

**Senate Bill No. 595**

(By Senators Miller, Beach and Stollings)

\_\_\_\_\_

[Introduced March 21, 2013; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

\_\_\_\_\_

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

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

2 That §11A-3-19, §11A-3-21, §11A-3-23, §11-A-3-52, §11A-3-54  
3 and §11A-3-56 of the Code of West Virginia, 1931, as amended, be  
4 amended and reenacted; that said code be amended by adding thereto  
5 two new sections, designated §11A-3-23a and §11A-3-58a and that  
6 §11A-4-4 of said code be amended and reenacted, all to read as  
7 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. However, for an  
9 interest in real estate identified in subsection (b) of this  
10 section the purchaser, or other authorized person, of the property  
11 shall pay the reasonable costs related to preparing the list of  
12 those served with notice to redeem, other than surface owners, as  
13 provided by subdivision (3), subsection (a), section twenty-three  
14 of this article;

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

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

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

22 (b) For an interest in real estate subject to the tax lien  
23 that includes minerals, but not an interest in the surface other

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

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

18       ~~(c)~~ (d) Whenever any certificate given by the sheriff for a  
19 tax lien on any land, or interest in the land sold for delinquent  
20 taxes, or any assignment of the lien is lost or wrongfully withheld  
21 from the rightful owner of the land and the land or interest has  
22 not been redeemed, the county commission may receive evidence of  
23 the loss or wrongful detention and, upon satisfactory proof of that

1 fact, may cause a certificate of the proof and finding, properly  
2 attested by the State Auditor, to be delivered to the rightful  
3 claimant and a record of the certificate shall be duly made by the  
4 county clerk in the recorded proceedings of the commission.

5 **§11A-3-21. Notice to redeem.**

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

9 To \_\_\_\_\_.

10 You will take notice that \_\_\_\_\_, the purchaser (or  
11 \_\_\_\_\_, the assignee, heir or devisee of \_\_\_\_\_,  
12 the purchaser) of the tax lien(s) on the following real estate,  
13 \_\_\_\_\_, (here describe the real estate for which the  
14 tax lien(s) thereon were sold) located in \_\_\_\_\_,  
15 (here name the city, town or village in which the real estate is  
16 situated or, if not within a city, town or village, give the  
17 district and a general description) which was returned delinquent  
18 in the name of \_\_\_\_\_, and for which the tax lien(s)  
19 thereon was sold by the sheriff of \_\_\_\_\_ County at the  
20 sale for delinquent taxes made on the \_\_\_\_\_ day of  
21 \_\_\_\_\_, 20, has requested that you be notified that a deed  
22 for such real estate will be made to him or her on or after April  
23 1, 20 \_\_\_\_, as provided by law, unless before that day you redeem

1 such real estate. The amount you will have to pay to redeem on the  
2 last day, March 31, will be as follows:

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

5 \$\_\_\_\_\_.

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

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

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

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

12 Amount paid for other statutory costs (describe)  
13 \_\_\_\_\_ .....

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

14 Total ..... \$\_\_\_\_\_

15 You may redeem at any time before March 31, 20  
16 \_\_\_\_\_, by paying the above total less any unearned  
17 interest.

18 NOTE: If you have received this notice because you are the  
19 owner of an interest in the surface overlaying a mineral interest  
20 that was returned delinquent, you may pay the clerk twice the  
21 amount identified above, plus a nonrefundable \$20 administrative  
22 fee, before March 1, 20\_\_. If you pay the required amount and the  
23 property is then redeemed, that amount you paid, less the

1 administrative fee, will be refunded to you. If you pay the  
2 required amount and the property is not redeemed, you will be  
3 substituted for the purchaser of the tax lien and you may proceed  
4 to obtain a deed for the property. If you and one or more  
5 additional surface owners each pay the appropriate amount, all the  
6 surface owners who have made payment shall submit, by April 7,  
7 20\_\_\_, an agreement dividing the real estate according to their  
8 proportionate shares or any other method or formula agreed to among  
9 all of you. If an agreement is not filed, the clerk shall refund  
10 the moneys tendered by the surface owners, less the administrative  
11 fees, and none of you will be substituted for the purchaser of the  
12 tax lien.

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

15                               State Auditor, State of West Virginia

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

1 **§11A-3-23. Redemption from purchase; receipt; list of redemptions;**  
2 **lien; lien of person redeeming interest of another;**  
3 **record.**

4 (a) After the sale of any tax lien on any real estate pursuant  
5 to section five of this article, the owner of, or any other person  
6 who was entitled to pay the taxes on, any real estate for which a  
7 tax lien on the real estate was purchased by an individual may  
8 redeem at any time before a tax deed is issued for the real estate.  
9 In order to redeem, he or she shall pay to the State Auditor the  
10 following amounts:

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

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

17 (3) Any additional expenses incurred from January 1 of the  
18 year following the sheriff's sale to the date of redemption for the  
19 preparation of the list of those to be served with notice to redeem  
20 and any written documentation used for the preparation of the list,  
21 with interest at the rate of one percent per month from the date of  
22 payment for reasonable legal expenses incurred for the services of  
23 an attorney who has performed an examination of the title to the



1 real estate and rendered written documentation used for the  
2 preparation of the list: *Provided*, That the maximum amount the  
3 owner or other authorized person shall pay, excluding the interest,  
4 for the expenses incurred for the preparation of the list of those  
5 to be served required by section nineteen of this article is \$300,  
6 plus any costs required by subsection (b), section nineteen of this  
7 article: *Provided however*, That the attorney may only charge a fee  
8 for legal services actually performed and must certify that he or  
9 she conducted an examination to determine the list of those to be  
10 served required by section nineteen of this article; and

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

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

1 of this article.

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

6 (d) Any person who, by reason of the fact that no provision is  
7 made for partial redemption of the tax lien on real estate  
8 purchased by an individual, is compelled in order to protect  
9 himself or herself to redeem the tax lien on all of the real estate  
10 when it belongs, in whole or in part, to some other person, shall  
11 have a lien on the interest of that other person for the amount  
12 paid to redeem the interest. He or she shall lose his or her right  
13 to the lien, however, unless within thirty days after payment he or  
14 she files with the clerk of the county commission his or her claim  
15 in writing against the owner of the interest, together with the  
16 receipt provided in this section. The clerk shall docket the claim  
17 on the judgment lien docket in his or her office and properly index  
18 the claim. The lien may be enforced as other judgment liens are  
19 enforced.

20 (e) Before a tax deed is issued, the county clerk may accept,  
21 on behalf of the State Auditor, the payment necessary to redeem any  
22 real estate encumbered with a tax lien and write a receipt. The  
23 amount of the payment necessary to redeem any real estate

1 encumbered with a tax lien shall be provided by the State Auditor  
2 and the State Auditor shall update the required payments plus  
3 interest at least monthly.

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

8 **§11A-3-23a. Surface owner substitution for purchaser.**

9 (a) If the real estate interest subject to a tax lien is an  
10 interest that includes minerals, but does not include an interest  
11 in the surface other than an interest for the purpose of developing  
12 the minerals, then prior to March 31 of the year following the sale  
13 an owner of record of the surface above the property subject to the  
14 tax lien being sold may pay the clerk: (1) Twice the amount that  
15 would be required for redemption pursuant to section twenty-three  
16 of this article; and (2) a nonrefundable \$20 administrative fee.  
17 The clerk shall issue the surface owner a certificate of  
18 substitution and send a copy to the purchaser. If more than one  
19 surface owner makes this payment to the clerk, the clerk shall  
20 issue each a certificate of substitution for each and send copies  
21 of the certificates of substitution to the others in addition to  
22 the purchaser. If a purchaser can demonstrate to the clerk that  
23 the he or she is related to the owner of the property in whose name

1 it is listed, then the clerk may, in his or her sole discretion,  
2 cancel the certificates of substitution and refund all moneys paid  
3 by the surface owner or owners, less the \$20 administrative fee.

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

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

12 (d) If more than one surface owner pays the clerk the  
13 appropriate amount the surface owners shall submit an agreement  
14 dividing the property according to their proportionate shares, or  
15 another mutually agreeable method or formula approved by all of  
16 them, by April 15 of the year following the sale of the lien. No  
17 deed may be issued before April 15 of the year following the sale.  
18 The interest of an owner of a surface tract shall be equal to the  
19 acreage stated on documents of record even if the owner only owns  
20 an undivided interest. However, if more than one owner of an  
21 undivided interest in the same tract pays the clerk the appropriate  
22 amount, his or her share shall be the total acreage of the  
23 undivided tract divided by the number of owners of the tract who

1 have also paid the clerk. If an agreement is filed, then the clerk  
2 shall make an amended certificate dividing the property according  
3 to their respective interests and refund any remaining moneys paid  
4 by them according to their agreed interests. If no agreement is  
5 filed, the clerk shall refund the moneys paid to the surface  
6 owners, less the \$20 administrative fees, and the original  
7 purchaser is returned to his or her original position.

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.

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

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

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

23 ~~(d)~~ (e) If the person requesting preparation and service of

1 the notice is an assignee of the purchaser, he or she shall, at the  
2 time of the request, file with the deputy commissioner a written  
3 assignment to him or her of the purchaser's rights, executed,  
4 acknowledged and certified in the manner required to make a valid  
5 deed.

6 **§11A-3-54. Notice to redeem.**

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

10 To \_\_\_\_\_

11 You will take notice that \_\_\_\_\_, the purchaser  
12 (or \_\_\_\_\_, the assignee, heir or devisee of \_\_\_\_\_,  
13 the purchaser) of the following real estate, \_\_\_\_\_,  
14 (here describe the real estate sold) located in \_\_\_\_\_,  
15 (here name the city, town or village in which the real estate is  
16 situated or, if not within a city, town or village, give the  
17 district and a general description) which was \_\_\_\_\_  
18 (here put whether the property was returned delinquent or  
19 nonentered) in the name of \_\_\_\_\_, and was sold by the  
20 deputy commissioner of delinquent and nonentered lands of  
21 \_\_\_\_\_ County at the sale for delinquent taxes (or  
22 nonentry) on the \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ 20, has  
23 requested that you be notified that a deed for such real estate

1 will be made to him or her on or after the \_\_\_\_\_ day of  
2 \_\_\_\_\_, ~~19~~ 20\_\_\_\_, as provided by law, unless before that  
3 day you redeem such real estate. The amount you will have to pay  
4 to redeem on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ will be as  
5 follows:

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

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

10 Amount paid for title examination and preparation of list of  
11 those to be served, and for preparation and service of the notice  
12 with interest to \_\_\_\_\_ ..... \$ \_\_\_\_\_

13 Amount paid for other statutory costs (describe)  
14 \_\_\_\_\_  
15 \_\_\_\_\_ ..... \$ \_\_\_\_\_

16 Total ..... \$ \_\_\_\_\_

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

19 NOTE: If you are receiving this notice because you are the  
20 owner of an interest in the surface overlaying a mineral interest  
21 which was returned delinquent, you may, before the above date, pay  
22 the deputy commissioner: (1) Twice the amount identified above;  
23 (2) the amount identified above or \$3,000, whichever is less; and



1 (3) a nonrefundable \$20 administrative fee. If you pay the  
2 required amount and the property is redeemed, the amount you paid,  
3 less the administrative fee, will be refunded. If you pay the  
4 required amount and the property is not redeemed, you will be  
5 substituted for the purchaser of the tax lien and may proceed to  
6 obtain a deed for the property. If you do so and if one or more  
7 additional surface owners do so, then the surface owners must  
8 submit an agreement dividing the property according to their  
9 proportionate shares. If an agreement is not filed, the deputy  
10 commissioner shall refund the moneys tendered by the surface  
11 owners, less the administrative fees, and the original purchaser  
12 will be returned to his or her original rights and duties.

13 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
14 20\_\_\_\_.

15 \_\_\_\_\_

16 Deputy Commissioner of Delinquent

17 and Nonentered Lands

18 \_\_\_\_\_ County,

19 State of West Virginia

20 The deputy commissioner for his or her service in preparing  
21 the notice shall receive a fee of \$10 for the original and \$2 for  
22 each copy required. Any costs which must be expended in addition  
23 thereto for publication, or service of such notice in the manner

1 provided for serving process commencing a civil action, or for  
2 service of process by certified mail, shall be charged by the  
3 deputy commissioner. All costs provided by this section shall be  
4 included as redemption costs and included in the notice described  
5 herein.

6 **§11A-3-56. Redemption from purchase; receipt; list of redemptions;**  
7 **lien; lien of person redeeming interest of another;**  
8 **record.**

9 (a) After the sale of any tax lien on any real estate pursuant  
10 to section forty-five or forty-eight of this article, the owner of,  
11 or any other person who was entitled to pay the taxes on, any real  
12 estate for which a tax lien thereon was purchased by an individual,  
13 may redeem at any time before a tax deed is issued therefor. In  
14 order to redeem, he or she must pay to the deputy commissioner the  
15 following amounts: (1) An amount equal to the taxes, interest and  
16 charges due on the date of the sale, with interest thereon at the  
17 rate of one percent per month from the date of sale; (2) all other  
18 taxes thereon, which have since been paid by the purchaser, his or  
19 her heirs or assigns, with interest at the rate of one percent per  
20 month from the date of payment; (3) such additional expenses as may  
21 have been incurred in preparing the list of those to be served with  
22 notice to redeem, and any title examination incident thereto, with  
23 interest at the rate of one percent per month from the date of

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

1 the deputy commissioner of those and any other unpaid statutory  
2 charges required by this article, and of any unpaid expenses  
3 incurred by the sheriff, the Auditor and the deputy commissioner in  
4 the exercise of their duties pursuant to this article, the deputy  
5 commissioner shall prepare an original and five copies of the  
6 receipt for the payment and shall note on said receipts that the  
7 property has been redeemed. The original of such receipt shall be  
8 given to the person redeeming. The deputy commissioner shall  
9 retain a copy of the receipt and forward one copy each to the  
10 sheriff, assessor, the Auditor and the clerk of the county  
11 commission. The clerk shall endorse on the receipt the fact and  
12 time of such filing and note the fact of redemption on his or her  
13 record of delinquent lands.

14 (b) Any person who, by reason of the fact that no provision is  
15 made for partial redemption of the tax lien on real estate  
16 purchased by an individual, is compelled in order to protect  
17 himself or herself to redeem the tax lien on all of such real  
18 estate when it belongs, in whole or in part, to some other person,  
19 shall have a lien on the interest of such other person for the  
20 amount paid to redeem such interest. He or she shall lose his or  
21 her right to the lien, however, unless within thirty days after  
22 payment he or she shall file with the clerk of the county  
23 commission his or her claim in writing against the owner of such

1 interest, together with the receipt provided for in this section.  
2 The clerk shall docket the claim on the judgment lien docket in his  
3 or her office and properly index the same. Such lien may be  
4 enforced as other judgment liens are enforced.

5 **§11A-3-58a. Surface owner substitution for purchaser.**

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

1 (b) If the property is redeemed, the deputy commissioner shall  
2 refund the moneys paid by the surface owners, less the  
3 administrative fees.

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

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

1 shall send the purchaser twice the amount required for redemption,  
2 and divide the remaining money paid by all surface owners according  
3 to their agreed interests.

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

5 **§11A-4-4. Right to set aside deed when one entitled to notice not**  
6 **notified.**

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

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

7 (c) Upon a preliminary finding by the court that the deed will  
8 be set aside pursuant to this section, such amounts shall be paid  
9 within one month of the entry thereof. Upon the failure to pay the  
10 same within said period of time, the court shall upon the request  
11 of the purchaser, enter judgment dismissing the action with  
12 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 §11A-3-58a are new; therefore, strike-throughs and underscoring have been omitted.