent tax and assessment collection fund allocations**

Under continuing law, 5% of all delinquent property taxes and assessments collected by the county treasurer are deposited in the county's Delinquent Tax and Assessment Collection (DTAC) Funds (the treasurer and prosecutor each have a DTAC fund). In general, the county treasurer and the county prosecuting attorney each receive one-half of the money. The treasurer may use a portion of the treasurer's allocation for the benefit of a CLRC. In addition, under existing law, if requested by the county treasurer, the board of county commissioners may designate an additional amount, up to 5%, of all delinquent property taxes collected, to be deposited in the treasurer's DTAC fund for the use of a CLRC. The bill allows, in addition to the treasurer, a county commissioner or the CLRC to make this request. In addition, if the board of

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<sup>41</sup> R.C. 5721.25.

<sup>42</sup> R.C. 5721.20.



county commissioners designates the additional amount, the bill requires that the additional amount be deposited directly into the CLRC fund and not the treasurer's DTAC fund.<sup>43</sup>

## County Land Reutilization Program Law (CLRP Law)

Under continuing law, counties, municipal corporations, and townships may elect to create county land reutilization programs (CLRPs) to facilitate the effective reutilization of nonproductive land situated within their boundaries, which can involve the creation of county land reutilization corporations (CLRCs) to act on the county's behalf. Subdivisions that have made such an election are called **electing subdivisions**. If an electing subdivision has created a CLRC, the foreclosure, sale, management, and disposition of all nonproductive land situated within the electing subdivision's boundaries are governed by the procedures set forth in the CLRP Law. At a general level, **nonproductive land (nonproductive property)** can be described as property that:

- Is subject to a filed tax foreclosure action;
- Satisfies one of a range of criteria, such as abandonment or unsafe conditions;
- The subdivision wishes to acquire; *and*
- Is offered for sale at the tax foreclosure proceeding, but unsold for want of a minimum bid.

(See "**Definitions**," below) Nonproductive land must be sold or transferred to the subdivision in the manner set forth in the CLRP Law or the Expedited Foreclosure on Abandoned Land Law.

The prosecuting attorney identifies all properties within the subdivision with respect to which a tax foreclosure proceeding is pending. The subdivision then selects the delinquent nonproductive properties that it wishes to acquire and informs the prosecuting attorney prior to the property's advertisement for sale. The CLRP Law specifies the minimum price that the property can be sold for, generally the amounts owed to the subdivision. If the property is not sold for want of a minimum bid, the subdivision is deemed to have submitted the winning bid and the land is deemed sold to the subdivision, with the consideration being the amounts owed. After the end of the redemption period, title to the property is deeded to the subdivision. The subdivision then takes possession of the property and may dispose of the land as it considers appropriate. Disposition may include sale without competitive bidding.

In addition, subdivisions may accept conveyance of the property in lieu of foreclosure.<sup>44</sup>

### Land reutilization program – definition

Under existing law, **land reutilization program** means the procedures and activities concerning the acquisition, management, and disposition of affected delinquent property set

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<sup>43</sup> R.C. 321.261(B) and (C).

<sup>44</sup> R.C. 5722.01, 5722.02, 5722.03, 5722.06, 5722.07, and 5722.09, repealed.

forth in the CLRP Law. The bill expands the scope of the program to include real property “otherwise acquired” by an electing subdivision, including a CLRC.<sup>45</sup>

### **Municipality or township priority right of acquisition of CLRC acquired property**

The bill repeals the priority right of acquisition of a municipal corporation and a township. Under the repealed provision, if a CLRC acquires property in a transaction other than a tax foreclosure proceeding, the property is subject to a priority right of acquisition by a municipal corporation or township in which the property is located. A municipal corporation or township claiming the right must file, and the CLRC must record, an instrument evidencing the right and intent to acquire the property within 30 days after the CLRC record the deed to the property. Once the instrument is recorded, the municipal corporation or township gets a priority right of acquisition effective for 90 days. If no statement of intent is timely filed or if the right is not timely exercised, the CLRC may dispose of the property free of any claim of the municipal corporation or township.<sup>46</sup>

### **Sale of tax foreclosed nonproductive property to electing subdivision**

If nonproductive property is available for acquisition pursuant to a tax foreclosure proceeding and is not sold for want of a minimum bid, and the electing subdivision where the property is located wants to acquire the property (see “**County Land Reutilization Program Law (CLRP Law)**,” above) it must be sold or transferred to the electing subdivision in the manner set forth in the CLRP Law or the Expedited Foreclosure on Abandoned Land Law. (Recall that the term “electing subdivision” does not mean the subdivision is electing to acquire the property but has elected to use the procedures in the CLRP law.)

Under the CLRP Law, if property an electing subdivision wishes to acquire is not sold for want of a minimum bid in a tax foreclosure sale, the electing subdivision is deemed to have submitted the winning bid, and the property is deemed sold to the electing subdivision. The property is sold for no consideration other than the costs of the proceeding, if applicable.

The costs incurred in the tax foreclosure proceeding are charged to the taxing districts, including the electing subdivision, with claims against the property in direct proportion to their interest in the amounts owed. If the electing subdivision is a CLRC, it is deemed to have the proportionate interest of the county on whose behalf it has been organized.

Under continuing law, in making a semiannual apportionment of funds, the auditor generally must retain at the next apportionment the amount charged to each such taxing district. The bill specifies that the costs retained by the auditor must be deposited to the credit of the county treasurer’s and prosecutor’s respective Delinquent Tax and Assessment Collection

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<sup>45</sup> R.C. 5722.01.

<sup>46</sup> R.C. 5722.02(D).

Fund to reimburse the treasurer and prosecutor according to their actual identified and advanced costs, equally, or in proportion to the percentage that each of their costs bear to the total costs.

The bill also eliminates a provision stating that, at the time of the sale or transfer, the officer must collect and the electing subdivision must pay the fee required by law for transferring and recording of deeds.<sup>47</sup>

### **Incontestability of title after transfer to electing subdivision**

Under existing law, whenever nonproductive property is sold under the CLRP Law to an electing subdivision, after one year from the date the deed conveying that property is recorded, no civil action may be commenced or defense asserted to question the validity of the electing subdivision's title vested for any irregularity, informality, or omission in the proceedings relative to the property's foreclosure, forfeiture, or sale.

The bill expands this provision to also specifically apply to transfers and sales to an electing subdivision under the Expedited Foreclosure on Abandoned Land Law, the Delinquent Land Law, and the Forfeited Lands Law.<sup>48</sup>

### **Transfer of forfeited nonproductive lands to electing subdivision**

Under existing law, if property has been forfeited to the state pursuant to a tax foreclosure proceeding, an electing subdivision may notify the county auditor of its desire to acquire the property prior to its advertisement and sale under the Forfeited Lands Law (see "**Forfeited Lands Law**," below).

If no minimum bid on the property is received, the property is deemed sold to the electing subdivision for no consideration other than the fee for transferring and recording of deeds, which the bill eliminates. Once the deed is recorded and delivered to the electing subdivision, the electing subdivision gets an incontestable title generally free from all liens and encumbrances. If the electing subdivision is a CLRC and the nonproductive land is sold or transferred to the corporation, existing law says that the corporation is deemed to have the proportionate interest of the county on whose behalf it has been designated and organized in the taxes, assessment, charges, penalties, and interest on the nonproductive land in that county. Under existing law, the auditor retains at the next apportionment the amount charged to each taxing district, except that in the case of nonproductive land sold or transferred to a county land reutilization corporation, the auditor must provide an invoice to the corporation for the amount charged to it. The bill adds that the costs retained by the auditor must be deposited to the credit of the county treasurer's Delinquent Tax and Assessment Collection Fund and the county prosecutor's Delinquent Tax and Assessment Collection Fund to reimburse the treasurer and prosecutor according to actual identified and advanced costs expended by the prosecutor

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<sup>47</sup> R.C. 5722.03.

<sup>48</sup> R.C. 5722.05.

or treasurer, equally, or in proportion to the percentage that each of their costs bears to the total costs.<sup>49</sup>

Upon delivery of a deed conveying any nonproductive property to an electing subdivision, the county auditor must charge all costs incurred in any tax foreclosure proceeding or incurred as a result of the forfeiture and sale of the property to the taxing districts, including the electing subdivision, in direct proportion to their interest in the amounts owed at the time the property was sold.

If no political subdivision has requested to purchase the property, property otherwise forfeited to the state for want of a bid at the foreclosure sale may, upon the request of a CLRC, be transferred directly to the CLRC. The bill specifies that this transfer is to be without cost.<sup>50</sup>

### **Electing subdivision (not CLRC) duty to manage CLRP property**

Under continuing law an electing subdivision, *other than a CLRC*, when assuming possession and control of nonproductive property it acquires through its land reutilization program must administer it. Included in the administration duties is the duty to study, analyze, and evaluate potential uses for the property to effectively reutilize it. The bill eliminates this duty.<sup>51</sup>

### **Sale of acquired real property**

#### **Authority to sell**

Under current law, an electing subdivision may sell, without competitive bidding, any property it acquires as a part of its land reutilization program to *assure* the property's effective reutilization. Except with respect to a sale by or to a CLRC, land reutilization program real property generally must be sold for at least its fair market value. Alternatively, upon the approval of the taxing districts entitled to share in sale proceeds, an electing subdivision (other than a CLRC) may either retain the property for public use, or transfer the property for consideration less than fair market value, if the transfer is to another political subdivision that devotes the property to public use. No approval is needed if the electing subdivision sells the property at or above fair market value.

The bill broadens this authority to permit an electing subdivision, including a CLRC, to sell any program real property to *promote* the property's effective reutilization. It also eliminates the fair market value requirement and the approval requirement for retaining property. As a result, under the bill, an electing subdivision may either:

1. Retain the property to devote it to land reutilization purposes or public use (without approval); or

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<sup>49</sup> R.C. 5722.04.

<sup>50</sup> R.C. 5722.04.

<sup>51</sup> R.C. 5722.06.

2. Sell, lease, or otherwise transfer the property to any person, including a political subdivision, to promote the property's effective reutilization.<sup>52</sup>

### Proceeds of the sale

When an electing subdivision, other than a CLRC, sells any land reutilization program property, the sale proceeds must be applied and distributed in a specified order. The proceeds from the sale of property held by a CLRC must be retained by CLRC for the purposes for which it was organized without further reporting or accounting to the taxing districts.

The bill applies the disposition provisions to all electing subdivisions, including CLRCs, revises the disposition provisions as described in the table below, and specifies that neither electing subdivisions nor CLRCs are required to report or account to taxing districts.<sup>53</sup>

Current law	The bill
<p>1. To the electing subdivision in reimbursement of its expenses incurred on account of the acquisition, maintenance, and disposition of the property, and such other CLRP expenses the electing subdivision apportions to it;</p> <p>2. To the county treasurer to reimburse those taxing districts to which the county auditor charged the costs of foreclosure or costs of forfeiture pursuant to the LRP Law. If the proceeds of the sale, after making the required payment, are insufficient to reimburse the full amounts charged to taxing districts, the balance of the proceeds must be used to reimburse the taxing districts in the same proportion as the costs were charged;</p> <p>3. To the county treasurer for distribution to the taxing districts charged costs by the county auditor, in the same proportion they were charged costs as an amount representing both of the following:</p> <ul style="list-style-type: none"> <li>▪ The taxes and related amounts owed on the property as of the date the electing subdivision acquires it;</li> </ul>	<p>1. Same;</p> <p>2. To the electing subdivision to be used for land reutilization purposes, public purposes, and, in the case of CLRCs, any purpose enumerated in the CIC Law;</p> <p>3. Repealed.</p>

<sup>52</sup> R.C. 5722.07.

<sup>53</sup> R.C. 5722.08 and 5722.15(B).

Current law	The bill
<ul style="list-style-type: none"> <li>▪ The taxes and related amounts that would have been due and payable with respect to the property from that date if the property was not exempt from taxation.</li> </ul> <p>4. The balance, if any, to be retained by the electing subdivision for application to the payment of costs and expenses of its land reutilization program.</p>	<p>4. The balance, if any, to be retained by the electing subdivision for its present or future land reutilization program uses and expenses.</p>

### **Taxing district committees and neighborhood advisory committees - repealed**

The bill repeals the authority of electing subdivisions to establish taxing district committees and neighborhood advisory committees. (CLRCs do not have the authority to establish these committees under current law or the bill.) A taxing district committee reviews program operations and advises the electing subdivision regarding land reutilization program matters. Similarly, an electing subdivision consults with a neighborhood advisory it creates to review program operations and receive advice from committee members.<sup>54</sup>

### **Updating taxing districts**

The bill repeals a provision requiring an electing subdivision to keep all taxing districts having an interest in the taxes, and related amounts on the real property it acquires as part of the land reutilization program informed concerning the program's administration.<sup>55</sup>

### **Conveyance in lieu of foreclosure – delinquent land**

The bill clarifies that an electing subdivision may accept a conveyance in lieu of foreclosure of tax delinquent property from the property owners, *regardless of whether a tax foreclosure proceeding has been filed against the property*. Current law allows the conveyance in lieu of foreclosure, but does not address whether that may occur if an action has not been filed.

Under continuing law, such a conveyance may only be accepted with the consent of the county auditor. If an electing subdivision or CLRC certifies to the auditor in writing that the delinquent property is abandoned property, the auditor must consent to the conveyance. The bill specifies that, while this consent must be given regardless of whether there are any liens, encumbrances, or other interests of record on the property, they remain with the property. Under existing law, the sale or transfer of the property acquired by the electing subdivision

<sup>54</sup> R.C. 5722.09, repealed.

<sup>55</sup> R.C. 5722.09, repealed.

extinguishes the lien on the title for all liens, assessments, penalties, interest, and charges *delinquent* at the time of the conveyance. Under the bill, the conveyance of the property extinguish all liens on the title for taxes, assessments, penalties, interest, and charges at the time of the conveyance.<sup>56</sup>

### **Electing subdivision (not CLRC) auction property after 15 years – repealed**

The bill repeals a requirement that, if an electing subdivision (other than a CLRC) acquires and holds real property pursuant to the CLRP Law and does not sell or otherwise transfer the property within 15 years after acquisition, it must offer that property for sale at public auction during the 16<sup>th</sup> year with a statutorily specified minimum bid. If the property is not sold under this repealed requirement, it may be disposed of or retained for any lawful purpose without further application of the CLRP Law.<sup>57</sup>

### **Removal from tax lists**

When an electing subdivision purchases nonproductive delinquent property or forfeited property under the CLRP Law, the county auditor must remove from the auditor's tax lists and duplicates all taxes, assessments, charges, penalties, and interest that are due and payable on the property at the time of the sale. The bill expands this provision to include property acquired under the CLRP or the Expedited Foreclosure on Abandoned Land Law, the Forfeited Lands Law, and delinquent property conveyed in lieu of foreclosure.<sup>58</sup>

### **Acquiring delinquent property for redevelopment**

Under continuing law, a county, municipal corporation, or township, or a CLRC, may declare that it is in the public interest to acquire tax-delinquent real property for the public purpose of redeveloping or otherwise rendering it suitable for productive, tax-paying use. Pursuant to such a declaration, the local government or CLRC may purchase or otherwise acquire title to delinquent land for which no tax certificate has been sold, but may not do so by appropriation (eminent domain). Under existing law, the title passes free and clear of the lien for delinquent taxes if all of the taxing authorities consent to release their claims. Generally, if a taxing authority does not consent, the entire amount of the lien continues until paid or otherwise discharged, but if a CLRC acquires the title, the lien is extinguished simultaneously with the transfer of title.

Under the bill, no consent is needed: the lien for the taxes and associated foreclosure costs is extinguished and the transfer of the title to the local government or CLRC is transferred free and clear of the lien for the taxes and costs. This includes taxes that are a lien but not yet

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<sup>56</sup> R.C. 5722.10.

<sup>57</sup> R.C. 5722.13, repealed, with conforming change in R.C. 5722.14.

<sup>58</sup> R.C. 5722.15.

determined, assessed, and levied (recall that taxes for a tax year attach, and are then enforceable through a tax lien, on the first day of the tax year).<sup>59</sup>

### **Funding – county land reutilization funds**

Under continuing law, a county land reutilization fund must be established in the county treasury of each county in which a CLRC has been organized and in which the county treasurer has made advance tax payments. Continuing law creates a number of funding sources for this type of fund, one of which is collected penalties and interest on delinquent taxes, the amount of which the treasurer has advanced to taxing districts in anticipation of their collection. When the county treasurer eventually collects the amounts advanced to taxing districts, the treasurer deposits the penalties and interest in the county land reutilization fund. Under continuing law, one way the treasurer can fund advanced payments to taxing districts is by borrowing the money.

Under current law, at the end of a year immediately following a year in which penalties and interest are deposited in the fund, any balance remaining in the fund must be encumbered to repay any money borrowed, and attendant interest, to fund advanced payments. The bill changes the law to only require that amounts remaining *from the deposited penalties and interest* be encumbered for the debt.<sup>60</sup>

### **Real property taxes**

The bill adds a new potential funding source for CLRCs. In addition to all sources of funding and income from any lawful source, up to 50% of real property taxes collected on real property conveyed by a CLRC may be remitted and paid to the county land reutilization fund. Such allocation of real property tax revenue must commence with the first taxable year following the date of conveyance and continue for a period of up to five years. The remittance applies to real property acquired by a CLRC through a foreclosure in the manner of a mortgage foreclosure, under the Expedited Foreclosure on Abandoned Land Law, the CLRP Law, the Delinquent Lands Law, and the Forfeited Land Law (See **COMMENT**).

A resolution by the board of county commissioners is necessary to invoke the remittance, and the resolution must provide for the amount and duration of the remittance. The resolution may also prescribe the taxing districts within the county to which the remittance must apply, and may include provisions exempting one or more taxing districts.

If the real property becomes delinquent within five years following the first taxable year after the conveyance, the county treasurer may enforce the delinquency in the same manner provided by law, but the required remittance to the CLRC does not apply to the property from the first taxable year that the real property taxes on such conveyed land becomes delinquent.

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<sup>59</sup> R.C. 5722.21; R.C. 323.11, not in the bill.

<sup>60</sup> R.C. 321.263; R.C. 321.341, not in the bill.



A CLRC may, by resolution of its board, elect not to receive the real property taxes for any real property conveyed by the CLRC. If such an election is made, the CLRC must notify the county treasurer by filing a copy of the resolution with the county treasurer. Thereafter, the county treasurer must remit such real property taxes to the appropriate taxing districts.<sup>61</sup>

### **Real property taxes exemption**

Under existing law, all lands acquired and held by an electing subdivision pursuant to the Land Reutilization Program Law is deemed real property used for a public purpose and is exempt from property taxes until sold. The bill specifies that this exemption commences on the day title to the property is transferred to the electing subdivision and continues while title is held by the electing subdivision. The exemption ends on the last day of the tax year in which the instrument transferring title from the electing subdivision to an owner whose use of the property does not qualify for an exemption pursuant to any other section of the Revised Code is recorded. If the title to the property is transferred to the electing subdivision and from the electing subdivision in the same tax year, then the exemption continues to the end of that tax year. The amount of taxes that are a lien but not yet determined, assessed, and levied for the tax year in which title is transferred to the electing subdivision must be forgiven or refunded by the county auditor.

Existing law also exempts land acquired by an electing subdivision acquired through methods other than the Land Reutilization Program. The bill adds a requirement that, for electing subdivisions other than CLRCs, the exemption only applies if the instrument transferring title to the electing subdivision states that it is being acquired as part of a land reutilization program. The bill also adds the same time calculation requirements to this exemption as are discussed in the above paragraph.<sup>62</sup>

### **Miscellaneous CLRC provisions**

#### **Exemption from sales tax**

The bill exempts from the Ohio sales tax both of the following:

- Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with a CLRC or its wholly owned subsidiary;
- Sales to a CLRC or its wholly owned subsidiary and sales by the CLRC or its wholly owned subsidiary.<sup>63</sup>

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<sup>61</sup> R.C. 5709.12(F) and 5722.111.

<sup>62</sup> R.C. 5722.11.

<sup>63</sup> R.C. 5739.02(B)(13) and (57).

## **General tax exemption**

In addition to the tax exemptions discussed above, the bill establishes a general tax exemption for CLRCs. They are not required to pay any state or local taxes or assessments, including sales tax, in connection with any projects they fund, or upon revenues or property they acquire or use, or income arising from those projects, revenue, or properties.<sup>64</sup>

## **Recorder's fees**

Under continuing law, the county recorder charges statutorily established fees for recording, indexing, making certified copies, and filing instruments. Under continuing law, these fees are not charged to a CLRC, its wholly owned subsidiary, or any other electing subdivision.

The bill revises this exemption as it applies to electing subdivisions. Under the bill, these fee provisions do not apply to any instrument filed by an electing subdivision, other than a CLRC or its wholly owned subsidiary, that transfers land to the electing subdivision's land reutilization program, if the instrument states that the land is being acquired by the electing subdivision as part of its land reutilization program.<sup>65</sup>

## **Municipal corporation transfer of property**

The bill permits a municipal corporation to transfer, lease, or convey real property to a CLRC or its subsidiary for any purpose under the Community Improvement Corporation Law, without competitive bidding. Under continuing law, the municipal corporation may transfer, lease, or convey real property in accordance with and for the purposes of an urban redevelopment or urban renewal plan, without competitive bidding.<sup>66</sup>

## **Underground Storage Tank Program and Corrective Action Program**

The state has an Underground Storage Tank Program and Corrective Action Program for releases of petroleum from underground storage tanks that, generally, make a "responsible person" strictly liable for any costs incurred for any corrective or enforcement actions with respect to a release of petroleum under these programs. While, generally, "responsible person" means the person who is the owner or operator of an underground storage tank system, the bill specifies that the term does not include a CLRC or its wholly owned subsidiary.

The bill also specifies that a "Class C release" of petroleum includes a release on property owned by a CLRC or owned by the state pursuant to the Forfeited Land Law. A Class C release, under continuing law, is generally a release of petroleum occurring or identified from an underground storage tank system for which the responsible person is not a viable person capable of undertaking or completing the required corrective actions.<sup>67</sup>

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<sup>64</sup> R.C. 1724.02(D).

<sup>65</sup> R.C. 317.32.

<sup>66</sup> R.C. 721.28.

<sup>67</sup> R.C. 3737.87 and R.C. 3737.88 and 3737.89, not in the bill.

## **Prevailing Wage Law does not apply to CLRCs**

The bill establishes that a county land reutilization corporation is not considered a public authority for purposes of Ohio's Prevailing Wage Laws.<sup>68</sup>

## **Community Improvement Corporation Law – records not public records**

Under continuing law, a community improvement corporation (CIC) may be an economic development corporation (EDC) or a CLRC.<sup>69</sup> The bill specifies that electronic records created or maintained by an EDC, when it is acting as an agent of a political subdivision, and CLRCs, at all times, in proprietary databases or applications are not public records for the purposes of the Public Records Law.<sup>70</sup>

## **Forfeited Lands Law**

### **Forfeiture generally**

Under existing law, if property, pursuant to a tax foreclosure proceeding, has been advertised and offered for sale on two separate occasions, not less than two weeks apart, and not sold for want of bidders, the property is forfeited to the state or to a political subdivision, school district, or CLRC. To make the forfeiture effective, the county prosecuting attorney must certify to the court that the property has been twice offered for sale and not sold for want of a bidder and the court enters an order of forfeiture.

Under the bill, if the tax foreclosure proceeding is pursuant to the Expedited Foreclosure on Abandoned Land Law, the property is required to have been advertised and offered for sale only once, and the bill clarifies that entity receiving the certification and issuing the forfeiture order is the board of revision, not the court.

The bill repeals a provision specifying that, after receiving the certification, the court must notify the political subdivision and school district in which the property is located, and any CLRC in the county, and offer to forfeit the property to the political subdivision, school district, or corporation, or to an electing subdivision. The entity can then petition for the property. If no such petition is filed within ten days, the court forfeits the property to the state. If an entity petitions to receive the property, the forfeiture is effective when, by entry, the court orders it forfeited. The court then certifies a copy of the forfeiture entry to the county auditor and then all the right, title, claim, and interest of the former owner is transferred to the entity. The bill instead simply specifies that the property is forfeited to the state upon an entry ordering forfeiture, by the court or board of revision.<sup>71</sup>

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<sup>68</sup> R.C. 1724.02(E).

<sup>69</sup> R.C. 1724.01(A)(1), not in the bill.

<sup>70</sup> R.C. 1724.11(A)(3).

<sup>71</sup> R.C. 5723.01(A) to (C).

## Sale of forfeited lands

Under continuing law, unchanged by the bill, the county auditor must maintain a **list of forfeited lands**. Under existing law, which the bill amends, the auditor must offer property on the list for sale at least annually.

The bill gives the auditor more discretion, requiring the auditor to conduct a sale of *one or more tracts* of such property annually, or more frequently if necessary. Generally, under the bill, the auditor selects the tract or tracts to be included in the sale, not being required to include all tracts on the list or offer any particular tract for sale at a particular time or within a given interval.

Continuing law also allows CLRCs to request that the county auditor transfer any parcel on the list of forfeited lands. Upon that request, the land is deemed sold to the CLRC by the state for no consideration. The bill offers CLRCs the ability to prevent property being offered for sale on one occasion without subsequently being required to acquire that property by request. Specifically, if a CLRC requests that a particular tract or tracts not be offered for sale at any time before the second publication of the notice of sale in a newspaper, or three days before the sale if published electronically, then the county auditor cannot offer that tract for sale. The request does not obligate the CLRC to acquire the tract, but a CLRC can only stop a particular property from being offered for sale once every three years.

If the amounts due on property have not been paid when the county auditor fixes the date for the sale of forfeited lands, current law requires the auditor to give public notice, once a week for two consecutive weeks before the sale, of the amounts due and the possibility of sale if the amounts remain unpaid by the time of the sale. The bill allows the notice to be published electronically for 14 days or under the existing terms.

Existing law specifies that the sale will be held at the county courthouse. Under the bill, the sale may be conducted at any location in the county considered appropriate by the county auditor.<sup>72</sup>

Under continuing law, the minimum bid at a public sale for forfeited lands is the lesser of two amounts:

- The fair market value of the parcel, as determined by the county auditor and as specified in the delinquent land tax certificate or master list of delinquent tracts, plus the costs incurred in the foreclosure proceedings and forfeiture proceedings;
- The total amount of the finding entered by the court, including all taxes, assessments, charges, penalties, and interest payable subsequent to the delivery to the county prosecuting attorney of the delinquent land tax certificate of master list of delinquent tracts and prior to the journalization of the order of forfeiture that led to the property's forfeiture to the state, plus the costs incurred in the foreclosure and forfeiture

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<sup>72</sup> R.C. 5723.04(A), (B), and (D), 5723.05, 5723.06(A)(1)(b), and 5723.10.

proceedings. For the purpose of determining this amount, the county treasurer may estimate the amount of taxes, assessments, interest, penalties, and costs that would have been payable at the time the land was forfeited to the state.

Under current law, if a parcel is sold at a public sale for the second amount, and the county treasurer's estimate of that amount exceeds the amount of taxes, assessments, interest, penalties, and costs actually payable when the land is transferred to the purchaser, the county auditor must refund the purchaser the difference. The bill changes this provision to look at the amounts due when the land was forfeited, not when transferred to a purchaser.

Similar to the Expedited Foreclosure on Abandoned Land Law, the bill specifies that the successful bidder must pay the county auditor a deposit of at least 10% of the sale price, at the time of the public auction, and pay the balance of the sale price within 30 days. At the time of the public auction and before the successful bidder pays the deposit, the county auditor may provide notice to the successful bidder that failure to pay the balance of the sale price within the prescribed period is considered a default under the terms of the sale and will result in retention of the deposit as payment for costs associated with advertising and offering the forfeited land for sale at a future public auction.

If this notice is provided to the successful bidder and the bidder fails to pay the balance of the sale price within the prescribed period, the sale must be voided due to default, and the county auditor retains the full amount of the deposit. In such a case, voiding of the sale occurs automatically without any action necessary on the part of the county auditor. If the amount retained by the county auditor is less than the costs, the county auditor may sue to recover the amount of any deficiency from the bidder. The forfeited land involved in the voided sale is put back on the forfeited land list and disposed of in accordance with the Forfeited Land Law. The defaulting bidder, any member of the bidder's immediate family, any person with a power of attorney granted by the bidder, and any pass-through entity, trust, corporation, association, or other entity directly or indirectly owned or controlled by the bidder or a member of the defaulting bidder's immediate family is prohibited from bidding on forfeited land at any future public auction for five years from the date of the bidder's default.<sup>73</sup>

### **Distribution of the proceeds of the sale**

Generally, the proceeds from a forfeiture sale are distributed as follows:

1. First, the county auditor deducts costs pertaining to the forfeiture and sale. The bill does not make substantive changes to this rule.
2. Next, under current law, the part of the proceeds that is equal to 10% of the taxes and assessments due must be deposited in equal shares into the county treasurer's and county prosecutor's Delinquent Tax and Assessment Collection funds created pursuant to continuing law. The bill increases the amount distributed under this provision from 10% to 30% of the taxes and assessments due. The bill also expands the funds receiving

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<sup>73</sup> R.C. 5723.06(A)(1), (D), and (E).

funds under this provision to include the county land reutilization fund if one is established by the county treasurer under continuing law.

3. Next, under a new provision added by the bill, if a CLRC is operating in the county, then an additional part of the proceeds equal to 10% of the taxes and assessments due must be deposited into the County Land Reutilization Corporation Fund.
4. Finally, as under continuing law, the remaining proceeds must be distributed by the auditor to the appropriate subdivisions to pay the taxes, assessments, charges, penalties, and interest that are due and unpaid. If the proceeds available for distribution are insufficient to pay the entire amount owed, the auditor must distribute the available proceeds in proportion to the amount that each subdivision is due. The court also may enter a deficiency judgment for the unpaid amount against the last owner of record of the land before its forfeiture to the state.<sup>74</sup>

### **Civil immunity in relation to forfeited lands**

The bill provides that the county and its officers or employees are not liable for damages, or subject to equitable remedies, for violation of a variety of environmental laws or any rule adopted or order, permit, license, variance, or plan approval issued under any of those laws in connection with property forfeited to the state under the Forfeiture Law, including the Air and Water Pollution Control Laws, the Underground Storage Tank Law, the Solid and Hazardous Wastes Law, the Hazardous Substances Law, and the Ohio Environmental Protection Agency Law.<sup>75</sup>

## **Nuisance buildings**

### **Township**

The bill authorizes a board of township trustees to contract with a CLRC to act as the board's agent in connection with the removal, repair, or securing of buildings that have been declared insecure, unsafe, or structurally defective by a fire department or a building department, or buildings that have been declared to be dangerous to life or health or unfit for human habitation by the local board of health (nuisance properties).

The township's total cost of removing, repairing, or securing nuisance properties, when approved by the board, are paid out of the township general fund or, if the costs exceed \$500, borrowed from a financial institution. Existing law specifies that the cost may be collected by one of two ways. The bill clarifies that either or both of the specified methods may be used and that these costs include costs incurred by an agent CLRC.

The first method involves the board, as under current law, or the agent CLRC, as added to the law by the bill, having the township fiscal officer certify the total costs to the county auditor who must place the costs upon the tax duplicate for the property, which act as a lien on

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<sup>74</sup> R.C. 5723.18.

<sup>75</sup> R.C. 5723.20.

the property. If certified by an agent CLRC, the auditor must place a notation on the tax list and duplicate showing the amount of the lien ascribed specifically to the CLRC. Under the bill, the costs are to be collected as other taxes. In the case of costs certified by the township, the costs must be returned to the township general fund; in the case of costs certified by an agent CLRC, the costs must be paid at the next settlement to the agent CLRC directly as instructed in an affidavit from the agent CLRC delivered to the county auditor or county treasurer.

The second method involves the board, as under current law, or an agent CLRC, as added to the law by the bill, commencing a civil action to recover their respective total costs from the property owner.<sup>76</sup>

### **Municipal corporation – collection of abatement costs**

Under continuing law, a municipal corporation may contract with a CLRC to act as the municipal corporation's agent to remove, repair, or secure nuisance properties (abatement activity). The municipal corporation or its agent CLRC may collect the total cost of abatement activity it incurs by (1) commencing a civil action, (2) adding the costs to the tax list and duplicate, and (3) placing a lien for the costs and foreclosing on the property. The bill revises provisions relating to the latter two methods.<sup>77</sup>

#### **Add costs to tax list and duplicate**

One method to recover the costs is for the municipal corporation or its agent CLRC may certify to the county auditor the total costs of the abatement activity, together with information identifying the property, the period of time in which the abatement activity commenced, and the owner. The county auditor then places the costs as a charge upon the tax list and duplicate, which become a lien on the property.

Under current law, the costs are to be collected as other taxes and returned to the municipal corporation, as directed by the legislative authority or by the agent CLRC in an affidavit to the auditor or treasurer. The placement of the costs on the tax list and duplicate relates back to, and is effective in priority, as of the date the costs were incurred, provided that the municipal corporation or the agent CLRC certifies the total costs within one year from the date the costs were incurred. Under the bill, the costs have the same priority of other taxes, and it is stated more clearly that the costs will be reimbursed directly to whichever party incurred them.

Under existing law, if a lien placed on property is extinguished because the property is transferred to a CLRC, the municipal corporation may still sue the property owner to recoup the costs incurred with respect to that property. The bill expands this authority to include the agent CLRC.<sup>78</sup>

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<sup>76</sup> R.C. 505.86.

<sup>77</sup> R.C. 715.261(A)(2) and (B).

<sup>78</sup> R.C. 715.261(B)(1).

## Placing a lien and foreclosing

Under another method, the municipal corporation or its agent CLRC may file a lien on property for the costs. The municipal corporation or agent CLRC may then pursue a foreclosure action to enforce the lien (a) in a court of competent jurisdiction or (b) with the county board of revision pursuant to the Expedited Foreclosure on Abandoned Land Law. Upon the entry of a decree of foreclosure, the county sheriff must advertise and offer the property for sale, with the minimum bid being the amounts owed on the property, the total abatement activity costs incurred, and any associated court costs and interest. The bill allows the sheriff to sell the property without an appraisal.

If the property is not sold for want of a minimum bid, existing law provides that the property must be disposed of as follows:

1. If the municipal corporation or its agent elects to acquire the property, it must be transferred to the municipal corporation or its agent as if the property were transferred by all owners in title to the municipal corporation or its agent in lieu of foreclosure. Additionally, the transfer is free from *any* lien for costs incurred to abate the property or for unpaid taxes, penalties, interest, charges, or assessments.

The bill revises this provision to deem the municipal corporation or its agent CLRC to have submitted the winning bid; the property is deemed sold to the municipal corporation or its agent for no consideration other than the cost of the proceedings. The bill specifies the procedure by which the municipal corporation or its agent CLRC obtains title, which is incontestable and free and clear of all liens and encumbrances, *except* for easements and covenants of record running with the land and created prior to the time of filing of the lien that was the subject of the foreclosure action.

2. As under continuing law, if the municipal corporation or its agent CLRC does not elect to acquire the property, the property is forfeited as provided in the Forfeited Lands Law, though only to the state, as the bill revised that law to end forfeiture to political subdivisions.

Under existing law, the property owner may redeem the property by paying the minimum bid within ten days after the entry of the decree of foreclosure. The bill extends the redemption period to permit redemption prior to the journalization of the confirmation of sale.<sup>79</sup>

## EPA asbestos demolition or renovation project fees

Under continuing law, upon submitting a notification to the Ohio EPA relating to an asbestos demolition or renovation project, an owner or operator who is responsible for the project must pay fees set forth in a statutory schedule. The bill prohibits the state, a

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<sup>79</sup> R.C. 715.261(B)(3).



municipality, or other political subdivision from charging an owner or operator fees other than the schedule fees in connection with the notification.<sup>80</sup>

## Definitions

**Abandoned land (abandoned property)** means delinquent lands, including any improvements on the lands, that are unoccupied and that first appeared on the abandoned land list or the delinquent tax list, at whichever of the following times is applicable:

1. In the case of agricultural land, at any time after two years after the county auditor makes the certification of the delinquent land list;
2. In the case of other types of land, at any time after the county auditor makes the certification of the delinquent land list.<sup>81</sup>

**Alternative redemption period** means, in any tax foreclosure proceeding, 28 days after an adjudication of foreclosure is journalized by a court or county board of revision having jurisdiction over the proceedings. Upon the expiration of the alternative redemption period, the right of redemption terminates without further order of the court or board of revision.<sup>82</sup>

**Delinquent land or delinquent lands (delinquent property)** is all lands, including lands that are unimproved by any dwelling, upon which delinquent taxes remain unpaid at the time a settlement is made between the county treasurer and auditor.<sup>83</sup>

**Delinquent tax list** means a list and duplicate, prepared by the county auditor, of all delinquent lands in the auditor's county, subject to certain exceptions. The delinquent land list and duplicate contains the description of the property, and the owner's name, and the total amount of all taxes, assessments, recoupment charges, penalties, and interest due and unpaid.<sup>84</sup>

**Delinquent taxes** means:

1. Any taxes charged against an entry on the general tax list and duplicate of real and public utility property that were charged against an entry on such list and duplicate for a prior tax year and any penalties and interest charged against such taxes.
2. 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

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<sup>80</sup> R.C. 3745.11(G).

<sup>81</sup> R.C. 323.65.

<sup>82</sup> R.C. 323.65(J).

<sup>83</sup> R.C. 5721.01.

<sup>84</sup> R.C. 5721.011 and 5721.03.

installment of such taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against such taxes.<sup>85</sup>

**Delinquent vacant lands** are lands that have been delinquent lands for at least one year and are unimproved by any dwelling. The bill eliminates this term.<sup>86</sup>

**Electing subdivision** is a municipal corporation that has enacted an ordinance or a township or county that has adopted a resolution for purposes of adopting and implementing the procedures set forth in the CLRP Law. A CLRC organized by a county and designated to act on behalf of the county deemed to be the electing subdivision.<sup>87</sup>

**Impositions** means delinquent taxes, assessments, penalties, interest, costs, reasonable attorney's fees of a certificate holder, applicable and permissible costs of the prosecuting attorney, and other permissible charges against abandoned land.<sup>88</sup>

**Land reutilization program** means the procedures and activities concerning the acquisition, management, and disposition of affected delinquent lands set forth in the CLRP Law and real property otherwise acquired by an electing subdivision, including a CLRC.<sup>89</sup>

**Nonproductive land (nonproductive property)** is delinquent land with respect to which a tax foreclosure proceeding has been instituted and to which one of the following criteria applies:

1. There are no buildings located on the land;
2. The land is abandoned land;
3. None of the buildings located on the land are occupied, and the township or municipal corporation in which the land is located instituted unsafe building proceedings;
4. None of the buildings located on the land are occupied at the time the foreclosure proceeding is initiated, and the local government or CLRC determines that the land is eligible for acquisition through a land reutilization program.<sup>90</sup>

**Right (or equity) of redemption**, as used in this analysis, means right of the property owner to redeem property subject to foreclosure by paying the amounts owed on the property.

**Tax foreclosure proceeding**, as used in this analysis, is a collective term that means a foreclosure proceeding for delinquent taxes under the general Executions Against Property Law, the Expedited Foreclosure on Abandoned Land Law, and the Delinquent Land Law.

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<sup>85</sup> R.C. 323.01.

<sup>86</sup> R.C. 5721.01.

<sup>87</sup> R.C. 5722.01.

<sup>88</sup> R.C. 323.65(E).

<sup>89</sup> R.C. 5722.01.

<sup>90</sup> R.C. 5722.01.

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## COMMENT

The bill authorizes a board of county commissioners to require that 50% of all property tax revenue collected on property conveyed by a CLRC be paid to and utilized by the CLRC for five years following that conveyance.<sup>91</sup> In this provision's absence, such revenue would be paid to local taxing authorities, e.g., school districts, townships, park districts, etc. This mechanism may conflict with Article XII, Section 5 of the Ohio Constitution, which directs that "[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state distinctly, the object of the same, to which only, it shall be applied." As a result, taxes levied for a specific purpose, including property taxes, may not be used for any other purpose. For example, voter-approved property taxes may only be used for the purpose for which voters approved them.<sup>92</sup>

Under the bill, property taxes may be redirected to CLRCs even though the underlying tax revenue approved by the taxing authority or by voters could not be used for CLRC purposes under the purpose for which the levy was authorized. Thus, this redirection mechanism may conflict with this constitutional directive.

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## HISTORY

Action	Date
Introduced	03-31-21

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ANHB0241IN-CORRECTED-134/ar

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<sup>91</sup> R.C. 5722.111.

<sup>92</sup> See *In re Transfer of Funds*, 52 Ohio App. 3d 1, 2 (2d Dist. 1988).