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H.B. 734
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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Rogers and Hicks-Hudson

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SUMMARY

- Repeals a provision authorizing the foreclosure of property to secure payment of delinquent property tax liens while allowing most other liens to survive the sale or transfer of the tax-foreclosed property.
- Prohibits certain persons owing or affiliated with persons owing delinquent property tax from purchasing tax-foreclosed property or delinquent tax certificates.
- Stipulates that an individual who knowingly violates the purchase prohibition commits criminal falsification.

DETAILED ANALYSIS

Tax foreclosure proceedings

The bill discontinues one method by which property may be foreclosed upon to secure payment of the state's lien for delinquent property taxes. Pursuant to this method, most other liens survive the sale or transfer of the tax-foreclosed property. As a result, the bill requires the use of other tax foreclosure methods, which generally result in the foreclosed property being sold free and clear of all liens.

Property taxes are liens of the state on the property against which they are assessed. If taxes are not timely paid, penalties and interest accrue, and the county auditor will enter the property on the delinquent tax list. If the delinquent tax and any penalties and interest owed on the property are not paid within 60 days after the property first appears on that list, payment of those amounts may be secured by foreclosing on the property.

Current law prescribes several methods that may be used by the county treasurer and prosecuting attorney to foreclose upon tax-delinquent property. Under most of these methods, a title search is conducted to identify other holders of liens on the property and those other lienholders are served notice of the foreclosure action, and a judgment ordering the foreclosure of the property results in the extinguishment of all of those other liens.[1]

However, one foreclosure method authorized under current law does not require a title search or notice to the lienholders. Under this method, only the state's lien for delinquent taxes and, if one exists, a receiver's lien – a lien for unreimbursed expenses to abate a public nuisance – is extinguished when the property is sold. This method ultimately imposes fewer procedural requirements, generally allowing the state to secure payment more quickly and at a lower cost.

Under this method, in addition to not receiving notice of the foreclosure action, the identity of other lienholders is omitted from the foreclosure complaint as well as the tax foreclosure notice, which is published in a newspaper and mailed to all interested parties. That notice and the advertisement for sale, which is published after judgment has been rendered, includes a statement that all liens except the state's lien for delinquent taxes and a receiver's lien survive the sale or transfer of the tax-foreclosed property, presumably to notify potential buyers that liens may be attached to that property.

The bill disallows the foreclosure of tax-delinquent property under this method, instead generally requiring the use of a foreclosure method that requires a title search and notification of lienholders and ensures that the foreclosed property will be sold clear of all liens.[2]

Sale of tax-foreclosed property

Once tax delinquent property is foreclosed, continuing law authorizes the property to be sold in a court-authorized sale run by the sheriff or another county official. The bill prohibits the owner of the property before it was foreclosed, persons owing delinquent Ohio property tax, and certain associated persons from purchasing the property at these sales.

Under current law, the former owner or an "associated person" may purchase the tax-foreclosed property, but not for an amount less than all taxes, assessments, charges, penalties, and interest owed on the property plus the costs incurred in the foreclosure proceedings. If the property sells for an amount less than the amount owed on the property, the buyer must sign an affidavit attesting that the buyer is not the former owner or an associated person. If within three years the auditor discovers that the owner or an associated person purchased the property for an amount less than the amount owed on the property, the buyer must pay the difference.

Associated persons include a member of that former owner's immediate family, an agent or family member of the owner, or a business owned or controlled by the owner or family member.

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[1] See, e.g., R.C. 5721.14 and 5721.18(B).

[2] R.C. 5721.18, 5721.19(F), 5721.191, and 5723.10; conforming changes in R.C. 5721.01, 5721.19(E), 5721.192, 5722.01, 5723.05, 5723.12, and 5723.18.

The bill instead outright prohibits the former owner and these associated persons from purchasing tax-foreclosed property, regardless of the purchase price, and additionally extends this prohibition to any person or pass-through entity that currently owes delinquent property taxes on any Ohio property and any pass-through entity owned by an investor that owes such taxes.

To enforce this prohibition, the bill requires, before the deed is transferred, that the transferee present to the selling official an affidavit attesting that the transferee is not any of the parties the bill prohibits from purchasing such property.[3]

Any individual who knowingly makes a false statement on the affidavit is guilty of falsification, which is a first degree misdemeanor that generally carries a fine of up to $1,000 and a jail term of up to 180 days.[4]

Tax certificate sales

In lieu of pursuing the foreclosure of tax delinquent properties, as described above, a county treasurer may opt to sell the enforcement rights to the state's delinquent lien to a private third party. These rights are conveyed via a tax certificate, sold at a public auction or pursuant to a negotiated sale, that authorizes the purchaser to initiate foreclosure proceedings against the certificate property. Current law prohibits any sale of a tax certificate to the certificate property's owner or a negotiated sale to a business in which the certificate owner is an investor.

As with the bill's prohibitions on certain parties purchasing foreclosed, tax-delinquent property, the bill likewise prohibits the sale of a tax certificate, whether through an auction or negotiated sale, to the owner of the certificate property or any other of the associated or tax-delinquent parties that the bill prohibits from purchasing tax-foreclosed property.

Similar to tax-foreclosed property sales under the bill, the purchaser of the tax certificate must present to the county treasurer an affidavit attesting that the purchaser is not a party prohibited from purchasing the tax certificate. Any individual who knowingly makes a false statement on the affidavit is likewise guilty of falsification.[5]

The bill maintains a provision in current law that allows a county treasurer to adopt rules prohibiting those who are delinquent on any obligation owed to Ohio, property tax or otherwise, from purchasing tax certificates in a negotiated sale.[6]

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[3] R.C. 323.28, 323.74, 5721.16, 5721.19(A) and (J), and 5723.06.

[4] R.C. 323.28, 323.74, 5721.19(K), and 5723.06; R.C. 2921.13(F)(1), 2929.24(A)(1), and 2929.28(A)(2)(a)(i), not in the bill.

[5] R.C. 5721.32 and 5721.33.

[6] R.C. 5721.33(E)(1).

HISTORY

Action	Date
Introduced	07-27-20

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