



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 482

132nd General Assembly
(As Introduced)

Reps. Lipps and Miller, O'Brien, Lepore-Hagan, West

BILL SUMMARY

Public Nuisance Statute

- Reduces the notice the landlord of subsidized housing must be given before a lawsuit seeking to abate a public nuisance can be filed from 60 days to 30 days.
- Reduces the minimum amount of time that must pass between the filing of a public nuisance lawsuit and the first hearing from 28 days to 14 days.
- Reduces the amount of time a property owner that has been ordered to abate a public nuisance has to comply with such an order from 30 days to 14 days, but preserves the judge's option to extend the deadline for good cause shown.
- Establishes a criminal penalty for property owners who fail to comply with an order requiring the abatement of a public nuisance.
- Establishes that the "preponderance of the evidence" standard is to be used by courts when determining whether a property is a public nuisance and when determining the appropriate party to abate the nuisance.

Blight Foreclosure Statute

- Reduces the amount of time a lienholder that is party to a blight foreclosure action has to remedy the blight conditions, thus requiring the dismissal of the action, from 60 days after service of the complaint to 30 days after service of the complaint.
- Establishes that the "preponderance of the evidence standard" is the applicable evidentiary standard under the Blight Foreclosure Statute.

Emergency

- Declares an emergency.

CONTENT AND OPERATION

Overview

The Ohio Public Nuisance Statute and Blight Foreclosure Statute allow for lawsuits designed to address nuisance and blight conditions. The bill amends the Public Nuisance Statute by reducing certain required timelines, establishing criminal penalties for property owners that fail to comply with court orders requiring abatement of public nuisances, and setting an evidentiary standard.

Specifically, it reduces a prefiling notice period, where a property alleged to be a public nuisance is subsidized housing, from 60 days to 30 days. It also reduces the minimum amount of time that must pass between the filing of a complaint under the Public Nuisance Statute and the case's first hearing from 28 days to 14 days. If a property owner has been ordered to abate a public nuisance, the bill reduces the amount of time the owner has to comply with that order from 30 days to 14 days. Owners who fail to comply with an order to abate a public nuisance are subject to criminal penalties established by the bill, up to 180 days in jail and up to \$500 in fines for each day the failure persists. Finally, the bill establishes that the "preponderance of the evidence standard" is applicable to a court's determinations as to whether a property is a public nuisance, and, if so, the appropriate party to abate the nuisance.¹

The Blight Foreclosure Statute allows a municipal corporation (a village or city) to force the foreclosure of liens (e.g., mortgages and tax liens) by alleging that the blight conditions cause the owner to be in default under the liens' terms. The process is available even if the municipal corporation does not own the liens to be foreclosed.

Existing law requires lienholders to be joined in blight foreclosure cases, and allows those lienholders to avoid foreclosure by remediating the blight conditions within 60 days of the complaint's service. The bill reduces the time for remediation to 30 days and establishes that the evidentiary standard to be used by courts addressing blight foreclosure claims is the "preponderance of the evidence standard."²

The Public Nuisance Statute and Blight Foreclosure Statute, as well as the bill's changes to each, are discussed more fully below.

¹ R.C. 3767.41.

² R.C. 3767.50.



Public Nuisance Statute

Scope and function of the Public Nuisance Statute

The Public Nuisance Statute is designed to address buildings that are in an unsafe condition. But, through its definition of "building," the law is limited to residential structures, including those with a mix of residential and light commercial or office uses, other than those that are owner-occupied and contain less than four residential units. A building is generally a "public nuisance" under Ohio law if any of the following apply:

- It is a menace to the public health, welfare, or safety.
- It is structurally unsafe, unsanitary, or not provided with adequate safe egress.
- It constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable.
- In relation to its existing use, it constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

For subsidized housing, however, federal standards related to the relevant subsidy program are used to determine if a building is a public nuisance.³

Lawsuits seeking to abate public nuisances can be brought through two mechanisms. First, in a civil action brought to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, resolution, or regulation applicable to buildings. Second, through a civil action for abatement brought by a local government (township, village, or city), neighbor, tenant, or nonprofit corporation that has as one of its goals the improvement of housing conditions in the county or municipal corporation (village or city) where the building is located.

In either type of action, the plaintiff may allege that the building is a public nuisance and request an injunction requiring that the building's owner abate the public nuisance, an order directing an interested party or receiver to abate the public nuisance, or both.⁴

The bill does not change any of the above aspects of the Public Nuisance Statute.

³ R.C. 3767.41(A)(1) and (2).

⁴ R.C. 3767.41(B)(1)(a).



Prefiling notice requirement

Under continuing law, before a lawsuit seeking abatement of a public nuisance *in subsidized housing* can be filed, the party seeking abatement must provide the property's landlord with written notice regarding the nuisance claims.

The required prefiling notice must specify one or more defective conditions that constitute a public nuisance as the term applies to public housing. It must also state that if the landlord fails to remedy the conditions within 60 days of the notice's service, suit may be filed. The bill reduces the time a landlord has to remedy the conditions to 30 days.⁵

There is no prefiling notice requirement, in existing law or under the bill, for alleged public nuisances in nonsubsidized housing.

Deadline for first hearing

Under existing law, the judge must hold a hearing in the public nuisance action at least 28 days after the owner of the building and other interested parties have been served with a copy of the complaint, along with notice of the date and time of the hearing.

The bill reduces the minimum time that must pass before the hearing to 14 days.⁶

Deadline for abatement

If the judge determines that a building is a public nuisance, the appropriate remedy depends on additional determinations required under the Public Nuisance Statute.

If the judge also determines that: (1) the building's owner has not previously been afforded a reasonable opportunity to abate the public nuisance *or* has been afforded that opportunity and has not refused or failed to abate the public nuisance, and (2) the complaint requested the issuance of an injunction, then the judge *may* issue an injunction requiring the owner of the building to abate the public nuisance or issue any other order to cause the public nuisance's abatement.

If an injunction or other order is issued to the owner, the owner then has no more than 30 days, under existing law, to comply with the injunction, unless the judge

⁵ R.C. 3767.41(B)(1)(b).

⁶ R.C. 3767.41(B)(2)(b).

extends that time for good cause shown. The bill reduces the initial period for abatement to 14 days, but maintains the possibility of extensions for good cause shown.⁷

If, after a determination that the building in question is a public nuisance, the judge alternately determines that (1) the building's owner has previously been afforded a reasonable opportunity to abate the public nuisance and has refused or failed to do so, and (2) the complaint requested the judge appoint an interested party or receiver to abate the public nuisance, then the judge must proceed to determine the appropriate party to undertake the work.⁸ The bill does not affect the provisions governing appointment of an interested party or receiver to abate a public nuisance, however, and they are not summarized here.

Failure of an owner to comply with an order for abatement

Existing law does not impose a criminal penalty on property owners who fail to comply with an injunction or order requiring the abatement of a public nuisance. The bill establishes that such a failure is a first degree misdemeanor and authorizes the court to impose a fine of up to \$500 for each day the failure persists. First degree misdemeanors are normally punishable by a fine of not more than \$1,000 and up to 180 days in jail. The bill applies (i.e., does not address) the standard maximum jail time.

The bill also establishes that an owner's failure to comply with an injunction or order requiring abatement of a public nuisance is a strict liability offense. That means that the offender's mental state (i.e., purposeful, knowing, reckless, or negligent) is irrelevant to the presence of criminal liability. The offense is established by the failure to comply alone.⁹

Evidentiary standard

Existing law does not set an evidentiary standard to be used by a judge making any findings or determinations required when directing an owner, interested party, or receiver to abate a public nuisance. The bill establishes that, in making any such finding, the judge shall apply the preponderance of the evidence standard.¹⁰

⁷ R.C. 3767.41(C)(1).

⁸ R.C. 3743.01(C)(2) and (C)(3).

⁹ R.C. 3767.41(D) and 3767.99(E), with conforming changes in R.C. 5721.17, 5721.18, 5721.19, 5721.192, 5723.05, and 5723.18; R.C. 2929.24 and 2929.28, not in the bill.

¹⁰ R.C. 3767.41(C)(4).



Blight Foreclosure Statute

Scope and function of the Blight Foreclosure Statute

Ohio law allows certain municipal corporations to bring about the foreclosure and judicial sale of blighted parcels when the blight conditions cause the property owner to be in default under the terms of a lien (e.g., a mortgage) on the property. The process is available even if the lien is not held by the municipal corporation. The municipal corporation must, however, give the lienholder the opportunity to avoid the foreclosure by remediating the conditions constituting the blight.

Foreclosure of liens on blighted parcels

Continuing law provides that a municipal corporation has a cause of action to foreclose any existing liens upon a "blighted parcel" located in the municipal corporation provided that no other foreclosure action affecting the blighted parcel is being actively prosecuted. Continuing law also establishes that the environmental division of the municipal court has exclusive original jurisdiction over any such action.¹¹ (See **COMMENT.**)

It is not necessary for the municipal corporation to have a lien of its own on the property, although a lien is required. Rather, it is sufficient for the municipal corporation to allege that, because of the continuing existence of conditions causing the property to be a blighted parcel, the owner has defaulted on the terms of any agreement giving rise to a lien for failure to maintain the property. The municipal corporation then may seek foreclosure of any or all outstanding liens upon the blighted parcel. It is an affirmative defense to the action that the "owner" of the blighted parcel has not been in default on any mortgage on the property for 12 months or more or that there is a bankruptcy proceeding pending in which the blighted parcel has been listed as an asset. (For the purposes of the Blight Foreclosure Statute, "owner" includes any person who is the owner of record, has a property interest in the premises, is a mortgagee in possession, or is a person, such as an executor, who has control of the premises.)

Continuing law limits the types of liens that the municipal corporation can use to put the property into foreclosure. Specifically, the municipal corporation may not use a lien held by the United States, a lien held by the state of Ohio other than a lien for real property taxes and assessments, a lien held by a political subdivision other than itself, or a lien vested by certain tax certificates. Additionally, the municipal corporation must join as a party to the action a lienholder whose lien is being used to put the property into foreclosure and must notify that lienholder that the municipal corporation is

¹¹ R.C. 3767.50(B).



proceeding to foreclose the lien under the Blight Foreclosure Statute and that the lienholder party may remediate the blight conditions.

Under existing law, if a lienholder party certifies to the court that it will remediate the conditions of the parcel constituting blight within 60 days after the party is served with a copy of the complaint of the foreclosure action, the municipal court must move to dismiss the action. The bill reduces the amount of time a lienholder party has to remediate blight conditions to 30 days.¹²

Evidentiary standard

Existing law does not set an evidentiary standard to be used by a judge during blight foreclosure proceedings. The bill establishes that, in making any such finding, the judge must apply the preponderance of the evidence standard.¹³

Definitions

Public nuisance definitions

"**Abate**" or "**abatement**" means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life. "Abatement" does not include the closing or boarding up of any building found to be a public nuisance.¹⁴

"**Interested party**" means any owner, mortgagee, lienholder, tenant, or person that possesses an interest of record in the property, as well as any applicant for the appointment of a receiver.¹⁵

Blight foreclosure definitions

"**Blighted parcel**" means either of the following:

(1) A parcel that has one or more of the following conditions:

- A code-enforcement agency has designated the structure as unfit for human habitation or use because it is dilapidated, unsanitary, unsafe, or vermin infested;

¹² R.C. 3767.50(B)(1).

¹³ R.C. 3767.50(D).

¹⁴ R.C. 3767.41(A)(3).

¹⁵ R.C. 3767.41(A)(4).



- The property poses a direct threat to public health or safety in its present condition by reason of environmentally hazardous conditions, solid waste pollution, or contamination;
- Tax or special assessment delinquencies exceeding the fair value of the land remain unpaid 35 days after notice to pay has been mailed.

(2) A parcel that has two or more of the following conditions that, collectively considered, adversely affect surrounding or community property values or entail land use relationships that cannot reasonably be corrected through existing zoning codes or other land use regulations:

- Dilapidation and deterioration;
- Age and obsolescence;
- Inadequate provision for ventilation, light, air, sanitation, or open spaces;
- Unsafe and unsanitary conditions;
- Hazards that endanger lives or properties by fire or other causes;
- Noncompliance with building, housing, or other codes;
- Nonworking or disconnected utilities;
- Is vacant or contains an abandoned structure;
- Excessive dwelling unit density;
- Is located in an area of defective or inadequate street layout;
- Overcrowding of buildings on the land;
- Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- Vermin infestation;
- Extensive damage or destruction caused by a major disaster when the damage has not been remediated within a reasonable time;
- Identified hazards to health and safety that are conducive to ill health, transmission of disease, juvenile delinquency, or crime;

- Ownership or multiple ownership of a single parcel when the owner, or a majority of the owners of a parcel in the case of multiple ownership, cannot be located.

But, when determining whether a property is a blighted parcel, the court cannot consider whether there is a comparatively better use for any the property or whether the property could generate more tax revenues if put to another use.¹⁶

COMMENT

The Blight Foreclosure Statute states: "[t]he environmental division of the municipal court has exclusive original jurisdiction of an action under this section."¹⁷ A plain reading of that sentence indicates that blight foreclosure actions can only be brought in municipal courts with an environmental division. Currently, the Franklin County Municipal Court is the only such court.¹⁸ Some ambiguity is caused by the municipal court jurisdictional statutes, where an environmental division is granted exclusive jurisdiction over blight foreclosure actions only "where established."¹⁹ Neither statute has been cited in case law, though, so it is unclear how the jurisdictional issue will be viewed by the courts.

HISTORY

ACTION	DATE
Introduced	01-30-18

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¹⁶ R.C. 3767.50, by reference to R.C. 1.08(B) and (C), not in the bill.

¹⁷ R.C. 3767.50(B)(2).

¹⁸ R.C. 1901.011.

¹⁹ R.C. 1901.185.

