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S.B. 206*
135th General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsor: Sen. Hackett

Margaret E. Marcy, Attorney

SUMMARY

Abandoned and derelict aircraft

- Authorizes a person to recoup unpaid storage costs from the owner of an aircraft by perfecting a lien on the aircraft.
- Establishes specific notification procedures that apply before the director of a public-use airport may perfect a lien on an abandoned aircraft for storage costs and for labor on or furnishing materials for the abandoned aircraft.
- Establishes a process to dispose of a derelict aircraft located on a public-use airport's property through either public auction or through an aircraft salvage or scrap metal dealer.
- Specifies that the owner of a derelict aircraft remains liable for any remaining costs, fees, and charges if the price of the aircraft does not cover the amount owed to the airport.
- Establishes a procedure for any excess proceeds from the disposal of a derelict aircraft to be distributed to other lienholders, the owner of the aircraft, or the Unclaimed Funds Trust Fund, as circumstances warrant.

Priority of property tax certificate liens

- Requires that, before a delinquent property tax certificate purchaser can hold the first lien position in any foreclosure of the property, the purchaser must first offer to sell the certificate to the person who held the immediately junior lien at the time of the certificate sale, if any.

* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Mechanic's liens

- Changes the default expiration date of a notice of commencement from six years to four years.
- Requires the notice of commencement to include a statement advising of that four-year expiration date.
- Allows the person who contracted for an improvement, upon its completion, to request that the county recorder indicate that the notice of commencement is expired.

Self-service storage facilities

- Authorizes an owner of a self-storage facility to dispose of stored property of occupants whose rental agreement is expired or has been terminated.
- Modifies the threshold of liability relating to self-service storage spaces.

Oil and Gas Land Management Commission leases

- Increases from three to five years the term of the standard lease used by a state agency when leasing oil and gas rights on property owned or managed by the state agency.

DETAILED ANALYSIS

Abandoned and derelict aircraft

Introduction

The bill adds unpaid storage costs to the list of costs that a person may recoup through the placement of a lien on an aircraft. It also establishes notification procedures that apply when perfecting a lien with respect to an abandoned aircraft located at a public-use airport. Additionally, it establishes a process for a public-use airport to sell a derelict aircraft left on the airport's property.

While current law establishes a process for placing a lien on an aircraft for performing labor on (i.e., repairing, servicing, and maintaining) or furnishing materials for an aircraft, it does not establish a process for storage liens or for getting rid of derelict aircraft left on an airport's property.

Abandoned and derelict aircraft meaning

Under the bill, an abandoned aircraft is one located on the premises of a public-use airport (i.e., an airport available for use by the general public without the prior approval of the owner or operator, except as federal laws or regulations require) when the owner or operator of the aircraft has not paid any tie-down, hangar, rent, or storage costs for use of the premises for at least 90 consecutive days.¹ A derelict aircraft, in contrast, is one that meets all of the following:

¹ R.C. 1311.71.

1. It is located on the premises of a public-use airport.
2. It is not in a flyable condition.
3. It does not comply with the U.S. Federal Aviation Administration (FAA) regulations that would allow it to be operated or flown.
4. It does not have a written repair plan that is approved and signed by either an FAA certified airframe and power plant mechanic or a person otherwise authorized to perform maintenance on the aircraft, in accordance with FAA regulations.
5. The owner or operator of the aircraft has not paid any tie-down, hangar, rent, or storage costs for use of the premises for at least 90 consecutive days.²

An abandoned aircraft might also be a derelict aircraft, if it meets the additional conditions related to derelict aircraft.

Storage liens

As indicated above, the existing process for placing a lien on an aircraft applies to costs for labor performed on, and materials furnished for, an aircraft. The bill applies this process to costs incurred for the storage of an aircraft. The existing process establishes procedures for perfecting the lien, which include the following:

- Filing an affidavit with the FAA to perfect the lien;
- Specifications for what must be included in the affidavit, such as the amount owed to the lien claimant and a description of the aircraft;
- A 90-day period in which to file the affidavit;
- Serving a copy of the affidavit on the owner;
- Lien priority processes;
- Enforcement of the lien through the court with jurisdiction in the county in which either the storage took place or in which the public-use airport's primary place of business is located (when in Ohio);
- Processes for an aircraft owner to take to release the lien or commence a suit on the lien; and
- Processes for the lien claimant (the airport) to maintain the lien (a lien otherwise lasts six years, unless released sooner) and the awarding of attorney's fees.³

² R.C. 4561.26.

³ R.C. 1311.72, 1311.73, 1311.74, not in the bill, 1311.75, 1311.76, 1311.77, 1311.78, not in the bill, 1311.79, not in the bill, and 1311.80, not in the bill.

Additional procedures for abandoned aircraft

The bill establishes a notification procedure that the director of a public-use airport must complete before the director may perfect a lien on an abandoned aircraft. Specifically, the director must search the airport's appropriate records and contact the FAA's Aircraft Registration Branch and the Office of Aviation (with the Ohio Department of Transportation) to determine the name and address of the abandoned aircraft's last registered owner. Within 20 days of receiving that information, the director must then send notice to the owner identified by the FAA and the Office of Aviation. The notice must include all of the following:

- A description of the abandoned aircraft, including its FAA N-Number, manufacturer name, model designation, and serial number;
- The location of the abandoned aircraft on the airport premises;
- The amount of any fees and charges for the use of the airport by the abandoned aircraft that have accrued; and
- That the airport may seek to perfect a lien if within 30 calendar days after the receipt of notice or notification that delivery was not possible the owner does not remove the abandoned aircraft and pay all of the accrued fees and charges.

The notice may be sent either by certified or express mail with return receipt requested, by certified mail with electronic tracking, by a commercial carrier service utilizing any form of delivery requiring a signed receipt, or by personal service. If the owner does not respond to the notice, does not remove the abandoned aircraft, and does not pay the accrued fees and charges in full within 30 days of receipt of the notice (or notification that delivery was not possible), the director may proceed in perfecting a lien on the abandoned aircraft. The failure of the owner to receive the notice of removal does not invalidate a perfected lien, if the director of the public-use airport complied with the notice procedures.⁴

Disposal process for derelict aircraft

Notification

The bill also establishes procedures for a director of a public-use airport to dispose of a derelict aircraft that is located on the airport premises. Before disposal, the director must follow a similar search and notice procedure as it would for placing a lien on an abandoned aircraft. Namely, the director must search its own records and contact the FAA Aircraft Registration Branch and the Office of Aviation to find the last registered owner *and* any person having legal or equitable interest in the derelict aircraft.

Within 20 days of receiving that information, the director must send a notice by the same methods of certified or express mail with return receipt requested, by certified mail with electronic tracking, by a commercial carrier service utilizing any form of delivery requiring a signed receipt, or by personal service. In addition to the notice sent to the owner and any person

⁴ R.C. 1311.721.

with a legal or equitable interest in the derelict aircraft, the director also must file a copy of the notice with the FAA's Aircraft Registration Branch and post a copy of the notice on the airport's website.

The notice itself is similar to the notice sent regarding a lien on an abandoned aircraft. Thus, the notice must identify the aircraft, its location, and the fees and charges that have accrued. However, the notice also must specify that the airport may remove, sell, scrap, or otherwise dispose of the derelict aircraft if, within 30 calendar days after the date of receipt of the notice or notification that delivery was not possible, the owner does not remove the derelict aircraft from the airport and pay all accrued fees and charges.⁵

Disposal

If the owner does not pay the accrued fees and charges in full and remove the derelict aircraft within 30 days of receipt of the notice (or notification that delivery was not possible), the director may do one of the following:

- Sell the derelict aircraft at public auction; or
- Dispose of the derelict aircraft through an aircraft salvage or scrap metal dealer.

If sold at public auction, the director must give notice of the date, time, and place of the sale at least ten calendar days prior to the sale in a written publication of general circulation in the airport's county. The director also may give written notice to any person known to have an interest in purchasing the derelict aircraft.

If disposed of through an aircraft salvage or scrap metal dealer, the director may negotiate with the dealer for the price to be received or paid by the director, based on the circumstances. The director must prepare and maintain all information pertaining to the establishment of that price and its justification. The negotiated price (whatever it may be) is considered a commercially reasonable price.

If the final price of the derelict aircraft is less than the accrued fees and charges against the derelict aircraft (or the director must pay for it to be salvaged/scrapped), the prior owner of the derelict aircraft remains liable to the airport for any remaining fees, charges, and the costs paid to the dealer. The airport may recover those fees, charges, and costs by any remedies otherwise provided by law.

If the final sale price is more than the accrued fees and charges against the aircraft, the director must pay all excess proceeds to the following individuals, as applicable:

1. Any other known lienholders, according to the priority of the liens;
2. The owner of the aircraft, if the owner can be determined and located;
3. The Director of Commerce, to be deposited as unclaimed funds into the Unclaimed Funds Trust Fund, if the owner cannot be determined or located.

⁵ R.C. 4561.26.

Any good faith purchaser or recipient of the derelict aircraft sold or obtained through the process established by the bill takes the derelict aircraft free and clear of the rights or liens of any other person holding legal or equitable interest to the aircraft, regardless of whether that interest was recorded. The purchaser or recipient must notify the FAA and the Office of Aviation of the change in registered ownership.⁶

Priority of property tax certificate liens

One option for counties to collect delinquent real property taxes is through the sale of tax certificates. Those certificates transfer the state's lien on property for delinquent taxes to a private person who then attempts to collect the amounts owed, plus an amount of interest determined at the time the certificate is sold. Under continuing law, the state's lien is superior to all other liens, which means that, if the underlying property is foreclosed upon, the state generally gets paid before any other lien holders, such as those holding a mortgage on the property.⁷

Under current law, when a tax certificate is sold, the state's first lien position is transferred to the purchaser. The bill eliminates the automatic first priority for tax certificate liens and instead predicates first priority for such liens on two conditions:

- Within 90 days of the certificate sale, the certificate buyer notifies the person, if any, who held the lien immediately junior to the state's tax lien at the time of the certificate sale offering that person a right of first refusal to purchase the certificate at its original purchase price. The certificate holder must record that notice with the county recorder.
- The junior lienholder fails to exercise the right of first refusal within 90 days of receiving the notice.

If those conditions are met, or if there is no junior lienholder, the certificate holder has first lien position. If the junior lienholder exercises the right to purchase the certificate, the first lien position will transfer to that lienholder.⁸

Mechanic's liens

Background

A mechanic's lien is a lien that gives a person who performs labor or supplies material that improves real property a right to impose a lien on that property to secure payment for the material supplied or the work performed. Chapter 1311 of the Revised Code sets forth a process that a contractor or material supplier must follow in order to preserve those lien rights. This process involves two key documents: the "notice of commencement" and the "notice of

⁶ R.C. 4561.27.

⁷ R.C. 323.11 and 5721.10, not in the bill.

⁸ R.C. 5721.35(B) and 5721.37(H), with conforming changes in R.C. 5301.25, 5721.06, 5721.32, and 5721.33.

furnishing.” A third document, the “affidavit for mechanic’s lien,” must be filed with the county recorder if the contractor or material supplier wish to actually place a lien on the real property.

Prior to any labor or materials being furnished for an improvement of real property, the owner or lessee who contracts for the labor or materials must record in the office of the county recorder a notice of commencement and must serve a copy of the notice on the original contractor. The notice of commencement is an affidavit that provides specific information on the property, including the owner, the contractor, and any lending institution involved in financing the improvement.

Certain subcontractors or material suppliers, who are not under direct contract with the owner or lessee, but rather are working under an agreement with the original contractor, must serve a notice of furnishing, within a specified time frame, in order to preserve the subcontractor’s or material supplier’s lien rights. The notice of furnishing is served to the owner or lessee of the real property and must include a statement explaining that the notice is required by the Ohio Mechanic’s Lien Law.⁹

Notice of commencement

Under current law, the default expiration date of a notice of commencement for a mechanic’s lien is six years after the notice is filed. The bill changes this to four years after filing and requires the notice to contain the following statement: “The expiration date for this notice of commencement is four years from the date of recording unless a different date is specified herein.” The bill specifies that the expiration of a notice of commencement does not affect the attachment, continuance, or priority of any liens.¹⁰

The bill permits a person who contracted for an improvement to file an affidavit stating that the improvement is complete and to request the county recorder indicate that the notice of commencement is expired. The person must send a copy of this affidavit to the contractor, and any subcontractors and lower tier project participants that were involved in the improvement. The bill specifies that failure to serve a copy of the affidavit on a contractor does not affect the expiration of the notice of commencement, extend the rights of any party seeking to file an affidavit of a mechanic’s lien, or affect any time periods or other rights, requirements, or limitations set forth in the Ohio Mechanic’s Lien Law.¹¹

Self-service storage facilities

Disposal of personal property

Continuing law, unchanged by the bill, gives the owner of a self-service storage facility a lien on an occupant’s personal property stored at the facility, or on the proceeds of the personal property, for certain charges that have become due and for expenses necessary for the

⁹ R.C. 1311.04; R.C. 1311.05 and 1311.06, not in the bill.

¹⁰ R.C. 1311.04(B)(12), (S), and (U); R.C. 1311.13, 1311.14, and 1311.15, not in the bill.

¹¹ R.C. 1311.04(T).

preservation of the property or enforcement of the lien. The law also requires a notice be sent to the occupant and any person with an interest in the property if the owner enforces the lien.

The bill allows the owner, as an alternative to enforcing the lien, to remove and dispose of personal property stored at the facility if the rental agreement has been terminated or is expired.¹²

Limitation of owner liability

Under continuing law, if a rental agreement between an owner and occupant of a self-service storage space contains a provision that limits the value of personal property stored in the storage space, that limit is the maximum value of the stored property. In other words, the value recovered in an insurance claim or civil action against the facility's owner or operator for loss of or damage to stored property cannot exceed the maximum value stated in the rental agreement. However, a rental agreement may not limit the value of property stored in a storage space to less than \$1,000. The provision of the rental agreement that contains this maximum limit must be printed in bold type or underlined. The limit stated in the rental agreement may be increased with the written permission of the owner of the storage space.

Under current law, the limit does not apply to an occupant's claim for damages based on negligence by, or on behalf of, the facility's owner. The bill increases the threshold such that the limit does not apply only in the case of "willful or wanton misconduct" by the owner.¹³

Oil and Gas Land Management Commission leases

Current law states that the term of the standard lease used by a state agency when leasing oil and gas rights on property owned or managed by the state agency is three years. The bill increases the lease term to five years.¹⁴

HISTORY

Action	Date
Introduced	12-12-23
Reported, S. Transportation	06-12-24
Passed Senate (32-1)	06-12-24
Reported, H. Civil Justice	---

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¹² R.C. 5322.03.

¹³ R.C. 5322.06.

¹⁴ R.C. 155.34.