

**H. B. 2848**

(By Delegate Boggs, Swartzmiller, Ferro,  
Caputo, D, Poling.)

(By Request of the State Auditor)

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

A BILL to amend and reenact §11A-3-18, §11A-3-27, and §11A-3-28 of  
the Code of the West Virginia, 1931, as amended, all relating  
generally to the sale of tax liens and nonentered, escheated  
and waste and unappropriated lands; providing the process for  
requesting a refund after forfeiture of rights to a tax deed;  
clarifying deadlines for receipt of tax deeds and refunds  
related to failure to meet deadlines; providing procedure for  
petitioning to compel execution of a deed by the State  
Auditor; removing the provisions allowing judgment against the  
State Auditor for costs in the case of failure or refusal to  
execute a deed without reasonable cause.

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

That §11A-3-18, §11A-3-27, and §11A-3-28 of the Code of the  
West Virginia, 1931, as amended, be amended and reenacted, all to  
read as follows:

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

3 **§11A-3-18. Limitations on tax certificates.**

4 (a) No lien upon real property evidenced by a tax certificate  
5 of sale issued by a sheriff on account of any delinquent property  
6 taxes may remain a lien on the real property for a period longer  
7 than eighteen months after the original issuance of the tax  
8 certificate of sale.

9 (b) All rights of a purchaser to a tax deed shall be  
10 considered forfeited and expired and no tax deed is to be issued on  
11 any tax sale evidenced by a tax certificate of sale where the  
12 certificate has ceased to be a lien pursuant to the provisions of  
13 this section and application for the tax deed, pursuant to the  
14 provisions of section twenty-seven of this article, is not pending  
15 at the time of the expiration of the limitation period provided in  
16 this section.

17 (c) Whenever a lien evidenced by a tax certificate of sale has  
18 expired by reason of the provisions of this section, the State  
19 Auditor shall immediately issue and record a certificate of  
20 cancellation describing the real estate included in the certificate  
21 of purchase or tax certificate and giving the date of cancellation  
22 and the State Auditor shall also make proper entries in his or her  
23 records. The State Auditor shall also present a copy of every  
24 certificate of cancellation to the sheriff who shall enter it in

1 the sheriff's records and the certificate and the record are prima  
2 facie evidence of the cancellation of the certificate of sale and  
3 of the release of the lien of the certificate on the lands  
4 described in the certificate. Failure to record the certificate of  
5 cancellation does not extend the lien evidenced by the certificate  
6 of sale. The sheriff and State Auditor are not entitled to any  
7 fees for the issuing of the certificate of cancellation nor for the  
8 entries in their books made under the provisions of this  
9 subsection.

10 (d) Whenever a purchaser has complied with the notice  
11 requirements provided in section nineteen of this article, but has  
12 failed to request a deed within the eighteen month deadline  
13 provided in this section, thereby forfeiting all rights to a tax  
14 deed, the purchaser may within thirty days of the expiration of the  
15 lien, request a refund of the amounts paid in excess of the taxes  
16 owed and expenses incurred in the processing of the tax lien:  
17 Provided, That the purchaser shall only be entitled to a refund  
18 upon proof of compliance with the requirements of section nineteen  
19 of this article.

20 **§11A-3-27. Deed to purchaser; record.**

21 (a) If the real estate described in the notice is not redeemed  
22 within the time specified in the notice, then ~~from~~ between April 1  
23 of the second year following the sheriff's sale and ~~until~~ the  
24 expiration of the lien evidenced by a tax certificate of sale

1 ~~issued by a sheriff for the real estate~~ as provided in section  
 2 eighteen of this article, the State Auditor or his or her deputy  
 3 shall upon request of the purchaser make and deliver to the clerk  
 4 of the county commission ~~subject to the provisions of section~~  
 5 ~~eighteen of this article~~, a quitclaim deed for the real estate:  
 6 Provided, That the purchaser's right to a tax deed shall be  
 7 considered forfeited if the deed is not requested within the  
 8 eighteen month period set forth in section eighteen. The deed  
 9 shall provide in form or effect as follows:

10 This deed made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by  
 11 and between \_\_\_\_\_, State Auditor, West Virginia, (or by  
 12 and between \_\_\_\_\_, a commissioner appointed by the  
 13 circuit court of \_\_\_\_\_ County, West Virginia) grantor, and  
 14 \_\_\_\_\_, purchaser, (or \_\_\_\_\_, heir, devisee or  
 15 assignee of \_\_\_\_\_, purchaser), grantee,  
 16 witnesseth, that:

17 Whereas, In pursuance of the statutes in such case made and  
 18 provided, \_\_\_\_\_, Sheriff of \_\_\_\_\_ County, (or  
 19 \_\_\_\_\_, deputy for \_\_\_\_\_, Sheriff of \_\_\_\_\_  
 20 County), (or \_\_\_\_\_, collector of \_\_\_\_\_ County),  
 21 did, in the month of \_\_\_\_\_, in the year 20 \_\_\_\_\_, sell the  
 22 tax lien(s) on real estate, hereinafter mentioned and described,  
 23 for the taxes delinquent thereon for the year (or years) 20 \_\_\_\_\_,  
 24 and \_\_\_\_\_, (here insert name of purchaser) for the sum of

1 \$ \_\_\_\_\_, that being the amount of purchase money paid to the  
2 sheriff, did become the purchaser of the tax lien(s) on such real  
3 estate (or on \_\_\_\_\_ acres, part of the tract or land, or on an  
4 undivided \_\_\_\_\_ interest in such real estate) which was  
5 returned delinquent in the name of \_\_\_\_\_; and

6 Whereas, The State Auditor has caused the notice to redeem to  
7 be served on all persons required by law to be served therewith;  
8 and

9 Whereas, The tax lien(s) on the real estate so purchased has  
10 not been redeemed in the manner provided by law and the time for  
11 redemption set in such notice has expired;

12 Now, therefore, the grantor, for and in consideration of the  
13 premises and in pursuance of the statutes, doth grant unto  
14 \_\_\_\_\_, grantee, his or her heirs and assigns forever, the  
15 real estate on which the tax lien(s) so purchased existed, situate  
16 in the county of \_\_\_\_\_, bounded and described as  
17 follows: \_\_\_\_\_

18 Witness the following signature: \_\_\_\_\_  
19  
20 State Auditor.

21 (b) ~~Except when ordered to do so, as provided in section~~  
22 ~~twenty-eight of this article,~~ The State Auditor may not execute and  
23 deliver a deed more than sixty days after the person entitled to  
24 the deed delivers the same and requests the execution of the deed,  
except pursuant to the provisions of section twenty-eight of this

1 article.

2 (c) For the execution of the deed and for all the recording  
3 required by this section, a fee of \$50 and the recording and  
4 transfer tax expenses shall be charged, to be paid by the grantee  
5 upon delivery of the deed. The deed, when duly acknowledged or  
6 proven, shall be recorded by the clerk of the county commission in  
7 the deed book in the clerk's office, together with any assignment  
8 from the purchaser, if one was made, the notice to redeem, the  
9 return of service of the notice, the affidavit of publication, if  
10 the notice was served by publication, and any return receipts for  
11 notices sent by certified mail.

12 (d) The State Auditor shall appoint employees of his or her  
13 office to act as his or her designee to effect the purposes of this  
14 section.

15 **§11A-3-28. Compelling service of notice or execution of deed.**

16 (a) If the State Auditor fails or refuses to prepare and serve  
17 the notice to redeem as required in sections twenty-one and twenty-  
18 two of this article, the person requesting the notice may, at any  
19 time within two weeks after discovery of the failure or refusal,  
20 but in no event later than sixty days following the date the person  
21 requested that notice be prepared and served, apply by petition to  
22 the circuit court of the county for an order compelling the State  
23 Auditor to prepare and serve the notice or appointing a  
24 commissioner to do so. If the person requesting the notice fails

1 to make application within the time allowed, he or she shall lose  
2 his or her right to the notice, but his or her rights against the  
3 State Auditor under the provisions of section sixty-seven of this  
4 article shall not be affected. Notice given pursuant to an order  
5 of the court or judge shall be as valid for all purposes as if  
6 given within the time required by section twenty-two of this  
7 article.

8 (b) If the State Auditor fails or refuses to execute the deed  
9 ~~as~~ to a purchaser who has complied with the deadline required in  
10 section twenty-seven of this article, the person requesting the  
11 deed may, at any time after such failure or refusal upon proof of  
12 compliance with the limitations period set forth in section twenty-  
13 seven of this article, but not more than six months after his or  
14 her right to the deed accrued, apply by petition to the circuit  
15 court of the county for an order compelling the State Auditor to  
16 execute the deed or appointing a commissioner to do so. If the  
17 person requesting the deed fails to prove compliance with the  
18 limitations period set forth in section twenty-seven of this  
19 article or fails to make an application within the time allowed, he  
20 or she shall lose his or her right to the deed. ~~but his or her~~  
21 ~~rights against the State Auditor under the provisions of section~~  
22 ~~sixty-seven of this article shall not be affected.~~ Any deed  
23 executed pursuant to an order of the court or judge shall have the  
24 same force and effect as if executed and delivered by the State

1 Auditor within the time specified in section twenty-seven of this  
2 article.

3 (c) Ten days' written notice of every application must be  
4 given to the State Auditor. If, upon the hearing of the  
5 application, the court or judge is of the opinion that the  
6 applicant is not entitled to the notice or deed requested, the  
7 petition shall be dismissed at his or her costs; but if the court  
8 or judge is of the opinion that he or she is entitled to the notice  
9 or deed, then, upon his or her deposit with the clerk of the  
10 circuit court of a sum sufficient to cover the costs of preparing  
11 and serving the notice, unless a deposit has already been made with  
12 the State Auditor, an order shall be made by the court or judge  
13 directing the State Auditor to prepare and serve the notice or  
14 execute the deed, or appointing a commissioner for the purpose, as  
15 the court or judge shall determine. ~~If it appears to the court or~~  
16 ~~judge that the failure or refusal of the State Auditor was without~~  
17 ~~reasonable cause, judgment shall be given against him or her for~~  
18 ~~the costs of the proceedings; otherwise the costs shall be paid by~~  
19 ~~the applicant.~~

20 (d) Any commissioner appointed under the provisions of this  
21 section shall be subject to the same liabilities as are provided  
22 for the State Auditor. For the preparation of the notice to  
23 redeem, he or she shall be entitled to the same fee as is provided  
24 for the State Auditor. For the execution of the deed, he or she



1 shall also be entitled to a fee of \$50 and the recording and  
2 transfer expenses, to be paid by the grantee upon delivery of the  
3 deed.

NOTE: The purpose of this bill is to provide the process for requesting a refund after forfeiture of rights to a tax deed; to clarify deadlines for receipt of tax deeds and refunds related to failure to meet deadlines; to provide the procedure for petitioning to compel execution of a deed by the State Auditor; and to remove the provisions allowing judgment against the State Auditor for costs in the case of failure or refusal to execute a deed without reasonable cause.

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