



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 390*

131st General Assembly
(As Reported by S. Ways & Means)

Reps. Schaffer, Retherford, Amstutz, Cera, Rogers, Anielski, Antonio, Baker, Bocchieri, Brenner, Brown, Buchy, Burkley, Celebrezze, Duffey, Fedor, Ginter, Green, Hagan, Hall, Hambley, Huffman, Lepore-Hagan, Maag, Manning, McClain, McColley, M. O'Brien, Patterson, Perales, Rezabek, Romanchuk, Ryan, Scherer, Schuring, Sears, Slaby, Slesnick, K. Smith, Sprague, Strahorn, Thompson, Young

BILL SUMMARY

Repayment of current federal unemployment debt

- Requires a one-time loan to be made from unclaimed funds to the Unemployment Compensation Fund for the purpose of paying unemployment benefits.
- Requires the Director of Job and Family Services to use the amount transferred into the Unemployment Compensation Fund from unclaimed funds to eliminate the balance of amounts advanced to the state from the federal government.
- Requires each experience-rated contributory employer to pay an increased contribution rate for contributions due in 2017 to repay the loan from unclaimed funds.

Contribution rate increase to pay principal on federal advances

- Requires, if as of the computation date an outstanding balance on advances exists, all experience-rated contributory employers to be subject to a contribution rate increase in an amount up to ½ of 1% for the purpose of eliminating the principal of any outstanding advance balance.

* This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete. Also, this analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 390 for an analysis of such provisions.

- States that it is the intent of the General Assembly to repeal this increase in contribution rates in future legislation adopting long-term reforms to the unemployment compensation system.

Surcharge to pay interest on federal advances

- Requires, beginning October 1, 2016, if interest is paid on federal advances from the Unemployment Compensation Interest Contingency Fund, the Director of Job and Family Services to determine the amount of a surcharge to assess against each contributory employer that generates an amount sufficient to repay the amount of any interest paid.

Correctional Institution Inspection Committee

- Changes employment authority of the Correctional Institution Inspection Committee (CIIC).
- Requires a staff representative assigned by CIIC, rather than the Director of CIIC, to serve on certain advisory boards.

Vacant and abandoned properties – expedited foreclosure actions

- Allows a mortgagee to bring an expedited foreclosure action against vacant and abandoned residential property.
- Enables a court to deem foreclosed residential properties vacant and abandoned when the mortgagor is in monetary default on the mortgage and certain conditions apply.
- Provides judicial and sale procedures for vacant and abandoned property.
- Authorizes a mortgagee of a residential property that has been found to be vacant and abandoned to enter and secure the property.
- Authorizes a mortgagee who has not yet filed a mortgage foreclosure action to enter and secure the residential property only if the mortgage contract or other documents provide for the entry.
- Extinguishes an owner's right to redemption of a mortgage on residential property found to be vacant and abandoned upon the confirmation of the sale of the property.

Modifications to judicial sale procedures

Official public sheriff sale website

- Creates the official public sheriff sale website to sell property subject to foreclosure sales.
- Permits judicial sales of residential property to be conducted through the website for the first five years the website is fully operational, after this period sales on the website are required.
- Permits judicial sales of commercial property to be conducted through the website.
- Requires the Department of Administrative Services to solicit competitive sealed proposals for the creation, operation, and maintenance of the website.
- Requires the website to meet specified minimum standards.
- Requires the website to be integrated with an auction management system.
- Establishes the standards for determining the license fee for the website.
- Establishes registration and bidding procedures for sales conducted through the website.
- Establishes the procedures for the sheriff or private selling officer to postpone, cancel, and void sales on the website.
- Permits counties to enter into shared services agreements relating to judicial sales on the website.
- Adds to the definition of "county expenses" to include online financial transaction device payments made through the website.

Private selling officer

- Authorizes a private selling officer to conduct foreclosure sales and establishes procedures relating to those sales.
- Permits a judgement creditor in a foreclosure action to file a motion with the court requesting a specified private selling officer to sell the real property.
- Permits a private selling officer to:
 - Market the real property subject to the foreclosure sale;



- Execute a deed of conveyance of the real property sold at the foreclosure sale;
- Record the deed conveying title to the real property sold at the foreclosure sale.
- Requires the private selling officer that conducts a sale to file a report with the court that issued the sale and to hire a title insurance agent or title insurance company to perform title, escrow, and closing services.
- Establishes a statutory form that may be used as the private selling officer's deed.

Other modifications to judicial sale procedures

- Establishes remote bidding procedures for physical location sales and website sales.
- Establishes new procedures for appraisal of property.
- Increases the penalty fee from 50¢ to \$50 for a freeholder who fails appraisal duties.
- Establishes new procedures for judicial sales of residential properties subsequent to the first sale attempt.
- Requires the purchaser of a property at a judicial sale, other than a purchaser who is the judgment creditor, to deposit a specified amount with the sheriff or private selling officer at the time of the sale.
- Permits a court, upon motion, to return a purchaser's deposit, less the costs of a subsequent sale, when a person fails to timely pay the balance due on the purchase price of a property sold at judicial sale.
- Authorizes, rather than requires, a county treasurer to estimate the tax-related charges to be discharged out of the proceeds of a court-ordered sale, a sale as a result of a partition action, or a sale by an executor, guardian, or trustee.
- Authorizes the plaintiff to an action resulting in such a sale to request that overestimated taxes discharged from sale proceeds be used to pay off unsatisfied liens or be paid to the court for distribution.
- Permits a plaintiff purchasing the property in such a sale to choose to have the current year's taxes, to the extent not yet determined, to be either paid from the sale proceeds or made payable at the next semiannual tax payment date.
- Requires the sheriff or private selling officer to record the deed of a property sold at a judicial sale within a certain time period and provides that if the deed is not

recorded within that time period, the purchaser may file a motion with the court to proceed with the transfer of title.

- Grants the judgment creditor and the first lienholder a right of redemption under certain circumstances.
- Requires additional information to be included in the notice and advertisement of judicial sales.
- Requires additional information for purchaser's identifying information and requires an entity that purchases information at a foreclosure sale to submit identifying information.
- Permits, under certain circumstances, a county prosecutor to proceed with a foreclosure sale of residential real property.

Owner's physical harm to property

- Provides that an owner who knowingly and with the purpose to diminish the value or enjoyment of the residential property moves, defaces, damages, or otherwise improperly tampers with the person's own residential property is guilty of criminal mischief if the property is the subject of a foreclosure action.

Attorney General reports and database

- Requires all officers appointed or authorized by a court to conduct a foreclosure sale of certain residential properties to submit quarterly reports to the Attorney General.
- Requires the Attorney General to establish and maintain a public database containing information submitted in the reports.

Responsibilities of the clerk of the court of common pleas

- Prohibits a clerk from restricting, prohibiting, or modifying the rights of parties seeking service on party defendants.

Enforcement of lost instrument

- Modifies one of the three conditions that must be satisfied for a person to enforce a lost instrument under Ohio Commercial Paper Law.

Tax certificate foreclosure sales

- Permits private selling officers to conduct tax certificate foreclosure sales.



- Establishes sale procedures conducted online.
- Authorizes private selling officers to carry out specified actions in order to sell the foreclosed property and execute a new deed.
- Specifies the amount that is considered reasonable for attorney, private selling officer, and title agent and title insurance company fees charged as costs against property.

Auctioneers

- Requires auctioneers who are not private selling officers who conduct judicial sales to be Ohio residents.

Exempt state employee salary schedules

- Eliminates Schedule E-1 for Step Eight Only, which is a salary schedule for exempt state employees, on July 1, 2017.
- Gradually moves exempt state employees paid under Schedule E-1 for Step Eight Only into the corresponding pay range in Schedule E-1.
- Creates a new step for pay ranges 12 through 16 of Schedule E-1, Step 8, which provides for a higher maximum amount of pay than the current law Schedule E-1 for Step Eight Only.

Certificates of need for changes

- Provides that any failure to conduct a reviewable activity in substantial accordance with an approved certificate of need is itself a reviewable activity if the failure occurs within five years of the reviewable activity's implementation.

Community health assessments, plans, and tax information

- Requires tax-exempt hospitals and boards of health to submit assessments of community health and implementation strategies to the Department of Health in alignment every three years beginning in 2020.
- Requires tax-exempt hospitals to submit to the Department certain tax information on an annual basis beginning July 1, 2017.

Alternative Fuel Vehicle Conversion Grant Program

- Establishes the Alternative Fuel Vehicle Conversion Grant Program to make grants to businesses that purchase large alternative fuel vehicles or convert large traditional fuel vehicles to run on alternative fuel.

Controlling Board

- Changes the name of the Controlling Board Emergency Purposes Fund to the Controlling Board Emergency Purposes/Contingencies Fund.
- Transfers up to \$25 million of surplus GRF revenues for use by the Controlling Board.

Movie production tax credit

- Adjusts how the refundable motion picture tax credit is calculated.
- Removes the \$5 million limit on the maximum credit amount that may be awarded to a motion picture.
- Increases the total amount of credits that may be awarded each year from \$20 million to \$40 million.
- Authorizes motion picture companies to transfer the authority to claim a credit to another person.
- Creates a program for certifying resident film crew trainees and authorizes the state to make payments to motion picture companies equal to 50% of those trainees' salaries.

Other tax-related provisions

- Exempts from sales and use tax the sale of natural gas by a municipal gas company and applies the exemption retroactively.
- Authorizes abatement of unpaid property taxes, penalties, and interest owed on property owned by a metropolitan housing authority that would have qualified for tax exemption if not for a failure to comply with certain exemption procedures.
- Clarifies the role of the Director of Budget and Management, Tax Commissioner, and Superintendent of Insurance in reviewing taxpayer applications for job retention tax credits.



- Eliminates the authority of counties to levy a tax on utility services purchased by consumers in the county.
- Authorizes library boards to issue special obligation bonds for facilities backed by a property tax levied for the library board by the board's taxing authority.

School district performance audits

- Requires the Auditor of State, in consultation with the Department of Education and the Office of Budget and Management, to determine for which school districts to conduct performance audits, with priority given to districts in fiscal distress.
- Requires the Auditor of State, rather than the Department, to pay the costs of the performance audits and transfers \$1 million for FY 2017 from the Department to the Auditor of State for that purpose.

Veterinarian licensing

- Expands the requirements to obtain a license to practice veterinary medicine to additionally require an applicant to have passed the nationally recognized examination approved by the State Veterinary Medical Licensing Board.

Ohio Turnpike and Infrastructure Commission

- Allows designees of the Directors of Transportation and Budget and Management to serve as members of the Ohio Turnpike and Infrastructure Commission.

Unit operation

- Requires that the Chief of the Division of Oil and Gas Resources Management issue, not later than 45 days after the bill's effective date, an order denying or providing for unit operation of a pool or part of a pool for applications involving the Department of Transportation for which a hearing has been conducted prior to the bill's effective date.
- Specifies that an applicant to whom the above provision applies is not required to commence unit operations within 24 months of the bill's effective date.

Ohio Judicial Conference

- Exempts the Ohio Judicial Conference from sunset review in 2016.



Capital Case Attorney Fee Council

- Creates the Capital Case Attorney Fee Council, replacing the Supreme Court of Ohio as the entity that sets the rate of compensation for counsel selected by indigent persons or appointed by the courts in capital cases.

Land conveyance

- Repeals a prior authorization for a land conveyance of Department of Job and Family Services property in Columbus and authorizes the land to be conveyed to the Columbus Downtown Development Corporation or a grantee to be determined.

Appropriations

- Makes capital and other appropriations.
- States the General Assembly's intent regarding capital appropriations and reappropriations, including that:
 - Appropriations and reappropriations are for capital construction projects that are ready to begin construction or for projects that will be completed within the fiscal biennium.
 - Projects that are neither started nor completed within the biennium will be allowed to lapse and not be reappropriated, barring extraordinary circumstances.

Effective dates

- Provides that the bill's provisions are effective on the 91st day after the act is filed with the Secretary of State, with exceptions.

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CONTENT AND OPERATION

Repayment of current federal unemployment debt

(Section 741.10)

As a result of Ohio carrying an unpaid balance for advances (essentially, loans) from the federal government for the payment of unemployment benefits, Ohio's employers have been subject to a graduated loss of the tax credit against the federal unemployment tax (see "**Background – federal advances and employer tax credit reductions**," below).

Loan from unclaimed funds

The bill requires, not later than September 15, 2016, the Director of Job and Family Services (JFS Director), who administers Ohio's unemployment compensation system, to certify to the Director of Budget and Management (OBM Director) the balance of federal unemployment advances. The bill requires the OBM Director not later than September 20, 2016, to request the Director of Commerce transfer cash from unclaimed funds to the Unemployment Compensation Fund in the amount certified by the JFS Director as a one-time loan for the purpose of paying unemployment benefits. The bill requires the Director of Commerce to make that transfer upon receipt of the request. The amount transferred must be credited to the Mutualized Account (the Mutualized Account is a separate account in the Unemployment Compensation Fund that is primarily used to pay benefits when an individual employer's account cannot be charged for those benefits for a variety of reasons).

The bill requires the OBM Director, in consultation with the JFS Director, to establish a schedule for the repayment of the loan. The loan must be repaid not later than February 28, 2018.

The JFS Director, not later than September 30, 2016, must deposit the amount transferred into the Unemployment Compensation Fund from unclaimed funds with the U.S. Secretary of the Treasury to eliminate the balance of amounts advanced.

Temporary contribution rate increase to repay the loan

The bill requires each experience-rated contributory employer (an employer with four or more consecutive calendar quarters of unemployment benefits charged against the employer) to pay an increased contribution rate for contributions due in 2017 in an amount, to be determined by the JFS Director and OBM Director, that generates an amount not greater in the aggregate than the amount necessary to repay the loan from unclaimed funds. The Directors must determine the amount of the increase on a flat-



rate basis. The increased amount, if not paid when due, must be treated the same as delinquent contributions under continuing law.

The bill requires the Ohio Treasurer of State to establish and maintain a separate account known as the "Loan Account" within the Unemployment Compensation Fund. The bill requires the JFS Director to deposit amounts received as a result of the increased contribution rate within the Loan Account and credit the amounts to the Mutualized Account. The JFS Director must repay the amount transferred as a loan from unclaimed funds from amounts within the Loan Account. If any amounts remain in the Loan Account after the repayment of the loan, the bill requires the amounts be deposited with the U.S. Secretary of the Treasury to the credit of Ohio's account within the federal Unemployment Trust Fund. The bill requires that the amount transferred from the Loan Account be charged to the Mutualized Account.

Background – federal advances and employer tax credit reductions

Unemployment compensation derives its origins from a federal excise tax levied on most employers in the country.¹ Under federal law, an employer may receive a tax credit of almost 90% if the employer makes specified contributions to an "approved" state unemployment compensation system. Additionally, the federal government pays a share of a state's administrative costs to run an approved state program. Approval, however, involves state adherence to federal law requirements and voluminous U.S. Department of Labor regulations. The FUTA tax credit for employers can be reduced under certain circumstances.

Federal law permits a state's governor, or the governor's designee (in Ohio, the JFS Director) to apply to the U.S. Secretary of Labor to receive three-month "advances" for the payment of unemployment benefits if the amount of funds in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.² Ohio began borrowing advances from the federal government in January 2009.³ FUTA requires states to repay federal advances according to specified deadlines. If a state does not repay as required, the basic penalty is a "graduated" loss of the federal tax credit for all employers in the state.⁴ Ohio employers are currently paying an increased FUTA tax

¹ 26 United States Code (U.S.C.) 3301 *et seq.* and 42 U.S.C. 501 *et seq.*

² 42 U.S.C. 1321; 20 Code of Federal Regulations (C.F.R.) 606.4; and R.C. 4141.43(F).

³ National Conference of State Legislatures, *Unemployment Insurance: State Trust Fund Loans* (May 19, 2016), <http://www.ncsl.org/research/labor-and-employment/state-unemployment-trust-fund-loans.aspx> (accessed May 23, 2016).

⁴ 26 U.S.C. 3302(c)(2).



rate. If the advances are repaid before November 10, 2016, the 2016 FUTA tax rate will revert back to the pre-advance level.⁵

Contribution rate increase to pay principal on federal advances

(R.C. 4141.25; Section 741.20)

If, as of the computation date (July 1), Ohio has an outstanding balance on federal unemployment advances, the bill requires all experience-rated contributory employers to be subject to a contribution rate increase, as determined by the JFS Director, in an amount up to ½ of 1% for the purpose of eliminating the principal of any outstanding advance balance.

The bill incorporates this increase into the continuing law formula used to calculate the minimum safe level tax (MSL tax). The MSL tax is a continuing law contribution rate increase imposed when the Unemployment Compensation Fund is below a "minimum safe level," in essence, the balance required in the Fund to pay benefits during a moderate recession. The purpose of the MSL tax is to rebuild the Fund to a safe level. Under continuing law, the MSL tax is calculated by taking a flat-rate percent by which the normal contribution rate for an employer is increased (the amount of the increase varies depending on how far below the minimum safe level the Fund is as of the computation date) and then entering that flat-rate into a formula based on experience. The bill requires the increase created by the bill, if it applies, to be added to the continuing law MSL flat-rate percent increase, and that sum is then required to be calculated pursuant to the continuing law MSL tax formula based on experience. The bill requires amounts received as a result of the increased contribution rate to be credited 50% to the individual employer's account and 50% to the Mutualized Account.

If the bill's contribution rate increase is imposed, the bill requires it to remain in effect for each calendar year thereafter until the earlier of the following:

(1) The principal on any outstanding advance balance has been eliminated.

(2) The JFS Director determines that the maximum FUTA tax credit an employer may receive pursuant to federal law will be reduced for that calendar year.

⁵ U.S. Department of Labor, *Historical FUTA Credit Reductions*, http://workforsecurity.doleta.gov/unemploy/docs/reduced_credit_states.xlsx (accessed May 23, 2016) and U.S. Department of Labor, *Current Year Potential FUTA Credit Reductions*, http://oui.doleta.gov/unemploy/docs/potential_credit_states_2016.xlsx (accessed May 23, 2016).



The bill specifies that it is the intent of the General Assembly to repeal this increase in contribution rates in future legislation adopting long-term reforms to the Unemployment Compensation System.

Surcharge to pay interest on federal advances

(R.C. 4141.251)

Beginning October 1, 2016, if the JFS Director pays interest charged pursuant to federal law on federal unemployment advances from the Unemployment Compensation Interest Contingency Fund (see "**Unemployment Compensation Interest Contingency Fund**," below), the bill requires the JFS Director to require each contributory employer to pay a surcharge. The JFS Director must determine the amount of a surcharge to assess against each contributory employer that generates an amount not greater in the aggregate than the amount sufficient to repay the Fund for the amount of that interest paid. The JFS Director must determine the surcharge amount on a flat rate basis.

The bill requires the JFS Director to collect the surcharge at the same time and in the same manner as contributions due under continuing law. If a surcharge is assessed, the JFS Director must provide notice to each employer subject to the surcharge, either upon the quarterly contribution report due from each employer under continuing law or by other appropriate notice, a separate listing of the surcharge amount due. The bill prohibits surcharge payments from being used to satisfy an employer's contribution obligations under continuing law.

If an employer payment is insufficient to pay the amount of contributions due under continuing law and the amount of the surcharge due, the bill requires the payment to be first applied against the surcharge due. The JFS Director then must apply the remaining amounts from a partial payment in the following order:

- (1) Against any mutualized contributions due;
- (2) To the credit of the employer's individual account;
- (3) Against any interest, forfeiture, and fines due.

If a surcharge is not paid when due, the bill requires it to be treated the same as delinquent contributions under continuing law and any forfeiture or interest payments associated with the collection of the surcharge be deposited consistent with forfeiture and interest associated with contributions under continuing law.



Unemployment Compensation Interest Contingency Fund

The bill creates the Unemployment Compensation Interest Contingency Fund in the state treasury. The Fund must be used to pay interest charged pursuant to federal law on federal unemployment advances. Any interest earned on the money in the Fund is to be retained in the Fund. The bill requires the JFS Director to deposit amounts received pursuant to the surcharge in the Fund.

Correctional Institution Inspection Committee (CIIC)

(R.C. 107.31, 107.34, 181.22, and 5145.162)

Employees

The bill specifies CIIC may employ professional, technical, and clerical employees as are necessary for CIIC to be able to successfully and efficiently perform its duties. All employees are in the unclassified service and serve at CIIC's pleasure. The bill authorizes CIIC to contract for the services of persons who are qualified by education and experience to advise, consult with, or otherwise assist CIIC in the performance of its duties. Finally, the bill provides that any decision related to the duties of employees or related to employment shall be made by a majority of the CIIC members unless a majority of the members is unable to decide a matter, in which case the chairperson decides the matter.

Under current law, CIIC may employ a director and any other nonlegal staff, who are in the unclassified service of the state, as necessary for CIIC to carry out its duties and may contract for the services of whatever nonlegal technical advisors are necessary for CIIC to carry out its duties. Current law requires that the Attorney General act as legal counsel to CIIC. The chairperson and vice-chairperson of the Legislative Service Commission (LSC) must fix the compensation of the Director of CIIC. The Director, with the approval of the Director of LSC, must fix the compensation of other CIIC staff in accordance with a salary schedule established by the Director of LSC. Contracts for the services of necessary technical advisors must be approved by the Director of LSC.

Advisory boards

The bill requires a staff representative assigned by CIIC, rather than the Director of CIIC, to serve on two advisory boards. Under current law, the Director of CIIC serves on the Criminal Sentencing Advisory Committee and the Office of Enterprise Development Advisory Board. The bill requires, instead, that CIIC assign a staff representative to serve on these advisory boards.



Overview

The bill makes changes relative to judicial foreclosure actions. First, it permits the mortgagee to bring an expedited foreclosure action against residential property that is "vacant and abandoned." The bill also establishes the official public sheriff sale website through which foreclosure sales can be held. The bill also permits private selling officers to conduct foreclosure sales, and makes other changes that modify the procedures that generally apply to the judicial sale of property. The bill specifies in its statement of intent that the changes in the bill relating to the judicial sale of real property comprise a comprehensive regulatory framework intended to operate uniformly throughout the state to provide efficient sales procedures for foreclosed property, improve the market for such property by increasing sale prices, and reduce the number of unoccupied and abandoned properties marring the cities in Ohio. This does not preempt vacant foreclosed property registration ordinances enacted by political subdivisions pursuant to their police powers.⁶

Ohio foreclosure procedures – background

There are two primary types of foreclosure in the U.S. – judicial foreclosure, in which a court conducts and oversees the process and the plaintiff obtains title only if the plaintiff is the successful bidder at auction, and nonjudicial, in which a lender or a trust may obtain title after a notice of foreclosure and then may sell the property, often at private auction.

Mortgage foreclosure

Ohio has the judicial form of foreclosure. In Ohio, the holder of the mortgage note (usually the mortgagee) must file a complaint in a court of common pleas to initiate the foreclosure action. After a hearing in which the homeowner has an opportunity to be represented and heard, a court can issue a judgment in favor of the plaintiff holder. Then, the holder must file for a writ of execution of that judgment, which directs the sheriff to sell the property at auction. Upon receiving that order of sale, a sheriff has the property appraised and sells it at auction.

Before the title of the property may transfer to the purchaser, the court must confirm the sale, indicating that the entire foreclosure procedure was conducted pursuant to the laws governing foreclosure. Only after the court's confirmation of the sale, and only if the plaintiff holder was the successful bidder at auction, does the holder obtain title to the property. The homeowner has until the court's confirmation of the sale to redeem the property and pay the amount owed. Ohio law also grants the

⁶ Section 101.03(A).



holder the right to obtain a deficiency judgment against the homeowner if the proceeds of the sale do not cover the amount the homeowner owed on the mortgage.

Not all of the described steps in a foreclosure action are contained in the Revised Code. Mortgage foreclosure procedures in Ohio are governed by the Ohio Rules of Civil Procedure, common law, statute, and local court rules. The early stages of foreclosure, including the filing for a foreclosure action and the notice provided to parties, are governed primarily by the Rules of Civil Procedure. The sale procedures and court confirmation are primarily governed by statute.

Definitions for foreclosures

The bill adopts the following definitions for purposes of foreclosure actions:

"Business day" means a calendar day that is not a Saturday or Sunday or a legal holiday.⁷

"Commercial property" means any property that is not residential property.⁸

"Financial transaction device" includes a credit card, debit card, charge card, or prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications or any other device or method for making an electronic payment or transfer of funds.⁹

"Manufactured home" means a building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with the federal construction and safety standards established by the U.S. Secretary of Housing and Urban Development pursuant to federal law, and that has a permanent label or tag affixed to it, certifying compliance with all applicable federal construction and safety standards.¹⁰

"Mobile home" means a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than 35 body feet in length or, when erected on site, is 320 or more square feet, is built on a permanent chassis, is transportable in one or

⁷ R.C. 2329.152(B)(1)(a) and R.C. 1.14, not in the bill.

⁸ R.C. 2329.01(B)(1).

⁹ R.C. 301.28.

¹⁰ R.C. 2308.01(A) and R.C. 3781.06, not in the bill.

more sections, and does not qualify as a manufactured home or as an industrialized unit.¹¹

"Mortgagee" means a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law.¹²

"Private selling officer" means an Ohio resident licensed as both an auctioneer and as a real estate broker or real estate salesperson under Ohio law.¹³

"Remote bid" means a bid submitted in writing via fax, email, or overnight delivery or courier.¹⁴

"Residential condominium unit" means a "residential unit," in which the designated part of the condominium property is devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a building. A "residential unit" may include exterior portions of the building, spaces in a carport, and parking spaces as described and designated in the declaration and drawings.¹⁵

"Residential mortgage loan" means a loan or agreement to extend credit, including the renewal, refinancing, or modification of such a loan or agreement, that is made to a person and that is primarily secured by a mortgage, deed of trust, or other lien upon any interest in residential property or any certification of stock or other evidence of ownership in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential property.¹⁶

"Residential property" means real property located within Ohio consisting of land and a structure on that land containing four or fewer dwelling units, each of which is intended for occupancy by a separate household. "Residential property" includes a residential condominium unit owned by an individual, notwithstanding the number of

¹¹ R.C. 2308.01(B) and R.C. 4501.01, not in the bill.

¹² R.C. 2308.02(A).

¹³ R.C. 2327.01, 2329.01(B)(2), and 5721.372.

¹⁴ R.C. 2329.152(B)(1)(b).

¹⁵ R.C. 2308.01(C) and R.C. 5311.01, not in the bill.

¹⁶ R.C. 2308.01(D) and 2329.01(B)(3).



units in the structure, but includes a manufactured or mobile home only if it is taxed as real property.¹⁷

Also, as used in this analysis:

"**Mortgagor**" means a person who, having all or part of title to property, by written instrument pledges that property for some particular purpose, such as security for a debt.¹⁸ In other words, the property owner who has taken out a mortgage.

"**Sheriff's sale**" and "**judicial sale**" mean the sale of property pursuant to court order.

Vacant and abandoned property: expedited foreclosure actions by mortgagees

The bill permits a mortgagee who files a foreclosure action on a residential property to file a motion with the court to proceed in an expedited manner on the basis the property is vacant and abandoned. In order to proceed in an expedited manner, upon the filing of such motion, the mortgagee is required to be a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law.¹⁹

The bill specifies that none of the bill's procedures regarding expedited actions supersede or limit other procedures adopted by the court to resolve residential mortgage loan foreclosure actions, including foreclosure mediation.²⁰

Vacant and abandoned property criteria

The bill provides that in deciding the motion to proceed in an expedited manner, the court is required to deem the residential property vacant and abandoned if all of the following apply:

(1) The court finds by a preponderance of the evidence that the residential mortgage loan is in monetary default;

¹⁷ R.C. 2308.01(E) and 2329.01(B)(3).

¹⁸ *Black's Law Dictionary*, fifth edition, 1979.

¹⁹ R.C. 2308.02(A).

²⁰ R.C. 2308.02(F).



(2) The court finds by a preponderance of the evidence that the mortgagee is a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law;

(3) No mortgagor or other defendant has filed an answer or objection setting forth a defense or objection that, if proven, would preclude the entry of a final judgment and decree of foreclosure;

(4) No mortgagor or other defendant has filed a written statement with the court indicating that the property is not vacant and abandoned; and

(5) The court finds by clear and convincing evidence that at least three of the following factors are true:

- Neither an owner nor a tenant appears to be residing in the property at the time of an inspection of the property by the appropriate official of a county, municipal corporation, or township in which the property is located, or by the mortgagee.
- Gas, electric, sewer, or water utility services to the property have been disconnected.
- Windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired.
- Doors on the property are smashed through, broken off, unhinged, or continuously unlocked.
- The property is sealed because, immediately prior to being sealed, it was considered by the appropriate official of a county, municipal corporation, or township in which the property is located to be open, vacant, or vandalized.
- Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property.
- Furnishings, window treatments, and personal items are absent from the structure on the land.
- The appropriate official of a county, municipal corporation, or township in which the property is located provides a written statement or

statements indicating that the structure on the land is vacant and abandoned.

- The property is the object of vandalism, loitering, criminal conduct, or there has been physical destruction or deterioration of the property.
- A mortgagor issues a written statement expressing the intent of all mortgagors to abandon the property.
- Other reasonable indicia of abandonment exist.²¹

Hearings

If, at the time the mortgagee brings an action to foreclose on a residential mortgage loan, the mortgagee files a motion for expedited foreclosure under the bill's expedited foreclosure provisions, the court must decide the motion not later than 21 days after the last period to answer the foreclosure complaint has expired, or within the time consistent with the local rules. If the mortgagee files the motion for expedited foreclosure after the last period to answer the foreclosure complaint has expired, the court must decide the motion not later than 21 days after the motion is filed, or within the time consistent with the local rules.²²

Preliminary finding

The bill requires that if a government official has not verified the real property is vacant and abandoned (see "**Vacant and abandoned property criteria**," above) but the court makes a preliminary finding that the residential real property is vacant and abandoned pursuant to the criteria above, then within seven days of the preliminary finding, the court must order the appropriate official of a county, municipal corporation, or township in which the property is located to verify the property is vacant and abandoned. Any court costs assessed in connection with this government inspection ordered by the court must not be more than \$50.²³

Judgment

Under the bill, if the court decides that the property is vacant and abandoned (see "**Vacant and abandoned property criteria**," above) and that the mortgagee who filed the motion to proceed in an expedited manner is entitled to judgment, the court

²¹ R.C. 2308.02(C).

²² R.C. 2308.02(B).

²³ R.C. 2308.02(C)(6).

must enter a final judgment and decree of foreclosure and order the property to be sold according to procedures under the bill (see "**Sale of property**," below).²⁴

Sale of property

If the court enters a judgment and orders a sale of the property, the officer conducting the sale must offer the property for sale within 75 days after the issuance of the order of sale. The sale must be conducted in accordance with existing execution of property procedures, including possible postponement procedures under the bill (see "**Postponement of sale**," below).²⁵

Right to enter the property

The bill enables a mortgagee of a residential property that is found to be vacant and abandoned under the bill's provisions to enter that property to secure it and prevent damage. If the mortgagee has not yet filed a mortgage foreclosure action, the mortgagee may enter the property only if the mortgage contract or other documents allow such an entry.²⁶

Right of redemption

The equitable and statutory rights to redemption of a mortgage on a property found to be vacant and abandoned under the bill's expedited foreclosure provisions expire upon the confirmation of the sale of the property.²⁷

Modifications to judicial sale procedures

The official public sheriff sale website

The bill requires the creation of the official public sheriff sale website. Within one year after the effective date of the bill, in all cases in which the sheriff is ordered to conduct a judicial sale of residential real property, the sale may be conducted on the official public sheriff sale website for a five-year period beginning when the website is fully operational. After this five-year period, the judicial sale of residential property must be conducted on the website. Judicial sales of commercial property may be conducted on the website during and after this five-year period. In addition, a sheriff is permitted to conduct a dual real property foreclosure sale on the official public sheriff

²⁴ R.C. 2308.02(D).

²⁵ R.C. 2308.02(E).

²⁶ R.C. 2308.03(A) and (B).

²⁷ R.C. 2308.03(C), with a conforming change in R.C. 2329.33.

sale website and at a physical location considered appropriate by the sheriff. All sales conducted on the website must be open for bidding for at least seven days.²⁸

Creation of website

The bill requires that within 90 days of the effective date of the bill, the Department of Administrative Services solicit competitive sealed proposals for the creation, operation, and maintenance of the official public sheriff sale website and an integrated auction management system. The website and the integrated auction management system must be a single statewide system that will be used by all county sheriffs in accordance with the requirements under the bill. The winning bidder must work with sheriffs and other groups to address issues regarding the website, including potential cost and recoupment, details of the implementation of the online system, and other unresolved concerns.²⁹

Website requirements

The website must meet the following minimum standards:

(1) The website's domain name must be relevant to the judicial sale of real property;

(2) The website itself must be limited to the judicial sale of real property in Ohio;

(3) The website cannot charge a fee for members of the public to view properties for sale;

(4) The website must allow each county sheriff to add text, images, or graphics to the website for the purpose of identifying the county or sheriff conducting the sale;

(5) The website must include industry-standard features and functionality, including user guides, online financial transaction device payments, anti-snipe functionality,³⁰ watch lists, email notifications, maximum bid limits, automatic incremental bidding, and search and map features that allow users to search by county, zip code, address, parcel number, appraised value, party name, case number, and other variables relevant to the judicial sale of real property;

²⁸ R.C. 2329.153(E)(1) and 2329.39 and Section 101.04(B).

²⁹ R.C. 2329.153(A) and Section 101.04(A).

³⁰ Sniping is the placing of a bid in the closing minutes of an online auction. eBay, *eBay Glossary*, <http://pages.ebay.com/help/account/glossary.html#S> (accessed April 4, 2016).

(6) The website must include features that allow for the cancellation of sales as required by law or court order and the postponement of sales;

(7) The website must provide a secure payment processing system that accepts online payment for property sold on the website and, in an efficient and cost effective manner, transfer those payments to the appropriate county official or account;

(8) The website must include the ability for an attorney or law firm to enter a bid in a representative capacity;

(9) The website must be integrated with the auction management system as described in the bill (see "**Auction management system,**" below).³¹

Auction management system

The website must be integrated with the auction management system, which is required to have a role-based workflow engine to assist in conducting sales on the website, capturing data, complying with all relevant laws, and managing administrative processes related to the judicial sale of real property in a timely, secure, and accurate manner. The auction management system must also be able to record the data necessary to meet the reporting requirement under the bill (see "**Attorney General reports and database,**" below), and record fees, costs, deposits, and other money items with the objective of ensuring an accurate accounting of moneys received and disbursed in each judicial sale of real property.³²

License fee

The license fee for the creation, operation, and maintenance of the official public sheriff sale website and integrated auction management system must be determined using a per-transaction license fee model or a per-use license fee model. The addition of a property to the website or the auction management system is considered *a transaction* for purposes of determining the license fee. The license fee applicable to each judicial sale of real property must be taxed as costs in the case, but no other license fees should be assessed to the county sheriff.³³

Registration and bidding procedures

If the property is sold online, the sheriff or private selling officer must require persons seeking to bid to register online with the website before being authorized to

³¹ R.C. 2329.153(B).

³² R.C. 2329.153(C).

³³ R.C. 2329.153(D).



bid. The registration form must include information that will enable the sheriff or private selling officer to identify the bidder, contact the bidder, and complete the sale of the property. In the case of an attorney or a law firm that represents a party to the foreclosure action and bids on a property in a representative capacity, the attorney or law firm must register as the representative of the party, as either an individual or entity. The registration form must include the following information:

(1) Individuals must provide the individual's name, mailing address (which cannot be a post office box address), email address, telephone number, and, if applicable, financial transaction device information.

(2) Entities must provide the entity's legal name, trade name (if different from its legal name), state and date of formation, active status with the Office of the Secretary of State, mailing address, telephone number, financial transaction device information if applicable, the name of an individual contact person for the entity, and the contact person's title, mailing address, which must not be a post office box address, email address, and telephone number.

The registration form on the website must require all persons registering to bid to state to the best of the person's knowledge and belief, that the information provided by the person is true, correct, and complete under penalties of perjury. The email address, telephone number, and financial transaction device information required above are confidential and not public records.³⁴

Sheriff postponement and cancellation of sale on website

If the sale of the real property will be conducted on the official public sheriff sale website, the judgment creditor may instruct the sheriff to postpone the sale of the property one time for up to 180 days after the initial sale date. After receiving this instruction, the sheriff must postpone the sale of the property by announcing on the website that the sale is postponed and giving notice of the rescheduled sale date. This announcement is deemed to meet the notice requirement under the bill (see "**Notice requirement**," below).³⁵ If the judgment creditor does not postpone the sale, the judgment creditor may instruct the sheriff to cancel the sale. Upon receiving this instruction, the sheriff must cancel the sale of the property by announcing on the website that the sale is cancelled. This announcement must remain posted on the website until at least the end of the required seven-day bidding period. If the sale of the

³⁴ R.C. 2329.154 and R.C. 149.43, not in the bill.

³⁵ R.C. 2329.153(E)(2) and 2329.26.



real property is postponed or canceled as described above, all bids made on the real property prior to the postponement or cancellation of the sale are void.³⁶

Shared service agreements and county expenses

The bill permits counties, pursuant to continuing law authority, to enter into a shared services agreement relating to the judicial sale of real property on the official public sheriff sale website. The shared services agreement between the counties may seek to improve efficiency and reduce costs in the judicial sale of real property by consolidating administrative functions and processes.³⁷ In addition, the bill adds to the definition of "county expenses" to include online financial transaction device payments made through the website. Under continuing law, "county expenses" may be paid to a county office by use of a financial transaction device.³⁸

Private selling officer

The bill establishes procedures that permit private selling officers to conduct foreclosure sales. In every foreclosure action demanding the judicial or execution sale of real property, the county sheriff must sell the property at a public auction, unless the judgement creditor files a motion with the court requesting a private selling officer to sell the property at a public auction. If the court authorizes a private selling officer to sell the property, the judgment creditor can either seek to have the property sold by the private selling officer authorized by the court or by the county sheriff. If the judgment creditor chooses to have the property sold by the private selling officer, the judgment creditor must file with clerk of court a writ requesting the issuance of an order of appraisal to the sheriff and an order of sale to the private selling officer authorized by the court. After the filing of that writ, the clerk of the court must immediately issue both of the following:

(1) An order of appraisal to the sheriff, who must obtain an appraisal of the property.

(2) An order of sale to the private selling officer, who, after the return of the appraisal, must advertise and sell the property in conformity with applicable law.³⁹

³⁶ R.C. 2329.153(E)(2) to (4).

³⁷ R.C. 2329.153(F).

³⁸ R.C. 301.28.

³⁹ R.C. 2329.151 and 2329.152(A).

Private selling officer authority

The private selling officer who conducts a sale may do any of the following:

- Market the real property and conduct the public auction of the property online or at any physical location in the county in which the property is situated. If the auction occurs online, the auction must be open for bidding for at least seven days.
- Hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to assist the private selling officer in performing administrative services;
- Execute to the purchaser, or to the purchaser's legal representative, a deed of conveyance of the property sold;
- Record on behalf of the purchaser the deed conveying title to the property sold, even if the deed may not actually have been delivered to the purchaser prior to its recording.⁴⁰

Private selling officer postponement and cancellation of sale

Under the bill, a judgment creditor that obtains a court order authorizing a specified private selling officer to sell the real property at a public auction may instruct the private selling officer to postpone the sale of the property one or more times, however all rescheduled sale dates must be within 180 days of the initial sale date. If the private selling officer receives an instruction to postpone, the officer must postpone the sale of the property by announcing that the sale is postponed in the following manner:

(1) If the sale is at a physical location, the announcement must be made at the sale and must include the date, time, and place of the rescheduled sale of the property.

(2) If the sale is online, the announcement must be made on the auction website and must include the date of the rescheduled sale of the property.

Each announcement must meet notice requirements under the bill (see "**Notice requirements**," below).

If the judgment creditor does not postpone the sale of the property, the judgment creditor may instruct the private selling officer to cancel the sale. If the officer receives this instruction, the officer must cancel the sale by announcing that the sale is canceled in the following manner:

⁴⁰ R.C. 2329.152(E)(1).

(1) If the sale is at a physical location, this announcement must be made at the sale.

(2) If the sale is online, this announcement must be made on the auction website and must remain posted there until at least the end of the required seven-day bidding period.

If the sale of the property is postponed or canceled, as described above, all bids made on the property prior to the postponement or cancellation of the sale are void.⁴¹

Costs

If the judgment creditor obtains a court order to have the real property sold by a private selling officer, then all of the following must be taxed as costs in the case:

(1) The cost of the appraisal;

(2) The cost of the advertisement;

(3) The fee charged by the private selling officer and all costs incurred by the private selling officer, with the condition that the fees and costs (excluding the appraisal and advertisement costs described above) must be taxed only up to 1.5% of the sale price of the real property. Any amount exceeding 1.5% of the sale price cannot be included in the amount necessary to redeem the property by the judgment debtor or in the calculation of any deficiency judgment, but rather must be paid by the judgment creditor or from the judgment creditor's portion of the proceeds of the sale.⁴²

Private selling officer report

The bill requires that a private selling officer that conducts a sale to file with the court that issued the order of sale an itemized report of all appraisal, publication, marketing, and other expenses of the sale and all fees charged by the private selling officer for marketing or conducting the sale, including the fee charged by the title agent or title insurance company for administration services, if applicable, and title, escrow, and closing services.⁴³

⁴¹ R.C. 2329.152(C).

⁴² R.C. 2329.152(D)(1).

⁴³ R.C. 2329.152(D)(2).

Delivery of deed

The bill establishes that by placing a bid at a sale, a purchaser appoints the private selling officer who conducts the sale as agent of purchaser for the sole purpose of accepting delivery of the deed.⁴⁴

Title insurance

The bill requires the private selling officer who conducts the sale to hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to perform title, escrow, and closing services related to the sale of the real property. The fee charged by the title insurance agent or title insurance company for services provided under the bill must be taxed as costs in the case, provided they are reasonable. Fees up to \$500 are presumed to be reasonable. Fees exceeding \$500 may only be paid if authorized by a court order.⁴⁵

Remote bidding for physical location sales

The bill establishes a remote bidding procedure for physical location sales. If the sale of the real property is conducted at a physical location, then each judgement creditor and lienholder who was party to the foreclosure action may submit a remote bid to the sheriff or the private selling officer. In order to receive remote bids, each sheriff and private selling officer must establish and maintain a fax number or an email address. Each remote bid must meet both of the following qualifications:

- (1) Be of a fixed maximum amount;
- (2) Be delivered to the sheriff or private selling officer on or before 4:30 p.m. on the business day immediately preceding the date of the sale.

Before the sale, the sheriff or the private selling officer are required to confirm receipt of the remote bid by sending a fax or email to the judgment creditor or lienholder who submitted the remote bid, and during the sale the sheriff or the officer must place the remote bid on behalf of the bidder. After the sale, the sheriff or the officer must provide notice of the results of the sale not later than the close of business on the day of the sale to all the bidders that submitted a remote bid. The notice must be sent by fax or email to the judgment creditor or lienholder or by posting the results of the sale on a public website.⁴⁶

⁴⁴ R.C. 2329.152(E)(2).

⁴⁵ R.C. 2329.152(E)(3) and (F).

⁴⁶ R.C. 2329.152(B)(2) and (3).



If a sheriff or officer fails to place a remote bid on behalf of a judgment creditor or lienholder to the prejudice of the judgment creditor or lienholder, then, upon the filing of a motion to vacate the sale within ten business days after the sale date, the sale must be vacated.⁴⁷

Appraisal of real property

Generally

The bill revises the real property appraisal provisions to clarify that the officer making the levy in an execution sale is the sheriff (as opposed to a private selling officer) and to require that the freeholders selected to appraise the property own real property in the county. Under existing law, when execution is levied upon real property, the officer who makes the levy must ask three disinterested freeholders, who are residents of the county where the property is located to impartially appraise the property, upon actual view.⁴⁸ The bill also refers to the "return of the estimate of the real property" as an "appraisal" or "appraised value."⁴⁹

Residential property appraisal

The bill adds that during the appraisal process of residential property subject to the foreclosure sale, the freeholders selected by the sheriff must return to the sheriff an estimate of the value of the property in money within 21 calendar days of the issuance of the order of appraisal by the clerk of the court. If the court has ordered or the clerk of the court has issued an order for a private selling officer to advertise and sell the appraised property, the freeholders selected by the sheriff must also deliver a copy of their appraisal to the private selling officer contemporaneously with their delivery of their appraisal to the sheriff.

If the freeholders selected by the sheriff do not deliver their appraisal within 21 days, as described above, then all of the following must occur:

(1) The cost of the appraisal by the freeholders must not be payable to the freeholders or taxed as costs in the case.

(2) The appraised value of the property must be the fair market value of the property as shown on the records of the county auditor, unless, for good cause shown, the court authorizes a separate appraisal of the property.

⁴⁷ R.C. 2329.152(B)(4).

⁴⁸ R.C. 2329.17(A).

⁴⁹ R.C. 2329.17, 2329.18, and 2329.19.

(3) The advertisement and sale of the property must proceed immediately in accordance with the order of advertisement and sale issued by the clerk of the court.

If a separate appraisal of the property is obtained, the cost of the appraisal must be included as an expense of the sale as described in the bill (see "**Costs**," above).⁵⁰

Commercial property appraisal

If the property to be appraised is commercial property, the freeholders selected by the sheriff must return to the sheriff an estimate of the value of the property in money in accordance with the timing or other requirements, if any, that may be established for the sale.⁵¹

Penalty for neglecting to serve as an appraiser

The bill increases the penalty fee from 50¢ to \$50 for a freeholder who is summoned as an appraiser and pursuant to continuing law fails to appear at the time and place appointed by the officers ordering the freeholder's appearance. Unless the freeholder has a reasonable excuse, the freeholder must pay the fee for each neglect.⁵²

Post appraisal procedures

The bill requires that if a court has ordered or the clerk of court has issued an order for the sheriff to advertise and sell the real property for which the appraised value has been determined, the sheriff must deposit a copy of the appraisal with the clerk of the court from which the writ was issued. In addition, if the court has ordered or the clerk of the court has issued an order for a private selling officer to advertise and sell the property for which the appraised value has been determined, the private selling officer must immediately advertise and sell the property in conformity with the bill's provisions and continuing law procedures.⁵³

Price and conditions for judicial sales subsequent to the first sale

The bill changes the procedures for judicial sales of residential property subsequent to the first attempt. The procedure for the first sale remains the same as under existing law: the property must be appraised and the sale price may not be less than $\frac{2}{3}$ of that appraised value. The bill requires that if a sale of the residential property

⁵⁰ R.C. 2329.17(B) and (C).

⁵¹ R.C. 2329.17(D).

⁵² R.C. 2329.56.

⁵³ R.C. 2329.18.

will be held at a physical location and not online and remains unsold after the first auction with a minimum bid of $\frac{2}{3}$ of the appraised value, a second auction is required with no set minimum bid and the property is to be sold to the highest bidder. However, the purchaser at the second sale is still subject to the costs, allowances, and real property taxes (see "**Purchaser's costs,**" below). This second auction must be held not earlier than seven days and not later than 30 days after the first auction. If the property remains unsold after two auctions, the bill allows the sheriff or officer to subsequently offer the property for sale with no set minimum bid or the property may be disposed of in any other manner provided by law. This differs from existing law, which allows the court, on motion of the plaintiff or defendant, to order a new appraisal and sale or direct the amount for which the property may be sold if the property remains unsold after the first sale.⁵⁴

Purchaser deposit

The bill requires that in every action demanding the judicial or execution sale of residential property, if the judgement creditor is the purchaser at the sale, the judgment creditor is not required to make a sale deposit. All other purchasers, however, must make a sale deposit as follows:

- If the property's appraised value is less than or equal to \$10,000, the deposit must be \$2,000.
- If the property's appraised value is greater than \$10,000 but less than or equal to \$200,000, the deposit must be \$5,000.
- If the property's appraised value is greater than \$200,000, the deposit must be \$10,000.

The timing of the deposit and other payment requirements must be established by the court or the person conducting the sale and included in the advertisement of the sale. If the purchaser fails to meet the timing or other requirements of the deposit, the sale is invalid.

In judicial or execution sales of commercial property, the purchaser at the sale must make a deposit pursuant to the requirement, if any, established by the sale.⁵⁵

⁵⁴ R.C. 2329.20, 2329.21, and 2329.52.

⁵⁵ R.C. 2329.211.

Failure to pay balance due on purchased property

Under continuing law, a court may issue an order for contempt against a person who purchases real property at a judicial sale and fails to timely pay the balance due on the purchase price, which can include ordering the forfeiture of any deposit paid in connection with the sale. The bill permits the court, upon motion, to order the return of any remaining portion of the purchaser's deposit, less the costs of a subsequent sale and any other remedy the court considers appropriate. The bill states that the effect of an order for contempt for failure of the purchaser to pay voids the confirmation of sale and transfer.⁵⁶

Property taxes paid from certain property sale proceeds

The bill modifies how property taxes are determined and paid when real property is sold through a partition action, sold by administrators, executors, guardians, or trustees, or sold at a court-ordered sale.

Under current law, a court is required to discharge from the proceeds of such a sale property tax, assessments, penalties, and interest (hereafter "property charges") that are a lien on the property as of the day the deed is transferred.⁵⁷ The county treasurer is required to estimate the amount that will be payable as of that day in order for the court to determine how much of the proceeds to pay toward the property charges. If the treasurer's estimate ultimately exceeds the property charges "actually payable" as of that date, the excess is refunded to the property's purchaser. (In the case of a court-ordered sale, the amount payable is the current year's taxes prorated to the date of the confirmation plus any unpaid taxes from prior years.) Under continuing law, if the estimate is less than the actual amount payable, that shortfall becomes due and payable at the next semiannual property tax payment date.

The bill continues to require a court to pay property charges, but only those charges that are a lien as of the date of the sale, rather than the date the deed is transferred. Additionally, the bill no longer requires the treasurer to estimate the amount payable on that date. But if the treasurer does complete an estimate, and the estimate exceeds the amount of charges actually payable on the date of sale, the bill no longer requires the excess to be refunded to the purchaser. Instead, the treasurer will hold that excess until the plaintiff to the action that resulted in the sale requests that the treasurer refund that amount to private lienholders or, if all such liens are satisfied, to

⁵⁶ R.C. 2329.30.

⁵⁷ The lien for annual property tax attaches January 1, even though the taxes are not due until the ensuing December 31 or, typically, the ensuing January when extensions are added. The actual amount due for a year may not be finally determined until late in the calendar year.

the court that authorized the sale for appropriate distribution. For court-ordered sales, the bill requires the treasurer to complete this estimate before the sale is confirmed.

If the plaintiff purchases the property, the bill prohibits the selling officer from deducting from the sale proceeds property charges that attach as a lien before the sale date but have not yet been determined, unless the plaintiff approves that deduction. If no approval is received, the officer certifies those property charges to the treasurer, which are added to the tax list for the current year.

Finally, the bill states that any property charges not paid on the date of sale, or charges that become payable after the sale date, continue as a lien on the property.⁵⁸

Deed and transfer of property title

The bill requires the officer who conducts the judicial sale to record the deed to the property within 14 days after the confirmation of sale and payment of the balance due. If the deed is not prepared or recorded within this 14-day period, the purchaser may file a motion with the court to proceed with the transfer of title. If the court finds that a proper sale was made, it must enter an order transferring the title to the purchaser, ordering the plaintiff to present a certified copy of the order to the county recorder for recording, and ordering the county recorder to record the order in the record of deeds.

After receiving the court order, the plaintiff in the foreclosure action, or the plaintiff's attorney, must cause a certified copy of the order recorded in the office of the county recorder. The order, when filed with the county recorder, has the same effect as a deed prepared and recorded by an officer who sells the residential property at a judicial sale under existing law.

The clerk must issue a copy of the court order to the county auditor to transfer record ownership of the property for the purpose of real property taxes. Property taxes coming due after the date of sale do not prohibit the auditor from transferring ownership of the property on its records or cause the recorder to deny the recording. The property taxes become the responsibility of the new title holder of the property. The sheriff cannot require the confirmation of sale to be amended for taxes not due and payable as of the date of the sale.

Additionally, the bill repeals a redundant provision requiring the attorney who filed the writ of execution to prepare a deed to the property purchased.⁵⁹

⁵⁸ R.C. 323.47.

Right of redemption by judgment creditor or first lienholder

In sales of residential properties taken in execution or order of sale that are sold at an auction with no set minimum bid, the bill gives the judgment creditor and the first lienholder of a property the right to redeem the property within 14 days after the sale by paying the purchase price. The redeeming party must pay the purchase price to the clerk of the court in which the judgment of foreclosure was rendered or the order of sale was made. Upon timely payment by the judgment creditor or first lienholder, the bill directs the court to proceed as if the redeeming party were the successful purchaser at sale.⁶⁰

Purchaser's costs

In addition to costs and allowances required to be paid by the purchaser of real property at a judicial sale under continuing law, the bill adds that the purchaser is also responsible for all taxes that the proceeds of the sale are insufficient to cover.⁶¹

Advertisement requirements

The bill adds to the information required to be in the advertisement for property being sold at a judicial sale. Any advertisement, in addition to information required by continuing law, must state that a purchaser of the real property is responsible for costs, allowances, and taxes that the proceeds of the sale are insufficient to cover.⁶²

Notice requirements

The bill requires that the written notice of the date, time, and place of a judicial sale of real property provided by a judgment creditor to all parties of action (as required by continuing law) include the date, time, and place of the sale if the sale is to be held at a physical location or the start date and website address of the sale if the sale is to be held online. The notice must include the provisional second sale of the property (see "**Price and conditions for sheriff's sales subsequent to the first sale**," above).

In addition, the bill modifies the public notice requirement under continuing law, in which the officer conducting the sale is required to give public notice of the date, time, and place of the sale once a week for at least three consecutive weeks before the day of the sale. The bill requires this information to be included in the public notice for

⁵⁹ R.C. 2329.31 and R.C. 2329.36(A), not in the bill.

⁶⁰ R.C. 2329.311.

⁶¹ R.C. 2329.21.

⁶² R.C. 2329.21.

physical location sales and if the sale will be conducted online then the public notice must include the start date, the minimum duration, and website address of the sale.

Under continuing law, the public notice must be published in a newspaper of general circulation in the county. In addition, the public notice must include the following information:

- Deposit requirement (see "**Purchaser deposit**," above);
- That the purchaser must be responsible for the costs, allowances, and taxes that the proceeds of the sale are insufficient to cover;
- The provisional second sale date, if applicable.

However, the bill provides that a sale will not be invalid, and that a court should not vacate a sale, if the notice required by the judgment creditor or the public notice fails to include the provisional date for a second sale of the property and the property is sold on the initial sale date.

The bill also requires that if a private selling officer has been ordered to sell the property, the private selling officer must give the public notice in the newspaper designated by the court. If the court has not designated a newspaper, the private selling officer must give the public notice in the newspaper customarily used or designated by the county sheriff, however, no sale that otherwise complies with the notice requirement is invalid.⁶³

Purchaser's identifying information

Under continuing law the purchaser of the real property at a foreclosure sale must submit identifying information, such as the purchaser's name, mailing address, and telephone number. The bill adds the above information is required if the purchaser is an individual, and in addition requires the individual to provide their email address and financial transaction device information.

The bill also requires a purchaser that is an entity to submit the entity's (1) legal name, (2) trade name if different from its legal name, (3) state and date of formation, (4) whether it is in active status with the Office of the Secretary of State, (5) mailing address, (6) telephone number, (7) financial transaction device information, (8) the name of an individual contact person for the entity, (9) the contact person's title, (10) the contact person's mailing address, which must not be a post office box, (11) the contact person's email address, and (12) the contact person's telephone number.

⁶³ R.C. 2329.26.

The bill permits the attorney or a law firm that represents a purchaser to submit the information required above in a representative capacity as either an individual or an entity. While this information continues to always be part of the record of the court of common pleas, under the bill it is part of the sheriff's record of proceedings only if the court ordered the sheriff to advertise and sell the real property. The bill specifies that the email address, telephone number, and financial transaction information submitted are confidential and not public records.⁶⁴

Reversal of judgment

The bill requires that when there has been a reversal of judgment on appeal and the court orders a judgment creditor to pay restitution, pursuant to continuing law, the court must take into consideration all persons who lost an interest in the property by reason of the judgment and sale and the order of the priority of those interests.⁶⁵

Property sold by master commissioner

The bill permits a court to authorize a master commissioner to sell real property only in response to a motion by a judgment creditor. The court can only grant the motion, as established under continuing law, if a special reason exists as to why the sale should not be made by the sheriff of the county where the decree or order was made or, as the bill adds, by the private selling officer.⁶⁶

Judgment creditor conduct

The bill requires a judgment creditor, in connection with a real property foreclosure action, to proceed in a commercially reasonable manner in complying with the bill, not inconsistent with ordinary care under existing law.⁶⁷

Local government authority to continue foreclosure sale

If there has been a decree of foreclosure entered with respect to a residential property and it has not been sold or a sale of the property is not underway, then the bill permits, beginning 12 months after the entry of the decree of foreclosure, a local political subdivision to request (by motion, resolution, or by other means) that a county prosecuting attorney file a motion with the court for the sale of the residential property. Once the prosecuting attorney receives the request or by the prosecuting attorney's own

⁶⁴ R.C. 2329.271(B)(2) and R.C. 149.43, not in the bill.

⁶⁵ R.C. 2329.45.

⁶⁶ R.C. 2329.34.

⁶⁷ Section 101.03(B)(2) and R.C. 1303.01(A)(9), not in the bill.

motion, the prosecuting attorney of the county in which the foreclosure action was filed may file a motion with the court to sell the property in the same manner as if the prosecuting attorney were the attorney for the party in whose favor the decree of foreclosure and order of sale was entered. The prosecuting attorney is required to serve a copy of the motion to all parties who entered an appearance in the foreclosure action in accordance with the Ohio Rules of Civil Procedure.

The court is required to decide the motion not sooner than 30 days after the date of the filing of the motion, and unless the court finds good cause as to why the property should not be sold, the court must grant the motion and order the prosecuting attorney to issue a praecipe for order of sale and sell the property at the next available public auction with no set minimum bid and in accordance with the terms of the order of sale and applicable provisions under Ohio law. In addition, the judgment creditor in the foreclosure action has the right to redeem the property within 14 days after the sale by paying the purchase price. The judgment creditor must pay the purchase price to the clerk of the court in which the judgment was rendered or the order of sale was made. Upon timely payment, the court must proceed with the recording of the deed and transfer of title (see "**Deed and transfer of property title**," above) with the judgment creditor considered the successful purchaser at sale.⁶⁸

Owner's physical harm to property

Under the bill, a person is guilty of criminal mischief if all of the following apply:

(1) The person knowingly and with the purpose to diminish the value or enjoyment of the residential property moves, defaces, damages, destroys, or otherwise improperly tampers with the person's own residential property.

(2) The residential real property is subject to a mortgage.

(3) The person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action related to the property. This includes the time between the filing of the foreclosure action and confirmation of sale.⁶⁹

Attorney General reports and database

The bill requires all officers appointed or authorized by a court to conduct a judicial sale or execution sale of residential property consisting of one to four single-family units to submit quarterly reports, consisting of data of each sale conducted, to

⁶⁸ R.C. 2329.071.

⁶⁹ R.C. 2308.04 and 2909.07.



the Attorney General for the purposes of assessing the extent to which the bill's deadline requirements are met.

One year after the effective date of the bill, the Attorney General is required to (1) establish and maintain a database comprised of the information submitted by the officer, (2) make the information included in the database publicly available, and (3) adopt rules for the creation and administration of the database.⁷⁰

Responsibilities of the clerk of the court of common pleas

The bill prohibits the clerk of the court of common pleas from restricting, prohibiting, or otherwise modifying the rights of parties to seek service on party defendants allowed by the Rules of Civil Procedure, either singularly or concurrently.⁷¹

Enforcement of lost instrument

The bill modifies one of the three conditions that must be satisfied for a person to enforce a lost instrument under Ohio Commercial Paper Law. Under current law a person not in possession of an instrument is entitled to enforce it if, in part, he or she was in possession of the instrument and entitled to enforce it when loss of possession occurred. The bill modifies this condition to additionally permit it to be satisfied if the person "had directly or indirectly acquired ownership" of the instrument from a person entitled to enforce it when loss of possession occurred.⁷²

Tax certificate foreclosure sales

Authority for private selling officer to sell property

The bill permits a certificate holder of a tax lien to file a motion with the court for an order authorizing a specified private selling officer to sell the real property at a public auction. If the court authorizes a private selling officer to sell the property, then after the filing of a writ for the order of sale with the clerk of the court, the clerk of the court must immediately issue an order of sale to the private selling officer authorized by the court. The officer can then conduct the public auction of the property at a physical location in the county in which the property is located or online. Similar to other foreclosure sales, if the public auction occurs online, the auction must be open for bidding for seven days, and if the property is not sold within the seven-day period, a second online auction must be held not earlier than three days or later than 30 days

⁷⁰ R.C. 2329.312.

⁷¹ R.C. 2303.26.

⁷² R.C. 1303.38(A)(1).

after the end of the first auction. The second auction must also be open for bidding for seven days.

A private selling officer who conducts a tax certificate foreclosure sale of real property at a public auction may do all of the following:

- Market the property for sale and hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to assist the officer in performing administrative services;
- Execute to the purchaser, or to the purchaser's legal representatives, a deed of conveyance of the property sold in conformity with the form set forth in the bill (see "**Private selling officer deed form**," below);
- Record on behalf of the purchaser the deed conveying title to the property sold, even if the deed has not actually been delivered to the purchaser prior to its recording.

By placing a bid at a sale, a purchaser appoints the private selling officer who conducts the sale as agent of the purchaser for the sole purpose of accepting delivery of the deed.

The private selling officer who conducts the sale must hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to perform title, escrow, and closing services related to the sale of the property.⁷³

Under continuing law when an officer who offers the property for sale in which there are no bids that meet the minimum bid requirement as determined by the court or board of revision, the officer must suspend the sale of the parcel to the second date that was specified in the advertisement of the sale. The bill specifies that this requirement applies whenever the officer charged to conduct the sale offers a certificate property for sale at a physical location and not online.⁷⁴

Priority of fees

Under continuing law fees and costs incurred in the proceeding filed against the property pursuant to a tax certificate foreclosure must be paid first, including attorney's fees of the certificate holder's attorney or the county prosecutor's costs. The bill adds to

⁷³ R.C. 5721.39(C).

⁷⁴ R.C. 5721.39(C)(6).



this list private selling officer's fees and marketing costs and title insurance agent and title company fees.⁷⁵

Attorney fees

The bill adds to continuing law limitations on attorney's fees that may be charged as costs against property if the tax certificate foreclosure action is filed by a private attorney. Under continuing law, the limit is \$2,500, unless otherwise authorized by the court. The bill specifies that fees less than or equal to \$2,500 are presumed to be reasonable. In addition, if the private attorney's fees payable are fixed and not determined on an hourly basis, the court cannot consider or require evidence of hours expended or hourly rates.⁷⁶

Private selling officer fee

The bill establishes limitations of the private selling officer's fees with respect to a tax certificate foreclosure action. The bill requires that these fees must be reasonable and specifies that fees less than or equal to \$750 are presumed to be reasonable. Under the bill, fees more than 5% of the sale of the property, if the fee amount is greater than \$750, can only be paid if authorized by a court order. In addition, the terms of sale negotiated under continuing law may include the amount to be paid in private selling officer's fees, subject to the bill's fee limitation described above.⁷⁷

Title agent and title insurance company fee

The bill establishes limitations on title insurance agents and title insurance company fees payable with respect to a tax certificate foreclosure action. The bill requires that the fees be reasonable and that fees up to \$500 are presumed to be reasonable. Fees more than \$500 can only be paid if authorized by a court order. In addition, the terms of sale negotiated under continuing law may include the amount to be paid in title agent's or title company's fees, subject to the fee limitations above.⁷⁸

Licensed auctioneers and judicial sales

The bill limits the authority of auctioneers to conduct judicial sales. Under current law, public auctions of goods, chattels, and lands levied upon by execution must be conducted personally an officer of the court or by an auctioneer licensed under

⁷⁵ R.C. 5721.39(D)(1).

⁷⁶ R.C. 5721.371.

⁷⁷ R.C. 5721.372.

⁷⁸ R.C. 5721.373.



Ohio Law. Under the bill, auctioneers who are not private selling officers can only auction goods and chattels. In addition, the auctioneer must be an Ohio resident licensed as an auctioneer under Ohio Law, limiting the ability of nonresident auctioneers acting under a reciprocal licensing arrangement.⁷⁹

Conduct throughout the foreclosure process

The bill requires a person whose conduct is governed by the bill to comply in good faith with the requirements of the bill and must act in good faith throughout the foreclosure process. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.⁸⁰

Conforming changes

Execution judgments

The bill makes conforming changes to how execution judgments are defined and carried out, permitting private selling officers to execute judgments. Continuing law states that an execution is a process of a court, issued by its clerk, the court itself, or the county board of revision with jurisdiction, and directed to the sheriff of the county, and that executions can be issued to the sheriffs of different counties at the same time. Under the bill, an execution includes a process of a court, issued by its clerk or the court itself, and directed to a private selling officer authorized under the bill's provisions, and executions may be issued to different private selling officers at the same time.⁸¹

Private selling officer's deed form

The bill establishes a statutory form that may be used as the private selling officer's deed. The deed, when properly executed, according to continuing law relating to real property conveyances, has the force and effect of a deed in fee simple to the grantee, the grantee's heirs, assigns, and successors, for their own use, with covenants that at the time of the delivery of the deed, the grantor was properly appointed, qualified, and acting in the fiduciary capacity described in that deed, and was authorized to make the sale and conveyance of the premises. In addition, the deed establishes that in all of the grantor's proceedings in the sale of the premises the grantor has complied with all requirements under law.⁸²

⁷⁹ R.C. 2329.151 and R.C. 4707.07, not in the bill.

⁸⁰ Section 101.03(B)(1).

⁸¹ R.C. 2327.01, 2327.02, 2327.04, 2329.151, 2329.17, and 2329.28.

⁸² R.C. 5302.01 and 5302.31 and R.C. Chapter 5301., not in the bill.



Technical change

The bill makes a technical change regarding which Ohio Civil Rule the judgment creditor must follow when providing the court proof of service.⁸³

Exempt state employee salary schedules

(R.C. 124.152, with conforming changes in R.C. 124.181, 124.382, and 126.32; Section 812.20)

The bill makes changes to the salary schedules for exempt state employees by eliminating Schedule E-1 for Step Eight Only on July 1, 2017. An exempt employee generally is an employee subject to the state job classification plan but exempt from collective bargaining. The bill gradually moves employees paid under Schedule E-1 for Step Eight Only into the corresponding pay range in Schedule E-1. The bill creates a new step for pay ranges 12 through 16 of Schedule E-1, Step 8, which provides for a higher maximum amount of pay than the current law Schedule E-1 for Step Eight Only. The amounts in Step 8 are the amounts currently specified in Schedule E-1, Step 7. The bill, with respect to Step 7, decreases the amounts paid under that step.

The bill requires an exempt state employee who is being paid a salary or wage in pay range 12 through 16 of Schedule E-1 for Step Eight Only to be paid a salary or wage in the corresponding pay range in Schedule E-1 as follows:

(1) If the employee has maintained satisfactory performance in accordance with the criteria established by the employee's appointing authority within the 12-month period immediately before July 1, 2016, at step 8 beginning on the first day of the pay period that includes July 1, 2016;

(2) If the employee has not maintained satisfactory performance in accordance with the appointing authority's criteria within that period, but attains satisfactory performance in accordance with the criteria before July 1, 2017, at step 8 beginning on the first day of the pay period that follows the date the employee attains satisfactory performance;

(3) If the employee does not attain satisfactory performance in accordance with the appointing authority's criteria before July 1, 2017, at the employee's base rate of pay as of the pay period immediately before the pay period that includes July 1, 2017, beginning on the first day of the pay period that includes July 1, 2017.

⁸³ R.C. 2329.26(A)(1)(a)(ii).



If an employee described in (3) above attains satisfactory performance in accordance with the appointing authority's criteria, the bill requires the employee to be paid a salary or wage at step 8 in the corresponding pay range in Schedule E-1 beginning on the first day of the pay period that follows the date the employee attains satisfactory performance.

The bill prohibits each exempt state employee who is being paid a salary or wage in range 17 or 18 of Schedule E-1 for Step Eight Only on the first day of the pay period that includes July 1, 2016, from receiving an increase in salary or wage until the maximum rate of pay for step 6 of the employee's corresponding pay range in schedule E-1 exceeds the employee's base rate of pay as of July 1, 2016. The bill requires such an employee who becomes eligible to receive an increase in salary or wage to be paid a salary or wage in step 6 of the employee's corresponding pay range in schedule E-1.

Effective date for pay schedule revisions

The sections amended by the bill to revise the pay schedules take effect on the bill's normal effective date.

An employee's "base rate of pay" is the rate of pay established under Schedule E-1 or Schedule E-1 for Step Eight Only plus the longevity supplement provided under current law and any other supplements added to those pay schedules.

Certificate of need for changes in a reviewable activity

(R.C. 3702.511)

Continuing law prohibits a person from carrying out a reviewable activity for which a certificate of need (CON) is needed unless the Department of Health has issued the person a CON for the activity.⁸⁴ The following are reviewable activities for which a CON is needed: (1) the establishment, development, or construction of a new long-term care facility, (2) the replacement of an existing long-term care facility, (3) the renovation of or addition to a long-term care facility that involves capital expenditures of \$2 million or more, not including expenditures for equipment, staffing, or operational costs, (4) an increase in long-term care bed capacity, (5) a relocation of long-term care beds from one physical facility or site to another, excluding relocation of beds within a long-term care facility or among buildings of a long-term care facility at the same site, and (6) expenditures of more than 110% of the maximum expenditure specified in a CON.

⁸⁴ R.C. 3702.53, not in the bill.

The Department is required by continuing law to monitor the activities of a person granted a CON for the five-year period following the date the CON is granted. The purpose of the monitoring is to determine whether the person granted the CON conducts the reviewable activity in substantial accordance with the CON.⁸⁵

The bill provides that any failure to conduct a reviewable activity in substantial accordance with an approved CON application, including a change in the site, is itself a reviewable activity if the failure occurs within five years after implementation of the reviewable activity for which the CON was granted. Another CON would be needed to continue conducting the reviewable activity with the change. Continuing law provides that a decrease in bed capacity is not to be used as the sole reason for a determination that a reviewable activity is not being conducted in substantial accordance with the CON.⁸⁶ This means that another CON would not be needed solely because of a decrease in bed capacity.

Alignment of community health assessments, plans, and tax information

(R.C. 3701.981)

The bill requires tax-exempt hospitals and boards of health to submit certain health assessments and implementation plans to the Department of Health on an aligned schedule. It also requires tax-exempt hospitals to submit certain tax-related information to the Department annually.

The bill's provisions apply to a board of health, which the bill defines as the board of health of a city or general health district or the authority having duties of a board of health under Ohio law. Boards of health are required to conduct community health assessments and health improvement plans as part of accreditation requirements.⁸⁷

The bill also applies to a tax-exempt hospital, which is defined as a nonprofit or government-owned hospital that is tax exempt under section 501(c)(3) of the Internal Revenue Code, and that is required to comply with community health needs assessment requirements under federal law. The Patient Protection and Affordable Care Act of 2010⁸⁸ (ACA) imposes new requirements that "hospital organizations" must

⁸⁵ R.C. 3702.52, not in the bill.

⁸⁶ R.C. 3702.52, not in the bill.

⁸⁷ Ohio Department of Health, *Profile and Performance*, <https://www.odh.ohio.gov/localhealthdistricts/profileandperformance.aspx> (last updated December 31, 2014).

⁸⁸ P.L. 111-148.



satisfy in order to be eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. One of the ACA's requirements is that each hospital organization conduct a community health needs assessment and adopt an implementation strategy at least once every three years. The assessment must consider input from persons who represent the broad interests of the community served by the hospital, including those with special knowledge of or expertise in public health, and it must be made widely available to the public.⁸⁹ The implementation strategy must address community health needs identified through the assessment.⁹⁰

Plans and assessments submitted by boards and hospitals

The bill requires, not later than July 1, 2017, each board of health and tax-exempt hospital to submit to the Department any existing plans and assessments for the most recent assessment and planning period. Beginning January 1, 2020, each board of health and tax-exempt hospital must complete assessments and plans in alignment on a three-year interval established by the Department. The first submission of plans and assessments must be made not later than October 1, 2020. The submission must cover years 2020 through 2022. Beginning October 1, 2023, and every three years thereafter, boards of health and tax-exempt hospitals must submit subsequent plans and assessments to the Department. The bill requires the Department to provide guidance regarding submitting the plans and assessments, and to provide an online repository for submission to the Department.

Tax information submitted by hospitals

The bill requires a tax-exempt hospital, on an annual basis beginning not later than July 1, 2017, to submit to the Department specified tax-related information. The information that must be submitted depends on whether the hospital is or is not a government-owned hospital.

Nonprofit hospitals general – In the case of a tax exempt hospital that is nonprofit but not government-owned, the bill requires the hospital to submit a copy of the hospital's Schedule H (Form 990) that it submitted to the Internal Revenue Service (IRS) for the preceding fiscal year. The hospital must include any corresponding attachments and reporting on financial assistance and means-tested government programs and community building activities included in Parts I and II of the form. Subsequent annual filings must be submitted to the Department each year within 30 days of filing with the IRS.

⁸⁹ 26 U.S.C. 501(r)(3).

⁹⁰ 26 C.F.R. 1.501(r)-3(c)(1) through (3).



Government-owned hospitals – In the case of a tax-exempt hospital that is government-owned, the bill requires the hospital to submit information that is equivalent to the IRS-related information submitted by a nonprofit hospital, as described above.

Under the bill, the Department is required to provide an online repository for the tax and equivalent information submitted by tax-exempt hospitals.

Alternative Fuel Vehicle Conversion Grant Program

(R.C. 122.076; Section 275.10 of Am. Sub. H.B. 64 of the 131st G.A.)

The bill creates the Alternative Fuel Vehicle Conversion Grant Program. Under the Program, the Director of Environmental Protection may make grants to eligible recipients for the purchase or conversion of large alternative fuel vehicles for use in business. Under the bill, "alternative fuel" means compressed natural gas, liquefied natural gas, or liquid petroleum gas (e.g., propane). An "alternative fuel vehicle" includes any vehicle, including a bi-fueled or dual-fueled vehicle, that is registered for use on public highways, that runs on alternative fuel, and that has a gross vehicle rating of at least 26,000 pounds.

A person may apply for a grant under the Program for the conversion of a traditional fuel vehicle (i.e., a vehicle that runs on gasoline or diesel) to run on alternative fuel, or for the purchase of a new alternative fuel vehicle. The purchase of a new alternative fuel vehicle must meet the following conditions:

- (1) The grant applicant must purchase the vehicle from an original equipment manufacturer, automobile retailer, or after-market conversion facility;
- (2) The applicant must be the first person to purchase the vehicle not for resale;
- (3) The alternative fuel technology used in the vehicle must have received a compliance designation or been certified by the U.S. Environmental Protection Agency for new or intermediate use;
- (4) The applicant must purchase the vehicle for use in business.

The grant amount allowed per vehicle is the lesser of \$25,000 or 50% of either (a) the cost of equipment and parts needed to convert a traditional fuel vehicle or (b) the "adjusted purchase price" of the new alternative fuel vehicle. The "adjusted purchase price" of a new vehicle is the portion of the price of the vehicle that is attributable to the parts and equipment used for the storage of alternative fuel, the delivery of alternative fuel to the motor, or the exhaust of gases from the combustion of alternative fuel. For a



converted vehicle, the cost of conversion parts and equipment may not include the cost of any parts and equipment that have previously been used to modify or retrofit another traditional fuel vehicle.

Under the bill, the limit on the total amount of grants that may be awarded to a single person is \$400,000.

The bill requires the Director to adopt rules in accordance with Ohio's Administrative Procedure Act that are necessary for the administration of the Program. The rules must establish an application form and procedures, a requirement that each grant recipient attest that most of the vehicle's miles will be within the state, and any other procedures, criteria, or grant terms that the Director determines necessary to administer the Program.

Alternative Fuel Vehicle Conversion Fund and appropriation

The bill creates the Alternative Fuel Vehicle Conversion Fund in the state treasury. Money in the Fund must be used solely to make grants under the Program. The bill directs the OBM Director to make at least \$5 million available to the Fund in FY 2017 from the Alternative Fuel Transportation Fund.

Controlling Board

Emergency Purposes Fund name change

(R.C. 127.19; Section 601.10 (amending Section 245.10 of H.B. 64 of the 131st G.A.))

The bill changes the name of the Controlling Board Emergency Purposes Fund to the Controlling Board Emergency Purposes/Contingencies Fund.

Surplus GRF transfer for Controlling Board use

(Section 515.10)

The bill requires the Director of OBM to transfer certain surplus GRF revenues, up to \$25 million, to the Controlling Board Emergency Purposes/Contingencies Fund. This fund is used by the Controlling Board for any purpose, including providing disaster and emergency aid to state agencies or local subdivisions.⁹¹ The amount to be transferred equals the lesser of \$25 million or the amount by which unencumbered GRF surplus revenue as of the end of FY 2016 exceeds the sum of (a) 0.5% of GRF revenues for the FY 2016 and (b) the amount, if any, by which the amount appropriated for FY

⁹¹ R.C. 127.19.

2017 exceeds GRF revenue estimates for that fiscal year. (These amounts are referred to statutorily as the "ending fund balance" and "carryover balance," respectively.⁹²)

Under current law, unencumbered GRF surplus revenue is credited to the Budget Stabilization Fund until that fund equals 8.5% of GRF revenue for the preceding fiscal year. Any remaining GRF surplus is credited to the Income Tax Reduction Fund, which is used to temporarily reduce personal income tax rates.⁹³

Movie production tax credit

(R.C. 122.85; Section 803.10)

The bill makes several changes to Ohio's refundable motion picture tax credit. The bill changes how the credit is calculated, removes a \$5 million cap on the maximum credit amount that may be awarded to a motion picture, increases the maximum amount of credits that may be awarded in each fiscal year, and authorizes motion picture companies to transfer the authority to claim a credit to another person.

Additionally, the bill creates a job training program for Ohio resident film crew members whereby the Director of Development Services is required to pay to the employing motion picture company one-half of the salary of such members certified by the Director.

Continuing law authorizes a motion picture company that produces at least part of a motion picture in Ohio and incurs at least \$300,000 in Ohio-sourced expenditures to apply to the Director of Development Services to receive a certificate entitling the company to refundable credits against the commercial activities tax, financial institutions tax, or personal income tax. The bill's tax credit changes apply to certificates issued beginning July 1, 2016. (Section 803.10(A).)

Credit amount

Under current law, the amount of the credit equals the lesser of \$5 million or a percentage of Ohio-sourced expenditures for goods, services, and payroll. Under current law, this percentage equals 25% of the cost of goods and services (including payroll of nonresidents) and 35% of payroll of Ohio resident cast and crew. The bill sets the credit percentage at 30% for all Ohio-sourced expenditures, including the payroll of Ohio resident cast and crew, and removes the \$5 million credit cap.

⁹² R.C. 131.44(A)(3)(b) and (c), not in the bill.

⁹³ R.C. 131.44(B) and (C), not in the bill.



Overall credit limit

Current law limits the total amount of tax credit certificates that may be issued to no more than \$40 million in each fiscal biennium and no more than \$20 million for the first fiscal year of the biennium. The bill increases the amount of allowable credits to \$40 million per fiscal year. If less than \$40 million is awarded in a year, the remainder would not be carried over to ensuing years.

Credit certificate transfers

The bill authorizes a motion picture company to transfer the authority to claim all or part of a motion picture tax credit to another person, provided the company provides certain details of the transfer to the Director of Development Services within 30 days after such a transfer. Specifically, the transferring company is required to detail the amount of the credit being transferred, the date of the transfer, and the tax identification number of any transferee. The Director may require a company to supply additional information.

The bill disallows credit transfers after expiration of the time for the motion picture company to claim the credit and requires any transferred credit to be claimed by the transferee for the same tax period for which the company could have claimed the credit. A motion picture company may divide portions of a transferred credit between different transferees but may not transfer the same portion of the credit to more than one transferee.

Film crew salary payment program

The bill requires the Director of Development Services to establish and adopt rules administering a program to pay eligible motion picture companies 50% of the salary of certain Ohio resident trainees. Under this program, the Director certifies resident individuals as eligible for the program if they participate in Director-approved on-the-job film or multimedia training or complete a Director-approved film or multimedia training course. The Director may prescribe additional certification qualifications.

A motion picture company whose production has been certified by the Director as eligible for a motion picture tax credit that intends to employ and provide on-the-job training to a certified individual in that production may apply to the Director for a payment equal to 50% of that certified employee's salary. The bill requires the Director, upon completion of the production, to pay to each approved applicant an amount equal to 50% of the certified individual's salary, though the bill does not specify the revenue source from which the payment may be drawn.



Other tax-related provisions

Municipal gas company sales exemption

The bill exempts from state and local sales and use taxes natural gas sold to customers by a municipal gas utility – defined as a municipally owned or operated system for distributing natural gas.⁹⁴ The exemption applies to sales occurring before or after the bill's effective date.⁹⁵

Continuing law exempts from sales and use tax sales of natural gas by a "natural gas company," which is broadly defined to include any entity that engages in the business of supplying or distributing natural gas for lighting, power, or heating purposes to in-state consumers.⁹⁶ However, the statute governing which entities are natural gas companies for this purpose does not apply to municipal corporations.⁹⁷

Tax abatement for housing authority property

The bill authorizes the abatement of unpaid property taxes, penalties, and interest on property that is owned by a metropolitan housing authority and that would have been tax-exempt if not for a failure to comply with the procedures for obtaining tax-exempt status. The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. The application must be filed within 12 months after the bill's effective date.⁹⁸

With the exception of the bill's abatement provisions, continuing law allows the Commissioner to abate only up to three years' worth of unpaid property taxes, interest, and penalties. No exemption may be granted if, after any abatement of taxes, there remain unabated unpaid taxes.⁹⁹

Procedures for receiving tax abatement

The application form must include the name of the county in which the property is located; the legal description or parcel number of the property; its taxable value; the

⁹⁴ R.C. 5739.01(RRR) and 5739.02(B)(7).

⁹⁵ Section 4.

⁹⁶ R.C. 5727.01, not in the bill.

⁹⁷ R.C. 5727.05.

⁹⁸ Section 3.

⁹⁹ R.C. 5713.08 and 5713.081, not in the bill.



amount of unpaid taxes, penalties, and interest; and any other information required by the Tax Commissioner.

If the property owner meets all of the qualifications specified in the bill, the unpaid charges must be abated. If the property does not meet the qualifications, or is otherwise being used for a purpose that would foreclose its right to exemption, the charges are not abated. For any year that the applicant is not entitled to tax abatement, the Commissioner must order the county treasurer to collect the unpaid charges for that year.

If property is already subject to an application for exemption pending on the bill's effective date, the Commissioner may consider the abatement without requiring the property owner to file another application.

JRTC application review process

(R.C. 122.171(C))

The bill clarifies the role of the Director of Budget and Management (OBM), Tax Commissioner, and Superintendent of Insurance in reviewing applications for job retention tax credits. Under continuing law, a taxpayer that will make a capital investment in Ohio and retain jobs may apply to the Tax Credit Authority for a job retention tax credit. After receiving an application, the Authority must forward the application to the OBM Director, Commissioner, Superintendent, and the Director of the Development Services Agency (DSA). Each official reviews the application to determine the economic impact of granting the credit on the state and affected local governments.

Under current law, after completing their review, all four of the officials must submit their "determinations and recommendations" to the Authority. The bill removes the requirement that the OBM Director, Commissioner, and Superintendent submit "recommendations" with respect to each application, while maintaining that requirement for the DSA Director.

Eliminate county utility excise tax

(R.C. 305.31, 305.42, 323.73, and 5747.51; R.C. 324.01, 324.02, 324.021, 324.03, 324.04, 324.05, 324.06, 324.07, 324.08, 324.09, 324.10, 324.11, 324.12, and 324.99 (all repealed))

The bill eliminates the authority of counties to levy a tax on utility services purchased by consumers in the county. Under current law, a board of county commissioners may impose such a tax by holding two hearings on the subject and adopting a resolution. The imposition of the tax need not be submitted to the electors of



the county but it is subject to referendum. The rate of the tax may not exceed 2% of the utility charge, except that customers engaged in business are required to pay at a rate of 150% of the rate imposed on all other customers.

The county utility excise tax was first authorized in 1967. However, no county has ever levied the tax.

Library tax-supported securities

(R.C. 3375.404)

The bill authorizes public library boards of trustees to issue securities to finance facilities and other property; the securities would be backed by property taxes levied by the library board's corresponding taxing authority – i.e., by the school board, municipal council, or board of township trustees or county commissioners that appoints the library board's trustees.

Currently, library boards have authority to issue securities only in anticipation of their share of distributions from the state's Public Library Fund (PLF). The proceeds raised from the securities must be used to pay the costs of real and personal property used by a library board to operate its library system. The amount of securities that may be outstanding at any time is limited to 30% of the library board's average PLF distribution during the two most recent years. The securities are deemed "special obligations" because they are payable solely from PLF distributions; bondholders do not have the right to have taxes levied to pay the debt charges as they would with general obligation securities.

Under continuing law, public library boards do not have independent taxing power. Instead, the library board's taxing authority may levy a property tax to pay the expenses of the corresponding library system and also may issue general obligation bonds backed by such a property tax to enable the library board to pay for real or personal property.¹⁰⁰ These general obligation bonds are issued and payable by, and are the obligation of, the taxing authority rather than the library board. The bill's special obligations would be issued by the library board itself, which would be obligated to pay the debt charges out of the proceeds it receives from the property tax levied for it by its taxing authority.

The bill states that the property tax-supported securities are special obligations that are payable only from the pledged tax revenue and not from any other source, are not a debt of either the library board or its taxing authority, and are not bonded

¹⁰⁰ R.C. 133.18, 3375.43 to 3375.45, 5705.19(D), 5705.191, and 5705.23.



indebtedness for the purposes of the constitutional "sinking fund" requirement mandating that a tax be levied whenever bonded indebtedness is incurred. The bill further states that the property tax must continue in effect for as long as needed, and at a sufficient rate, to retire the securities.

School district performance audits

(R.C. 3316.042; Sections 601.10 and 601.21 (amending Sections 223.10, 263.10, and 263.50 of H.B. 64 of the 131st G.A.))

Under continuing law, the Auditor of State may conduct performance audits of school districts that are under fiscal caution, in fiscal watch, or in fiscal emergency to review areas of operation in which the Auditor believes greater operational efficiencies or enhanced results can be achieved. The performance audits cannot include an evaluation of a district's academic performance.

The bill revises the law regarding these performance audits. First, rather than requiring the Auditor to conduct performance audits, upon the request of the Superintendent of Public Instruction, for districts in any of the three categories of fiscal concern, the bill requires the Auditor of State to determine for which school districts to conduct performance audits. When making that determination, the Auditor of State must (1) consult with the Department of Education and the Office of Budget and Management, and (2) give priority to districts in fiscal distress, including districts employing fiscal practices or experiencing budgetary conditions that could produce a state of fiscal watch or fiscal emergency, again as determined by the Auditor of State and in consultation with the Department and OBM.

Finally, the bill requires that the Auditor of State, rather than the Department, to pay the costs of the performance audits. It also transfers to the Auditor of State \$1 million, originally appropriated to the Department, for FY 2017 to pay expenses related to these performance audits.

Veterinarian licensing

(R.C. 4741.11)

The bill expands the requirements to obtain a license to practice veterinary medicine to additionally require an applicant to have passed the nationally recognized examination approved by the State Veterinary Medical Licensing Board in accordance with rules adopted by the Board. Under continuing law, the State Veterinary Medical Licensing Board must issue an applicant a license to practice veterinary medicine whenever the applicant is not in violation of the Veterinarian Licensing Law and has



graduated from an approved or accredited veterinary college or been issued a certificate of having obtained an equivalent education.

Ohio Turnpike and Infrastructure Commission

(R.C. 5537.02)

The bill allows designees of the Directors of Transportation and Budget and Management to serve as members of the Ohio Turnpike and Infrastructure Commission. Current law only allows the respective Directors to serve on the Commission.

Unit operation

(Section 715.10)

The bill requires that for an application for unit operation under the Oil and Gas Law that encompasses a unit area for which all or part of the mineral rights are owned by the Department of Transportation on which the Chief of the Division of Oil and Gas Resources Management has held a hearing before the effective date of the bill, that the Chief issue, not later than 45 days after the bill's effective date, an order denying or providing for the unit operation of a pool or part of a pool. The bill specifies that an applicant to whom the above provision applies is not required to commence unit operations within 24 months of the bill's effective date.

Ohio Judicial Conference exempt from sunset review

(Section 701.20)

The amendment exempts the Ohio Judicial Conference from review by the Sunset Review Committee convened to operate during the 131st General Assembly. The operation of the Ohio Judicial Conference is renewed until December 31, 2020.

Capital Case Attorney Fee Council

(R.C. 120.33 and 2941.51)

The bill creates the Capital Case Attorney Fee Council, which replaces the Supreme Court of Ohio as the entity that sets the rate of compensation for counsel selected by indigent persons or appointed by the courts in capital cases. The five members comprising the Council, all sitting state appellate court judges, are to be appointed by the Chief Justice of the Supreme Court not later than 60 days after the effective date of the bill, and their initial terms commence 90 days after the effective date of the bill. When any vacancy occurs, the Chief Justice must appoint a sitting state



appellate judge to fill the vacancy. Members will receive no additional compensation for their service, but may be reimbursed for expenses reasonably incurred in service to the Council, to be paid by the Supreme Court. The Supreme Court is also required to provide administrative support to the Council, which is required to initially meet not later than 120 days after the effective date of the bill and then meet not less than annually.

Upon setting the amount or rate of compensation, the chairperson of the Council promptly must provide written notice to the State Public Defender of the amount or rate set and the amount or rate set becomes effective 90 days after the date on which the chairperson provides that written notice to the State Public Defender. All amounts or rates set by the Council are final, subject to modification by the Council, and are not subject to appeal.

Land conveyance

(Section 103.10 and 753.10)

The bill repeals a prior authorization for a land conveyance of Department of Job and Family Services property at 145 S. Front Street, in the city of Columbus, and authorizes the Governor to execute a deed conveying property at the same location to the Columbus Downtown Development Corporation, or to a grantee to be determined. A legal description of the property is contained in the bill.

The bill sets forth specific terms for the land conveyance, including all of the following:

The real estate must be sold as an entire tract and not in parcels.

The conveyance must include improvements and chattels situated on the real estate, and is subject to all leases, easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. The real estate must be conveyed in an "as-is, where-is, with all faults" condition.

The deed may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions the Director of Administrative Services determines to be in the best interest of the state.

Subsequent to the conveyance, any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions contained in the deed may be



released by the state or the Department of Job and Family Services without the necessity of further legislation.

The deed may contain restrictions prohibiting the purchaser or purchasers from occupying, using, or developing, or from selling, the real estate such that the use or alienation will interfere with the quiet enjoyment of neighboring state-owned land.

The Director of Administrative Services must offer the real estate to the Columbus Downtown Development Corporation, or to a grantee or grantees to be determined, through a real estate purchase agreement prepared by the Department of Administrative Services. Consideration for the conveyance of the real estate must be at a price acceptable to the Director of Administrative Services and the Director of Job and Family Services. The consideration must be paid at closing.

If the Columbus Downtown Development Corporation, or the grantee or grantees to be determined, does not complete the purchase of the real estate within the time period provided in the real estate purchase agreement, the Director of Administrative Services may offer to sell the real estate to an alternate grantee or grantees, through a real estate purchase agreement prepared by the Department of Administrative Services. Consideration for the conveyance of the real estate to an alternate Grantee or Grantees must be at a price acceptable to the Director of Administrative Services and the Director of Job and Family Services. The consideration must be paid at closing.

The purchaser must pay all costs associated with the purchase, closing, and conveyance of the subject real property, including surveys, title evidence, title insurance, transfer costs and fees, recording costs and fees, taxes, and any other fees, assessments, and costs that may be imposed.

The net proceeds of the sale must be deposited into the state treasury to the credit of the Unemployment Compensation Special Administrative Fund, under section 4141.11 of the Revised Code.

Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the subject real estate. The deed must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the office of the Franklin County Recorder.



The authorization for the land conveyance expires three years after the effective date of the bill.

Intent regarding capital appropriations and reappropriations

(Section 701.30)

The bill states that the General Assembly's intent regarding capital appropriations and reappropriations made in S.B. 260 and S.B. 310 of the 131st General Assembly and subsequent capital-appropriations and reappropriations bills is that those appropriations and reappropriations are for capital construction projects that are ready to begin construction or for projects that will be completed within the applicable two-year fiscal biennium. It also states that the General Assembly's intent is that projects that are neither started nor completed within the biennium will be allowed to lapse and not be reappropriated. However, the bill states that the General Assembly recognizes that there are times when extraordinary circumstances prevent projects from progressing as originally conceived. But it states that reappropriations for these projects will be the exception, not the default.

Effective dates

(Sections 812.10 and 812.20)

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the bill, including those sections making capital appropriations are subject to the referendum and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill includes an exception to the default provision providing that certain uncodified provisions including, for example, appropriations for current expenses, go into immediate effect. The bill also provides that the amendments in the bill to the codified law that are cross-references to the amendment regarding exempt state employee salary schedules are to take effect on July 1, 2017.

HISTORY

ACTION	DATE
Introduced	11-05-15
Reported, H. Ways & Means	01-27-15
Passed House (93-0)	02-24-16
Reported, S. Ways & Means	---

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