



# Ohio Legislative Service Commission

## Bill Analysis

Mackenzie Damon

### Sub. S.B. 172

130th General Assembly

(As Reported by S. Public Safety, Local Government, and Veterans Affairs)

**Sens.** Patton, Seitz, Hughes, Schiavoni, Skindell, LaRose, Bacon

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## BILL SUMMARY

- Makes several changes to Ohio law governing land reutilization programs, including the following:
  - Expressly extends political subdivision sovereign immunity to county land reutilization corporations (CLRCs).
  - Provides that, in addition to existing criteria, land may be considered to be nonproductive, and therefore eligible for acquisition by a land bank, if the land is abandoned.
  - Removes a requirement that at least 75% of the property owned by a CLRC be unoccupied.
  - Allows a land bank to acquire nonproductive land if the property has been offered for sale once, instead of twice, and has not been sold for a specified minimum price.
  - Specifies that the property tax exemption for CLRC-owned property also extends to property held by a wholly owned subsidiary of a CLRC.
  - Specifies that, like a CLRC, a political subdivision is not required to apply to any county or state agency for property tax exemption for its land bank property.
  - Allows a land bank to move to vacate an order transferring foreclosed property to the land bank if the land bank previously requested the transfer but no longer wishes to acquire the property.

--Requires, instead of allows, the county auditor to approve a conveyance of property in lieu of foreclosure if the land bank has certified in writing that the property is abandoned.

--Allows a political subdivision to sell property in its land bank program to a CLRC for less than fair market value.

--Provides that, when a CLRC purchases property sold pursuant to a nontax foreclosure proceeding, any taxes, penalties, and interest due on the property are automatically extinguished if the CLRC is also the judgment creditor in the foreclosure proceeding.

--Allows county treasurers and prosecuting attorneys to allocate surplus money in each officer's delinquent tax and assessment collection fund to pay for nuisance abatement actions taken by CLRCs, and increases the total amount that the officers in certain counties may allocate from the funds for nuisance abatement.

--Authorizes a court of common pleas in a county that has established a CLRC to collect an additional filing fee of up to \$500 in all new foreclosure proceedings, except for tax foreclosures, to benefit the CLRC.

--Allows a municipal corporation or CLRC to file a lien to recoup nuisance abatement costs and file a foreclosure action to enforce the lien, in addition to the remedies already available to recoup such costs.

- Makes several changes to Ohio law governing expedited, nonjudicial tax foreclosure procedures, including the following:

--Specifies that land is considered to be abandoned, and therefore eligible for expedited foreclosure, if the land is insecure, vacant, or vandalized upon visible inspection and meets other statutory criteria.

--Allows for the transfer of foreclosure cases between county boards of revision and courts of common pleas or municipal courts.

--Shortens the period of time in which a property owner may move to dismiss an expedited foreclosure complaint, from 20 days after service of the complaint to 14 days thereafter.

--Allows a county board of revision to issue subpoenas to compel witness testimony or the production of papers, books, and accounts with respect to an expedited foreclosure case.



- Allows a CLRC or political subdivision to repurchase a delinquent tax certificate at its original purchase price from the certificate holder under certain circumstances.
- Shortens the alternative redemption period that may be invoked in a foreclosure action involving abandoned property, from the period ending 45 days after the adjudication of foreclosure is journalized to the period ending 28 days thereafter.
- Provides that tax foreclosure actions may be started before the list of tax-delinquent property is published if the publication is not made as otherwise required by ongoing law.
- Changes the notice that is printed on property tax bills to reflect current law, which provides that property owners may face foreclosure if the billed taxes are not paid within 60 days.

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## **CONTENT AND OPERATION**

### **Changes to the law governing land banks and property tax foreclosures**

The bill makes several changes to the law governing land reutilization programs and property tax foreclosures. The first part of this analysis addresses the changes to land reutilization programs. The second and third parts of the analysis discuss the bill's changes to property tax foreclosure procedures.

#### **Land bank programs**

Under Ohio law, a county, municipal corporation, or township may adopt a land reutilization program in order to facilitate the reutilization of nonproductive land located within its boundaries. (Land reutilization programs are commonly referred to as "land bank" programs.) Under such a program, the subdivision may acquire properties that have been foreclosed for tax delinquency, sell those properties to get them back on the tax rolls, or dedicate the properties to public use.

In lieu of establishing its own land bank program, a county with a population of more than 60,000 may create a county land reutilization corporation (CLRC). A CLRC is a nonprofit organization that has the same powers as a subdivision with its own land bank program, but that has a different funding mechanism, greater authority to acquire foreclosed and forfeited land, and the power to regionally address vacant housing problems.

#### **Nonproductive land definition**

A land bank is charged with acquiring and disposing of "nonproductive" land located within its boundaries. Under current law, nonproductive land is tax delinquent land that is subject to a property tax foreclosure proceeding and that fits into one of the following categories:

- (1) The land is vacant;
- (2) The land contains buildings or structures that are not occupied and upon which proceedings have been instituted for the removal or demolition of buildings due to their being insecure, unsafe, or structurally defective;
- (3) The land contains buildings or structures that are not occupied at the time the foreclosure proceeding is initiated and whose acquisition the municipal corporation, county, or township determines to be necessary for the implementation of an effective land bank program.



Subdivisions and CLRCs may acquire nonproductive land once the tax lien has been foreclosed and, in the general case, the property has been offered for sale at a specified minimum price but remains unsold. (Under two alternative procedures, subdivisions and CLRCs may purchase nonproductive land directly from the owner before the tax lien is foreclosed,<sup>1</sup> or by a conveyance in lieu of foreclosure. See "**Conveyance in lieu of foreclosure**," below.)

The bill adds that property may be considered to be nonproductive if the property qualifies as abandoned (for a definition of abandoned property, see "**Abandoned land definition**," below). In addition, the bill modifies (3) to require that, instead of determining that acquisition of a property is necessary to the effectiveness of the land bank, a subdivision or CLRC need only determine that the land is eligible for the land bank program.<sup>2</sup>

### **CLRC ownership of unoccupied property**

Under current law, at least 75% of the property owned by the CLRC must be unoccupied. The bill removes this requirement.<sup>3</sup>

### **Tax sale requirement; acquisition costs**

The bill allows a subdivision or CLRC to acquire nonproductive land it has selected for its land bank if the property has been offered for sale once but has not been sold for a specified minimum price.<sup>4</sup> (Generally, the minimum price is set at either the amount of the tax delinquency, including penalties and interest and various costs of foreclosure, the fair market value as shown on the tax list, or two-thirds of a newly appraised value, depending on the foreclosure proceeding.) In the case of property foreclosed under R.C. 323.25, only one sale offer at a minimum price will be required if the property qualifies as "abandoned land" (see "**Abandoned land definition**," below).<sup>5</sup> Current law generally requires tax-delinquent property to be offered for sale twice at the specified minimum price before it may be acquired by a subdivision or CLRC under the land bank law.

Once a subdivision or CLRC acquires nonproductive land that failed to sell at a tax sale, the subdivision or CLRC must pay a share of the foreclosure costs in

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<sup>1</sup> R.C. 5722.21.

<sup>2</sup> R.C. 5722.01.

<sup>3</sup> R.C. 1724.02.

<sup>4</sup> R.C. 5722.03(D).

<sup>5</sup> R.C. 323.28(D).



proportion to the subdivision's or CLRC's share of property taxes charged against the property (a CLRC's share is the county's share), and must pay the deed transfer and recording fees.<sup>6</sup>

The bill exempts CLRCs and subdivisions from having to pay the transfer and recording fees for nonproductive land it so acquires.<sup>7</sup>

### **Property tax exemption**

Under continuing law, land held by a CLRC or political subdivision as part of a land bank program is exempt from taxation. The bill clarifies that this exemption extends to property held by any subsidiary that is wholly owned by a CLRC.

The bill also specifies that a political subdivision is not required to apply to any county or state agency for exemption of its land bank property. Current law already includes a similar provision for CLRCs.<sup>8</sup>

### **Rejection of selected properties**

Continuing law allows a land bank to acquire delinquent property that is not sold at a foreclosure auction for a minimum price (see "**Tax sale requirement; acquisition costs,**" above). The subdivision or CLRC must notify the prosecuting attorney that it wishes to acquire the property before the property is advertised for sale. If the property is not sold at auction for the applicable minimum price, the court of common pleas or board of revision will issue an order transferring the property to the land bank.

The bill provides that, if a land bank selects such a property and a court or board orders the property transferred to the land bank, the land bank may move to vacate the transfer order if it no longer wishes to acquire the parcel. If the land bank files a petition to vacate the transfer within 60 days after the transfer order was journalized, the court or board must vacate the transfer. If the petition is filed after that 60-day period, the court or board may vacate the transfer at its discretion using the standards outlined in Civil Rule 60.

If an order transferring property to a land bank is vacated, the court or board must reinstate the foreclosure proceedings. The court or board may not transfer the parcel to the land bank again unless the land bank re-elects to acquire the parcel at least

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<sup>6</sup> R.C. 5722.03(D), (E), and (F).

<sup>7</sup> R.C. 317.32.

<sup>8</sup> R.C. 5709.12 and 5722.11.



seven days prior to the scheduled final hearing or sale of the parcel. In such a case, the land bank may not subsequently reject the transfer.<sup>9</sup>

### **Conveyance in lieu of foreclosure**

In addition to acquiring foreclosed property that is not sold at auction, a land bank may also acquire property through a conveyance in lieu of foreclosure from the property owner. Any such conveyance must receive the consent of the county auditor. Under current law, the auditor may consent to a conveyance at his or her discretion. The bill retains this standard for most conveyances, but requires the auditor to consent if a land bank certifies in writing that the property subject to the conveyance qualifies as abandoned (for a definition of abandoned property, see "**Abandoned land definition**," below).<sup>10</sup>

### **Sale of land bank property between subdivision and CLRC**

The bill allows a political subdivision to sell property in its land bank program to a CLRC for less than fair market value. Under current law, a CLRC or political subdivision may sell property acquired through its land bank program to any person without competitive bidding. A CLRC may sell the property for less than fair market value, but a political subdivision may not. Under the bill, a political subdivision could sell land bank property for less than fair market value to a CLRC, but not to any other purchaser.<sup>11</sup>

### **Discharge of taxes in certain nontax foreclosure acquisitions**

Under continuing law, when property subject to a nontax foreclosure proceeding is sold pursuant to a judicial order, any taxes, assessments, penalties, and interest that are due on the property or that accrue before confirmation of the sale are deducted from the proceeds of the sale and used to pay the tax debt. The bill creates an exception to this rule for certain property purchased by a CLRC. Under the bill, such taxes and charges will not be applied against the proceeds of the sale, but instead will be automatically discharged, if the CLRC both purchases the property and is the judgment creditor or assignee of all rights, title, and interest in the judgment arising from the foreclosure proceeding.<sup>12</sup>

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<sup>9</sup> R.C. 5722.031.

<sup>10</sup> R.C. 5722.10.

<sup>11</sup> R.C. 5722.07.

<sup>12</sup> R.C. 323.47.



## **CLRC immunity from tort liability**

Under continuing law, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or its employees in connection with a governmental or proprietary function, subject to several exceptions enumerated by law. The distinction between governmental and proprietary functions determines, among other things, whether a subdivision may be held liable for a negligent act of an employee: a subdivision may be held liable for negligent acts by a subdivision employee with respect to a proprietary (but not governmental) function of the subdivision.<sup>13</sup>

The bill expressly extends political subdivision sovereign immunity to CLRCs, and specifies that all CLRC activities authorized by law are considered to be governmental functions for purposes of the sovereign immunity law.<sup>14</sup>

Continuing law already exempts a CLRC from liability for damages from leaking underground storage tanks, air pollution, sewage waste, or hazardous waste released from a CLRC-acquired property.<sup>15</sup>

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

Under continuing law, 5% of all delinquent property taxes and assessments collected by the county treasurer are deposited in the county's delinquent tax and assessment collection (DTAC) fund. In general, the county treasurer and the county prosecuting attorney each receive one-half of the money deposited in the fund. The treasurer may use a portion of the treasurer's allocation for the benefit of a CLRC. In addition, if requested by the county treasurer, the board of county commissioners may designate an additional amount, up to 5%, of all delinquent property taxes collected to be deposited in the DTAC fund for the use of a CLRC.

The bill allows county treasurers and prosecuting attorneys to allocate excess money in each officer's DTAC fund to CLRCs to carry out nuisance abatement activities. Under current law, only municipal corporations and townships may receive money from either the treasurer's or prosecuting attorney's DTAC funds specifically for that purpose.

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<sup>13</sup> R.C. 2744.02(B)(2).

<sup>14</sup> R.C. 2744.01.

<sup>15</sup> R.C. 5722.22.



The bill also increases, from \$3 million to \$5 million per year, the limit on the amount of excess DTAC money that treasurers or prosecuting attorneys in certain counties may allocate from a DTAC fund for nuisance abatement activities on foreclosed residential property. The limit applies only to counties with a population of more than 100,000 according to the Department of Development's 2006 population estimate.

A treasurer or prosecuting attorney may also use excess money in the officer's DTAC fund for foreclosure prevention activities. Under current law, the officer must first obtain approval for such expenditures from the County Investment Advisory Committee. The bill removes this requirement.<sup>16</sup>

### **Additional court fee to benefit CLRCs**

Under the bill, the court of common pleas of a county that has established a CLRC may collect an additional filing fee of up to \$500 in all new foreclosure proceedings, except for tax foreclosures, for the benefit of the CLRC. The fee is in addition to all other required court filing fees. The proceeds from the fee must be deposited with the CLRC on or before the twentieth day of each month.<sup>17</sup>

### **Recoupment of nuisance abatement costs**

Continuing law allows a municipal corporation or CLRC to incur costs to abate a nuisance or correct, repair, or replace hazardous or unsafe conditions at a structurally defective, abandoned, or vacant building. The municipal corporation or CLRC may recoup the costs by bringing a civil action against the property owner or by requesting that the county auditor place the abatement costs on the property tax list and collect the costs in the same manner as other taxes and assessments.

The bill provides that, in addition to these remedies, a CLRC or municipal corporation may place a lien on a property for abatement costs and bring a foreclosure action to enforce the lien. The foreclosure action may be brought in the court of common pleas, a municipal court with jurisdiction, or the county board of revision. If the property is foreclosed, it must be offered for sale at one auction, and the minimum bid must equal the total amount of taxes, assessments, and other charges due on the property, the nuisance abatement costs incurred by the municipal corporation or CLRC, and any court costs. The municipal corporation or CLRC may elect to acquire any

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<sup>16</sup> R.C. 321.261.

<sup>17</sup> R.C. 2303.201(F).



property that is not sold at auction. Absent such an election, the property will be forfeited to the state or another political subdivision.<sup>18</sup>

### **Responsibility for liens on acquired property**

The bill specifies that a CLRC acquires property free and clear of any lien for unpaid water rents or charges, or for costs incurred by a municipal corporation or the CLRC to abate nuisance conditions at the property, as long as the costs or charges were incurred before the CLRC acquired the property and the CLRC did not incur the costs or charges. In such cases, the CLRC is also immune from liability in any action to enforce the lien.<sup>19</sup>

### **Expedited foreclosure proceedings**

The bill makes several changes to the expedited, nonjudicial tax foreclosure process available for abandoned property. In 2006, county boards of revision were given the authority to hear tax foreclosure complaints on such property. The procedure is in lieu of the traditional judicial foreclosure process. Under the procedure, the board of revision must conduct a foreclosure hearing between 30 and 180 days after service of the foreclosure complaint. The board may then foreclose the state's lien for property taxes and order that the property be sold at auction or otherwise conveyed to a political subdivision or CLRC.<sup>20</sup>

### **Abandoned land definition**

The expedited foreclosure process is available for property that qualifies as "abandoned" land. Under continuing law, land is abandoned if it is unoccupied and has appeared on the delinquent tax list or delinquent vacant land tax list. Continuing law establishes a presumption that land is unoccupied if two or more of the following criteria are met:

(1) A county, municipal corporation, or township inspects the parcel and finds that no person, trade, or business inhabits, or is visibly present from an exterior inspection of, the parcel;

(2) No utility connections service the parcel, and no utilities are actively being billed by a utility provider with respect to the parcel;

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<sup>18</sup> R.C. 715.261.

<sup>19</sup> R.C. 715.261, 743.04, 5722.03, 5722.04, 5722.10, 5723.12, and 6119.06.

<sup>20</sup> R.C. 323.65 to 323.79.



(3) The parcel is boarded up or otherwise sealed because a political subdivision determined that it was open, vacant, or vandalized.

The bill adds a fourth criterion that may be used to establish a presumption that land is unoccupied. The new criterion requires a finding that the land or any improvement thereon is insecure, vacant, or vandalized upon visible inspection.<sup>21</sup>

### **Transfer of cases between courts and BORs**

The bill allows for the transfer of foreclosure cases between county boards of revision and courts of common pleas or municipal courts. A court or board may order the transfer of a case upon the motion of the property owner, the prosecuting attorney, or the court or board itself. A court may transfer a proceeding to a board of revision only if the board of revision adjudicates property tax foreclosures and only upon a finding that the property subject to the proceeding is abandoned land.

If a court or board orders the transfer of a case, the prosecuting attorney must notify the clerk of court and the court or board to which the case was transferred within 28 days after the transfer order is journalized. The prosecuting attorney must also provide notice of the transfer to all parties to the action, except any party that has failed to appear, answer, or plea in the action. If the prosecuting attorney fails to file the notice of transfer with the clerk of court within 28 days, the complaint is considered to have been dismissed without prejudice by both the court and board of revision.

Upon the transfer of a case, the clerk of court must proceed as if the case had been originally filed with the court or board to which the case was transferred. All evidence filed with the transferring court or board must be accepted by the court or board to which the case is transferred as competent evidence in the proceeding, unless otherwise required by law or unless the court or board determines that accepting the evidence would not be in the interests of justice.<sup>22</sup>

### **Dismissal of complaints**

Under continuing law, an expedited foreclosure case is initiated by a complaint brought by a delinquent tax certificate holder, a CLRC, or the board of revision itself. Currently, a property owner may move to dismiss the complaint by filing a petition within 20 days after service of the complaint. The bill shortens this period to 14 days. The bill also specifies that, if an owner cannot be located and is served notice of the complaint by publication in a newspaper, the owner must answer or appear in the

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<sup>21</sup> R.C. 323.65(F)(2).

<sup>22</sup> R.C. 323.25 and 323.691.



proceeding within 30 days after the publication. If the owner does not do so, the owner is considered to be default and will not receive further notice of the proceeding.<sup>23</sup>

### **Power to issue subpoenas**

The bill allows a county board of revision to issue subpoenas to compel witness testimony or the production of papers, books, and accounts, if the testimony or documents are necessary to adjudicate an expedited tax foreclosure case.<sup>24</sup>

### **Public auction of abandoned foreclosed land**

Under continuing law, a board of revision may order that abandoned foreclosed land be disposed of at a public auction. At any such auction, the successful bidder must pay a deposit of at least 10% of the purchase price on the day of the auction and the remaining balance within 30 days thereafter.

The bill adds that, if a successful bidder does not pay the balance due in the time required, the sale is automatically rejected due to default and the sheriff may keep the 10% deposit paid at the time of the auction. If the deposit amount is less than the total costs of advertising and offering the land for sale at a future auction, the sheriff or prosecuting attorney may also bring an action against the bidder to recover the deficiency. In the event of a default, the bidder, any member of the bidder's family, and any entity owned or controlled by the bidder or the bidder's family are prohibited from bidding on the abandoned land at any future auction for five years.<sup>25</sup>

## **General tax foreclosure provisions**

### **Acquisition of tax certificates by CLRC or political subdivision**

The bill allows a CLRC, county, municipal corporation, or township to acquire a property tax certificate from a certificate holder for the same price paid by the certificate holder, if the CLRC or subdivision requests to purchase the certificate within one year from the date the certificate is sold, the certificate was sold at a block sale, and the certificate relates to a parcel of abandoned land.

Continuing law authorizes county treasurers to sell property tax "certificates," which essentially transfer a taxing authority's lien for delinquent taxes to a private entity. Through the sale of such certificates, taxing authorities may recover unpaid taxes

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<sup>23</sup> R.C. 323.69 and 323.70.

<sup>24</sup> R.C. 323.70(C).

<sup>25</sup> R.C. 323.73.



before ordinary tax foreclosure proceedings would otherwise conclude. A certificate purchaser may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the person's behalf. The purchaser may also transfer the certificate to another person.<sup>26</sup>

### **Alternative redemption period**

Continuing law provides a "statutory right of redemption" whereby an owner of foreclosed property may pay the amount due to stop the foreclosure proceeding and repossess the property. Typically, the right of redemption continues until a court issues a confirmation of sale of the property following a sheriff's sale. However, if the foreclosed property at issue is abandoned and is located in a county in which a CLRC operates, the county treasurer may request the use of an "alternative redemption period" in the petition to foreclose the property.

Under current law, the alternative redemption period ends 45 days after an adjudication of foreclosure is journalized by the court or board of revision. The bill shortens this period to 28 days.<sup>27</sup>

Continuing law also requires that, upon the expiration of an alternative redemption period, a court or board of revision must transfer foreclosed property directly to a CLRC or political subdivision without a sale if the CLRC or subdivision requests the transfer. The bill specifies that such transfers are required even when the amount of tax, penalties, and interest due on the property and the costs of the foreclosure action do not exceed the property's fair market value. Generally, in proceedings that do not involve the alternative redemption period, a court or board may order a direct transfer without sale only if the total impositions against the property exceed its fair market value.<sup>28</sup>

### **Time for tax foreclosure actions to begin**

The bill states that tax foreclosure actions may be started before the list of tax-delinquent property is published if the publication is not made as otherwise required by ongoing law.<sup>29</sup> Under ongoing law, each county auditor must compile a list of tax-delinquent land each year and have it published in a newspaper. The publication serves as a notice to property owners and lienholders of the delinquency and of the potential

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<sup>26</sup> R.C. 5721.36(A)(3).

<sup>27</sup> R.C. 323.65 and 323.78.

<sup>28</sup> R.C. 323.78(B).

<sup>29</sup> R.C. 323.25, 323.69, and 5721.03(B)(5).



for a foreclosure action if the taxes are not paid, in addition to the other required notice attempts by mail or in person. Publication must occur twice within a 60-day period that begins when the county auditor delivers a copy of the list to the county treasurer. Since the list must be delivered to the treasurer within 30 days after the second of two property tax settlements per year (which must occur by August 10), the published list must appear twice between about September 10 and November 9.

Under the bill, a delay in the publication of the tax delinquency list would not preclude the initiation of a tax foreclosure action under any of the foreclosure procedures or the sale of tax certificates. Under ongoing law, tax foreclosure proceedings may be initiated once the delinquent tax list is compiled or at least 60 days thereafter, depending on the authorizing statute.<sup>30</sup>

### **Notice on tax bills**

The bill changes the notice that is printed on property tax bills informing property owners of the potential for foreclosure if taxes are not paid. Currently, the notice states that the property is "subject to" foreclosure if the billed taxes are not paid within one year after the tax due date. The bill changes the notice to state that property is subject to foreclosure if the billed taxes are not paid within 60 days after the due date.

### **Delinquent vacant land definition**

The bill conforms the definition of delinquent vacant land across the various tax foreclosure statutes to include only land that has been delinquent for at least one year and that has not been improved by any structure. Currently, the law governing traditional tax foreclosures uses this definition, but the law governing the expedited foreclosure process and land bank programs do not include the one-year requirement.<sup>31</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	08-08-13
Reported, S. Public Safety, Local Gov't & Veterans Affairs	11-21-13

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<sup>30</sup> R.C. 323.25, 323.67, 5721.14, and 5721.18.

<sup>31</sup> R.C. 323.65 and 5722.01.

