

1 **H. B. 2947**

2  
3 (By Delegates Manchin, Manypenny, Ellem, Pino, Guthrie,  
4 Walters, Lane, Caputo and Fleischauer)

5  
6 [Introduced March 15, 2013; referred to the  
7 Committee on the Judiciary then Finance .]

8 **FISCAL**  
**NOTE**

9  
10 A BILL to amend and reenact §11A-3-19, §11A-3-21 and §11A-3-23 of  
11 the Code of West Virginia, 1931, as amended; to amend said  
12 code by adding thereto a new section, designated §11A-3-23a;  
13 to amend and reenact §11A-3-52, §11A-3-54 and §11A-3-56 of  
14 said code; to amend said code by adding thereto a new section,  
15 designated §11A-3-58a; and to amend and reenact §11A-4-4 of  
16 said code, all relating to permitting surface owners to  
17 purchase the mineral interests that lay below the property  
18 when the mineral interest becomes subject to a tax lien;  
19 establishing procedures; requiring notice; establishing the  
20 purchase prices; establishing a nonrefundable \$20  
21 administrative fees; providing a procedure if more than one  
22 surface owner seeks to purchase the delinquent mineral  
23 interest; modifying notices to redeem that are sent to  
24 property owners; and providing remedies relating to tax sales.

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



1 sheriff's sale for the preparation of the list of those to be  
2 served with notice to redeem including proof of the additional  
3 expenses in the form of receipts or other evidence of reasonable  
4 legal expenses incurred for the services of any attorney who has  
5 performed an examination of the title to the real estate and  
6 rendered written documentation used in the preparation of the list  
7 of those to be served with the notice to redeem. However, for an  
8 interest in real estate identified in subsection (b) of this  
9 section the purchaser, or other authorized person, of the property  
10 shall pay the reasonable costs related to preparing the list of  
11 those served with notice to redeem, other than surface owners, as  
12 provided by subdivision (3), subsection (a), section twenty-three  
13 of this article;

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

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

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

21 (b) For an interest in real estate subject to the tax lien  
22 that includes minerals, but not an interest in the surface other  
23 than an interest in the surface for the purpose of developing the  
24 minerals, the list shall include the last known name and mailing

1 address of the taxpayer who receives a tax ticket for the surface  
2 property shown on the tax maps identified in subsection (e),  
3 section seven, article one-c, chapter eleven of this code that lie  
4 above the mineral tract. If these requirements are not met all the  
5 benefits of the purchase will be lost. However, no deed to a bona  
6 fide purchaser for value from a purchaser, or a surface owner  
7 substituted for a purchaser, may be set aside for failure of the  
8 purchaser to comply with this subsection, but this limitation does  
9 not affect any other remedies at law.

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

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

1 county clerk in the recorded proceedings of the commission.

2 **§11A-3-21. Notice to redeem.**

3 (a) Whenever ~~the provisions of~~ section nineteen of this  
4 article ~~have~~ has been complied with, the State Auditor shall  
5 prepare a notice in form or effect as follows:

6 To \_\_\_\_\_.

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

23 Amount equal to the taxes, interest, and charges due on the  
24 date of sale, with interest to March 31, 20 \_\_\_\_\_ .....

1 \$ \_\_\_\_\_.

2 Amount of subsequent years taxes paid on the property, since  
3 the sale, with interest to March 31, 20 \_\_\_\_ ..... \$ \_\_\_\_\_

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

8 Amount paid for other statutory costs (describe)  
9 \_\_\_\_\_ ..... \$ \_\_\_\_\_

10 Total ..... \$ \_\_\_\_\_

11 You may redeem at any time before March 31, 20  
12 \_\_\_\_\_, by paying the above total less any unearned  
13 interest.

14 NOTE: If you have received this notice because you are the  
15 owner of an interest in the surface overlaying a mineral interest  
16 that was returned delinquent, you may pay the clerk twice the  
17 amount identified above, plus a nonrefundable \$20 administrative  
18 fee, before March 1, 20\_\_ . If you pay the required amount and the  
19 property is then redeemed, that amount you paid, less the  
20 administrative fee, will be refunded to you. If you pay the  
21 required amount and the property is not redeemed, you will be  
22 substituted for the purchaser of the tax lien and you may proceed  
23 to obtain a deed for the property. If you and one or more  
24 additional surface owners each pay the appropriate amount, all the

1 surface owners who have made payment shall submit, by April 7,  
2 20\_\_\_, an agreement dividing the real estate according to their  
3 proportionate shares or any other method or formula agreed to among  
4 all of you. If an agreement is not filed, the clerk shall refund  
5 the moneys tendered by the surface owners, less the administrative  
6 fees, and none of you will be substituted for the purchaser of the  
7 tax lien.

8 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

9 \_\_\_\_\_

10 State Auditor, State of West Virginia

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

19 **§11A-3-23. Redemption from purchase; receipt; list of redemptions;**  
20 **lien; lien of person redeeming interest of another;**  
21 **record.**

22 (a) After the sale of any tax lien on any real estate pursuant  
23 to section five of this article, the owner of, or any other person  
24 who was entitled to pay the taxes on, any real estate for which a

1 tax lien on the real estate was purchased by an individual may  
2 redeem at any time before a tax deed is issued for the real estate.  
3 In order to redeem, he or she shall pay to the State Auditor the  
4 following amounts:

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

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

11 (3) Any additional expenses incurred from January 1 of the  
12 year following the sheriff's sale to the date of redemption for the  
13 preparation of the list of those to be served with notice to redeem  
14 and any written documentation used for the preparation of the list,  
15 with interest at the rate of one percent per month from the date of  
16 payment for reasonable legal expenses incurred for the services of  
17 an attorney who has performed an examination of the title to the  
18 real estate and rendered written documentation used for the  
19 preparation of the list: *Provided*, That the maximum amount the  
20 owner or other authorized person shall pay, excluding the interest,  
21 for the expenses incurred for the preparation of the list of those  
22 to be served required by section nineteen of this article is \$300,  
23 plus any costs required by subsection (b), section nineteen of this  
24 article: *Provided however*, That the attorney may only charge a fee

1 for legal services actually performed and must certify that he or  
2 she conducted an examination to determine the list of those to be  
3 served required by section nineteen of this article; and

4 (4) All additional statutory costs paid by the purchaser.

5 (b) Where the State Auditor has not received from the  
6 purchaser satisfactory proof of the expenses incurred in preparing  
7 the notice to redeem, and any written documentation used for the  
8 preparation of the list of those to be served with notice to  
9 redeem, including the certification required in subdivision (3),  
10 subsection (a) of this section, incident thereto, in the form of  
11 receipts or other evidence of legal expenses, incurred as provided  
12 in section nineteen of this article, the person redeeming shall pay  
13 the State Auditor the sum of \$300 plus interest at the rate of one  
14 percent per month from January 1 of the year following the  
15 sheriff's sale for disposition by the sheriff pursuant to ~~the~~  
16 ~~provisions of~~ sections ten, twenty-four, twenty-five and thirty-two  
17 of this article.

18 (c) The person redeeming shall be given a receipt for the  
19 payment and the written opinion or report used for the preparation  
20 of the list of those to be served with notice to redeem required by  
21 section nineteen of this article.

22 (d) Any person who, by reason of the fact that no provision  
23 is made for partial redemption of the tax lien on real estate  
24 purchased by an individual, is compelled in order to protect

1 himself or herself to redeem the tax lien on all of the real estate  
2 when it belongs, in whole or in part, to some other person, shall  
3 have a lien on the interest of that other person for the amount  
4 paid to redeem the interest. He or she shall lose his or her right  
5 to the lien, however, unless within thirty days after payment he or  
6 she files with the clerk of the county commission his or her claim  
7 in writing against the owner of the interest, together with the  
8 receipt provided in this section. The clerk shall docket the claim  
9 on the judgment lien docket in his or her office and properly index  
10 the claim. The lien may be enforced as other judgment liens are  
11 enforced.

12 (e) Before a tax deed is issued, the county clerk may accept,  
13 on behalf of the State Auditor, the payment necessary to redeem any  
14 real estate encumbered with a tax lien and write a receipt. The  
15 amount of the payment necessary to redeem any real estate  
16 encumbered with a tax lien shall be provided by the State Auditor  
17 and the State Auditor shall update the required payments plus  
18 interest at least monthly.

19 (f) On or before the tenth day of each month, the county clerk  
20 shall deliver to the State Auditor the redemption money paid and  
21 the name and address of the person who redeemed the property on a  
22 form prescribed by the State Auditor.

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

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

1 interest that includes minerals, but does not include an interest  
2 in the surface other than an interest for the purpose of developing  
3 the minerals, then prior to March 31 of the year following the sale  
4 an owner of record of the surface above the property subject to the  
5 tax lien being sold may pay the clerk: (1) Twice the amount that  
6 would be required for redemption pursuant to section twenty-three  
7 of this article; and (2) a nonrefundable \$20 administrative fee.  
8 The clerk shall issue the surface owner a certificate of  
9 substitution and send a copy to the purchaser. If more than one  
10 surface owner makes this payment to the clerk, the clerk shall  
11 issue each a certificate of substitution for each and send copies  
12 of the certificates of substitution to the others in addition to  
13 the purchaser. If a purchaser can demonstrate to the clerk that  
14 the he or she is related to the owner of the property in whose name  
15 it is listed, then the clerk may, in his or her sole discretion,  
16 cancel the certificates of substitution and refund all moneys paid  
17 by the surface owner or owners, less the \$20 administrative fee.

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

20 (c) If the property is not redeemed, and if only one surface  
21 owner has received a certificate of substitution, then the clerk  
22 shall send the amount paid by the surface owner to the purchaser,  
23 less the \$20 administrative fee, and record the certificate of  
24 substitution. That surface owner enjoys the full rights and duties

1 of the purchaser.

2 (d) If more than one surface owner pays the clerk the  
3 appropriate amount the surface owners shall submit an agreement  
4 dividing the property according to their proportionate shares, or  
5 another mutually agreeable method or formula approved by all of  
6 them, by April 15 of the year following the sale of the lien. No  
7 deed may be issued before April 15 of the year following the sale.  
8 The interest of an owner of a surface tract shall be equal to the  
9 acreage stated on documents of record even if the owner only owns  
10 an undivided interest. However, if more than one owner of an  
11 undivided interest in the same tract pays the clerk the appropriate  
12 amount, his or her share shall be the total acreage of the  
13 undivided tract divided by the number of owners of the tract who  
14 have also paid the clerk. If an agreement is filed, then the clerk  
15 shall make an amended certificate dividing the property according  
16 to their respective interests and refund any remaining moneys paid  
17 by them according to their agreed interests. If no agreement is  
18 filed, the clerk shall refund the moneys paid to the surface  
19 owners, less the \$20 administrative fees, and the original  
20 purchaser is returned to his or her original position.

21 **§11A-3-52. What purchaser must do before he or she can secure a**  
22 **deed.**

23 (a) Within forty-five days following the approval of the sale  
24 by the auditor pursuant to section fifty-one of this article, the

1 purchaser, his or her heirs or assigns, in order to secure a deed  
2 for the real estate purchased, shall:

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

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

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

13 (b) If the purchaser fails to fulfill the requirements set  
14 forth in ~~paragraph~~ subsection (a) of this section, the purchaser  
15 shall lose all the benefits of his or her purchase.

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

21 (d) For an interest in real estate subject to the tax lien or  
22 liens that includes minerals but does not include an interest in  
23 the surface, except an interest for the purpose of developing the  
24 minerals, the list shall include the last known name and mailing

1 address of the taxpayer known to the sheriff to which the sheriff  
 2 is required to send a tax ticket pursuant to section eight, article  
 3 one of this chapter for all tracts of surface property shown on the  
 4 tax maps, provided in subsection (e), section seven, article one-c,  
 5 chapter eleven of this code, that lie above the mineral tract  
 6 subject to the tax lien or liens purchased. No deed to a bona fide  
 7 purchaser for value from a purchaser or a surface owner substituted  
 8 for a purchaser may be set aside for failure of the purchaser to  
 9 comply with this subsection. This limitation does not affect any  
 10 other remedies at law.

11 ~~(d)~~ (e) If the person requesting preparation and service of  
 12 the notice is an assignee of the purchaser, he or she shall, at the  
 13 time of the request, file with the deputy commissioner a written  
 14 assignment to him or her of the purchaser's rights, executed,  
 15 acknowledged and certified in the manner required to make a valid  
 16 deed.

17 **§11A-3-54. Notice to redeem.**

18 Whenever ~~the provisions of~~ section fifty-two of this article  
 19 ~~have~~ has been complied with, the deputy commissioner shall  
 20 thereupon prepare a notice in form or effect as follows:

21 To \_\_\_\_\_

22 You will take notice that \_\_\_\_\_, the purchaser  
 23 (or \_\_\_\_\_, the assignee, heir or devisee of \_\_\_\_\_,  
 24 the purchaser) of the following real estate, \_\_\_\_\_,

1 (here describe the real estate sold) located in \_\_\_\_\_,  
 2 (here name the city, town or village in which the real estate is  
 3 situated or, if not within a city, town or village, give the  
 4 district and a general description) which was \_\_\_\_\_  
 5 (here put whether the property was returned delinquent or  
 6 nonentered) in the name of \_\_\_\_\_, and was sold by the  
 7 deputy commissioner of delinquent and nonentered lands of  
 8 \_\_\_\_\_ County at the sale for delinquent taxes (or  
 9 nonentry) on the \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ 20\_\_\_\_, has  
 10 requested that you be notified that a deed for such real estate  
 11 will be made to him or her on or after the \_\_\_\_\_ day of  
 12 \_\_\_\_\_, ~~19~~ 20\_\_\_\_, as provided by law, unless before that  
 13 day you redeem such real estate. The amount you will have to pay  
 14 to redeem on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ will be as  
 15 follows:

16        Amount equal to the taxes, interest and charges due on the  
 17 date of sale, with interest to \_\_\_\_\_ .....\$ \_\_\_\_\_

18        Amount of taxes paid on the property, since the sale, with  
 19 interest to \_\_\_\_\_ ..... \$ \_\_\_\_\_

20        Amount paid for title examination and preparation of list of  
 21 those to be served, and for preparation and service of the notice  
 22 with interest to \_\_\_\_\_ ..... \$ \_\_\_\_\_

23        Amount paid for other statutory costs (describe)  
 24 \_\_\_\_\_

1 \_\_\_\_\_ ..... \$ \_\_\_\_\_

2 Total ..... \$ \_\_\_\_\_

3 You may redeem at any time before \_\_\_\_\_ by paying  
4 the above total less any unearned interest.

5 NOTE: If you are receiving this notice because you are the  
6 owner of an interest in the surface overlaying a mineral interest  
7 which was returned delinquent, you may, before the above date, pay  
8 the deputy commissioner: (1) Twice the amount identified above;  
9 (2) the amount identified above or \$3,000, whichever is less; and  
10 (3) a nonrefundable \$20 administrative fee. If you pay the  
11 required amount and the property is redeemed, the amount you paid,  
12 less the administrative fee, will be refunded. If you pay the  
13 required amount and the property is not redeemed, you will be  
14 substituted for the purchaser of the tax lien and may proceed to  
15 obtain a deed for the property. If you do so and if one or more  
16 additional surface owners do so, then the surface owners must  
17 submit an agreement dividing the property according to their  
18 proportionate shares. If an agreement is not filed, the deputy  
19 commissioner shall refund the moneys tendered by the surface  
20 owners, less the administrative fees, and the original purchaser  
21 will be returned to his or her original rights and duties.

22 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
23 20\_\_\_\_.

24 \_\_\_\_\_

1 Deputy Commissioner of Delinquent  
 2 and Nonentered Lands  
 3 \_\_\_\_\_ County,  
 4 State of West Virginia

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

14 **§11A-3-56. Redemption from purchase; receipt; list of redemptions;**  
 15                   **lien; lien of person redeeming interest of another;**  
 16                   **record.**

17       (a) After the sale of any tax lien on any real estate pursuant  
 18 to section forty-five or forty-eight of this article, the owner of,  
 19 or any other person who was entitled to pay the taxes on, any real  
 20 estate for which a tax lien thereon was purchased by an individual,  
 21 may redeem at any time before a tax deed is issued therefor. In  
 22 order to redeem, he or she must pay to the deputy commissioner the  
 23 following amounts: (1) An amount equal to the taxes, interest and  
 24 charges due on the date of the sale, with interest thereon at the

1 rate of one percent per month from the date of sale; (2) all other  
2 taxes thereon, which have since been paid by the purchaser, his or  
3 her heirs or assigns, with interest at the rate of one percent per  
4 month from the date of payment; (3) such additional expenses as may  
5 have been incurred in preparing the list of those to be served with  
6 notice to redeem, and any title examination incident thereto, with  
7 interest at the rate of one percent per month from the date of  
8 payment, but the amount he or she shall be required to pay,  
9 excluding said interest, for such expenses incurred for the  
10 preparation of the list of those to be served with notice to redeem  
11 required by section fifty-two of this article, and any title  
12 examination incident thereto, shall not exceed \$200 and, if the  
13 real estate is subject to paragraph (d), section fifty-two of this  
14 article, the reasonable cost for determining the location of all  
15 tracts of surface property shown on the tax maps identified in  
16 subsection (e), section seven, article one-c, chapter eleven of  
17 this code that lie above the real estate subject to the tax lien or  
18 liens purchased not to exceed the actual amount incurred for the  
19 preparation of the list of those to be served with the notice to  
20 redeem other than the surface owner; (4) all additional statutory  
21 costs paid by the purchaser; and (5) the deputy commissioner's fee  
22 and commission as provided by section sixty-six of this article.  
23 Where the deputy commissioner has not received from the purchaser  
24 satisfactory proof of the expenses incurred in preparing the notice

1 to redeem, and any examination of title incident thereto, in the  
2 form of receipts or other evidence thereof, the person redeeming  
3 shall pay the deputy commissioner the sum of \$200 plus interest  
4 thereon at the rate of one percent per month from the date of the  
5 sale for disposition pursuant to ~~the provisions of~~ sections  
6 fifty-seven, fifty-eight and sixty-four of this article. Upon  
7 payment to the deputy commissioner of those and any other unpaid  
8 statutory charges required by this article, and of any unpaid  
9 expenses incurred by the sheriff, the auditor and the deputy  
10 commissioner in the exercise of their duties pursuant to this  
11 article, the deputy commissioner shall prepare an original and five  
12 copies of the receipt for the payment and shall note on said  
13 receipts that the property has been redeemed. The original of such  
14 receipt shall be given to the person redeeming. The deputy  
15 commissioner shall retain a copy of the receipt and forward one  
16 copy each to the sheriff, assessor, the auditor and the clerk of  
17 the county commission. The clerk shall endorse on the receipt the  
18 fact and time of such filing and note the fact of redemption on his  
19 or her record of delinquent lands.

20 (b) Any person who, by reason of the fact that no provision is  
21 made for partial redemption of the tax lien on real estate  
22 purchased by an individual, is compelled in order to protect  
23 himself or herself to redeem the tax lien on all of such real  
24 estate when it belongs, in whole or in part, to some other person,

1 shall have a lien on the interest of such other person for the  
2 amount paid to redeem such interest. He or she shall lose his or  
3 her right to the lien, however, unless within thirty days after  
4 payment he or she shall file with the clerk of the county  
5 commission his or her claim in writing against the owner of such  
6 interest, together with the receipt provided for in this section.  
7 The clerk shall docket the claim on the judgment lien docket in his  
8 or her office and properly index the same. Such lien may be  
9 enforced as other judgment liens are enforced.

10 **§11A-3-58a. Surface owner substitution for purchaser.**

11 (a) If the real estate interest subject to a tax lien is a  
12 mineral interest, but does not include an interest in the surface  
13 other than an interest for the purpose of developing the minerals,  
14 then within thirty days after notices to redeem have been served,  
15 or an attempt of personal service has been made, the notices have  
16 been mailed or, if necessary, published in accordance with section  
17 fifty-five of this article, following the deputy commissioner's  
18 sale, a surface owner above the mineral interest may pay to the  
19 deputy commissioner: (1) Twice the amount that would be required  
20 for redemption; (2) the amount that would be required for  
21 redemption or \$3,000, whichever is less; and a nonrefundable \$20  
22 administrative fee. The deputy commissioner 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 submits

1 payment to the deputy commissioner, the deputy commissioner shall  
2 issue each a certificate of substitution and send copies of the  
3 certificates of substitution to the others in addition to the  
4 purchaser.

5 (b) If the property is redeemed, the deputy commissioner shall  
6 refund the moneys paid by the surface owners, less the  
7 administrative fees.

8 (c) If the property is not redeemed, and if only one surface  
9 owner has received a certificate of substitution, then the deputy  
10 commissioner shall send the amount paid by the surface owner to the  
11 purchaser and record the certificate of substitution. The surface  
12 owner is substituted and has the full rights and duties of the  
13 purchaser.

14 (d) If more than one surface owner submits payment, before an  
15 additional fifteen days, the surface owners must submit an  
16 agreement dividing the real estate according to their proportionate  
17 share. The interest of an owner of a surface tract shall be equal  
18 to the acreage stated on documents of record even if the owner only  
19 owns an undivided interest. However, if more than one owner of an  
20 undivided interest submits payment, their proportionate shares are  
21 the total acreage of the undivided tract divided by the number of  
22 owners of the tract who pay in. If no agreement is filed, then the  
23 deputy commissioner shall refund their moneys, less the  
24 administrative fees, and the original purchaser is returned to his

1 or her original position. If an agreement is filed, then the  
 2 deputy commissioner shall make an amended certificate showing the  
 3 division according to their interests, the deputy commissioner  
 4 shall send the purchaser twice the amount required for redemption,  
 5 and divide the remaining money paid by all surface owners according  
 6 to their agreed interests.

7 **ARTICLE 4. REMEDIES RELATING TO TAX SALES.**

8 **§11A-4-4. Right to set aside deed when one entitled to notice not**  
 9 **notified.**

10 (a) If any person entitled to be notified under ~~the provisions~~  
 11 ~~of~~ section twenty-two or fifty-five, article three of this chapter  
 12 is not served with the notice as therein required, and does not  
 13 have actual knowledge that such notice has been given to others in  
 14 time to protect his or her interests by redeeming the property, or  
 15 is exercising rights as a surface owner pursuant to sections  
 16 twenty-three-a or fifty-eight-a, article three of this chapter, he  
 17 or she, his or her heirs and assigns, may, before the expiration of  
 18 three years following the delivery of the deed, institute a civil  
 19 action to set aside the deed. No deed shall be set aside under ~~the~~  
 20 ~~provisions of~~ this section until payment has been made or tendered  
 21 to the purchaser, or his or her heirs or assigns, of the amount  
 22 which would have been required for redemption or the exercise of  
 23 rights as a surface owner under pursuant to sections twenty-three-a  
 24 or fifty-eight-a, article three of this chapter, together with any

1 taxes which have been paid on the property since delivery of the  
2 deed, with interest at the rate of twelve percent per annum.

3 (b) No title acquired pursuant to this article shall be set  
4 aside in the absence of a showing by clear and convincing evidence  
5 that the person who originally acquired such title failed to  
6 exercise reasonably diligent efforts to provide notice of his or  
7 her intention to acquire such title to the complaining party or his  
8 or her predecessors in title.

9 (c) Upon a preliminary finding by the court that the deed will  
10 be set aside pursuant to this section, such amounts shall be paid  
11 within one month of the entry thereof. Upon the failure to pay the  
12 same within said period of time, the court shall upon the request  
13 of the purchaser, enter judgment dismissing the action with  
14 prejudice.

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 establishes procedures to be followed. The bill requires notice; establishing the purchase prices. The bill establishes a nonrefundable \$20 administrative fee. The bill provides a procedure if more than one surface owner seeks to purchase the delinquent mineral interest. The bill modifies notices to redeem that are sent to property owners. The bill provides remedies relating to tax sales.

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 §11A3-58a are new; therefore, they have been completely underscored.