

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3202

FISCAL
NOTE

By Delegates Westfall, Holstein and Barnhart

[By Request of the Auditor's Office]

[Introduced February 02, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §11A-1-9 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11A-3-2, §11A-3-13, §11A-3-38, §11A-3-45, §11A-3-46, §11A-3-47,
 3 §11A-3-48, and §11A-3-56 of said code, all related to real property property taxes,
 4 modifying who is entitled to pay certain taxes on real estate; modifying certain public
 5 notices regarding the certification of real estate to the West Virginia Auditor; modifying who
 6 is entitled to redeem real estate that is subject to delinquent taxes, providing eligibility
 7 requirements to bid on tax liens at certain auctions conducted by the West Virginia Auditor,
 8 specifying that participation in certain auctions constitutes transacting business in West
 9 Virginia; providing for certain rulemaking authority, including emergency rulemaking;
 10 modifying certain public notices regarding certain auctions conducted by the West Virginia
 11 Auditor; and providing for the incurrence of certain expenses related to title examinations
 12 by the West Virginia Auditor and the collection for reimbursement for the same.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-9. Payment of taxes by co-owner or other interested party; lien.

1 Any owner of real estate whose interest is not subject to separate assessment, or any
 2 person having a lien on the land, or on an undivided interest therein, ~~or any other person having an~~
 3 ~~interest in the land, or in an undivided interest therein~~ which he or she desires to protect, shall be
 4 allowed to pay the whole, but not a part, of the taxes assessed thereon. Any co-owner of real
 5 estate whose interest is subject to separate assessment shall be allowed at his or her election to
 6 pay the taxes either on his or her own interest alone or in addition thereto upon the interest of any
 7 or all of his co-owners. If his or her own or any other interest less than the whole, on which he or
 8 she desires to pay the taxes, was included in a group assessment, he or she must before payment
 9 have the group assessment split and must secure from the assessor and present to the sheriff a
 10 certificate setting forth the changes made in the assessment. The sheriff shall make the necessary
 11 changes in his or her records, prepare new tax bills to conform thereto, and then deliver the

12 certificate to the clerk of the county court, who shall note the changes on his or her records.

13 One who pays taxes on the interest of any other person shall be subrogated to the lien of
 14 the State upon such interest. He or she shall lose his or her right to the lien, however, unless within
 15 30 days after payment he or she shall file with the clerk of the county court his or her claim in
 16 writing against the owner of such interest, together with the tax receipt or a duplicate thereof. The
 17 clerk shall docket the claim on the judgment lien docket in his or her office and properly index the
 18 same. Such lien may be enforced as other judgment liens are enforced.

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

§11A-3-2. Second publication of list of delinquent real estate; notice

1 (a) On or before the September 10 of each year, the sheriff shall prepare a second list of
 2 delinquent lands, which shall include all real estate in his or her county remaining delinquent as of
 3 the first day of September, together with a notice of sale, in form or effect as follows:

4 Notice is hereby given that the following described tracts or lots of land or undivided
 5 interests therein in the County of _____ and the tax liens that encumber the same
 6 which are delinquent for the nonpayment of taxes for the year (or years) 20_____, will be
 7 certified to the Auditor for disposition pursuant to West Virginia Code § 11A-3-44 on the 31st day of
 8 October, 20_____.

9 Upon certification to the Auditor, tax liens on each unredeemed tract or lot, or each
 10 unredeemed part thereof or undivided interest therein, shall be sold at public auction to the highest
 11 bidder in an amount which shall not be less than the taxes, interest, and charges which shall be
 12 due thereon to the date of sale, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale
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13 If any of said tracts or lots remain unsold following the auction, they shall be subject to sale

14 by the Auditor without additional advertising or public auction such terms as the Auditor deems
15 appropriate pursuant to § 11A-3-48 of this code.

16 Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be
17 redeemed by the payment to the undersigned sheriff (or collector) before certification to the
18 Auditor, of the total amount of taxes, interest, and charges due thereon up to the date of
19 redemption by credit card, cashier's check, money order, certified check or United States currency.
20 Payment must be received in the tax office by the close of business on the last business day prior
21 to the certification.

22 After certification to the Auditor, any of the aforesaid tracts or lots may be redeemed by any
23 ~~person entitled to pay the taxes thereon~~ the owner of the same whose interest is not subject to
24 separate assessment, or any person having a lien on the same, or on an undivided interest
25 therein, at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest,
26 and charges due thereon up to the date of redemption.

27 Given under my hand this _____ day of
28 _____, 20_____.
29 _____

30 Sheriff (or collector).

31 The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a
32 Class III-0 legal advertisement in compliance with the provisions of § 59-3-1 *et seq.* of this code,
33 and the publication area for such publication shall be the county.

34 (b) In addition to such publication, no less than 30 days prior to the sale by the Auditor
35 pursuant to § 11A-3-44 of this code, the sheriff shall send a notice of the delinquency and the date
36 of sale by certified mail: (1) To the last known address of each person listed in the land books
37 whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes
38 are due as disclosed by a statement filed with the sheriff pursuant to the provisions of section three
39 of this article; (3) to each other person with an interest in the property or with a fiduciary

40 relationship to a person with an interest in the property who has in writing delivered to the sheriff on
41 a form prescribed by the Tax Commissioner a request for such notice of delinquency; and (4) in the
42 case of property which includes a mineral interest but does not include an interest in the surface
43 other than an interest for the purpose of developing the minerals, to each person who has in
44 writing delivered to the sheriff, on a form prescribed by the Tax Commissioner, a request for such
45 notice which identifies the person as an owner of an interest in the surface of real property that is
46 included in the boundaries of such property: *Provided*, That in a case where one owner owns more
47 than one parcel of real property upon which taxes are delinquent, the sheriff may, at his or her
48 option, mail separate notices to the owner and each lienholder for each parcel or may prepare and
49 mail to the owner and each lienholder a single notice which pertains to all such delinquent parcels.
50 If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description
51 of all parcels of property on which taxes are delinquent. In no event shall failure to receive the
52 mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed
53 if it is conveyed pursuant to § 11A-3-27 of § 11A-3-59 of this code.

54 (c) To cover the cost of preparing and publishing the second delinquent list, a charge of \$25
55 shall be added to the taxes, interest, and charges already due on each item and all such charges
56 shall be stated in the list as a part of the total amount due.

57 (d) To cover the cost of preparing and mailing notice to the landowner, lienholder, or any
58 other person entitled thereto pursuant to this section, a charge of \$10 per addressee shall be
59 added to the taxes, interest, and charges already due on each item and all such charges shall be
60 stated in the list as a part of the total amount due.

61 (e) Any person whose taxes were delinquent on the first day of September may have his or
62 her name removed from the delinquent list prior to the time the same is delivered to the
63 newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the
64 person at the date of such redemption. In such case, the sheriff shall include but \$3 of the costs
65 provided in this section in making such redemption. Costs collected by the sheriff hereunder which

66 are not expended for publication and mailing shall be paid into the General County Fund.

§11A-3-13. Publication by sheriff of certification list.

1 Within one month after completion of the certification, the sheriff shall prepare and publish
2 a list of all the certifications made by him or her, in form or effect as follows, which list shall be
3 published as a Class II-0 legal advertisement in compliance with the provisions of § 59-3-1 *et*
4 *seq.* of this code, and the publication area for such publication shall be the county.

5 List of tax liens on real estate in the county of _____, in the month (or
6 months) of _____, 20_____, certified for nonpayment of taxes thereon
7 for the year (or years) 20_____, and certified to the Auditor of the State of West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged
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8 The owner of any real estate listed above, ~~or any other~~
9 ~~person entitled to pay the taxes thereon~~ whose interest is not subject to separate assessment, or
10 any person having a lien on such real estate, or on an undivided interest therein may, however,
11 redeem such real estate as provided by law.

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

13 _____

14 Sheriff

15 To cover the costs of preparing and publishing such list, a charge of \$15 shall be added to
16 the taxes, interest, and charges already due on each item listed.

§11A-3-38. Redemption of nonentered or certified lands.

1 (a) The owner of any real estate certified to the Auditor ~~auditor~~ pursuant to §11A-3-8 of this
2 ~~article of this code~~ whose interest is not subject to separate assessment, or any person having a
3 lien on such real estate, or on an undivided interest therein, or the owner of any nonentered real
4 estate subject to the authority of the auditor pursuant to §11A-3-37 of this code, article, ~~or any~~
5 ~~other person who was entitled to pay the taxes thereon~~ may redeem such real estate from the

6 auditor at any time prior to the certification of such real estate to the deputy commissioner as
7 provided in §11A-3-44 of this code article. Thereafter such real estate shall be subject to
8 disposition pursuant to section forty-four of this article, and subsequent sections.

9 (b) In order to redeem the person seeking redemption must pay to the auditor such of the
10 following amounts as may be due: (1) The taxes, interest and charges due on the real estate on
11 the date of certification to the auditor or the discovery of the nonentry, with interest at the rate of
12 twelve percent per annum from the date of such certification or discovery; (2) all taxes assessed
13 thereon for the year in which the certification occurred or nonentry was discovered, with interest at
14 the rate of twelve percent per annum from the date on which they became delinquent, except
15 when such taxes are currently due and payable to the sheriff; (3) all taxes except those for the
16 current year which would have been assessed thereon since the certification had the certification
17 not occurred, or which, in case of nonentered lands, would have been assessed thereon had the
18 land been properly entered, with interest at the rate of twelve percent per annum from the date on
19 which such taxes would have become delinquent: Provided, That in the case of nonentered lands,
20 the owner shall not be liable for more than the taxes and interest which would have become due
21 and payable during the ten years immediately preceding the date of the discovery of the nonentry.

22 (c) In computing the amount due under subdivision (3), subsection (b) of this section on
23 real estate certified to the auditor by the sheriff, the auditor shall use as the basis for computation
24 the classification and valuation placed thereon by the assessor for each year since the sale. If
25 such valuation and classification have not been made, he shall use the last valuation and
26 classification appearing on the property books. In computing the amount due under subdivision
27 (3), subsection (b) of this section on nonentered real estate, the auditor shall use as the basis for
28 computation such classification and valuation as may, at the request of the auditor or the person
29 redeeming, be certified to the auditor by the assessor as the classification and valuation which in
30 his opinion would be proper for each year of nonentry.

31 (d) Redemption of an undivided interest included in a group assessment shall not be

32 permitted until the applicable provisions of §11A-1-9 or §11A-1-10 of this code ~~article one of this~~
33 ~~chapter~~ have been complied with, except that instead of presenting the assessor's certificate to
34 the sheriff as therein provided, the person redeeming shall present it to the auditor, who, after
35 making the necessary changes in the land book, and in the record of delinquent lands kept in his
36 office, shall compute the taxes due on the part or interest redeemed.

§11A-3-45. Auditor to hold annual auction.

1 (a) Each tract or lot certified by the Auditor pursuant to § 11A-3-44 of this code shall be sold
2 by him or her at public auction at the courthouse of the county to the highest eligible bidder during
3 the courthouse's normal operating hours on any business working day within 90 days after the
4 Auditor has certified the lands as required by § 11A-3-44 of this code. The payment for any tract or
5 lot purchased at a sale shall be made by check, U. S. currency, or money order payable to the
6 Auditor and delivered before the close of business on the day of sale. No part or interest in any
7 tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety
8 of such unredeemed tract, lot, or interest, as the same is described and constituted as a unit or
9 entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on
10 the first day of the sale, it shall be continued from day to day between the same hours until all the
11 land shall have been offered for sale. For the avoidance of doubt, bidding at an auction held
12 pursuant to this section constitutes transacting business in this state for purposes of § 31B-10-
13 1001 et seq., § 31D-15-1501 et seq., and § 31E-14-1401 et seq. of this code.

14 (b) A private, nonprofit, charitable corporation, incorporated in this state, which has been
15 certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal
16 Internal Revenue Code, as amended, which has as its principal purpose the construction of
17 housing or other public facilities and which notifies the Auditor of an intention to bid and
18 subsequently submits a bid that is not more than five percent lower than the highest bid submitted
19 by any person or organization which is not a private, nonprofit, charitable corporation as defined in
20 this subsection, shall be sold the property offered for sale at public auction by the Auditor pursuant

21 to the provisions of this section at the public auction as opposed to the highest bidder.

22 The nonprofit corporation referred to in this subsection does not include a business
23 organized for profit, a labor union, a partisan political organization, or an organization engaged in
24 religious activities, and it does not include any other group which does not have as its principal
25 purpose the construction of housing or public facilities.

26 (c) To attain eligibility to bid at a public auction held pursuant to this section, a potential
27 bidder must register in advance of such public auction with the Auditor’s office. The Auditor may
28 refuse to register or deregister a potential bidder that has demonstrated a failure to make a
29 payment owed at a previous auction held pursuant to this section. Citizens of or entities organized
30 in or controlled by citizens of any country designated as Country of Particular Concern by the
31 Department of State of the United State of America are ineligible from participating in any public
32 auction held pursuant to this section.

33 (d) In order to effectuate the purposes of this section, the Auditor
34 may promulgate procedural rules, interpretive rules and legislative rules,
35 including emergency rules, or any combination thereof, in accordance with § 29A-3-1 et seq. of
36 this _____ code.

§11A-3-46. Publication of notice of auction.

1 Once a week for three consecutive weeks prior to the auction required in § 11A-3-45 of this
2 code, the Auditor shall publish notice of the auction as a Class III-0 legal advertisement in
3 compliance with the provisions of § 59-3-1 et seq. of this code, and the publication area for such
4 publication shall be the county.

5 The notice shall be in form or effect as follows:

6 Notice is hereby given that the following described tracts or lots of land in the County of
7 _____, have been certified by the Auditor of the State of West Virginia, for sale
8 at public auction. The lands will be offered for sale by the undersigned Auditor at public auction in
9 (specify location) the courthouse of _____ County between the hours of

10 _____ in the morning and _____ in the afternoon, on the
11 _____ day of _____, 20_____.

12 Each tract or lot as described below will be sold to the highest eligible bidder at the auction.
13 The payment for any tract or lot purchased at a sale shall be made by check or money order
14 payable to the Auditor and delivered before the close of business on the day of the sale. If any of
15 said tracts or lots remain unsold following the auction, they will be subject to later sale without
16 additional advertising or public auction. All potential bidders must register in advance of the
17 auction with the Auditor’s office. Citizens of or entities organized in or controlled by citizens of any
18 country designated as Country of Particular Concern by the Department of State of the United
19 State of America are ineligible from participating in the auction held pursuant to this section.
20 Bidding at the auction constitutes transacting business in this state for purposes of § 31B-10-1001
21 et seq., § 31D-15-1501 et seq., and § 31E-14-1401 et seq. of this code. The Auditor's sale may
22 include tracts or lots remaining unsold from a previous auction not required by law to be
23 readvertised and described for this subsequent auction of those same tracts and lots. All sales are
24 subject to the approval of the Auditor of the State of West Virginia.

25 (here insert description of advertised lands to be sold)

26 Any of the aforesaid tracts or lots may be redeemed by ~~any person entitled to pay the taxes~~
27 ~~thereon~~ the owner of the same whose interest is not subject to separate assessment, or any
28 person having a lien on the same, or on an undivided interest therein, at any time prior to the sale
29 by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the
30 date of redemption. Lands listed above as escheated or waste and unappropriated lands may not
31 be redeemed.

32 Given under my hand this _____ day of _____,
33 20_____.

34 _____ Auditor of the State of West Virginia.

35 The description of lands required in the notice shall be in the same form as the list certifying

36 said lands for sale. If the Auditor is required to auction lands certified to him or her in any previous
37 years, pursuant to § 11A-3-48 of this code, he or she shall include such lands in the auction without
38 further advertisement, with reference to the year of certification and the item number of the tract or
39 interest.

40 To cover the cost of preparing and publishing the notice, a charge of \$30 shall be added to
41 the taxes, interest, and charges due on the delinquent and non-entered property.

§11A-3-47. Redemption prior to sale.

1 Any of the delinquent and nonentered lands certified to the deputy commissioner may be
2 redeemed, prior to the auction, by ~~the owner of such land or any other~~
3 ~~person entitled to pay the taxes thereon~~ the owner of such lands whose interest is not subject to
4 separate assessment, or any person having a lien on such land, or on an undivided interest
5 therein, by payment of the taxes, interest, and charges due. The deputy commissioner shall
6 prepare an original and five copies of the receipt, give to the person redeeming the original receipt,
7 retain one copy for his or her files and forward one copy each to the sheriff, auditor, assessor, and
8 the clerk of the county commission, each of whom shall note the fact of such redemption on their
9 respective records of delinquent lands. Any person redeeming the interest of another shall be
10 subrogated to the lien of the state on such interest as provided in §11A-1-9 of this ~~chapter~~ code.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

1 If any of the lands which have been offered for sale at the public auction provided in § 11A-
2 3-45 of this code shall remain unsold following such auction; or were sold at a tax sale auction
3 within the previous five years, which were not redeemed, and for which no deed was secured by
4 the purchaser; or if the Auditor refuses to approve the sale pursuant to § 11A-3-51 of this code, the
5 Auditor may sell the lands without any further public auction or additional advertising of the land, in
6 the following priority: (1) To a person vested with an ownership interest in an adjacent tract or
7 parcel of land: *Provided*, That If more than one adjacent landowner desires to acquire the same
8 tract or lot, then the Auditor shall sell such tract or lot to the highest bidder; (2) to the municipality in

9 which the tract or lot is located; (3) The county commission of the county in which the tract or lot is
 10 located; (4) to the West Virginia Land Stewardship Corporation as part of its Land Bank Program
 11 set forth in § 31-21-11 *et seq.* of this code; or (5) to any party willing to purchase such property.

12 The price of such property shall be as agreed upon by the Auditor and purchaser:
 13 Provided, That the Auditor may engage a licensed attorney to provide a title examination on lands
 14 set forth in the preceding paragraph and require that a purchaser reimburse the Auditor for any
 15 expenses related thereto as condition for the sale.

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

1 (a) After the sale of any tax lien on any real estate pursuant to § 11A-3-45 or § 11A-3-48 of
 2 this code, the owner of, ~~or any other person who was entitled to pay the taxes on~~ any real estate
 3 for which a tax lien thereon was purchased whose interest is not subject to separate assessment,
 4 or any person having a lien on such real estate, or on an undivided interest therein, may redeem at
 5 any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the Auditor
 6 the following amounts:

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

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

11 (3) Such additional expenses as may have been incurred in preparing the list of those to be
 12 served with notice to redeem, and for any licensed attorney's title examination incident thereto,
 13 with interest at the rate of one percent per month from the date of payment, but the amount he or
 14 she shall be required to pay, excluding said interest, for such expenses incurred for the
 15 preparation of the list of those to be served with notice to redeem required by § 11A-3-52 of this
 16 code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An
 17 attorney may only charge a fee for legal services actually performed and must certify that he or she

18 conducted an examination to determine the list of those to be served required by § 11A-3-52 of this
19 code;

20 (4) All additional statutory costs paid by the purchaser; and

21 (5) The Auditor's fee and commission as provided by § 11A-3-66 of this code. Where the
22 Auditor has not received from the purchaser satisfactory proof of the expenses incurred in
23 preparing the notice to redeem, or of any licensed attorney's title examination incident thereto, in
24 the form of receipts or other evidence thereof, the person redeeming shall pay the Auditor the sum
25 of \$500 plus interest thereon at the rate of one percent per month from the date of the sale for
26 disposition pursuant to the provisions of § 11A-3-57, § 11A-3-58, and § 11A-3-64 of this code.
27 Upon payment to the Auditor of those and any other unpaid statutory charges required by this
28 article, and of any unpaid expenses incurred by the sheriff and the Auditor, and the deputy
29 commissioner in the exercise of their duties pursuant to this article, the Auditor shall prepare an
30 original and five copies of the receipt for payment and shall note on said receipts that the property
31 has been redeemed. The original of such receipt shall be given to the person redeeming. The
32 Auditor shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, and
33 the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such
34 filing and note the fact of redemption on his or her record of delinquent lands.

35 (b) Any person for reasons of financial hardship may petition the Auditor to redeems his or
36 her primary residence in installments. The petition shall certify to the Auditor that the real estate is
37 the primary residence of the redeeming party. The Auditor may approve a financial hardship plan
38 and it shall be signed by him or her and the party making the request. A copy of the document
39 evidencing such acceptance shall be filed with the clerk of the county commission in which the
40 property is located.

41 (c) Any person who, by reason of the fact that no provision is made for partial redemption of
42 the tax lien on real estate purchased at the public auction or at a subsequent sale, is compelled in
43 order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs,

44 in whole or in part, to some other person, shall have a lien on the interest of such other person for
45 the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however,
46 unless within 30 days after payment he or she shall file with the clerk of the county commission his
47 or her claim in writing against the owner of such interest, together with the receipt provided for in
48 this section. The clerk shall docket the claim on the judgment lien docket in his or her office and
49 properly index the same. Such lien may be enforced as other judgment liens are enforced.

NOTE: The purpose of this bill is to clarify what parties are entitled to redeem delinquent property and limit those that are entitled to bid on delinquent property at public auction.

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