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Bill Analysis

Legislative Service Commission

H.B. 421

127th General Assembly
(As Introduced)

Reps. Miller, J. McGregor, DeGeeter, Evans, Szollosi, Yuko, Skindell

BILL SUMMARY

- Establishes a procedure for a school district, community school, STEM school, or nonpublic school to file a civil action to take control of nearby abandoned nuisance buildings and abate the nuisance by repairing or demolishing the buildings.
- Requires the appropriate court of common pleas to conduct a hearing and to enter judgment in favor of the school district or school if the facts alleged in the complaint are proved.
- Provides that a school board, authority, or body and its officers, agents, employees, and students are immune from civil and criminal liability for actions taken in regard to a nuisance abandoned building under the authority granted by the court's judgment.
- Specifies that the owner of the building may be liable to the school board, authority, or body for its expenses in prosecuting the action and abating the nuisance.

CONTENT AND OPERATION

Current law on abatement of nuisance buildings

Current law, not changed by the bill, prescribes a procedure for filing an action in court to take control of a nuisance building and place it in the custody of a receiver, who may rehabilitate and sell the building or may demolish the building to abate the nuisance. Such an action may be filed by the municipal corporation in which the building is located, by any neighbor or tenant, or by a nonprofit corporation established to improve housing conditions in the county or municipal corporation. Under this law, a building is a public nuisance if it is shown to be "a menace to the public health, welfare, or safety;" structurally

unsafe, unsanitary, or without adequate safe egress; a fire hazard or otherwise dangerous to human life; not fit for human habitation; or a hazard to the public health, welfare, or safety due to inadequate maintenance, dilapidation, obsolescence, or abandonment.¹ Presumably, under this current procedure, the authorities of a school that is located near a nuisance abandoned building could file an action, or could cooperate with a local prosecutor or a housing authority, to abate that nuisance.

The bill's alternative procedure for abandoned buildings located around schools

(R.C. 3318.81 to 3318.813)

The bill sets forth an alternative procedure for public and private schools to seek court approval to take control of nuisance abandoned buildings located around the schools and to abate the nuisance by repairing or demolishing the buildings. Under the bill, the board of education of a school district, the governing authority of a community school,² the governing body of a science, technology, engineering, and mathematics (STEM) school,³ or the governing authority of a nonpublic school has a civil cause of action "in rem" against "an abandoned residence or other building" that (1) is contiguous to or located within 1,000 feet of a school under the board's, authority's, or body's control and (2) "constitutes a nuisance detrimental to the mission of the school." (An "in rem" action is taken against a thing and not against a person.) The bill specifies that the court of common pleas of the county in which the building is located has original jurisdiction of the action.⁴

¹ R.C. 3767.41, not in the bill.

² Community schools (sometimes called "charter schools") are public schools that operate independently of a school district under a contract with a sponsoring entity.

³ A subcommittee of the Partnership for Continued Learning may select up to five STEM schools to operate beginning in fiscal year 2009 based on competitive proposals. Each STEM school must be operated under a collaborative consisting of a school district and other public and private entities.

⁴ The environmental division of the Franklin County Municipal Court and the housing divisions of the Cleveland and Toledo municipal courts have exclusive jurisdiction in actions brought under the current procedure set forth in R.C. 3767.41, instead of the court of common pleas. See R.C. 1901.181, not in the bill.

Notice of intent to file an action

(R.C. 3318.811(A))

Before commencing an in rem action under the bill, the school board, authority, or body must search relevant land, probate, tax, judicial, and other records to identify any governmental entity or person having an interest in the building. The board, authority, or body then must notify those entities or persons by certified mail of the intention to commence the action. The notice must include a description of the effect a judgment in the action will have, of the interested party's rights to intervene in the action or to abate the nuisance in lieu of the action, and of the interested party's exposure to liability if judgment is entered in favor of the school. If the notice is not delivered and is returned, the board, authority, or body must send the notice again by ordinary mail.

In addition to mailed notice, the board, authority, or body must publish notice of the same information in a newspaper of general circulation in the county in which the building is located once a week for three consecutive weeks, on three different days of the week. The board, authority, or body may not commence the action until 30 days after the latest of the date the search was completed, the date the last notice was mailed, or the date the newspaper publication is complete.

Complaint, hearing, and judgment

(R.C. 3318.811(B) to (D))

The bill specifies the contents of the complaint that the school board, authority, or body may file with the court. First, the complaint must allege facts tending to show that the building (1) is contiguous to or is situated within 1,000 feet of a school under the board's, authority's, or body's control, (2) is abandoned, and (3) constitutes a nuisance detrimental to the mission of the school. Next, the board, authority, or body must show that it has searched the relevant records to identify persons having an interest in the building and that it has notified those persons in the manner prescribed by the bill. Finally, the board, authority, or body must indicate that the action is being commenced after expiration of the time prescribed by the bill.

The court of common pleas must conduct a hearing on the matter not earlier than 30 days and not later than 90 days after the date of the initial filing. The bill specifies that the school board, authority, or body has the burden of proving the facts alleged in the complaint by a preponderance of the evidence. Not later than 30 days after conclusion of the hearing, the court must determine whether the facts alleged in the complaint have been proved. If the court determines that the facts

alleged in the complaint have not been proved, the court must dismiss the action.⁵ On the other hand, if the court determines that the facts alleged in the complaint have been proved, the court must enter a judgment in favor of the school board, authority, or body. The judgment may permit repair or demolition of the building.

Effect of judgment

(R.C. 3318.811(D))

The bill does not specify what is to be done with the title to the property and what, if any, ownership rights the school board, authority, or body may have in the property. Still, the bill states that if the court enters a judgment in favor of the school board, authority, or body that authorizes demolition, that judgment "forecloses any interest, other than federal liens, in the residence or other building."⁶ It also creates a monetary liability by the owner of record to the school board, authority, or body for its costs in prosecuting the action and abating the nuisance (see "**Monetary liability of the property owner**" below).

Right of appeal

(R.C. 3318.811(E))

The bill specifies that the court's judgment may be appealed in the same manner as in any other civil action. In addition, under the bill, if the judgment authorizes the building to be demolished, and the judgment is appealed, the court must issue a stay of the demolition pending completion of the appeal.

Immunity

(R.C. 3318.811(E))

The bill immunizes the school board, authority, or body and its officers, employees, agents, and students from any civil or criminal liability for any action taken within the scope of the authority granted by the court's judgment.

⁵ Presumably this is a dismissal with prejudice, meaning that the action may not be refiled.

⁶ In contrast, the current procedure under R.C. 3767.41 states that title in any building that is sold by the receiver "shall be incontestable in the purchaser and shall be free and clear of all liens for delinquent taxes, assessments, charges, penalties, and interest owed to this state or any political subdivision of this state, that could not be satisfied from the proceeds of the sale." However, other liens and encumbrances with respect to the building survive the sale, including, federal tax liens and easements and covenants that run with property and that were created prior to the time of the sale. (R.C. 3767.41(K).)

Right of others to repair or demolish while the action is pending

(R.C. 3318.812)

Anytime before the court enters judgment in the in rem action, any party to the action "or any other person" may "lawfully" occupy and repair, repair, or demolish the building. Presumably, the person who does so must have some independent right to enter, occupy, and use the property, including an ownership or leasehold interest or a license or easement to use the property. The person must promptly notify in writing the court and each party (or each other party) to the action.

If the notice is received before the court's hearing, the court must stay further proceedings in the action, pending completion of the repair or demolition. If the notice is received during or after the hearing but before the entry of judgment, the court must delay the entry of judgment, pending completion of the repair or demolition. However, if the notice is received after the entry of judgment, the notice is void and the judgment must be executed.

If the court finds, upon motion by the school board, authority, or body, and after a hearing, that the person's repair or demolition of the building is not being prosecuted with "reasonable diligence," or that it has been abandoned, the in rem action may proceed. If the court finds that the repair or demolition has been completed in "a satisfactory, workerlike manner," the court must dismiss the pending in rem action.

Monetary liability of the property owner

(R.C. 3318.813)

The bill specifies that if the judgment in the in rem action is in favor of the school board, authority, or body, or if that favorable judgment is appealed and ultimately upheld, the owner of the building is liable to the board, authority, or body for expenses incurred in bringing and prosecuting the action, including costs and reasonable attorney's fees, and for the expenses incurred in abating the nuisance. The court, upon application of the school board, authority, or body, may issue a finding determining the amount of the liability and order the amount to be paid. This order is a separate judgment and appears to be an "in personam" judgment (against a person) for payment of the specified amount rather than in rem as in the original action. This second judgment likely would be executed separately.

HISTORY

ACTION

DATE

Introduced

01-02-08

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