

STATEMENT TO
[First Reprint]
SENATE, No. 860

with Senate Floor Amendments
(Proposed by Senator SINGLETON)

ADOPTED: DECEMBER 11, 2023

These floor amendments make several changes to the bill concerning procedures in the action to partition real property.

The amendments provide that the court, in determining whether the property is heirs property, would rely on information contained in the pleadings, or any other information provided to the court pursuant to the Rules of Court. Under the amendments, if the court determines that the property is heirs property, the court would appoint a special master and may, when appropriate, appoint a commissioner or commissioners to partition the property unless all of the cotenants otherwise agree in writing.

The amendments also provide that if the court determines that the property may be heirs property, the court would order the plaintiff to post, and maintain while the action is pending, a conspicuous notice on the property that is the subject of the action in accordance with the Rules of Court.

Prior to the floor amendments, the bill had provided that after a party sends written notice of a request for partition by sale, a cotenant intending to buy all of the interests of the cotenants would be required to send written notice to the parties and special master within 30 days that it elects to buy all of the interests of the cotenants that requested partition by sale. The amendments change the 30-day deadline to 45 days.

The floor amendments also provide that a sale may occur only after the purchase prices for all interests subject to sale have been paid into the Superior Court Trust Fund and those interests have been reallocated among the cotenants. Any funds deposited into the Trust Fund would be distributed in accordance with the procedures set forth in the Rules of Court.