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Understanding Ohio's Land Bank Legislation

By Thomas J. Fitzpatrick IV

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Understanding Ohio's Land Bank Legislation

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The effects of sustained high rates of foreclosure on numerous areas of Cuyahoga County have thrust land banking to the forefront of recent public policy discussions in Ohio. This *Policy Discussion Paper* seeks to inform those discussions by explaining the state's traditional land banking system and illustrating how the new land banking system, spelled out in Senate Bill 353/House Bill 602 and signed into law January 2009, works.

To contact the author or obtain further information about this research, please e-mail Anne O'Shaughnessy at anne.o'shaughnessy@clev.frb.org or call her at 216.579.2233.

Thomas J. Fitzpatrick IV is a visiting scholar in the Office of Policy Analysis at the Federal Reserve Bank of Cleveland. The author wishes to thank those that took time out of their busy schedules to offer questions, comments and guidance on this paper. You are too numerous to name individually, but this paper has greatly benefited from your input.

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I. What Is a Land Bank (and Why Do We Need One)?

Unlike federal land banks, which extend credit to farmers and ranchers, the land banks discussed in this article are typically established as a vehicle for community development and revitalization. A good working definition of a land bank is offered by Frank Alexander, director of the Project on Affordable Housing and Community Development at Emory University School of Law, who describes land banks as "governmental [entities] that [focus] on the conversion of vacant, abandoned, and tax-delinquent properties into productive use."[1] The duties of a land bank generally include assuming the title to tax-delinquent properties, then securing, rehabilitating or demolishing, and transferring those properties to responsible developers or homeowners to ensure the properties are put to use instead of remaining vacant or abandoned.[2] Policymakers are increasingly considering the land bank model to address the problem of vacant and abandoned properties in cities like Cleveland, which has an abundance of vacant housing.

One factor exacerbating the growing number of vacant properties is the high foreclosure rate in Cuyahoga County, which has been described as the epicenter of the foreclosure crisis.[3] The problem of vacancy touches most of Ohio, which a recent study estimated as having more than 15,000 vacant and abandoned buildings and nearly 10,000 vacant and abandoned lots across a handful of cities.[4] In fact, the foreclosure crisis has exacerbated a longer-term trend of increased housing vacancy driven in part by Cleveland's population decline.[5]

Vacant and abandoned properties are not readily absorbed by housing demand in cities that are losing population. In the greater Cleveland metropolitan area, for example, permits for new construction outpaced population growth by nearly 50 percent from 1990 to 2000.[6] Because most of this new growth occurred outside of the city and inner-ring suburbs, those core areas were left with higher concentrations of vacant and abandoned housing.[7] Looking ahead, even after foreclosures return to lower levels, cities like Cleveland will continue to face the challenges of concentrated areas of vacant and abandoned housing.

Why is this issue such a challenge for municipalities? Studies have shown that vacant and abandoned buildings are magnets for criminal activity[8] and that reducing vacancy suppresses criminal activity.[9] Thousands of fires are also reported in vacant structures each year, causing tens of millions of dollars in damage.[10] Vacant and abandoned properties also remain off tax rolls and lower the value of surrounding properties, further eroding the real property tax base.[11] Perhaps most significantly, vacant properties signal that a neighborhood is on the decline.[12] They undermine a neighborhood's sense of community and discourage further investment.[13] Moreover, such disinvestment often spreads across neighborhoods and worsens the overall health of a city.[14] For these reasons, neighborhoods, schools, and city governments bear the greatest costs induced by vacant and abandoned property.[15]

The process of land banking is not intended to replace the operation of private markets, but rather to assist where there is a failure of market conditions.[16] Private markets are not likely to provide an adequate remedy for this problem and in some cases may aggravate it. Private parties have little or no incentive to purchase land when the property taxes owed on the land exceed its fair market value.[17] Similarly, private parties are very unlikely to purchase land with defects on its title, because it is rarely cost-effective to cure title defects.[18] When

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land speculators do purchase and hold tax-foreclosed property, cohesive redevelopment plans can be held up or completely prevented. This speculation problem is exacerbated when speculators reside out of state, beyond the reach of local jurisdictions.

An efficient land bank, on the other hand, can help municipalities address the costs borne by neighborhoods, schools, and city governments by working to reduce vacancy and abandonment. For instance, land bank systems can deter harmful land speculation by enabling land banks to obtain title to distressed properties before they are offered to the public. Land bank systems can also deter harmful tax-lien speculation by enabling land banks to purchase tax liens against distressed properties instead of these liens being offered for sale to the public. And land banks can fill an important gap in private markets by purchasing undesirable land and removing defects on the title, a critical function since property without clear title is undesirable to private buyers, who cannot obtain title insurance without clear title. Overall, land banks undertake their tasks with the goal of returning distressed properties to private entities that will put the land to productive use. If no private interest exists for land bank acquisitions, the land can be converted into public green space and donated to municipalities.

II. Ohio's Traditional Land Banks

Up until January 2009, the Ohio Revised Code only allowed local authorities to establish a type of land bank called a land-reutilization program. These land banks typically do not pursue tax foreclosures or otherwise take an active role in addressing the problem of vacant and abandoned properties. Instead, they are commonly used to hold properties, usually vacant lots, in inventory. Established in an earlier era to address a different problem, these passive land banks may not be adequately equipped to address the problem facing Ohio today. This section will explore the history of Ohio's traditional land banking system and illustrate why it is not suited to address the modern vacancy and abandonment problems facing communities across the state.

A. History of Land Banks in Ohio

Passive land banks, or those that simply hold properties for future use, were designed in 1976 to address widespread tax delinquency. In the mid 1970s, Cleveland's population declined significantly, which contributed to more than 11,000 parcels of land becoming tax-delinquent.[19] At the time, tax-foreclosure procedures required that lawsuits be brought against property owners rather than against the properties themselves. Because many of these tax-delinquent owners had left the jurisdiction, numerous tax foreclosures could not be filed. To help address the effects of widespread tax delinquency, then, legislators enacted a bill in 1976 enabling local authorities, most commonly cities, to create passive land banks.[20]

The 1976 legislation also modified tax-foreclosure procedures so that real property tax foreclosures were actions against property, rather than against property owners, thus allowing actions against tax-delinquent properties even after owners left the jurisdiction.[21] When a county foreclosed on a property, the property would then be advertised and offered for sale at public auction. If a parcel was not purchased after being offered at two auctions, the legislation allowed for passive land banks to receive, manage, and convey the property to private third parties.[22]

In 1988, the Ohio legislature modified the land bank law to permit the abatement of property taxes on land held by passive land banks.[23] The 1988 legislation also created a dedicated fund for the prosecution of delinquent real property taxes.[24] A small percentage of delinquent real property taxes and assessments is placed in the fund to finance tax-foreclosure suits by county prosecutors and to cover passive land bank costs. Finally, the 1988 legislation altered notice requirements to streamline judicial tax foreclosure proceedings.[25] More recently, House Bill 294 was passed in 2006 to expedite the tax foreclosure process.[26] Under the changes made by HB 294, the foreclosure of distressed properties may be adjudicated with an administrative hearing rather than through a judicial proceeding.

B. Challenges Faced by Passive Land Banks

Passive land banks may have worked effectively to address the tax-delinquency problems faced by Cuyahoga County in 1976, but they are not fully equipped to address the problems Ohio faces today. The fact that passive land banks are municipal programs, rather than separate legal entities, has four important implications. First, passive land banks have no operating budgets or staffs of their own, and most local governments lack the tools necessary to address the vacant and abandoned housing problem.[27] The limited funding these passive land banks receive comes from participating local governments and the housing trust funds available to support activities related to the transformation of land bank properties.[28] Because passive land banks lack dedicated staff, time spent on passive land bank issues reduces the time and resources that localities can direct to other important issues.

Second, passive land banks operate only within local governments, so they cannot address vacancy and abandonment regionally. This limits the redevelopment planning each program can undertake. The spread of urban decay is not bound by city limits. Redevelopment strategies in one municipality will affect those of its neighbors and beyond. Consider that in Franklin County, home to Columbus, a land-reutilization program has been organized at the county level, but is unable to actively foreclose on tax-delinquent properties within municipalities without their consent.[29] This restriction hinders the county's redevelopment efforts.

Third, because passive land banks are not legal entities, they do not have the power to acquire real-estate-owned (REO) properties or contract to upkeep inventoried parcels. These actions must be executed at the city level. This lack of leverage creates inefficiencies both for the parties holding REO properties and for Ohio government, because it forces multiple municipal negotiations for the purchase or upkeep of REO properties.

Fourth, because passive land banks are government programs as opposed to separate legal entities operating independently from local governments, local governments are exposed to legal liability. Under the state's pre-2009 legislation, local governments bore the legal liability for all properties in a land-reutilization program's inventory. The most distressed properties carry with them the most significant exposure to liability, which may serve to discourage effective use of land banks.

Incidentally, passive land banks are limited to taking unimproved land[30] unless the structures on the land are slated for demolition or are unoccupied and acquisition is "necessary for the implementation of an effective land reutilization program."[31] The tendency has been for passive land banks, such as the one in Cleveland, to acquire only unimproved land.[32] A couple of driving factors were likely at play: First, the legal liability and costs associated with

holding the land may motivate passive land banks to acquire only unimproved land. Second, passive land banks do not have the funding to engage in wide-scale rehabilitation or demolition. These factors demonstrate that passive land banks are designed to address a different problem entirely, as many of today's tax-delinquent properties have buildings in need of rehabilitation or demolition located on the parcels.

Passive land banks also take a long time to acquire tax-foreclosed properties. Under Ohio's former land bank legislation, tax-foreclosed property had to go through two public auctions, held only a few times a year, before being transferred to passive land banks (and prior to being offered at a public auction, the property had to be advertised for 21 days). Even the majority of expedited HB 294 foreclosures were required to go through at least one auction before they could be transferred.[33] Thus, properties acquired by passive land banks sometimes sat vacant for up to nine months after foreclosure and before being transferred to the program, allowing plenty of time for such properties to fall into disrepair or to be stripped by looters.

Communities that established a countywide land-reutilization program under the previous law had to contend with the challenges imposed by a cumbersome land-acquisition process. To begin with, the requirements that had to be satisfied before a land-reutilization program could take title to a property limited the types of properties the program could access. In the case of the Franklin County Land Reutilization Program, the properties it most commonly acquired after being offered at public auction were (1) vacant lots with delinquent taxes in excess of property value, (2) abandoned homes or commercial structures, and (3) environmentally distressed properties.[34] Franklin County could not acquire recently vacated or abandoned homes for its land-reutilization program because the Ohio Revised Code required that those properties first be offered for sale at public auctions.

Ohio's new land banking system addresses the shortcomings detailed above by establishing land banks as separate legal entities with their own staffs, budgets, and independent legal status. Land banks organized under the new system will have the resources and ability to address the regional problems of vacancy and abandonment more efficiently and effectively than former law allowed. Further, they will have the legal independence necessary to shelter localities from legal liabilities associated with minimizing the effects of vacant and abandoned housing.

Under Ohio's new and banking system, a county land bank can be organized as a corporation that is empowered to foreclose on tax-delinquent properties. Once the county land bank has title and obtains appropriate municipal permits, it can either contract the properties for rehabilitation or demolition or sell them to responsible developers. If properties are rehabilitated, the county land bank will resell them individually to homeowners. Alternatively, county land banks can bundle clusters of acquired properties and sell them to developers.

III. How the Land Bank Bill Alters Ohio's Traditional Land Banking Model

Intended to modernize Ohio's current land bank system, Senate Bill 353/House Bill 602 (the Land Bank Bill) allows for the creation of County Land Reutilization Corporations (CLRCs)—nonprofit community improvement corporations authorized by and subject to the Ohio Revised Code[35]—to help acquire, reclaim, rehabilitate, and reutilize vacant land. The bill effectively establishes a pilot land-bank program that, for now, is limited to Cuyahoga County[36] and will run for two years from the date on which a CLRC is incorporated.[37] The land banking system established under the Land Bank Bill alters the state's current model in four significant ways:

- It gives CLRCs the power to regionally address vacant and abandoned housing.
- It streamlines the primary method of property acquisition: tax foreclosure.
- It secures a source of funding for the county land bank without creating new taxes.
- Finally, it assures that the land bank has the ability to organize as a corporation that is legally distinct from a local government.

A. County Land Reutilization Corporations: A Modern Land Banking Model

i. CLRC Powers

The new legislation gives CLRCs both special and traditional corporate powers. Special powers include the ability to contract with numerous government organizations and county boards. Counties will be able to provide CLRCs with all the basics needed to run a business—data storage, office space, etc.—at or below market rates. CLRCs would be empowered to contract with municipalities for management of property. Finally, CLRCs would be able to initiate foreclose on tax liens.

As an Ohio Revised Code § 1724 corporation, CLRCs have most of the traditional powers of corporations.[38] Among these are the abilities to develop regional strategies for addressing the vacant and abandoned housing problem, negotiate directly for the acquisition of REO properties, maintain other entities' REO properties for a fee, accept properties as gifts or donations, purchase properties from individuals, and contract for the rehabilitation or maintenance of inventoried properties. Negotiating at the county level with banks or servicers to acquire REO properties makes the process more efficient for all parties involved. Servicers and municipalities within a county will not have to engage in numerous transactions, each resulting in the transfer of a handful of distressed REO properties. Instead, a CLRC can negotiate for every distressed REO property in the county.

As an independent corporation, a CLRC will also have the freedom to decide how to dispose of property. This could entail anything from rehabilitation and resale to demolition. Because a CLRC is organized to effect land redevelopment, it could vet potential new owners to ensure they are ready to be homeowners. Alternatively, the CLRC could sell to private developers who bring forward approved plans to help accomplish long-term community development. The CLRC also has the flexibility to adapt to new market demands quickly, choosing to lease properties, for example, if there were a sudden demand for leased space.[39] The Land Bank Bill thus gives land banks increased independence and flexibility.[40]

As will be discussed more fully in the funding section, CLRCs may borrow money via loans or lines of credit and by issuing financial instruments or securities. They may request that a county's Board of Commissioners pledge a source of revenue to secure a borrowing and is-

sue notes in some circumstances. If CLRCs are operating within the boundaries of a city or other municipality, they may request that the municipality issue bonds to fund CLRC activities within those boundaries. The Land Bank Bill also empowers CLRCs to spend money assisting municipalities in abating residential nuisances and to fund prosecutions for violations of laws governing real estate, encouraging CLRCs and municipalities to collaborate.

ii. CLRC Immunities

The Land Bank Bill also grants CLRCs important immunities. Because CLRCs would be in the business of acquiring vacant, abandoned, or otherwise distressed real property, they should be immune from some regulations. The new law immunizes CLRCs from state environmental regulations and orders, permits, licenses, variances or plans approved or issued under any such regulations. There are, however, some immunities absent from the list that may actually benefit CLRCs.

Substantial exposure to liability comes with acquiring nuisance properties.[41] The potential for nuisance lawsuits is a real possibility between the time when a CLRC acquires a property and when that property is rehabilitated, demolished, or sold. Similarly, there is a real possibility of successful negligence lawsuits against a CLRC between the time a CLRC acquires title to a negligently maintained property and when the property is rehabilitated, demolished, or sold.

CLRCs would not benefit from sovereign immunity because they would be independent corporations created by county governments. Thus, it might be wise to provide CLRCs with temporary immunity from lawsuits that are based on the condition of the property when it was acquired. Such immunity could run from the time of property acquisition by CLRCs until the expiration of a reasonable time necessary to cure the property's defects.[42] While the recently enacted Land Bank Bill is a step in the right direction by granting some immunities, it could have offered CLRCs further important protections.

iii. Checks and Balances

Granting a CLRC broad powers and immunities renders it a potent redevelopment tool in the right hands. Such powers and immunities, however, also raise the question of who or what will operate as a check on a CLRC to balance out its powers. In this case, the answer is twofold. First, the board of directors of every CLRC will be comprised of three elected officials and two directors appointed by elected officials and approved by municipalities in the relevant counties. Thus, voters could change the leadership of a CLRC by electing different officials.

Second, municipalities can effectively prevent CLRCs from operating within their borders. Although it is not spelled out in the Land Bank Bill, as a pragmatic matter, CLRCs will have to work in cooperation with municipalities. The CLRCs will not be able to obtain permits for actions such as demolition, for example, unless municipalities issue the permits. The Land Bank Bill also grants municipalities the right of first refusal on all tax-delinquent properties within their borders. That is, if both a municipality and a CLRC are interested in receiving the same parcel of tax-foreclosed land, the municipality takes priority over a land bank.

As community improvement corporations, CLRCs will be subject to further oversight by the state auditor.[43] Each year, every CLRC will be required to file an annual report with the state auditor. Failure to file this report will result in a CLRC's articles of incorporation being cancelled by the Ohio secretary of state, at which point that CLRC would no longer be able to function as a corporation or under any special powers it had been granted.[44]

In addition, CLRCs will be subject to regular audits by the state auditor.[45] These audits will occur at least once every two years. Audits may also occur more frequently, which might be desirable to ensure CLRC powers and immunities are not abused.[46] These reports and audits ensure that the activities of CLRCs are in accord with their purpose of facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, and tax-foreclosed land.[47] Finally, to ensure transparency, CLRCs will be required to keep regular corporate books and records of all transactions, including disclosure of prices paid and prices received for each parcel of land.[48]

Most notably, the Land Bank Bill imposes unique reporting requirements on CLRCs. No more than seven months after incorporation, each CLRC must file a report with the Ohio General Assembly summarizing the CLRC's activities. The report must contain a list of expenditures, revenues, parcels acquired and method of acquisition, among other things.[49] A similar report must be filed no more than 13 months after incorporation. Together, these reports will provide the legislature with information necessary to evaluate a CLRC's operations.

These checks should ensure that CLRCs do not abuse the powers and immunities granted by the Land Bank Bill. Because CLRCs are granted specific powers, immunities, and exemptions these checks accommodate public oversight and transparency of CLRCs, and continue Ohio's tradition of providing a strong home rule environment for municipalities.

B. Primary Method of Property Acquisition: Tax Foreclosure

Under the new legislation, land banks' primary method of property acquisition will continue to be foreclosure on tax-delinquent properties.[50] A land bank cannot focus its acquisition strategies directly on vacant and abandoned housing for a few reasons. For one, vacancy is difficult to ascertain and track. There is also no precise, widely accepted definition for abandoned property. And—in part because of these two factors—no organization currently acts as a central information repository to document the location of vacant and abandoned properties at the county level.[51] A county-level data repository would assist in a more regional evaluation of the vacant and abandoned housing problem, and may help tailor future strategic redevelopment plans.

Property-tax delinquency, however, is often a precursor to vacancy and abandonment when it occurs in neighborhoods with high foreclosure rates.[52] Emory University's Frank Alexander calls such delinquency "the most significant common denominator among vacant and abandoned properties."[53] A property owner's decision to stop paying taxes, combined with foreclosures in the neighborhood, is often a sign that the owner plans no further investment in his residential property.[54]

While the primary means of property acquisition remains the same as that of the passive land banks, the Land Bank Bill significantly reduces the time it takes to procure vacant or abandoned property. The bill creates an alternative redemption period[55] that runs for 45 days from adjudication of foreclosure, after which the right of equitable redemption expires. Once the 45 days have passed, the bill allows the parcel to be transferred directly to a CLRC without appraisal or sale. These changes address several shortcomings of passive land banks, in that this direct-transfer provision prevents speculators from purchasing and holding land without reinvesting in it.[56] The shortened acquisition timeline also helps ensure that the property does not fall into disrepair while going through the two public auctions

now required by law and reduces the opportunity for vandals to strip the property of copper pipe, aluminum siding, storm windows, and other easily sold materials.

Another important feature of the new law is that it provides a "title cleaning" mechanism for all properties that a CLRC acquires. This will make CLRC properties more attractive to responsible developers by ensuring the land has a marketable title. The mechanism works by automatically extinguishing any other interests in land that is transferred to a CLRC. This is a critical function of successful land banks, because without marketable title to a property, potential owners will not be able to obtain title insurance. If title to property cannot be insured, it is unlikely that the property will be purchased by either homeowners or developers.

The new law also updates the regulations governing tax liens and foreclosures in ways that benefit parties other than CLRCs. For instance, the Land Bank Bill adds a title-clearing mechanism to tax foreclosures.[57] It also changes the procedures for transferring title to properties when the taxes owed exceed the property's fair market value. Finally, it prevents the creation of tax liens in circumstances where owners are attempting to pay off their real property tax debts.[58]

C. Funding Mechanisms

Funding is one of the most critical aspects of any active land bank. Wide-scale rehabilitation and demolition, both of which may be necessary to address Ohio's vacant and abandoned housing problem, can be very expensive. Without a source of funding, passive land banks have limited ability to address the vacancy and abandonment problem facing Ohio. For example, a guiding consideration of the Franklin County Land Reutilization Program is minimizing its financial and staffing impact.[59] The new law specifies that the primary source of funding for CLRCs will be penalties and interest on delinquent real property taxes—which means no new taxes.

Previously, county treasurers sold tax certificates to private parties for the amount of the delinquent taxes.[60] Under the changes in the Land Bank Bill, CLRCs essentially would purchase tax certificates, individually or in bulk, instead of county treasurers offering them for sale to private parties. In this way, the Land Bank Bill allows for the public use of an existing tax and prevents tax liens from being sold to speculators. Under the funding mechanism for CLRCs established by the Land Bank Bill, no new real property taxes or assessments are imposed on punctual tax payers.

It is important to note that tax lien speculators do not capture all interest and penalties from delinquent property taxes. Some of these revenues flow to and are used by municipalities. Under the Land Bank Bill, municipalities will continue to receive the principal value of delinquent real property taxes and assessments. The penalties and interest, however, will now be redirected to CLRCs.

The Land Bank Bill makes the numerous statutory changes required to create a mechanism through which CLRCs can capture interest and penalties, including a revised tax distribution schedule. The new mechanism will function by way of the County Treasurer, upon approval of the County's Investment Advisory Committee, borrowing money from the County Treasury. Borrowed money is paid directly to taxing districts in amounts equal to their unpaid or delinquent real property taxes and assessments. As those unpaid and delinquent taxes are

recovered, the principal amount of the tax goes to pay off the line of credit. The penalties and interest are put into an account used to fund CLRCs.[61] At the end of the year, monies remaining but unused will be applied to debts incurred to advance payment to taxing districts.[62] This system should operate effectively at the county level because the County Treasurer has access to lists of all tax-delinquent properties in the county as well as the amount owed on each property.

The changes will allow the line of credit to be funded initially via several methods. First, the CLRC can borrow from the County Treasury. Second, if the County Treasury cash flow is insufficient to fund the new legislation's revised tax distribution schedule, a line of credit with a financial institution can be used to satisfy the deficiency. Finally, the Land Bank Bill creates an optional mechanism for the creation and sale of delinquent-tax anticipation securities. These would not be general obligations of the County. Instead, they would be supported with only a pledge of revenue from the collection of specifically identified delinquent real property taxes and assessments.

The Land Bank Bill does increase the rate at which interest is calculated on unpaid and delinquent taxes and assessments.[63] Each month the taxes are delinquent, 1 percent interest is charged against the amount owed. Late payment penalties (5% and 10%) remain the same. The current Cuyahoga County Treasurer projects that this interest rate increase will generate roughly seven million dollars in annual revenue in Cuyahoga County.

It should be noted that this funding system could also work at the municipal level. Previously, municipalities could purchase tax certificates from the county and pursue the lower interest and penalties for either general or specific use.[64] The fact that cities have not been doing this may be due to economies of scale. That is, the amount of interest and penalties collected by any one municipality, when compared to collection costs, may make pursuing the interest and penalties cost prohibitive. Aggregated at the county level, however, pursuing the collection of interest and penalties may prove to be cost effective.[65]

The Land Bank Bill also allows for numerous possible secondary sources of funding for CLRCs. First, CLRCs will capture the proceeds from the sale of any of their urban and suburban properties. This is made possible because CLRCs obtain clear title to land after the alternate redemption period, and because all delinquent taxes and assessments will be advanced to taxing districts. Thus, there would be no liens on the land that would entitle any person or taxing district to a portion of sale proceeds.

Second, the bill allows up to 5 percent of the delinquent taxes and assessments collection fund to be earmarked for use by a CLRC. This fund was used exclusively for the collection of delinquent real property, personal property, and mobile/manufactured home taxes and for passive land bank expenses.

Third, a Board of County Commissioners may provide additional funding. Boards are authorized to make contributions to corporations organized under Ohio Revised Code § 1724.[66] Boards are also authorized to levy additional property taxes to help fund CLRCs. Boards may also support CLRCs from their general operating tax levies.

Fourth, CLRCs are nonprofit corporations that can raise money in their own right. They can do this by borrowing money, issuing bonds, accepting gifts, and applying in their own names for grants.[67] CLRCs may grant mortgages on the land they hold in order to secure bor-

rowed money.[68] Finally, CLRCs may contract with lenders or servicers and GSEs to provide upkeep and manage temporarily vacant properties for a fee. This is a significant change from passive land banks, which could not independently pursue funding because of their status as government programs rather than independent corporations.

IV. Conclusion

The reforms contained in the Land Bank Bill will modernize Ohio's land banking model in several ways. The state's passive land banks are not equipped to address the widespread vacant and abandoned housing problems plaguing many regions of Ohio. The Land Bank Bill enables land banks to organize at the county level as corporations directed by elected officials and appointees. The prototype CLRC will act as a county-level repository for data, allowing for regional evaluation of the vacant and abandoned housing problem.

The Land Bank Bill gives the new land banks operating budgets that are independent from municipal budgets without raising taxes. It encourages cooperation between CLRCs and municipalities. The Land Bank Bill also significantly reduces the amount of time it takes for land banks to acquire vacant properties, expediting the properties' return to the real property tax rolls.

There are aspects of the Land Bank Bill that should be carefully observed and considered by policy makers. For example, the lack of temporary immunity from lawsuits based on the condition of the premises when it is acquired by a land bank exposes land banks to legal liability. Also, the funding process for CLRCs will redirect some penalties and interest on delinquent real property taxes and assessments from municipalities to CLRCs. This may have short-term implications for municipal budgets, despite the assistance CLRCs may provide to municipalities. Representatives from municipal and county governments should work closely together to determine the total financial impact of CLRCs, taking into account both the municipal costs of funding CLRCs and the financial benefits municipalities will reap from CLRC operations in both the short and long term.

Ultimately, the successful economic development of a region involves numerous factors, including workforce training, transit systems, taxes, and the business climate. The Land Bank Bill does not guarantee community stabilization or development. Rather, it establishes land banks as an effective tool for stabilizing and developing communities. It will allow a single, countywide entity to take clear title to distressed properties, expediting rehabilitation and development of these properties. It should encourage the acquisition of distressed properties by granting land banks specific immunities and allowing municipalities to avoid liability associated with distressed properties.

In sum, the Land Bank Bill addresses many of the challenges faced by the state's traditional land bank model. The bill offers a well-rounded approach to solving the problems caused by excessive vacant and abandoned real property. The bill is designed to implement a pilot program in Cuyahoga County, an area that has been dramatically affected by vacant and abandoned real property. And, not insignificantly, the approach spelled out in the Land Bank Bill comes at a low cost because it requires no new property taxes or assessments to punctual taxpayers.

Endnotes

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7. Bier & Post supra note 6, at 2. The paper goes on to state that East Cleveland has approximately 3,500 abandoned units, or 13 percent of the abandoned units in the greater Cleveland area. Id. at 3. See also FRANK S. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY 5 (Brookings Institute, 2008) ("[Excess supplies of real estate] can happen gradually over a period of years as populations shift from urban centers to suburban and exurban rings…"). The fact that real property is not fungible in nature, the supply and demand for land is often not flexible enough for prices and consumption to adjust to relative demand and available supply. Id. at 7.

8. Mark Setterfield, Abandoned Buildings: Models for Legislative and Enforcement Reform, Research Project 23, Trinity College (1997); William Speilman, Abandoned Buildings: Magnets for Crime, 21 Journal of Criminal Justice 481 (1993).

9. Douglass Goodman & Bruce D. Mann, An Empirical Investigation of More Police Time: Crime in Midwest Cities, 1990 v. 2000 16 (Working Paper Series University of Puget Sound July 2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=770385.

10. Setterfield supra note 8.

11. A 1998 study of the Cleveland area showed that for every property in tax delinquency, house values within 1-2 blocks decreased by $778. Robert A Simons, Roberto G. Quercia & Ivan Maric, The Value Impact of New Residential Construction and Neighborhood Disinvestment on Residential Sales Price, 15 JOURNAL OF REAL ESTATE RESEARCH 147, 158 (1998). A more recent study found that an additional abandoned structure within 500 feet reduces the sale price of a residence by 2.27 percent, within 501-1000 feet by 1.92 percent, and within 1001-1500 feet by 1.5 percent. NIGEL G. GRISWOLD & PATRICIA E. NORRIS, ECONOMIC IMPACTS OF RESIDENTIAL PROPERTY ABANDONMENT AND THE GENESEE COUNTY LAND BANK IN FLINT, MICHIGAN 4 (MSU Land Policy Institute, 2007).

12. Alexander, supra note 1, at 4 (citation omitted). See James Goldstein et al., Urban Vacant Land Redevelopment: Challenges and progress, (Lincoln Institute of Land Policy, Working Paper, 2001): Edward G. Gotez et al., Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing (1998); Kathleen C. Engel, Do Cities Have Standing? Redressing the Externalities of Predatory Lending, 38 Conn. L. Rev. 355, 357-59 (2006).

13. ALEXANDER, supra note 1, at 4; Engel supra note 12, at 357-59.

14. ALEXANDER, supra note 1, at 4.

15. Alexander, supra note 7, at 5.

16. ALEXANDER, supra note 7, at 6.

17. ALEXANDER, supra note 1, at 8. See also Ana Baptista, Redeveloping City-Owned Vacant Lots: Strategies for the Equitable Redevelopment of City-Owned Vacant Land in Providence, RI, Brown University for Environmental Studies (2000) available at http://envstudies.brown.edu/oldsite/Thesis/2000/masters/abaptista/.

18. ALEXANDER, supra note 1, at 8.

19. Frank S. Alexander, Land Bank Strategies for Renewing Urban Land, 14 JOURNAL OF AFFORDABLE HOUSING 147 (2005).

20. Id. at 148.

21. Id. at 148.

22. Id. at 148.

23. ALEXANDER, supra note 1, at 6; Alexander supra note 19, at 148; Ohio H.B. 603 Approved June 24, 1988.

24. ALEXANDER, supra note 1, at 6; Frank S. Alexander supra note 19, at 148; Ohio H.B. 603 Approved June 24, 1988.

25. ALEXANDER, supra note 1, at 6; Alexander supra note 19, at 148; Ohio H.B. 603 Approved June 24, 1988.

26. Part of the definition of "abandoned land" is that the land must be unoccupied. See Ohio Rev. Code § 323.65(A) (2008).

27. ALEXANDER, supra note 7, at 5.

28. ALEXANDER, supra note 1, at 26.

29. For more information about Franklin County's land reutilization program, see the Franklin County Treasurer's website at http://www.co.franklin.oh.us/treasurer/landbank/index.html (last visited November 2008).

30. Generally, unimproved land is land without any constructed improvements such as residential or commercial buildings or other structures.

31. Ohio Revised Code § 5722.01(E) (2008).

32. ALEXANDER, supra note 1, at 9.

33. The only time properties can be transferred directly to a land bank under current law is when the taxes owed on the property exceed the property's fair market value and the property is foreclosed upon via an HB 294 expedited foreclosure. Ohio Revised Code § 323.73(G) (2008).

34. See http://www.co.franklin.oh.us/treasurer/landbank/index.html (last visited November 2008).

35. The County Treasurer would act as the incorporator with approval of the Board of Commissioners. As with any corporation, a CLRC's articles of incorporation must be approved by the Secretary of State and are subject to review by the Attorney General for compliance with applicable law. Once incorporated, the board of directors is created. The County Treasurer (or his designee) and at least two County Commissioners (or their designees) must sit on the board. An amendment has been proposed that would allow large municipalities to appoint a director. The Board adopts a code of regulations for governance which provides for corporate government and appointment of officers to conduct business and management of property, and establishes policies and procedures (including agreements with municipalities and other agencies). The code of regulations for governance must conform to Ohio Revised Code §§ 1702.11 & 1724 (2008).

36. The Land Bank Bill only allows for creation of a CLRC in counties with a population of 1.2 million or greater, according to the most recent census. It only allows CLRCs to be incorporated within one year of the effective date of the amendment, which would be December 2009. Thus, only counties meeting the population requirement according to the last census would be eligible. In Ohio, only Cuyahoga County has a population exceeding 1.2 million as of the 2000 census.

37. After two years, the Land Bank Bill prevents CLRCs from acquiring new title to properties by all direct, and most indirect, means.

38. For a list of powers, see Ohio Revised Code § 1724.02 (2008).

39. The Land Bank Bill caps the amount of occupied property a CLRC can own at 25 percent of the CLRC's inventory.

40. This increased independence and flexibility is accompanied by significant accountability, discussed infra, in section III.A.iii.

41. Samsa supra note 2, at 228.

42. Although such a time limit could be a specific number of days, granting immunity for a "reasonable period" would allow courts to consider surrounding circumstances and to account for changes in the amount of time it takes to rehabilitate or demolish buildings. It also allows land banks to avoid nuisance or negligence liability by strategically acquiring properties so that no one property sits too long without being addressed.

43. Ohio Revised Code § 1724.05 (2008).

44. Ohio Revised Code § 1724.06 (2008).

45. These audits are required by Ohio Revised Code § 1724.05 (2008) and subject to Ohio Revised Code § 117.11 (2008).

46. Ohio Revised Code § 117.11(A) (2008).

47. Ohio Revised Code § 1724.05 (2008); Land Bank Bill Proposed Ohio Revised Code § 1724.01(B)(2).

48. Ohio Revised Code § 1702.25 (2008).

49. The reports must contain: (1) an itemized list of CLRC revenues and receipts from any and every source; (2) CLRC expenses; (3) the number of parcels acquired by the CLRC and how they were acquired; (4) the disposition of all property; (5) the number of parcels of abandoned land the CLRC foreclosed upon via tax lien certificates; (6) the value of tax lien certificates acquired by the CLRC; (7) a summary of CLRC nuisance abatement and code enforcement activities; (8) the number of employees and officers of the CLRC; and (9) the compensation CLRC officers received.

50. As discussed in section III.A.i., infra, a CLRC will be empowered to purchase REO property from servicers and lenders (as well as other property owners, if necessary) and accept gifts and donations as well.

51. Municipal Departments of Community Development may act indirectly as repositories of the location of vacant and abandoned properties because of the information they receive from Community Development Corporations. CLRCs could aggregate and supplement this information to further one of their primary goals: acting as county-level repositories of this information to further regional evaluation of the vacant and abandoned housing problem.

52. ALEXANDER, supra note 1, at 4.

53. ALEXANDER, supra note 1, at 4.

54. ALEXANDER, supra note 1, at 14.

55. The redemption period is the time after foreclosure that former owners may pay the amount of the lien against the property and regain title. Under current law this period lasts until sale to a third party.

56. This direct-transfer provision may also have the effect of preventing investors from assembling land on their own for new investment projects. Such investors, however, should be able to purchase land from land banks if their projects are viable, since the assembling of distressed parcels of land for sale to developers is a primary duty of a land bank.

57. This mechanism clears title of all encumbrances save federal tax liens, as well as easements and covenants that run with the land and were established prior to the tax lien.

58. No tax lien certificates can be issued against properties with owners in bankruptcy, where the taxes have already been paid, or where there is a valid tax contract in effect. Similar to these borrower protections, the bill also allows the county treasurer to collect guaranteed funds from homeowners and use them to pay off tax liens, preventing foreclosure.

59. See http://www.co.franklin.oh.us/treasurer/landbank/index.html (last visited November 2008).

60. These sales are subject to Ohio Revised Code §§ 5721.30, et seq. (2008).

61. This is not a completely new system. Currently tax certificates can be purchased by private individuals to for the principal amount of unpaid and delinquent taxes. Revenue from the sale of such certificates goes to the appropriate taxing districts (those selling their interest in unpaid or delinquent real property taxes and assessments). After holding the certificates for one year, the purchaser may attempt to collect the taxes, along with penalties and interest. Essentially the bill would result in these certificates being sold to a County Land Reutilization Corporation instead of to private "tax lien" speculators.

62. Whether money is remaining will be calculated using the first-in, first-out method. If debts are repaid and money still remains, the money can be reappropriated by the CLRC for the next year. If it is not reappropriated, it will be transferred to the county's general fund.

63. Interest is currently charged on delinquent property taxes on August 1 (for the prior 8 months) and December 1 (for the prior 4 moths).The tax rate is calculated according to Ohio Revised Code § 5703.47, which requires following this formula:

    [The rate of average market yield on outstanding marketable obligations of the U.S. with remaining periods of three moths or less] + 3 percent.

64. There is nothing in ORC §§ 5721.30 et seq. to prevent cities from purchasing tax certificates.

65. The success of the Genesee County Land Bank operating under a similar system suggests the collection of interest and penalties is cost-effective at the county level.

66. County Land Reutilization Corporations would be organized under Ohio Revised Code § 1724 (2008).

67. The Genesee County, Michigan, county land bank has been using EPA Brownfield grants to fund portions of its activities.

68. This is not nullified by the title-clearing mechanism set in place for CLRCs.Title is only cleared upon acquisition.Thus, subsequent encumbrances on title will not be washed away.

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