

H. B. 4393

(By Delegates Frazier, Pino, Ellem, Caputo,
Lane, Manchin, Manypenny and Fleischauer)
[Introduced February 2, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §11A-3-19 and §11A-3-21 of the Code of
West Virginia, 1931, as amended; to amend said code by adding
thereto a new section, designated §11A-3-23a; to amend and
reenact §11A-3-52 and §11A-3-54 of said code; and to amend
said code by adding thereto a new section, designated
§11A-3-58a, all relating to permitting surface owners to
purchase the mineral interests that lay below the property
when the mineral interest becomes subject to a tax lien;
establishing the purchase price to be twice the amount owed by
the mineral interest owner; setting forth the procedure for
clerks and deputy commissioners; establishing a nonrefundable
\$20 administrative fee to be paid by surface owners; providing
a procedure if more than one surface owner desires to purchase
the delinquent mineral interest; and modifying notices to
redeem that are sent to property owners identifying the
additional rights available to surface owners.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §11A-3-19 and §11A-3-21 of the Code of West Virginia,
3 1931, as amended, be amended and reenacted; that said code be
4 amended by adding thereto a new section, designated §11A-3-23a; that
5 §11A-3-52 and §11A-3-54 of said code be amended and reenacted; and
6 that said code be amended by adding thereto a new section,
7 designated §11A-3-58a, all to read as follows:

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

10 **§11A-3-19. What purchaser must do before the deed can be secured.**

11 (a) At any time after October 31 of the year following the
12 sheriff's sale, and on or before December 31 of the same year, the
13 purchaser, his or her heirs or assigns, in order to secure a deed
14 for the real estate subject to the tax lien or liens purchased,
15 shall:

16 (1) Prepare a list of those to be served with notice to redeem
17 and request the State Auditor to prepare and serve the notice as
18 provided in sections twenty-one and twenty-two of this article;

19 (2) When the real property subject to the tax lien is
20 classified as Class II property, provide the State Auditor with the
21 physical mailing address of the property that is subject to the tax
22 lien or liens purchased;

23 (3) Provide the State Auditor with a list of any additional

1 expenses incurred after January 1 of the year following the
2 sheriff's sale for the preparation of the list of those to be served
3 with notice to redeem including proof of the additional expenses in
4 the form of receipts or other evidence of reasonable legal expenses
5 incurred for the services of any attorney who has performed an
6 examination of the title to the real estate and rendered written
7 documentation used in the preparation of the list of those to be
8 served with the notice to redeem;

9 (4) Deposit with the State Auditor a sum sufficient to cover
10 the costs of preparing and serving the notice; and

11 (5) Present the purchaser's certificate of sale, or order of
12 the county commission where the certificate has been lost or
13 wrongfully withheld from the owner, to the State Auditor.

14 If the purchaser fails to meet these requirements, he or she
15 shall lose all the benefits of his or her purchase.

16 (b) For an interest in real estate subject to the tax lien or
17 liens that includes minerals but does not include an interest in the
18 surface, other than an interest for the purpose of developing the
19 minerals, the list shall include the last known name and mailing
20 address of the taxpayer to which the sheriff is required to send a
21 tax ticket pursuant to section eight, article one of this chapter
22 for all tracts of surface property shown on the tax maps provided
23 in subsection (e), section seven, article one-c, chapter eleven of
24 this code to lie above the mineral tract subject to the tax lien or

1 liens purchased. For failure to meet these requirements, the
2 purchaser shall lose all the benefits of his or her purchase. No
3 deed to a bona fide purchaser for value from a purchaser or a
4 surface owner substituted for a purchaser may be set aside for
5 failure of the purchaser to comply with this subsection, but this
6 limitation does not affect other remedies at law, if any.

7 ~~(b)~~ (c) If the person requesting preparation and service of the
8 notice is an assignee of the purchaser, he or she shall, at the time
9 of the request, file with the State Auditor a written assignment to
10 him or her of the purchaser's rights, executed, acknowledged and
11 certified in the manner required to make a valid deed.

12 ~~(c)~~ (d) Whenever any certificate given by the sheriff for a tax
13 lien on any land, or interest in the land sold for delinquent taxes,
14 or any assignment of the lien is lost or wrongfully withheld from
15 the rightful owner of the land and the land or interest has not been
16 redeemed, the county commission may receive evidence of the loss or
17 wrongful detention and, upon satisfactory proof of that fact, may
18 cause a certificate of the proof and finding, properly attested by
19 the State Auditor, to be delivered to the rightful claimant and a
20 record of the certificate shall be duly made by the county clerk in
21 the recorded proceedings of the commission.

22 **§11A-3-21. Notice to redeem.**

23 (a) Whenever the provisions of section nineteen of this article
24 have been complied with, the State Auditor shall prepare a notice

1 in form or effect as follows:

2 To _____.

3 You will take notice that _____, the purchaser (or
4 _____, the assignee, heir or devisee of _____, the
5 purchaser) of the tax lien(s) on the following real estate,
6 _____, (here describe the real estate for which the tax
7 lien(s) thereon were sold) located in _____, (here
8 name the city, town or village in which the real estate is situated
9 or, if not within a city, town or village, give the district and a
10 general description) which was returned delinquent in the name of
11 _____, and for which the tax lien(s) thereon was sold by
12 the sheriff of _____ County at the sale for delinquent
13 taxes made on the _____ day of _____, 20, has
14 requested that you be notified that a deed for such real estate will
15 be made to him or her on or after April 1, 20 ____, as provided by
16 law, unless before that day you redeem such real estate. The amount
17 you will have to pay to redeem on the last day, March 31, will be
18 as follows:

19 Amount equal to the taxes, interest, and charges due on the
20 date of sale, with interest to March 31, 20 _____

21 \$ _____
22 Amount of subsequent years taxes paid on the property, since
23 the sale, with interest to March 31, 20 _____ \$ _____

24 Amount paid for title examination and preparation of list of

1 those to be served, and for preparation and service of the notice
2 with interest from January 1, 20 (insert year) following the
3 sheriff's sale to March 31, 20 _____ \$ _____

4 Amount paid for other statutory costs (describe)
5 _____ \$ _____

6 Total \$ _____

7 You may redeem at any time before March 31, 20 _____,
8 by paying the above total less any unearned interest.

9 NOTE: If you are receiving this notice because you are the
10 owner of an interest in the surface overlaying a mineral interest
11 which was returned delinquent, you may pay the clerk twice the
12 amount identified above and a \$20 administrative fee, before March
13 1, 20__ . If you do so and the property is redeemed, the amount you
14 paid, less the administrative fee, will be refunded. If you do so
15 and the property is not redeemed, then you will be substituted for
16 the purchaser of the tax lien and may proceed to obtain a deed for
17 the property. If you do so and if one or more additional surface
18 owners do so, then the surface owners must submit, by April 7,
19 20__ , an agreement dividing the real estate according to their
20 proportionate share or any other method or formula agreed to among
21 all of you. If an agreement is not filed, the clerk shall refund
22 the moneys tendered by the surface owners, less the administrative
23 fees, and the original purchaser will be returned to his or her
24 original rights and duties.

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

2 _____

3 State Auditor, State of West Virginia

4 (b) The State Auditor, for his or her service in preparing the
 5 notice, ~~shall receive~~ receives a fee of \$10 for the original and \$2
 6 for each copy required. Any additional costs which must be expended
 7 for publication, or service of the notice in the manner provided for
 8 serving process commencing a civil action, or for service of process
 9 by certified mail, shall be charged by the State Auditor. All costs
 10 provided by this section shall be included as redemption costs and
 11 included in the notice described in this section.

12 **§11A-3-23a. Surface owner substitution for purchaser.**

13 (a) If the real estate interest subject to the tax lien is an
 14 interest in real estate that includes minerals but does not include
 15 an interest in the surface, other than an interest for the purpose
 16 of developing the minerals, then prior to March 31 of the year
 17 following the sale an owner of record of the surface laying above
 18 the real estate interest subject to the tax lien real estate being
 19 sold may pay the clerk the amount that would be required for
 20 redemption pursuant to section twenty-three of this article, plus
 21 an additional amount equal to that amount or \$3000, whichever is
 22 less, plus an administrative fee of \$20. The clerk shall issue the
 23 surface owner a certificate of substitution and send a copy to the
 24 purchaser. If more than one surface owner of record applies to pay

1 the clerk, the clerk shall accept payment from each surface owner
2 of record and issue each a certificate of substitution for each and
3 send copies of the certificates of substitution to each other in
4 addition to the purchaser.

5 (b) If the property is redeemed, the clerk shall refund the
6 moneys paid, less the administrative fees.

7 (c) If the property is not timely redeemed, and if only one
8 surface owner has received a certificate of substitution, then the
9 clerk shall send the amount paid by the surface owner to the
10 purchaser, keep the \$20 administrative fee, and record the
11 certificate of substitution, and the surface owner is substituted
12 to the full rights and duties of the purchaser.

13 (d) If more than one surface owner pays in, then no deed may
14 be issued before April 15 of the year following the sale and the
15 surface owners must submit an agreement dividing the real estate
16 according to the proportion their interests bear to each other, or
17 any other method or formula approved by all surface owners who paid
18 in, by April 15 of the year following the sale of the lien. The
19 interest of an owner of a surface tract shall be equal to the
20 acreage stated on documents of record even if the owner only owns
21 an undivided interest. However, if more than one owner of an
22 undivided interest pays in, his or her proportion shall be the total
23 acreage of the undivided tract divided by the number of owners of
24 the tract who pay in. If no agreement is filed, then the clerk

1 shall refund the moneys paid to the surface owners, except for the
2 \$20 administrative fees, and the original purchaser is returned to
3 his or her original position. If an agreement is filed, then the
4 clerk shall make an amended certificate showing the division
5 according to their respective interests and divide any remaining
6 moneys paid by all surface owners according to their agreed interest
7 and return it to them.

8 **§11A-3-52. What purchaser must do before he or she can secure**
9 **deed.**

10 (a) Within forty-five days following the approval of the sale
11 by the Auditor pursuant to section fifty-one of this article, the
12 purchaser, his or her heirs or assigns, in order to secure a deed
13 for the real estate purchased, shall:

14 (1) Prepare a list of those to be served with notice to redeem
15 and request the deputy commissioner to prepare and serve the notice
16 as provided in sections fifty-four and fifty-five of this article;

17 (2) When the real property subject to the tax lien was
18 classified as Class II property, provide the deputy commissioner
19 with the actual mailing address of the property that is subject to
20 the tax lien or liens purchased; and

21 (3) Deposit, or offer to deposit, with the deputy commissioner
22 a sum sufficient to cover the costs of preparing and serving the
23 notice.

24 (b) If the purchaser fails to fulfill the requirements set

1 forth in ~~paragraph~~ subsection (a) of this section, the purchaser
2 shall lose all the benefits of his or her purchase.

3 (c) After the requirements of ~~paragraph~~ subsection (a) of this
4 section have been satisfied, the deputy commissioner may then sell
5 the property in the same manner as he sells lands which have been
6 offered for sale at public auction but which remain unsold after
7 such auction, as provided in section forty-eight of this article.

8 (d) For an interest in real estate subject to the tax lien or
9 liens that includes minerals but does not include an interest in the
10 surface, except an interest for the purpose of developing the
11 minerals, the list shall include the last known name and mailing
12 address of the taxpayer to which the sheriff is required to send a
13 tax ticket pursuant to section eight, article one of this chapter
14 for all tracts of surface property shown on the tax maps, provided
15 in subsection (e), section seven, article one-c, chapter eleven of
16 this code, that lie above the mineral tract subject to the tax lien
17 or liens purchased. No deed to a bona fide purchaser for value from
18 a purchaser or a surface owner substituted for a purchaser may be
19 set aside for failure of the purchaser to comply with this
20 subsection but this limitation does not affect other remedies at
21 law, if any.

22 ~~(d)~~ (e) If the person requesting preparation and service of the
23 notice is an assignee of the purchaser, he or she shall, at the time
24 of the request, file with the deputy commissioner a written

1 assignment to him or her of the purchaser's rights, executed,
2 acknowledged and certified in the manner required to make a valid
3 deed.

4 **§11A-3-54. Notice to redeem.**

5 Whenever the provisions of section fifty-two of this article
6 have been complied with, the deputy commissioner shall thereupon
7 prepare a notice in form or effect as follows:

8 To _____

9 You will take notice that _____, the purchaser
10 (or _____, the assignee, heir or devisee of _____,
11 the purchaser) of the following real estate, _____,
12 (here describe the real estate sold) located in _____,
13 (here name the city, town or village in which the real estate is
14 situated or, if not within a city, town or village, give the
15 district and a general description) which was _____
16 (here put whether the property was returned delinquent or
17 nonentered) in the name of _____, and was sold by the
18 deputy commissioner of delinquent and nonentered lands of
19 _____ County at the sale for delinquent taxes (or
20 nonentry) on the _____ day of _____, ~~19~~ 20, has
21 requested that you be notified that a deed for such real estate will
22 be made to him or her on or after the _____ day of _____,
23 ~~19~~ 20, as provided by law, unless before that day you redeem
24 such real estate. The amount you will have to pay to redeem on the

1 _____ day of _____, ~~19~~20 will be as follows:

2 Amount equal to the taxes, interest and charges due on the date
3 of sale, with interest to _____\$ _____

4 Amount of taxes paid on the property, since the sale, with
5 interest to _____ \$ _____

6 Amount paid for title examination and preparation of list of
7 those to be served, and for preparation and service of the notice
8 with interest to _____ \$ _____

9 Amount paid for other statutory costs (describe)

10 _____

11 _____ \$ _____

12 Total \$ _____

13 You may redeem at any time before _____ by paying
14 the above total less any unearned interest.

15 NOTE: If you are receiving this notice because you are the
16 owner of an interest in the surface overlaying a mineral interest
17 which was returned delinquent, you may pay the deputy commissioner
18 the amount identified above, plus an amount equal to that amount or
19 \$3000, whichever is less, plus a \$20 administrative fee, before the
20 above date. If you do so and the property is redeemed, the amount
21 you paid, less the administrative fee, will be refunded. If you do
22 so and the property is not redeemed, then you will be substituted
23 for the purchaser of the tax lien and may proceed to obtain a deed
24 for the property. If you do so and if one or more additional

1 surface owners do so, then the surface owners must submit an
2 agreement dividing the property according to their proportionate
3 shares. If an agreement is not filed, the deputy commissioner shall
4 refund the moneys tendered by the surface owners, less the
5 administrative fees, and the original purchaser will be returned to
6 his or her original rights and duties.

7 Given under my hand this _____ day of _____,
8 ~~19~~ 20_____.
9 _____

10 Deputy Commissioner of Delinquent
11 and Nonentered Lands
12 _____ County,
13 State of West Virginia

14 The deputy commissioner, for his or her service in preparing
15 the notice, ~~shall receive~~ receives a fee of \$10 for the original and
16 \$2 for each copy required. Any costs which must be expended in
17 addition thereto for publication, or service of such notice in the
18 manner provided for serving process commencing a civil action or for
19 service of process by certified mail, shall be charged by the deputy
20 commissioner. All costs provided by this section shall be included
21 as redemption costs and included in the notice described herein.

22 **§11A-3-58a. Surface owner substitution for purchaser.**

23 (a) If the real estate interest subject to the tax lien is an
24 interest in real estate that includes minerals but does not include

1 an interest in the surface, other than an interest for the purpose
2 of developing the minerals, then within thirty days after notices
3 to redeem have been personally served, or an attempt of personal
4 service has been made, or such notices have been mailed or, if
5 necessary, published in accordance with the provisions of section
6 fifty-five of this article, following the deputy commissioner's
7 sale, an owner of record of the surface laying above the real
8 estate interest subject to the tax lien real estate being sold may
9 pay to the deputy commissioner twice the amount that would be
10 required for redemption, plus an amount equal to that amount or
11 \$3000, whichever is less. The deputy commissioner shall issue the
12 surface owner a certificate of substitution and send a copy to the
13 purchaser. If more than one surface owner of record applies to pay
14 the deputy commissioner, the deputy commissioner shall accept
15 payment from each surface owner of record and issue each a
16 certificate of substitution for each and send copies of the
17 certificates of substitution to each other in addition to the
18 purchaser.

19 (b) If the property is redeemed, the deputy commissioner shall
20 refund the moneys paid, less the administrative fees.

21 (c) If the property is not timely redeemed, and if only one
22 surface owner has received a certificate of substitution, then the
23 deputy commissioner shall send the amount paid by the surface owner
24 to the purchaser and record the certificate of substitution,

1 whereupon the surface owner is substituted to the full rights and
2 duties of the purchaser.

3 (d) If more than one surface owner submits payment, before an
4 additional fifteen days, the surface owners must submit an agreement
5 dividing the real estate according to their proportionate share. The
6 interest of an owner of a surface tract shall be equal to the
7 acreage stated on documents of record even if the owner only owns
8 an undivided interest. However, if more than one owner of an
9 undivided interest submits payment, their proportionate shares are
10 the total acreage of the undivided tract divided by the number of
11 owners of the tract who pay in. If no agreement is filed, then the
12 deputy commissioner shall refund their moneys, less the
13 administrative fees, and the original purchaser is returned to his
14 or her original position. If an agreement is filed, then the deputy
15 commissioner shall make an amended certificate showing the division
16 according to their interests, the deputy commissioner shall send the
17 purchaser twice the amount required for redemption, and divide the
18 remaining money paid by all surface owners according to their agreed
19 interests.

NOTE: The purpose of this bill is to permit surface owners to purchase the mineral interests that lay below their property when the mineral interest becomes subject to a tax lien. The bill provides that the price to substitute the surface owner for the tax lien purchaser would be twice the amount owed by the mineral interest owner. The bill sets forth the procedure for clerks and deputy commissioners and establishes a nonrefundable \$20

administrative fee to be paid by surface owners. The bill provides a procedure if more than one surface owner desires to purchase the delinquent mineral interest. The bill modifies the notices to redeem that are sent to property owners by identifying the additional rights available to surface owners.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§11A-3-23a and §11A-3-58a are new; therefore, they have been completely underscored.