

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 548

By Senator Weld

[Originating in the Committee on the Judiciary;

reported on February 16, 2023]

1 A BILL to amend and reenact §11A-3-2, §11A-3-13, §11A-3-38, §11A-3-45 of the Code of West
2 Virginia, 1931, as amended; to amend said code by adding thereto a new section,
3 designated §11A-3-45a; to amend and reenact §11A-3-46, §11A-3-47, §11A-3-48 of said
4 code; to amend said code by adding thereto a new section, designated §11A-3-48a; and to
5 amend and reenact §11A-3-56 of said code, all relating to real property taxes; modifying
6 who is entitled to redeem real estate that is subject to delinquent taxes; modifying certain
7 public notices regarding the certification of real estate to the Auditor; modifying who is
8 entitled to redeem nonentered or certified lands; specifying that participation in certain
9 auctions conducted by West Virginia Auditor constitutes transacting business in West
10 Virginia; providing eligibility requirements to bid on tax liens at certain auctions conducted
11 by the Auditor; providing for certain rule-making authority, including emergency
12 rulemaking; barring certain parties from participating in auctions conducted by Auditor;
13 modifying certain public notices regarding certain auctions conducted by the Auditor;
14 providing for the incurrence of legal expenses related to title examinations by the West
15 Virginia Auditor and the reimbursement for those expenses; authorizing West Virginia
16 Auditor to refuse to sell unsold lands to potential buyers who fail to meet certain criteria;
17 and barring certain parties from purchasing unsold lands.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE
AND UNAPPROPRIATED LANDS.**

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 (a) On or before the September 10 of each year, the sheriff shall prepare a second list of
2 delinquent lands, which shall include all real estate in his or her county remaining delinquent as of
3 the first day of September, together with a notice of sale, in form or effect as follows:

4 Notice is hereby given that the following described tracts or lots of land or undivided

5 interests therein in the County of _____ and the tax liens that encumber the same
6 which are delinquent for the nonpayment of taxes for the year (or years) 20_____, will be
7 certified to the Auditor for disposition pursuant to West Virginia Code §11A-3-44 on the 31st day of
8 October, 20_____.

9 Upon certification to the Auditor, tax liens on each unredeemed tract or lot, or each
10 unredeemed part thereof or undivided interest therein, shall be sold at public auction to the highest
11 bidder in an amount which shall not be less than the taxes, interest, and charges which shall be
12 due thereon to the date of sale, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest, and charges due to date of sale
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13
14 If any of said tracts or lots remain unsold following the auction, they shall be subject to sale
15 by the Auditor without additional advertising or public auction, such terms as the Auditor deems
16 appropriate pursuant to §11A-3-48 of this code.

17 Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be
18 redeemed by the payment to the undersigned sheriff (or collector) before certification to the
19 Auditor, of the total amount of taxes, interest, and charges due thereon up to the date of
20 redemption by credit card, cashier's check, money order, certified check, or United States
21 currency. Payment must be received in the tax office by the close of business on the last business
22 day prior to the certification.

23 After certification to the Auditor, any of the aforesaid tracts or lots may be redeemed by any
24 person entitled to pay the taxes thereon, the owner of the same whose interest is not subject to
25 separate assessment, or any person having a lien on the same, or on an undivided interest
26 therein, at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest,
27 and charges due thereon up to the date of redemption.

28 Given under my hand this _____ day of

29 _____, 20_____.

30 _____

31 Sheriff (or collector).

32 The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a
33 Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code,
34 and the publication area for such publication shall be the county.

35 (b) In addition to such publication, no less than 30 days prior to the sale by the Auditor
36 pursuant to §11A-3-44 of this code, the sheriff shall send a notice of the delinquency and the date
37 of sale by certified mail: (1) To the last known address of each person listed in the land books
38 whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes
39 are due as disclosed by a statement filed with the sheriff pursuant to the provisions of §11A-3-3 of
40 this code; (3) to each other person with an interest in the property or with a fiduciary relationship to
41 a person with an interest in the property who has in writing delivered to the sheriff on a form
42 prescribed by the Tax Commissioner a request for such notice of delinquency; and (4) in the case
43 of property which includes a mineral interest but does not include an interest in the surface other
44 than an interest for the purpose of developing the minerals, to each person who has in writing
45 delivered to the sheriff, on a form prescribed by the Tax Commissioner, a request for such notice
46 which identifies the person as an owner of an interest in the surface of real property that is included
47 in the boundaries of such property: *Provided*, That in a case where one owner owns more than
48 one parcel of real property upon which taxes are delinquent, the sheriff may, at his or her option,
49 mail separate notices to the owner and each lienholder for each parcel or may prepare and mail to
50 the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the
51 sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description of all
52 parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed
53 notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is

54 conveyed pursuant to §11A-3-27 or §11A-3-59 of this code.

55 (c) To cover the cost of preparing and publishing the second delinquent list, a charge of \$25
56 shall be added to the taxes, interest, and charges already due on each item and all such charges
57 shall be stated in the list as a part of the total amount due.

58 (d) To cover the cost of preparing and mailing notice to the landowner, lienholder, or any
59 other person entitled thereto pursuant to this section, a charge of \$10 per addressee shall be
60 added to the taxes, interest, and charges already due on each item and all such charges shall be
61 stated in the list as a part of the total amount due.

62 (e) Any person whose taxes were delinquent on the first day of September may have his or
63 her name removed from the delinquent list prior to the time the same is delivered to the
64 newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the
65 person at the date of such redemption. In such case, the sheriff shall include but \$3 of the costs
66 provided in this section in making such redemption. Costs collected by the sheriff ~~hereunder~~ under
67 this section which are not expended for publication and mailing shall be paid into the General
68 County Fund.

§11A-3-13. Publication by sheriff of certification list.

1 Within one month after completion of the certification, the sheriff shall prepare and publish
2 a list of all the certifications made by him or her, in form or effect as follows, which list shall be
3 published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et*
4 *seq.* of this code, and the publication area for such publication shall be the county.

5 List of tax liens on real estate in the county of _____, in the month (or
6 months) of _____, 20_____, certified for nonpayment of taxes thereon
7 for the year (or years) 20_____, and certified to the Auditor of the State of West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged
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8 The owner of any real estate listed above, or any other person entitled to pay the taxes

9 thereon whose interest is not subject to separate assessment, or any person having a lien on such
10 real estate, or on an undivided interest therein may, however, redeem such real estate as provided
11 by law.

12 Given under my hand this _____ day of _____, 20____.

13 _____

14 Sheriff

15 To cover the costs of preparing and publishing such list, a charge of \$15 shall be added to
16 the taxes, interest, and charges already due on each item listed.

§11A-3-38. Redemption of nonentered or certified lands.

1 (a) The owner of any real estate certified to the Auditor pursuant to §11A-3-8 of this code
2 whose interest is not subject to separate assessment, or any person having a lien on such real
3 estate, or on an undivided interest therein, or the owner of any nonentered real estate subject to
4 the authority of the Auditor pursuant to §11A-3-37 of this code, or any other person who was
5 entitled to pay the taxes thereon may redeem such real estate from the Auditor at any time prior to
6 the certification of such real estate to the deputy commissioner as provided in §11A-3-44 of this
7 code. Thereafter such real estate shall be subject to disposition pursuant to §11A-3-44 of this
8 code, and subsequent sections.

9 (b) In order to redeem the person seeking redemption must pay to the Auditor such of the
10 following amounts as may be due: (1) The taxes, interest and charges due on the real estate on
11 the date of certification to the Auditor or the discovery of the nonentry, with interest at the rate of 12
12 percent per annum from the date of such certification or discovery; (2) all taxes assessed thereon
13 for the year in which the certification occurred or nonentry was discovered, with interest at the rate
14 of 12 percent per annum from the date on which they became delinquent, except when such taxes
15 are currently due and payable to the sheriff; (3) all taxes except those for the current year which
16 would have been assessed thereon since the certification had the certification not occurred, or
17 which, in case of nonentered lands, would have been assessed thereon had the land been

18 properly entered, with interest at the rate of 12 percent per annum from the date on which such
19 taxes would have become delinquent: *Provided*, That in the case of nonentered lands, the owner
20 shall not be liable for more than the taxes and interest which would have become due and payable
21 during the 10 years immediately preceding the date of the discovery of the nonentry.

22 (c) In computing the amount due under subdivision (3), subsection (b) of this section on
23 real estate certified to the Auditor by the sheriff, the Auditor shall use as the basis for computation
24 the classification and valuation placed thereon by the assessor for each year since the sale. If
25 such valuation and classification have not been made, he or she shall use the last valuation and
26 classification appearing on the property books. In computing the amount due under subdivision
27 (3), subsection (b) of this section on nonentered real estate, the Auditor shall use as the basis for
28 computation such classification and valuation as may, at the request of the Auditor or the person
29 redeeming, be certified to the Auditor by the assessor as the classification and valuation which in
30 his opinion would be proper for each year of nonentry.

31 (d) Redemption of an undivided interest included in a group assessment shall not be
32 permitted until the applicable provisions of §11A-1-9 or §11A-1-10 of this code have been
33 complied with, except that instead of presenting the assessor's certificate to the sheriff as therein
34 provided, the person redeeming shall present it to the Auditor, who, after making the necessary
35 changes in the land book, and in the record of delinquent lands kept in his or her office, shall
36 compute the taxes due on the part or interest redeemed.

§11A-3-45. Auditor to hold annual auction.

1 (a) Each tract or lot certified by the Auditor pursuant to §11A-3-44 of this code shall be sold
2 by him or her at public auction at the courthouse of the county to the highest eligible bidder during
3 the courthouse's normal operating hours on any business working day within 90 days after the
4 Auditor has certified the lands as required by §11A-3-44 of this code. The payment for any tract or
5 lot purchased at a sale shall be made by check, U. S. currency, or money order payable to the
6 Auditor and delivered before the close of business on the day of sale. No part or interest in any

7 tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety
8 of such unredeemed tract, lot, or interest, as the same is described and constituted as a unit or
9 entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on
10 the first day of the sale, it shall be continued from day to day between the same hours until all the
11 land shall have been offered for sale. Bidding at an auction held pursuant to this section
12 constitutes transacting business in this state for purposes of §31B-10-1001 et seq., §31D-15-1501
13 et seq., and §31E-14-1401 et seq. of this code.

14 (b) A private, nonprofit, charitable corporation, incorporated in this state, which has been
15 certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal
16 Internal Revenue Code, as amended, which has as its principal purpose the construction of
17 housing or other public facilities and which notifies the Auditor of an intention to bid and
18 subsequently submits a bid that is not more than five percent lower than the highest bid submitted
19 by any person or organization which is not a private, nonprofit, charitable corporation as defined in
20 this subsection, shall be sold the property offered for sale at public auction by the Auditor pursuant
21 to the provisions of this section at the public auction as opposed to the highest bidder.

22 The nonprofit corporation referred to in this subsection does not include a business
23 organized for profit, a labor union, a partisan political organization, or an organization engaged in
24 religious activities, and it does not include any other group which does not have as its principal
25 purpose the construction of housing or public facilities.

26 (c) To attain eligibility to bid at a public auction held pursuant to this section, a potential
27 bidder must register in advance of such public auction with the Auditor's office. Registration shall
28 be done in accordance with rules promulgated by the State Auditor's office. The Auditor may
29 deregister or refuse to register a potential bidder who:

30 (1) Has failed to make a payment owed at a prior auction held pursuant to this section;

31 (2) At the time of registration is delinquent in the payment of real property taxes to any
32 county in this state;

33 (3) At the time of registration is subject to legal proceedings in any county or municipality
34 that are related to code enforcement violations regarding real property owned by him or her; and

35 (4) Within the preceding five years prior to the auction, has failed to comply with a valid
36 raze or repair order (or any other similar order) issued by a county or municipality.

37 (d) Potential bidders who are domestic or foreign entities as defined in chapters 31B, 31D,
38 and 31E of this code must show proof at the time of their registration that they properly registered
39 with the Secretary of State's office and are authorized to conduct business in this state.

40 (e) In order to effectuate the purposes of this section, the Auditor may promulgate
41 procedural rules, interpretive rules, and legislative rules, including emergency rules, or any
42 combination thereof, in accordance with §29A-3-1 et seq. of this code.

11A-3-45a. Certain parties barred from participating in public auctions.

1 (a) Citizens of or entities organized in or controlled by citizens or governments of any
2 country designated as a Country of Particular Concern by the Department of State of the United
3 States of America are ineligible from participating in any public auction held pursuant to §11A-3-45
4 of this code.

5 (b) For purposes of this section, "Country of particular concern" means a country that has
6 been designated as such by the Department of State of the United States of America pursuant to
7 Section 408(a) of 22 USC 6448.

§11A-3-46. Publication of notice of auction.

1 (a) Once a week for three consecutive weeks prior to the auction required in §11A-3-45 of
2 this code, the Auditor shall publish notice of the auction as a Class III-0 legal advertisement in
3 compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such
4 publication shall be the county.

5 The notice shall be in form or effect as follows:

6 Notice is hereby given that the following described tracts or lots of land in the County of
7 _____, have been certified by the Auditor of the State of West Virginia, for sale

8 at public auction. The lands will be offered for sale by the undersigned Auditor at public auction in
9 (specify location) the courthouse of _____ County between the hours of
10 _____ in the morning and _____ in the afternoon, on the
11 _____ day of _____, 20_____.

12 Each tract or lot as described below will be sold to the highest eligible bidder at the auction.
13 The payment for any tract or lot purchased at a sale shall be made by check or money order
14 payable to the Auditor and delivered before the close of business on the day of the sale. If any of
15 said tracts or lots remain unsold following the auction, they will be subject to later sale without
16 additional advertising or public auction. All potential bidders must register in advance of the
17 auction with the Auditor's office. Citizens of or entities organized in or controlled by citizens of any
18 country designated as a Country of Particular Concern by the Department of State of the United
19 States of America are ineligible from participating in the auction held pursuant to this section.
20 Bidding at the auction constitutes transacting business in this state for purposes of §31B-10-1001
21 et seq., §31D-15-1501 et seq., and §31E-14-1401 et seq. of this code. The Auditor's sale may
22 include tracts or lots remaining unsold from a previous auction not required by law to be
23 readvertised and described for this subsequent auction of those same tracts and lots. All sales are
24 subject to the approval of the Auditor of the State of West Virginia.

25 (here insert description of advertised lands to be sold)

26 Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes
27 thereon, the owner of the same whose interest is not subject to separate assessment, or any
28 person having a lien on the same, or on an undivided interest therein, at any time prior to the sale
29 by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the
30 date of redemption. Lands listed above as escheated or waste and unappropriated lands may not
31 be redeemed.

32 Given under my hand this _____ day of _____,
33 20_____.

34 _____ Auditor of the State of West Virginia.

35 (b) The description of lands required in the notice shall be in the same form as the list
36 certifying said lands for sale. If the Auditor is required to auction lands certified to him or her in any
37 previous years, pursuant to §11A-3-48 of this code, he or she shall include such lands in the
38 auction without further advertisement, with reference to the year of certification and the item
39 number of the tract or interest.

40 (c) To cover the cost of preparing and publishing the notice, a charge of \$30 shall be added
41 to the taxes, interest, and charges due on the delinquent and nonentered property.

§11A-3-47. Redemption prior to sale.

1 Any of the delinquent and nonentered lands certified to the deputy commissioner may be
2 redeemed, prior to the auction, by the owner of such land or any other person entitled to pay the
3 taxes thereon, the owner of such lands whose interest is not subject to separate assessment, or
4 any person having a lien on such land, or on an undivided interest therein, by payment of the
5 taxes, interest, and charges due. The deputy commissioner shall prepare an original and five
6 copies of the receipt, give to the person redeeming the original receipt, retain one copy for his files
7 and forward one copy each to the sheriff, Auditor, assessor, and the clerk of the county
8 commission, each of whom shall note the fact of such redemption on their respective records of
9 delinquent lands. Any person redeeming the interest of another shall be subrogated to the lien of
10 the state on such interest as provided in section nine, article one of this chapter.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

1 (a) If any of the lands which have been offered for sale at the public auction provided in
2 §11A-3-45 of this code shall remain unsold following such auction, or were sold at a tax sale
3 auction within the previous five years which were not redeemed and for which no deed was
4 secured by the purchaser, or if the Auditor refuses to approve the sale pursuant to §11A-3-51 of
5 this code, the Auditor may sell the lands without any further public auction or additional advertising
6 of the land, in the following priority: (1) To a person vested with an ownership interest in an

7 adjacent tract or parcel of land: *Provided*, That if more than one adjacent landowner desires to
8 acquire the same tract or lot, then the Auditor shall sell such tract or lot to the highest bidder; (2) to
9 the municipality in which the tract or lot is located; (3) the county commission of the county in which
10 the tract or lot is located; (4) to the West Virginia Land Stewardship Corporation as part of its Land
11 Bank Program set forth in §31-21-11 of this code; or (5) to any party willing to purchase such
12 property.

13 (b) The price of such property shall be as agreed upon by the Auditor and purchaser:
14 *Provided*, That the Auditor may engage a licensed attorney to provide a title examination on lands
15 set forth in the preceding subsection and require that a purchaser reimburse the Auditor for any
16 expenses related to the title examination as a condition for the sale.

17 (c) The Auditor may refuse to sell unsold lands to a potential buyer that is subject to any of
18 the following:

19 (1) Has failed to make a payment owed at a prior previous auction held pursuant to §11A-3-
20 45 of this code;

21 (2) At the time of registration is delinquent in the payment of real property taxes to any
22 county in this state;

23 (3) At the time of registration is subject to legal proceedings in any county or municipality
24 that are related to code enforcement violations regarding real property owned by them; and

25 (4) Within the preceding five years prior to the purchase, has failed to comply with a valid
26 raze or repair order (or any other similar order) issued by a county or municipality.

§11A-3-48a. Certain parties barred from purchasing unsold lands.

27 (a) Citizens of or entities organized in or controlled by citizens or governments of any
28 country designated as a country of particular concern by the United States Department of State
29 shall be barred from purchasing unsold lands pursuant to §11A-3-48 of this code.

30 (b) For purposes of this section, a "Country of particular concern" means a country that has
31 been designated as such by the Department of State of the United States of America pursuant to

32 Section 408(a) of 22 USC 6448.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of
2 this code, the owner of, or any other person who was entitled to pay the taxes on any real estate for
3 which a tax lien thereon was purchased whose interest is not subject to separate assessment, or
4 any person having a lien on such real estate, or on an undivided interest therein, may redeem at
5 any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the Auditor
6 the following amounts:

7 (1) An amount equal to the taxes, interest, and charges due on the date of the sale, with
8 interest thereon at the rate of one percent per month from the date of sale;

9 (2) All other taxes thereon, which have since been paid by the purchaser, or his or her heirs
10 or, with interest at the rate of one percent per month from the date of payment;

11 (3) Such additional expenses as may have been incurred in preparing the list of those to be
12 served with notice to redeem, and for any licensed attorney's title examination incident thereto,
13 with interest at the rate of one percent per month from the date of payment, but the amount he or
14 she shall be required to pay, excluding said interest, for such expenses incurred for the
15 preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this
16 code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An
17 attorney may only charge a fee for legal services actually performed and must certify that he or she
18 conducted an examination to determine the list of those to be served required by §11A-3-52 of this
19 code;

20 (4) All additional statutory costs paid by the purchaser; and

21 (5) The Auditor's fee and commission as provided by §11A-3-66 of this code. Where the
22 Auditor has not received from the purchaser satisfactory proof of the expenses incurred in
23 preparing the notice to redeem, or of any licensed attorney's title examination incident thereto, in

24 the form of receipts or other evidence thereof, the person redeeming shall pay the Auditor the sum
25 of \$500 plus interest thereon at the rate of one percent per month from the date of the sale for
26 disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon
27 payment to the Auditor of those and any other unpaid statutory charges required by this article,
28 and of any unpaid expenses incurred by the sheriff, ~~and~~ the Auditor, and the deputy commissioner
29 in the exercise of their duties pursuant to this article, the Auditor shall prepare an original and five
30 copies of the receipt for payment and shall note on said receipts that the property has been
31 redeemed. The original of such receipt shall be given to the person redeeming. The Auditor shall
32 retain a copy of the receipt and forward one copy each to the sheriff, assessor, and the clerk of the
33 county commission. The clerk shall endorse on the receipt the fact and time of such filing and note
34 the fact of redemption on his or her record of delinquent lands.

35 (b) Any person for reasons of financial hardship may petition the Auditor to ~~redeems~~
36 redeem his or her primary residence in installments. The petition shall certify to the Auditor that the
37 real estate is the primary residence of the redeeming party. The Auditor may approve a financial
38 hardship plan and it shall be signed by him or her and the party making the request. A copy of the
39 document evidencing such acceptance shall be filed with the clerk of the county commission in
40 which the property is located.

41 (c) Any person who, by reason of the fact that no provision is made for partial redemption of
42 the tax lien on real estate purchased at the public auction or at a subsequent sale, is compelled in
43 order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs,
44 in whole or in part, to some other person, shall have a lien on the interest of such other person for
45 the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however,
46 unless within 30 days after payment he or she shall file with the clerk of the county commission his
47 or her claim in writing against the owner of such interest, together with the receipt provided for in
48 this section. The clerk shall docket the claim on the judgment lien docket in his or her office and
49 properly index the same. Such lien may be enforced as other judgment liens are enforced.

