



Aida S. Montano

Bill Analysis
Legislative Service Commission

Sub. H.B. 138

127th General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. Foley and Blessing, Domenick, Skindell, R. Hagan, J. McGregor, Ujvagi, Budish, Lundy, Stebelton, Raussen, Yuko, DeGeeter, Collier, Combs, Letson, Luckie, Harwood, Strahorn, D. Stewart, Driehaus, White, Garrison, Miller, Bolon, Brady, Boyd, Seitz

BILL SUMMARY

- Expands the existing authority of a county treasurer to bring a civil action to enforce a tax lien on tax delinquent premises in the court of common pleas (R.C. 323.25 foreclosure action) by providing that the action also may be brought in a municipal court with jurisdiction or in the county board of revision with jurisdiction under existing law to adjudicate the foreclosure of abandoned land to enforce the state's tax lien and that the action may be for the sale of the premises (existing law) or the transfer of the premises to an "electing subdivision."
- Expands the existing authority of a county prosecuting attorney to bring a foreclosure action in court in the name of the county treasurer to enforce the state's tax lien on delinquent lands or delinquent vacant lands (R.C. 5721.18 foreclosure action) by providing that the action also may be brought in the county board of revision with jurisdiction as described in the preceding dot point and that the proceeding may be for the sale of the lands (existing law) or the transfer of the lands to an "electing subdivision."
- Provides that with respect to either of the foreclosure actions described in the preceding dot points, if the complaint alleges that the property is delinquent vacant land, abandoned lands, or nonproductive land, and the value of the taxes, assessments, penalties, interest and all other charges and costs of the action exceed the county auditor's fair market value of the parcel, the court or county board of revision, upon any adjudication of foreclosure, must order the fee simple title of the property to be transferred to and vested in an electing subdivision, without appraisal and

sale, and establishes a rebuttable presumption that, for purposes of determining whether those taxes, assessments, penalties, interest and other charges and costs exceed the actual fair market value of the parcel, the auditor's most current valuation is the fair market value of the parcel.

- Provides that the officer charged with conducting the sale of any parcel upon an order of foreclosure must first read aloud the parcel's complete legal description, or may read aloud only a summary description and a parcel number if the advertising notice includes a complete legal description or indicates where that description may be obtained.
- Establishes a procedure in which the political subdivision in which the foreclosed land is located or an "electing subdivision" may petition the court to receive through forfeiture land that has been foreclosed under the proceedings described above in the first two dot points, has been advertised and offered for sale on two separate occasions, and has not sold for want of bidders.
- Provides that in foreclosures of real property, including foreclosures for taxes, mortgages, judgment liens, and other valid liens, the description of the property, the order of sale, order to transfer, and any deed or deed forms may be prepared, adopted, and approved in advance by the court or county board of revision, directly commanding the sheriff to sell, convey, or deliver possession of the property as commanded in the order.
- If the foreclosed property is sold under an order of sale or transferred under an order to transfer, requires the officer who conducted the sale or made the transfer to collect the recording fee and any associated costs to cover the recording from the purchaser or transferee at the time of the sale or transfer and, following confirmation of the sale or transfer, to execute and record the deed conveying title to the property to the purchaser or transferee.
- Grants a court by order or local rule or a county board of revision with jurisdiction as described above in the first dot point direct authority to issue writs and orders for provisional remedies and process of every kind.
- Authorizes the municipal corporation or township in which is located real property that is subject to a writ of execution to inspect any structures on the property.

- Requires the purchaser of real property taken in execution to provide contact and other information and requires a court to set aside a sale of real property taken in execution for noncompliance with purchaser information requirements.
- Authorizes a court to stay confirmation of a sale of real property taken in execution to give the owner time to redeem the property or for any other reason that the court considers appropriate.
- Requires an officer who sells real property taken in execution to record the deed or file the certificate pertaining to registered land.

TABLE OF CONTENTS

Enforcement of tax lien (R.C. 323.25 foreclosure action)	4
General procedure	4
Conduct of sale	5
Delinquent lands; foreclosure proceedings on lien of state (R.C. 5721.18 foreclosure action)	5
General procedure	5
Conduct of sale	6
Transfer to electing subdivision.....	7
Forfeiture of lands	7
Existing law.....	7
Operation of the bill	8
Judgments generally.....	8
Execution of judgments generally.....	8
Issuance of process.....	9
Execution against property.....	10
Inspection of structures on land subject to writ of execution	10
Information required of purchaser of real property at execution sale	10
Setting aside sale for noncompliance with purchaser information requirements.....	11
Confirmation of sale	11
Delivery and recording of deed or certificate.....	11
Conforming amendments	12

CONTENT AND OPERATION

Enforcement of tax lien (R.C. 323.25 foreclosure action)

General procedure

Existing law requires a county treasurer to enforce the lien for taxes charged against an entry on the tax duplicate or any part of such taxes that are not paid within 60 days after delivery of the delinquent land duplicate to the county treasurer as prescribed by law. The enforcement is by civil action in the treasurer's official capacity as treasurer, for the sale of such premises, in the court of common pleas in the same way mortgage liens are enforced.

The bill expands the authority of a county treasurer to enforce a tax lien in a civil action in the court of common pleas by providing that the action may also be brought in a municipal court with jurisdiction or in the county board of revision with jurisdiction pursuant to R.C. 323.66 (see **COMMENT 1**) (hereafter "county board of revision with jurisdiction") and that the action may also be for the transfer of the premises to an electing subdivision as described below in "Transfer to electing subdivision." The bill makes changes to the foreclosure action procedure to conform it to the above changes.

Under the bill (changes made by the bill are in italics), after the civil action has been instituted, but before the filing of an entry of confirmation of sale *or transfer*, any person entitled to redeem the land may do so by tendering to the county treasurer an amount sufficient, as determined by the court *or board of revision*, to pay the taxes, assessments, penalties, interest, and charges then due and unpaid, and the costs incurred in the action, and by demonstrating that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes. A finding must be entered in the proceeding for taxes, assessments, penalties, interest, and charges due and payable at the time the deed of real property sold *or transferred* is transferred to the purchaser *or transferee*, plus the cost of the proceeding. For purposes of determining such amount, the county treasurer may estimate the amount of taxes, assessments, interest, penalties, and costs that will be payable at the time the deed of the property is transferred to the purchaser *or transferee*. The court of common pleas, *a municipal court with jurisdiction, or the county board of revision with jurisdiction* must order such premises *to be transferred* as described below in "Transfer to electing subdivision," or to be sold for payment of the finding, but for not less than the total amount of the finding or the fair market value of the premises plus the cost of the proceeding, unless the county treasurer applies for an appraisal. (R.C. 323.25 and 323.28(A).)

Conduct of sale

The bill provides that whenever the officer charged to conduct the sale offers any parcel for sale, the officer first must read aloud a complete legal description of the parcel, or in the alternative, may read aloud only a summary description and a parcel number if the county has adopted a permanent parcel number system and if the advertising notice published prior to the sale includes a complete legal description or indicates where the complete legal description may be obtained (R.C. 323.28(F)).

Delinquent lands; foreclosure proceedings on lien of state (R.C. 5721.18 foreclosure action)

General procedure

Under existing law, upon the delivery by the county auditor to the prosecuting attorney of a delinquent land or delinquent vacant land tax certificate, or of a master list of delinquent or delinquent vacant tracts, the prosecuting attorney must institute a foreclosure proceeding in the name of the county treasurer to foreclose the lien of the state, in any court with jurisdiction, unless the taxes, assessments, charges, penalties, and interest are paid prior to the time a complaint is filed, or *unless* a foreclosure or foreclosure and forfeiture action has been or will be instituted under R.C. 323.25 (see "Enforcement of tax lien (R.C. 323.25 foreclosure action)," above) or R.C. 5721.14 (foreclosure and forfeiture proceedings against vacant lands).

The bill expands the authority of a county prosecuting attorney to enforce the state's tax lien by a *R.C. 5721.18 foreclosure action* in court by providing that the prosecuting attorney also may institute the proceeding in a county board of revision with jurisdiction. The bill makes changes to the foreclosure action procedure to conform it to the above change.

Under the bill (changes made by the bill are in italics), the prayer of the complaint must be that the court *or the county board of revision with jurisdiction* issue an order that the property be sold *or conveyed* by the sheriff, or if the action is in the municipal court by the bailiff, in the manner provided in R.C. 5721.19 (court finding, appraisal, and sale). In the foreclosure proceeding, the treasurer may join in one action any number of lots or lands, but the decree must be rendered separately, and any proceedings may be severed, in the discretion of the court *or board of revision*, for the purpose of trial or appeal, and the court *or board of revision* must make such order for the payment of costs as is considered proper. In its judgment of foreclosure, the court *or the county board of revision with jurisdiction* must enter a finding with respect to each parcel of the amount of the taxes, assessments, charges, penalties, and interest, and the costs incurred in



the foreclosure proceeding instituted against it, that are due and unpaid. The court *or the county board of revision must order such premises to be transferred as described below in "Transfer to electing subdivision,"* or may order each parcel to be sold, without appraisal, for not less than the fair market value of the parcel, as determined by the county auditor, plus the costs incurred in the foreclosure proceeding, or the total amount of the finding entered by the court *or the county board of revision*, including all taxes, assessments, charges, penalties, and interest payable subsequent to the delivery to the county prosecuting attorney of the delinquent land tax certificate or master list of delinquent tracts and prior to the transfer of the deed of the parcel to the purchaser following confirmation of sale, plus the costs incurred in the foreclosure proceeding. Each parcel affected by the court's finding *and order of sale* must be separately sold, unless the court orders any of such parcels to be sold together.

If a parcel is sold *or transferred* under this section *or R.C. 323.28* (see "Enforcement of tax lien (R.C. 323.25 foreclosure action)," above) *and 323.65 to 323.78,*¹ the officer who conducted the sale *or made the transfer of the property* must collect the recording fee *and any associated costs to cover the recording* from the purchaser *or transferee* at the time of the sale *or transfer* and, following confirmation of the sale *or transfer*, must *execute* (instead of *prepare*) and record the deed conveying title to the parcel to the purchaser *or transferee*. The bill adds the provision that for purposes of recording such deed, by placement of a bid or making a statement of interest by any party ultimately awarded the parcel, that purchaser or transferee thereby appoints the officer who makes the sale or is charged with executing and delivering the deed as agent for the purchaser or transferee for the sole purpose of accepting delivery of the deed. For such purposes, the confirmation of any such sale or order to transfer the parcel without appraisal or sale is deemed delivered upon the confirmation of such sale or transfer. (R.C. 5721.18 and 5721.19(A), (B), and (H).)

Conduct of sale

The bill further provides that whenever the officer charged to conduct the sale offers any parcel for sale the officer first must read aloud a complete legal description of the parcel, or in the alternative, may read aloud only a summary description and a parcel number if the county has adopted a permanent parcel number system and if the advertising notice prepared pursuant to R.C. 5721.19 includes a complete legal description or indicates where the complete legal description may be obtained (R.C. 5721.19(C)(1)).

¹ Sub. H.B. 294 of the 126th General Assembly enacted expedited tax foreclosure proceedings for abandoned lands before a county board of revision in R.C. 323.65 to 323.78.

Transfer to electing subdivision

With respect to the foreclosure proceedings described above in "Enforcement of tax lien (R.C. 323.25 foreclosure action)" and "Delinquent lands; foreclosure proceedings on lien of state (R.C. 5721.18 foreclosure action)," the bill provides that notwithstanding R.C. 5722.03 (see **COMMENT 2**), if the complaint alleges that the property is *delinquent vacant land* as defined in R.C. 5721.01, *abandoned lands* as defined in R.C. 323.65, or lands described in R.C. 5722.01(E) (see **COMMENT 3** for a description of the referenced sections), and the value of the taxes, assessments, penalties, interest and all other charges and costs of the action exceed the auditor's fair market value of the parcel, then the court or board of revision having jurisdiction over the matter on motion of the plaintiff, or on the court's or board's own motion, must, upon any adjudication of foreclosure, order, without appraisal and without sale, the fee simple title of the property to be transferred to and vested in an *electing subdivision* as defined in R.C. 5722.01(A) (see **COMMENT 4**). For purposes of determining whether the taxes, assessments, penalties, interest and all other charges and costs of the action exceed the actual fair market value of the parcel, the auditor's most current valuation is rebuttably presumed to be, and constitutes prima facie evidence of, the fair market value of the parcel. In such case, the filing for journalization of a decree of foreclosure ordering that direct transfer without appraisal or sale constitutes confirmation of the transfer and thereby terminates any further statutory or common law right of redemption. (R.C. 323.28(E) and 5721.19(I).)

Forfeiture of lands

Existing law

Existing law provides that every tract of land and town lot, which, pursuant to the *R.C. 323.25 foreclosure proceedings* or *R.C. 5721.18 foreclosure proceedings*, has been advertised and offered for sale on two separate occasions, not less than two weeks apart, and not sold for want of bidders, must be forfeited to the state. The county prosecuting attorney must certify to the court that such tract of land or town lot has been twice offered for sale and not sold for want of a bidder. The forfeiture of lands and town lots is effective when the court by entry orders such lands and town lots forfeited to the state. (R.C. 5723.01(A)(1) and (2).)

Existing law further provides that premises ordered to be sold under the *R.C. 323.25 foreclosure proceedings* but remaining unsold for want of bidders after being offered for sale on two separate occasions, not less than two weeks apart, must be forfeited to the state and disposed of pursuant to R.C. Chapter 5723. (R.C. 323.28(D)).

Operation of the bill

Under the bill, the forfeiture of every tract of land and town lot under the circumstances described in "**Existing law**," above, may also be to a political subdivision as described in the following paragraph. The forfeiture is effective when the court by entry orders such lands and town lots forfeited to the state *or to a political subdivision*. (R.C. 5723.01(A)(1) and (2).)

The bill provides that after having been notified as described above in "**Existing law**" that the tract of land or town lot has been twice offered for sale and not sold for want of bidder, the court must notify the political subdivision in which the property is located and offer to forfeit the property to the political subdivision, or to an *electing subdivision* (see **COMMENT 4**), upon a petition from the political subdivision. If the political subdivision does not petition the court within ten days of the court's notification, the court must forfeit the property to the state. If the political subdivision requests through a petition to receive the property through forfeiture, the forfeiture of land and town lots is effective when, by entry, the court orders such lands and town lots forfeited to the political subdivision. The court must certify a copy of the entry to the county auditor and, after the date of certification, all the right, title, claim, and interest of the former owner is transferred and vested in the political subdivision. (R.C. 5723.01(A)(3).)

The bill further modifies existing law by providing that premises ordered to be sold under the *R.C. 323.25 foreclosure proceedings* but remaining unsold for want of bidders after being offered for sale on two separate occasions, not less than two weeks apart, must be forfeited to the state *or to a political subdivision as described in the two preceding paragraphs* (added by the bill) and must be disposed of pursuant to R.C. Chapter 5723. (R.C. 323.28(D)).

Judgments generally

The general law on judgments provides that when a mortgage is foreclosed or a specific lien enforced, a sale of the property must be ordered. The bill modifies the general law on judgments by providing that when a mortgage is foreclosed or a specific lien enforced, a sale of the property, *or a transfer of property pursuant to the bill* (see "**Transfer to electing subdivision**," above) *and pursuant to R.C. 323.65 to 323.78* (see footnote 1), must be ordered *by the court having jurisdiction or the county board of revision with jurisdiction* (R.C. 2323.07).

Execution of judgments generally

Existing law states that an execution is a process of a court, issued by its clerk, and directed to the sheriff of the county. The bill provides that an execution

is a process that may also be issued by the court itself or the county board of revision with jurisdiction, and directed to the sheriff. (R.C. 2327.01.)

Current law specifies three kinds of execution: (1) against the property of the judgment debtor, including orders of sale, (2) against the person of the judgment debtor, and (3) for the delivery of the possession of real property, including real property sold under orders of sale.

The bill modifies the kinds of execution specified in (1) and (3) in the preceding paragraph to include orders to transfer property pursuant to the bill's provisions or to R.C. 323.65 to 323.78 (see footnote 1). It provides that in the case of foreclosures of real property, including foreclosures for taxes, mortgages, judgment liens, and other valid liens, the description of the property, the order of sale, order to transfer, and any deed or deed forms may be prepared, adopted and otherwise approved in advance by the court having jurisdiction or the county board of revision with jurisdiction, directly commanding the sheriff to sell, convey, or deliver possession of the property as commanded in that order. In those cases, the clerk must journalize the order and deliver that writ or order to the sheriff for execution. If the property is sold under an order of sale or transferred under an order to transfer, the officer who conducted the sale or made the transfer of the property must collect the recording fee and any associated costs to cover the recording from the purchaser or transferee at the time of the sale or transfer and, following confirmation of the sale or transfer, must execute and record the deed conveying title to the property to the purchaser or transferee. For purposes of recording that deed, by placement of a bid or making a statement of interest by any party ultimately awarded the property, the purchaser or transferee thereby appoints the officer who makes the sale or is charged with executing and delivering the deed as agent for that purchaser or transferee for the sole purpose of accepting delivery of the deed. For purposes of this provision, the confirmation of any such sale or order to transfer the property without appraisal or sale is deemed delivered upon the confirmation of that sale or transfer. (R.C. 2327.02.)

Issuance of process

Under current law, all writs and orders for provisional remedies, and process of every kind, must be issued by the clerk of the court of common pleas; but before they are issued a praecipe must be filed with the clerk demanding the same. The bill provides that the issuance of writs and orders for provisional remedies and process of every kind may also be issued directly by an order or local rule of a court, or by a county board of revision with jurisdiction. (R.C. 2303.11.)

Execution against property

Inspection of structures on land subject to writ of execution

The bill authorizes the municipal corporation or township in which is located real property that is subject to a writ of execution to inspect any structures on the property (R.C. 2329.17(B)).

Information required of purchaser of real property at execution sale

The bill requires the purchaser of lands and tenements taken in execution to submit to the officer who makes the sale the following information (R.C. 2329.271(A)(1)):

- (1) The purchaser's name;
- (2) The purchaser's address which may not be a post office box but must be the primary residence of the purchaser, purchasing entity, or designated agent;
- (3) The purchaser's telephone number;
- (4) A statement indicating whether the purchaser will occupy the lands and tenements.

If the purchaser is a corporation, partnership, association, estate, trust, or other business organization the only place of business of which is in the county where the real property is located, the information supplied must be the contact information for a natural person who resides in that county and whom the purchasing entity has designated to receive notices or inquiries about the property. If the purchasing entity has a place of business outside the county in which the real property is located and the purchasing entity's principal place of business is located in Ohio, the contact information supplied must be for a natural person who resides in Ohio and whom the purchasing entity has designated to receive notices or inquiries about the property. If the purchasing entity has a place of business outside the county in which the real property is located and its principal place of business is not located in Ohio, the contact information supplied must be for both a natural person who resides in Ohio and whom the purchasing entity has designated to receive notices or inquiries about the property and a natural person who is employed by the purchasing entity at its principal place of business outside Ohio and whom the purchasing entity has designated to receive notices or inquiries about the property. (R.C. 2329.271(A)(2).)

The required information must be part of the sheriff's record of proceedings and part of the record of the court of common pleas. The information is a public record and open to public inspection. (R.C. 2329.271(B).)

The bill specifically requires the officer who takes the property in execution to collect the required information from the purchaser before selling the property (R.C. 2329.26(A)(3)).

Setting aside sale for noncompliance with purchaser information requirements

Under existing law, a court must set aside a sale of real property taken in execution upon motion if the sale does not comply with certain notice requirements. If the court enters an order confirming the sale, the order constitutes a judicial finding that the notice requirements have been satisfied. The bill adds noncompliance with the purchaser information requirements (see "**Information required of purchaser of real property at execution sale**," above) as grounds for a motion to set aside a sale, specifies that the motion may be made by any interested party, and provides that an order confirming the sale constitutes a judicial finding that the purchaser submitted the required information. (R.C. 2329.27(B)(1) and (3)(a)(iii).)

Confirmation of sale

Under existing law, when an officer who sells real property pursuant to a writ of execution returns the writ, the court must examine the proceedings to determine if the officer made the sale in conformity with statutory requirements. If the court finds that the officer complied with the law, it must direct the court clerk to make an appropriate entry on the journal and the officer to give the purchaser a deed. The bill specifies that the court must give these directions within 30 days after the return of the writ. The bill also provides that nothing in the section containing these requirements prevents the court of common pleas from staying the confirmation of the sale to permit a property owner time to redeem the property or for any other reason that the court considers appropriate. If the court stays confirmation, the sale must be confirmed within 30 days after the termination of a stay. (R.C. 2329.31.)

Delivery and recording of deed or certificate

Under the bill, a purchaser, by placing a bid on real property at a sale on execution, appoints the officer who makes the sale as the purchaser's agent for the sole purpose of accepting delivery of the deed. The officer must record the deed, or for registered land file the documents required by R.C. 5309.64, with the county recorder within 14 days after making the deed. The officer must charge the purchaser a fee to cover the actual costs of recording the deed or filing the documents. (R.C. 2329.36(B) and (C).)

Registered land is land for which a certificate of title has been issued following a procedure set forth in the Revised Code. Registration provides the owner with certain title guarantees. The bill requires that a sheriff who sells registered land pursuant to a court order file with the county recorder a certificate that the terms of sale have been complied with and certified copies of the order of sale, the return of the order, and the confirmation of sale. The purchaser may then have the property transferred to the purchaser, the title registered accordingly, and a new certificate of title issued. (R.C. 5309.64(B).)

Conforming amendments

The bill amends R.C. 2329.18 and 2329.19 to conform to the designation of divisions in R.C. 2329.17.

COMMENT

1. Under R.C. 323.66 (not in the bill), in lieu of utilizing the judicial foreclosure remedies under the law to enforce the state's lien for real estate taxes, a county board of revision may adjudicate the foreclosure of abandoned land in the county and its disposition by public auction or by other conveyance, and may foreclose the state's lien for real estate taxes upon the abandoned land or the lien of a person holding a tax certificate ("certificate holder"), as the case may be.

2. R.C. 5722.03 (not in the bill) prescribes the procedures for the sale to an electing subdivision of nonproductive land within the subdivision's boundaries that the subdivision wishes to acquire and that has been advertised and offered for sale pursuant to a foreclosure proceeding as provided in R.C. 323.25 or 5721.18, but is not sold for want of a minimum bid.

3.(a) R.C. 5721.01(A) (not in the bill) defines "delinquent vacant lands" as all lands that have been delinquent lands for at least two years and that are unimproved by any dwelling. "Delinquent lands" means all lands upon which delinquent taxes, as defined in R.C. 323.01, remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to R.C. 321.24(C).

(b) R.C. 323.65(A) (not in the bill) defines "abandoned land" as delinquent lands or delinquent vacant lands, including any improvements on the lands, that are unoccupied and that first appeared on the abandoned land list compiled under R.C. 323.67(C), or the delinquent tax list or delinquent vacant land tax list compiled under R.C. 5721.03, at whichever of the following times is applicable: (i) in the case of lands other than agricultural lands, at any time after the county auditor makes the certification of the delinquent land list under R.C. 5721.011, or (ii) in the case of agricultural lands, at any time after two years after the county auditor makes the certification of the delinquent land list under R.C. 5721.011.

(c) The land described in R.C. 5722.01(E) (not in the bill) is "nonproductive land" defined as any parcel of delinquent vacant land with respect to which a foreclosure proceeding pursuant to R.C. 323.25, a foreclosure proceeding pursuant to R.C. 5721.18(A) or (B), or a foreclosure and forfeiture proceeding pursuant to R.C. 5721.14 has been instituted; and any parcel of delinquent land with respect to which a foreclosure proceeding pursuant to R.C. 323.25 or R.C. 5721.18(A) or (B) has been instituted, and upon which there are no buildings or other structures, or upon which there are either: (i) buildings or other structures that are not in the occupancy of any person and as to which the township or municipal corporation within whose boundaries the parcel is situated has instituted proceedings under R.C. 505.86 or 715.26 or Section 3 of Article XVIII, Ohio Constitution, for the removal or demolition of such buildings or other structures by the township or municipal corporation because of their insecure, unsafe, or structurally defective condition, or (ii) buildings or structures that are not in the occupancy of any person 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 reutilization program.

4. R.C. 5722.01(A) (not in the bill) defines "electing subdivision" as a municipal corporation that has enacted an ordinance or a township or county that has adopted a resolution pursuant to R.C. 5722.02 for purposes of adopting and implementing the procedures set forth in R.C. 5722.02 to 5722.15 (Land Reutilization Program Law).

HISTORY

ACTION	DATE
Introduced	03-28-07
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