

H. B. 2851

(By Delegates Manypenny, Fleischauer,
Hamilton and Martin)

[Introduced January 25, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

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;
5 that §11A-3-52 and §11A-3-54 of said code be amended and reenacted;
6 and 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
3 served with notice to redeem including proof of the additional
4 expenses in the form of receipts or other evidence of reasonable
5 legal expenses incurred for the services of any attorney who has
6 performed an examination of the title to the real estate and
7 rendered written documentation used in the preparation of the list
8 of those to be 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
18 the surface, other than an interest for the purpose of developing
19 the minerals, the list shall include the last known name and
20 mailing address of the taxpayer to which the sheriff is required to
21 send a tax ticket pursuant to section eight, article one of this
22 chapter for all tracts of surface property shown on the tax maps
23 provided in subsection (e), section seven, article one-c, chapter
24 eleven of this code to lie above the mineral tract subject to the

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

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

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

23 **§11A-3-21. Notice to redeem.**

24 (a) Whenever the provisions of section nineteen of this

1 article have been complied with, the State Auditor shall prepare a
2 notice in form or effect as follows:

3 To _____.

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

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

22 \$ _____

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

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

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

7 Total \$ _____

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

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

1 fees, and the original purchaser will be returned to his or her
2 original rights and duties.

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

4 _____

5 State Auditor, State of West Virginia

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

14 **§11A-3-23a. Surface owner substitution for purchaser.**

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

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

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

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

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

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

8 **§11A-3-52. What purchaser must do before he or she can secure a**
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 (a) of this section, the purchaser shall lose
2 all the benefits of his or her purchase.

3 (c) After the requirements of paragraph (a) of this section
4 have been satisfied, the deputy commissioner may then sell the
5 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
10 the 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
18 from a purchaser or a surface owner substituted for a purchaser may
19 be 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
23 the notice is an assignee of the purchaser, he 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
 22 will be made to him or her on or after the _____ day of
 23 _____, ~~19~~ 20, as provided by law, unless before that
 24 day you redeem such real estate. The amount you will have to pay

1 to redeem on the _____ day of _____, ~~19~~20 will be
2 as follows:

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

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

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

10 Amount paid for other statutory costs (describe)
11 _____
12 _____ \$ _____

13 Total \$ _____

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

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

1 additional surface owners do so, then the surface owners must
2 submit an agreement dividing the property according to their
3 proportionate shares. If an agreement is not filed, the deputy
4 commissioner shall refund the moneys tendered by the surface
5 owners, less the administrative fees, and the original purchaser
6 will be returned to 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 a fee of \$10 for the original and \$2 for
16 each copy required. Any costs which must be expended in addition
17 thereto for publication, or service of such notice in the manner
18 provided for serving process commencing a civil action, or for
19 service of process by certified mail, shall be charged by the
20 deputy commissioner. All costs provided by this section shall be
21 included as redemption costs and included in the notice described
22 herein.

23 **§11A-3-58a. Surface owner substitution for purchaser.**

24 (a) If the real estate interest subject to the tax lien is an

1 interest in real estate that includes minerals but does not include
2 an interest in the surface, other than an interest for the purpose
3 of developing the minerals, then within thirty days after notices
4 to redeem have been personally served, or an attempt of personal
5 service has been made, or such notices have been mailed or, if
6 necessary, published in accordance with the provisions of section
7 fifty-five of this article, following the deputy commissioner's
8 sale, an owner of record of the surface laying above the real
9 estate interest subject to the tax lien real estate being sold may
10 pay to the deputy commissioner twice the amount that would be
11 required for redemption. 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
5 agreement dividing the real estate according to their proportionate
6 share. The interest of an owner of a surface tract shall be equal
7 to the acreage stated on documents of record even if the owner only
8 owns 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
15 deputy commissioner shall make an amended certificate showing the
16 division according to their interests, the deputy commissioner
17 shall send the purchaser twice the amount required for redemption,
18 and divide the remaining money paid by all surface owners according
19 to their agreed interests.

NOTE: The purpose of this bill is to permit surface owners to purchase the mineral interests that lay below the 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.