

Rec., June 3

101

ENROLLED BILL
(EXTRAORDINARY SESSION, 1933)

House Bill No. 109

(By Mr. Smith, of West)

Passed June 3, 1933

In Effect from Passage

Originated in the.....

Takes effect.....

Passage.....

James L. Stace
Clerk House of Delegates.

James L. Stace
Clerk.

CORRECTLY ENROLLED

James L. Stace
Chairman Senate Committee.

James L. Stace
Chairman House Committee.

ENROLLED BILL

(H. B. No. 109)

[Passed June 3, 1933; in effect from passage.]

AN ACT to amend and reenact sections four, five, six, seven, eight, nine, ten, fourteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-one, thirty-five and thirty-six, article three, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter forty-nine, acts of one thousand nine hundred thirty-one, relating to the sale of delinquent, forfeited and escheated lands, and to add to said article sections thirty-seven, thirty-eight, thirty-nine and forty relating to the same subject.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven, eight, nine, ten, fourteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four,

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.

Chairman Senate Committee.

2

[Enrolled H. B. No. 109

twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-one, thirty-five and thirty-six, article three, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-nine, acts of the legislature, one thousand nine hundred thirty-one, be amended and reenacted and that sections thirty-seven, thirty-eight, thirty-nine and forty be added thereto to read as follows:

Section 4. Subject to the provision hereinafter contained the
2 office of commissioner of school lands in each county of this state
3 is hereby discontinued and the office of state commissioner of
4 forfeited lands is established. The auditor of the state is hereby
5 made ex officio state commissioner of forfeited lands. The state
6 commissioner of forfeited lands shall have direct supervision
7 and control in all matters of administration of waste and un-
8 appropriated, escheated, delinquent and forfeited lands, other
9 than those properly belonging to the circuit court: *Provided,*
10 That for the purpose of handling all tracts or parcels of real
11 estate which have heretofore been certified to them for their
12 action, the present commissioners of school lands in the several
13 counties shall continue to function until the thirty-first day of

James L. Smith

Chairman House Committee.

3

15-a It shall be the duty of the state commissioner of forfeited
15-b lands to administer the laws relating to all waste and unap-
15-c propriated, delinquent, forfeited and escheated lands, doing
15-d so, as far as is possible, through the land department of the
15-e auditor's office. To effect the purpose of this revision, all ad-
15-f ministrative features of waste and unappropriated, escheated,
16 delinquent and forfeited lands, not contravening the constitu-
17 tion, are hereby transferred to the control and jurisdiction of
18 the state commissioner of forfeited lands.

19 Each of the present commissioners of school lands may at
20 any time after the passage of this act and shall be required to
21 make settlement of all matters in their hands, whether suits be
22 pending or otherwise, on or before December thirty-first, one
23 thousand nine hundred thirty-three, and again within sixty
24 days after the thirty-first day of December, one thousand nine
25 hundred thirty-five, and the court shall make such allowance
26 for the work done and services rendered by them and their
27 attorneys as the court shall determine to be proper and right.
28 The court may, by order entered of record, retain, in suits

CORRECTLY ENROLLED

Anna D. Byrnes

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

29 which shall be pending when this act becomes effective, such
30 tracts and parcels of land as to which it shall appear to the
31 court to be proper to be disposed of in such suits, and the tracts
32 and parcels so retained shall be finally disposed of in such suits,
33 which shall be handled by the prosecuting attorney or the
34 attorney appointed in his stead in accordance with the law as
35 it was before the passage of this act, but all other tracts and
36 parcels of land shall be reported to the state commissioner of
37 forfeited lands on or before the thirty-first day of December,
38 one thousand nine hundred thirty-five.

39 For the purpose of settlement, the state commissioner of for-
40 feited lands may call upon the state tax commissioner to audit
41 the accounts of any or all of the commissioners of school lands,
42 and he shall take such legal and necessary actions as may be re-
43 quired to compel settlement and the accounting for and pay-
44 ment of any funds found in such audit to be due from any of
45 such commissioners of school lands.

46 For the purpose of this act the term "hand" or "lands", as
47 used herein, shall be construed to mean real estate of any char-
48 acter or nature whatsoever.

Sec. 5. A record of all real estate forfeited for any cause

CORRECTLY ENROLLED

James A. Hays

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 109]

5

2 to the state of West Virginia under the constitution and laws
3 thereof or purchased for the state at a sale for taxes and not
4 redeemed or released according to law, which has or shall come
5 to the knowledge of the state commissioner of forfeited lands,
6 shall be kept by him in a well-bound book in his office, in which
7 shall be shown the name of the former owner thereof, if known,
8 and if not, that fact shall be stated; the quantity, or supposed
9 quantity of such real estate; the local or other description
10 thereof as certified to him; for what years the owner thereof was
11 not charged with taxes thereon, and when such real estate be-
12 came forfeited, or if charged, the year for which the land became
12-a forfeited for the nonpayment of taxes. Such record shall
13 be prima facie evidence that the owner of such real estate was
14 not charged with taxes thereon for any of the years stated there-
15 in and that he did not cause such real estate to be entered and
16 charged with taxes as required by law, or if charged, failed
17 to pay the taxes during the time provided by law for such pay-
18 ment, and that such real estate was forfeited and that the title
19 thereto vested in the state at the time specified. In order to
20 enable the state commissioner of forfeited lands to make such
21 record, it shall be the duty of the clerk of the county court of

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee
James A. Rogers
Chairman Senate Committee.

22 each county in which any such real estate should have been, but
23 was not, entered on the land books and charged with taxes,
24 upon discovering any such failure, after entering the same
25 on his own record, to certify the same and all the facts in re-
26 lation thereto, to the state commissioner of forfeited lands.

Sec. 6. It shall be the duty of the surveyor of each county
2 in this state, as soon as the same shall come to his knowledge, to
3 report to the state commissioner of forfeited lands, all waste
4 and unappropriated and forfeited lands in his county, except
5 the lands under the bed of the Ohio river or any other navigable
6 stream, subject to sale under the provisions of this article, desig-
7 nating particularly the quantity of the tract or parcel and the
8 local situation thereof, together with all information he can
9 procure in relation to the same and of any claim of title thereto.

Sec. 7. It shall be the duty of the escheator of each county
2 in this state to furnish to the state commissioner of forfeited
3 lands a copy of the list which he is required by the provisions
4 of section five, article two of this chapter to prepare, showing
5 all lands within his county of which any person shall have died
6 owning an estate or inheritance, intestate and without any

CORRECTLY ENROLLED

James D. Byrd

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

7

7 known heir, and which have, therefore, become escheated to
8 the state.

Sec. 8. The state commissioner of forfeited lands shall ten-
2 der and file a written report to the circuit court of each county
3 from time to time, and, at least once in each two years, setting
4 forth a list of all tracts and parcels of land, lying in whole
5 or in part in each county, reported to him by the surveyor and
6 escheator as required by sections six and seven of this article,
7 or which shall otherwise come to his knowledge as having become
8 forfeited by reason of the nonpayment of taxes charged thereon,
9 and not redeemed from the state commissioner of forfeited
10 lands as hereinafter provided, which in his opinion are liable
11 to be sold for the benefit of the school fund. This report shall be
12 made in triplicate and two copies sent to the clerk of the cir-
13 cuit court; at least four months prior to the date of filing such
14 a written report to the circuit court of the lands purchased for
15 the state, forfeited for the nonpayment of taxes and not re-
16 deemed, the state commissioner of forfeited lands shall pre-
17 pare and have published once in two newspapers of opposite
18 political faith of general circulation in such county a forfeited
19 land notice in the following form, the cost of which shall not

CORRECTLY ENROLLED

James D. Byrnes

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

20 exceed twenty-five cents per tract for each newspaper to be paid
21 out of the state general school fund upon the warrant of the
22 state auditor, and to be added to the cost of redemption of any
23 such tracts that may thereafter be redeemed.

24 Notice to delinquent taxpayers of forfeited lands about to be
25 sold:

26 The following tracts of land forfeited for the nonpayment of
27 taxes thereon will be proceeded against in the circuit court and
28 sold by the sheriff unless redeemed from the state commissioner
29 of forfeited lands at Charleston, West Virginia, before the....
30 day of....., 19.....

31 County of....., District of.....

32 Name Quantity.....

33 Location

34 The state commissioner of forfeited lands, in such report as
35 herein provided for, shall show, as far as practicable, the fol-
36 lowing:

37 (a) The name of the party, parties, firms or corporations
38 claiming title to such land at the time such report is made; the
39 number of the lots or acres as the case may be; the town, city,
40 district, road, street or waters in or on which such real estate is

CORRECTLY ENROLLED

James L. Smith

Chairman House Committee.

Chairman Senate Committee.

Enrolled H. B. No. 109]

9

41 located, and such other description as may reasonably be given
42 in such report that will aid in identifying or locating the land
43 and the years constituting such forfeiture; the name or names
44 of all known claimants, or adverse claimants, and all known oc-
45 cupants of such real estate or any part thereof;

46 (b) If such report describes any real estate as waste and un-
47 appropriated such report shall also state that such tracts of real
48 estate were waste and unappropriated and that title thereto had
49 not passed from the commonwealth of Virginia or the state of
50 West Virginia, and the names of all claimants or occupants
51 thereof;

52 (c) If such report describes any real estate as escheated, the
53 report shall also state that such tracts of real estate were es-
54 cheated to this state by reason of the owner named therein
55 having died intestate and without any heir, owning an estate of
56 inheritance which shall be specifically described in such report;

57 (d) If such report describes real estate forfeited by reason
58 of the nonpayment of any taxes charged thereon, the report
59 shall state that such tracts of real estate were forfeited for the
60 nonpayment of taxes charged thereon.

CORRECTLY ENROLLED

James L. Smith
D. Hyre

Chairman House Committee.

Chairman Senate Committee.

10

[Enrolled H. B. No. 109]

Sec. 9. When the report mentioned in the preceding section
2 is filed, the clerk of the circuit court shall transmit to the clerk
3 of the county court of such county an attested copy of such
4 report, which shall be by the clerk of the county court recorded
5 in his office in a well-bound book, which shall be labeled on the
6 back thereof "Report of state commissioner of forfeited lands."
7 Such clerk of the county court shall index each tract or parcel
8 of land so reported in the name of the party or parties from
9 whom the same became forfeited; or, if such parcel or parcels
10 should be waste and unappropriated, the same shall be indexed
11 as to their location, or, if such parcel or parcels should be
12 escheated the same shall be indexed as to the person from whom
13 such lands escheated, and if the name of such person be un-
14 known then as to their location.

15 In any suit pending in the circuit court upon a report made by
16 the state commissioner of forfeited lands, when redemption of
17 a tract or parcel of land has been made under a decree of such
18 court, or where a tract or parcel of land has been decreed and
19 sold, or where the court has decreed a tract or lot of land
20 not forfeited to the state as waste and unappropriated, or not
21 escheated to the state, the clerk of such court shall, after each

CORRECTLY ENROLLED

Henry D. Rogers,

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 109].

11

22 term thereof, report each tract or parcel of land so adjudicated
23 by such court to the clerk of the county court, who shall, upon
24 the copy of such report so recorded in his office, in the marginal
25 space therein to be provided therefor, note in red ink opposite
26 each tract the disposition thereof made by any decree, showing
27 the date of such decree, the chancery order book and page num-
28 ber where recorded, and its purport in respect to such tract by
29 the words "redeemed," giving the date and by whom redeemed,
30 decreed and sold; giving the date and name of the purchaser,
31 or not liable to sale, as the case may be.

Sec. 10. Every such report shall be recorded in the chancery
2 order book of such court and filed and preserved by the clerk
3 of such court in his office, and at any time after December thirty-
4 first, one thousand nine hundred thirty-five, a suit or suits in
5 chancery shall be commenced and prosecuted at the instance
6 of the state commissioner of forfeited lands by the prosecuting
7 attorney of each county or other attorney, as hereinafter pro-
8 vided for, by and in the name of the state of West Virginia,
9 for the sale of every such tract and parcel of land, so
10 reported, as required by section four, article thirteen of
10-a the constitution of this state. All tracts or parcels of land

CORRECTLY ENROLLED

James D. Hays

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

11 mentioned in such report, which are claimed to have escheated,
12 shall be proceeded against in a separate suit. All other tracts
13 or parcels of land mentioned in any such report may be in-
14 cluded in one suit, but a separate suit may be brought and
15 prosecuted for the sale of each tract of land exceeding in
16 quantity one thousand acres; and the former owner of any such
17 tract of land at the time of the forfeiture thereof, or the person
18 in whose name the same is forfeited, shall, if known, be made
19 a defendant therein, and all persons claiming title to or interest
20 in any such lands shall also, as far as known, be made defendants
21 therein. And there shall be filed as an exhibit with such bill,
22 which shall be treated as part of the allegations thereof, a cer-
23 tified copy of the state commissioner's report mentioned in sec-
24 tion eight of this article. And any person claiming an interest
25 in any such land or in the proceeds thereof, not so made defend-
26 ant, may file his petition in any such suit stating what interest
27 he claims therein, either in open court or before a commissioner
28 in chancery, while the suit is pending before him, or at rules,
29 and shall thereupon become a defendant therein, and may
30 defend and protect his interest, if he has any therein, to the
31 same extent as if he had originally been made a party defendant

CORRECTLY ENROLLED

James L. Smith

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

13

32 therein. It shall be the duty of the prosecuting attorney of
33 each county, under the direction of the state commissioner of
34 forfeited lands, to represent the state in all matters pertaining
35 to the institution and prosecution of all suits mentioned in this
36 section and in any suit for the collection of the purchase money
37 on any land sold in said suit, but in case the prosecuting
38 attorney should not be able to give the matter proper attention
39 then the said state commissioner of forfeited lands may employ
40 another attorney to handle the same.

Sec. 14. If at any time during the pendency of any suit for the
2 sale of forfeited, escheated or waste and unappropriated lands,
3 whether now pending or hereafter brought, the prosecuting
4 attorney or the attorney employed by the state commissioner
5 shall become satisfied that part or the whole of the land sought
6 to be sold therein is not liable to sale for the benefit of the
7 school fund, such attorney shall report in writing to the court
8 the facts and reasons which lead him to that conclusion, which
9 report shall be filed and made part of the record; and if the
10 court, upon consideration thereof, and upon such inquiry as it
11 may make, shall concur in such report, in whole or in part, it
12 shall confirm the same to that extent, and shall dismiss such

James L. Smith
 Henry A. Byrd

Chairman Senate Committee.

Chairman House Committee.

13 suit as to the lands embraced in such report as far as it may
 14 be confirmed.

Sec. 18. All suits brought and prosecuted under the provi-
 2 sions of this article shall be commenced as provided in article
 3 three, chapter fifty-six of this code and proceeded in, heard
 4 and determined in the same manner, and in all respects, as in
 5 other suits in chancery are brought, prosecuted and proceeded
 6 in, and shall be subject to the same rules of chancery practice
 7 as other suits in chancery in the state courts of this state except
 8 as herein otherwise provided.

9 In all suits brought under the provisions of this article, the
 10 clerk shall append to the summons a memorandum containing
 11 a list of the lands against which suit is brought, together with
 12 the location and general local description of each parcel, or in-
 13 stead of such memorandum may insert in the summons im-
 14 mediately after the name of each defendant a general descrip-
 15 tion and location of each parcel of land in which he appears to
 16 be interested, and the same shall be served on the defendant by
 17 leaving a copy thereof at the residence of those found and by
 18 publication of such summons and memorandum, if such be ap-
 19 pended, as to those not found, once a week for three successive

CORRECTLY ENROLLED

James D. Hyman

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

15

20 weeks in a newspaper published in and of general circulation
21 in the county in which said suit is brought, and if no such
22 paper be published in such county then in some newspaper of
23 general circulation therein, and the same shall be sufficient
24 service of such summons and memorandum and shall be all the
25 summons or notice which shall be required in behalf of the state
26 as to any party to said cause and as to all other persons whom-
27 soever, whether named in the bill or not, including all unknown
28 persons, all occupants and claimants, all heirs, devisees, and
29 assigns of former owners, occupants and claimants of said lands,
30 or any part thereof, all trustees, all holders of liens, leases or
31 other encumbrances thereon. Alias summons may be issued
32 and served as above set out with like memoranda appended
33 thereto. The affidavit of the publisher, or of any credible per-
34 son who served the same, that any summons and memorandum
35 appended thereto, or any alias or subsequent summons and
36 memorandum thereto, was so served or published shall be suffi-
37 cient service thereof and return of service.

38 The original bill of the state against land purchased for the
39 state may contain only such parties and such descriptions of
40 the tracts and parcels of land proceeded against as are con-

CORRECTLY ENROLLED

James L. Smith
James A. Boyce

Chairman Senate Committee.

Chairman House Committee.

41 tained in the list of lands purchased for the state and those
42 holding liens or leases thereon, but before decree for sale
43 of any such land shall be made, the prosecuting attorney or
44 other attorney shall file in the circuit court clerk's office a de-
45 scription of each of such tracts and parcels of land sought to be
46 sold, showing the number of the lot or acres as the case may be,
47 the town, city, district, road, street or waters in or on which
48 such real estate is located, and such other description as may
49 reasonably be necessary to identify the land, and the names, if
50 any there be, of such of the heirs, devisees and assignees of the
51 former owner, lessees and lienholders as appears of record in
52 the office of the clerk of the county court, and such description
53 when filed shall be taken and treated as an amendment to the
54 original bill, and summons thereon shall be issued against all
55 such additional parties (but no party theretofore summoned
56 need be included) with memoranda appended thereto showing,
57 as hereinbefore provided, the parcels of land in which the new
58 parties appear to be interested, or in lieu of such memoranda
59 a general description of each parcel may be inserted in the sum-
60 mons immediately after the name of the party appearing to be
61 interested therein, as hereinbefore provided, and such summons

CORRECTLY ENROLLED

James L. Smith
James A. Hyatt

Chairman House Committee.

Chairman Senate Committee.

Enrolled H. B. No. 109]

17

62 shall be served or published, and if such memoranda be ap-
63 pended thereto the same shall be served or published therewith,
64 as hereinbefore provided, and affidavit of such service or pub-
65 lication shall be made, as hereinbefore provided, and no other
66 service thereof or other notice or summons shall be required in
67 behalf of the state.

68 The clerk of the circuit court shall enter all orders and de-
69 crees and all reports, lists, settlements and papers required by
70 this article or by order of the court to be recorded, in a chan-
71 cery order book which shall be designated "Forfeited lands
72 chancery order book" and in which no orders, decrees or pro-
73 ceedings shall be entered except such as relate to waste and
74 unappropriated lands, lands sold, forfeited or escheated to the
75 state. Such order book shall contain an adequate alphabetical
76 index in which shall be entered, in alphabetical order, at the
77 time of their recordation, a notation of all orders, decrees, re-
78 ports, lists and recorded papers, showing the nature thereof,
79 the page where recorded and the names of all parties interested
80 therein.

Sec. 19. Before decree shall be entered for the sale of any

CORRECTLY ENROLLED

James L. Smith

Henry A. Byrnes

Chairman House Committee.

Chairman Senate Committee.

2 tract or parcel of land, the prosecuting attorney or person
3 acting in his stead shall report to the court: A description of
4 the land sufficient to identify the same, the name, or names, of
5 the parties, if the same be known or at the time suit was brought
6 appeared of record in the office of the clerk of the county court,
7 who were the former owners, occupants or claimants thereof,
8 the year or years for which the land was forfeited, the amount
9 of taxes, interest and costs properly charged or chargeable
10 against the same remaining unpaid, and the names of the par-
11 ties entitled to redeem the same; but before filing such report,
12 the said attorneys shall give ten days' notice of the completion
13 of such report to the attorneys of record of all parties interested
14 therein who have appeared in the cause, and that the same will
15 remain in his office for ten days for their examination; and any
16 person desiring to except to said report or any part thereof may
16-a do so by filing such exception with the prosecuting attorney or
17 other attorney acting in his stead within said ten days or by
18 filing the same in court at any time before the entry of the
19 decree of sale. Reference of such cause to a commissioner in
20 chancery shall not be made except, upon motion of the
21 plaintiff or some party interested therein but if the court shall

CORRECTLY ENROLLED

James L. Smith
James A. Boyce

Chairman House Committee.

Chairman Senate Committee.

Enrolled H. B. No. 109]

19

22 find that a reference is proper, and such reference when made
23 shall be only as to the parcel or parcels of land included in the
24 motion, and the cause shall be proceeded in without reference
25 as to all other parcels of land not so included in such motion.
26 When a decree of reference is made in any suit the commis-
27 sioner, before proceeding to the discharge of his duties under
28 such decree, shall give notice to all the parties interested in such
29 reference and to all unknown owners, lessees, lienholders and
30 claimants of the lands, or any part of them, mentioned in the
31 reference, by publication in some newspaper printed in the
32 county in which the suit is brought, or if no such paper be
33 printed therein, then in some newspaper of general circulation
34 in such county, once in each week for three successive weeks,
35 and by posting at the front door of the courthouse of such
36 county, at least three weeks before proceeding to discharge his
37 duties under such decree, of the time and place at which he
38 will so proceed. And such notice when so published and posted
39 shall be equivalent to the personal service thereof on all the
40 parties to the record in such reference, and on all unknown
41 owners and claimants of any tract or parcel of land mentioned

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.
James L. Smith
Chairman Senate Committee.

42 in the reference, or any part thereof. Such notice may be in
43 form or effect as follows:

44 The State of West Virginia vs. A., B., C., D., etc. (naming
45 all the defendants mentioned in the reference).

46 The plaintiff and each and all of the above named defendants,
47 and all unknown owners, lessees, lienholders and claimants of
48 any part or parcel of the following tract (or tracts) of lands
49 (here give a general description of each tract of land proceeded
50 against in the reference, and give the name and the last address,
51 if any, known to the commissioner, of the owner or owners in
52 whose names such land is alleged in the bill to be forfeited)
53 mentioned in the plaintiff's bill in the above styled cause, will
54 take notice that, on the . . . day of . . . , 19 . . . , at . . . ,
55 in the county of . . . , I will commence the discharge
56 of my duties under a decree of reference entered in said cause
57 on the . . . day of . . . , 19 . . . , directing me to ascer-
58 tain and report (here insert what is required by the decree to
59 be ascertained and reported), at which time and place, you, and
60 each of you, can attend and protect and defend any interest

James A. Smith

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 109]

21

61 you may have in the lands, or any of them, in question in this
62 suit.

63 Given under my hand this day of, 19.....

64

65

Commissioner.

Sec. 20. The commissioner shall proceed with all reasonable
2 diligence in the discharge of his duties under such decrees, and
3 he may make and file his report as to any one or more of the
4 tracts, or parts thereof, mentioned in the reference, at any time,
5 without waiting to complete his report as to the whole of such
6 tracts.

Sec. 21. If there be no exception to either of such reports,
2 provided for in sections nineteen and twenty, or if there be
3 exceptions thereto which are overruled, the court shall confirm
4 the same, and decree a sale of the lands, or any part of them
5 therein mentioned, which are subject to sale for the benefit of
6 the school fund, at public auction to the highest bidder, upon
7 such terms and conditions as, in the opinion of the court, will
8 produce the greatest amount of purchase money. And the
9 court may decree the sale of any one or more of the tracts, par-
10 eels, lots, or parts of tracts or lots, mentioned in the bill with-

CORRECTLY ENROLLED

James L. Smith
James D. Hays

Chairman House Committee.

Chairman Senate Committee.

11 out waiting the termination of the suit as to the other lands
12 mentioned therein. When exceptions are sustained to such re-
13 ports, the same proceedings shall be had herein as in other
14 suits in chancery.

Sec. 22. Every such sale shall be made by the sheriff of the
2 county in which such suit is pending or when the sheriff shall be
3 an interested party by another person named by the court upon
4 such terms, conditions and notice as are provided in the decree
5 of sale. All tracts, lots or parcels of land offered for sale on
6 which there is no bid, or the bid or bids do not equal the taxes,
7 interest and costs shall be purchased by the sheriff for the
8 amount of taxes, interest and cost due thereon, for the state, and
9 such title as was vested in the owner at the time of forfeiture
10 shall become absolutely vested in the state and all such lands shall
11 be administered by the public land corporation of West Virginia.
12 All such tracts, lots or parcels of land shall be thenceforth
13 irredeemable except as may be otherwise provided by the con-
14 stitution, and shall be certified to the state commissioner of
15 forfeited lands.

16 The said sheriff or other party directed by the court as afore-
17 said to make the sale, when the sale is other than for cash, shall

CORRECTLY ENROLLED

James L. Smith
James A. Hyatt

Chairman House Committee.

Chairman Senate Committee.

Enrolled H. B. No. 109]

23

18 take from the purchaser of each parcel of land so purchased his
19 notes with good security, payable to the state of West Virginia,
20 for the deferred payments of purchase money provided for in
21 the decree of sale, with interest from date thereof, and shall
22 make a report thereof to the clerk of the circuit court which de-
23 creed the sale, in which he shall state the name of each purchaser
24 and the particular tract or tracts, lot or lots, or part or parcels,
24-a of any tract or lot purchased by him, and the quantity, as near
25 as may be, so purchased by such purchaser the amount of the
26 purchase money of each tract, lot or parcel, or the part thereof
27 so purchased; the amount of the purchase money paid on each
28 at the time of the purchase, and the amount of notes taken for
29 the residue of the purchase money; the name of the surety in
30 such notes and the time at which they will become due and
31 payable; the gross amount of the money in hand arising from
32 such sales and the cost and legal expense thereof. He shall re-
33 turn with his report all notes and securities taken by him for
34 the purchase money of the real estate sold by him, and the clerk
35 of the court shall endorse thereon the day they will respectively
36 become due and payable, file and preserve the same in his office;

CORRECTLY ENROLLED

James D. Hyman

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

24

[Enrolled H. B. No. 109

37 such notes and securities shall be a lien upon the real estate
38 for which they were given; and, if not paid when due, the clerk
39 shall, without process or further proceeding, enter in the law
40 order book a judgment against the maker and obligors therein
41 and sureties thereon, in favor of the state of West Virginia,
42 upon such note for the amount remaining unpaid, with interest.
43 Such judgment shall be as final and valid as if entered by the
44 court, except only that the court shall have such control of it
45 as is given by article two, chapter fifty-eight of this code.

46 Execution may issue upon such judgment or a rule may be
47 awarded and the land resold as in other chancery suits.

48 Upon the confirmation of said report, the clerk of the circuit
49 court shall transmit a certified copy of the same to the clerk of
50 the county court of his county or of so much thereof as may be
51 confirmed.

Sec. 24. The sheriff or other person appointed by the court
2 shall collect the remaining proceeds of all sales and after de-
3 ducting the actual costs, shall pay to the state commissioner of
4 forfeited lands the proceeds of all such sales as provided in the
5 next succeeding section.

6 The sheriff or other person appointed by the court shall be

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.
D. Hyman
Chairman Senate Committee.

Enrolled H. B. No. 109]

25

7 allowed by the court the actual expenses necessarily incurred
8 and actually paid by him in the discharge of the duties in mak-
9 ing such sale and the report thereof under this article, to be
10 fixed and adjusted by the court upon the production of vouchers
11 showing the amounts paid and on what account.

12 For the services required herein of the prosecuting attorney
13 or other attorney employed by the state commissioner, as pro-
14 vided for in section ten of this article, he shall receive the docket
15 or attorney's fee taxed in the costs of such cases for the state
16 if they be collected from the defendant or defendants, but not
17 otherwise; which fees shall not exceed fifty per cent of the tax
18 bill and interest which together amount to twenty dollars or
19 less; and the maximum fee in connection with any such bill
20 shall be ten dollars and the minimum fee two dollars: *Provided*,
21 That in any case where in the opinion of the court from proper
22 proof any additional compensation should be allowed the attor-
23 ney for the state the court may with the consent of the state
24 commissioner of forfeited lands so allow it.

Sec. 25. The cost per tract of every such suit shall be taxed
2 by the clerk as hereinbefore provided. The clerk's fee shall be
3 one dollar for each tract and the sheriff's fee for service of each

CORRECTLY ENROLLED

James L. Smith
Henry A. Rogers

Chairman House Committee.

Chairman Senate Committee.

4 summons shall be seventy-five cents, and shall be paid out of the
5 proceeds of the sale of such real estate, and not otherwise, to
6 the several persons entitled thereto, if sufficient for the purpose;
7 but if such proceeds from each tract are not sufficient to pay
8 such costs, the same shall be paid therefrom to the several per-
9 sons entitled thereto pro rata. The balance of such proceeds
10 of any sale in excess of the costs per tract shall be paid into the
11 treasury of the state for the benefit of the school fund. Any
12 person who shall receive any money under the provisions of
13 this article, which he is required to pay over and account for
14 hereunder, and who shall fail to pay over and account for the
15 same when lawfully required to do so, shall be deemed guilty
16 of larceny, and shall be fined not exceeding double the amount
17 he has failed to pay over and account for, and, at the discre-
18 tion of the court, may be imprisoned in the county jail not ex-
19 ceeding one year. No sheriff or other party ordered to make
20 sale shall, directly or indirectly, become the purchaser of any
21 forfeited land at the sale thereof, and for a violation of this
22 provision he shall be fined not exceeding five hundred dollars.

Sec. 26. The sheriff or other person ordered by the court to

2 make sale shall report to the circuit court of his county an item-

CORRECTLY ENROLLED

James E. Smith
Chairman House Committee
Henry A. Rogers
Chairman Senate Committee

Enrolled H. B. No. 109]

27

3 ized account of his receipts and disbursements of all funds re-
4 ceived by him under the provisions of this chapter. Whenever
5 any such report is confirmed by the court, it shall be the duty
6 of the circuit clerk to make up in triplicate and to forward to
7 the state commissioner of forfeited lands and the clerk of the
8 county court a duly certified copy of such report and accounts
9 and of the order confirming same within thirty days from the
10 date of such confirmation on a form to be prescribed by the
11 state commissioner of forfeited lands.

12 Such report shall set forth: All the tracts of land forfeited
13 and so sold or escheated and so sold in his county for which no
14 previous report has been made; the names of the parties in
15 which the lands were forfeited; the quantity forfeited, descrip-
16 tion, year forfeited, amount of taxes due when forfeited, and
17 whether sold, redeemed, not liable to sale or a suit pending;
18 date of such action; amount for which sold or redeemed; name
19 of purchaser or redeмпtor; disbursements, (a) to the auditor,
20 (b) to the sheriff, (c) to the municipality, (d) costs per tract,
21 itemizing the several items thereof. Every such sheriff or cir-
22 cuit clerk or other party failing to make any report required
23 by this section shall be guilty of a misdemeanor and be fined

CORRECTLY ENROLLED

James L. Smith

Chairman House Committee.

Anna D. Hyatt

Chairman Senate Committee.

24 not less than one hundred nor more than one thousand dollars,
25 to be paid into the state treasury to the credit of the general
26 school fund.

Sec. 27. When the whole of the purchase money of any tract
2 or lot of land, or any part or parcel of a tract or lot, pur-
3 chased by any person at any such sale, with the interest due
4 thereon and the costs, if any, incurred in the collection thereof,
5 is fully paid, the sheriff or other person appointed by the court
6 shall, as soon as the sale is confirmed, convey to the purchaser,
7 his heirs, devisees or assigns, or to such persons as he or they
8 may direct, to be evidenced by him or them joining in such
9 deed by a proper deed, all the right, title and interest of the
10 state of West Virginia, in and to the real estate thereby con-
11 veyed, which passed to and vested in the state, under the con-
12 stitution and laws thereof, by reason of the forfeiture of such
13 real estate, or otherwise, which remained in the state at the
14 time of the decree for the sale thereof, regardless of whether
15 the same was sold and purchased or forfeited for any cause,
16 escheated, or waste and unappropriated land.

Sec. 28. The former owner of any such land, his heirs, per-
2 sonal representatives or assigns, or any creditor having a lien

CORRECTLY ENROLLED

James L. Smith
James A. Henry

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

29

3 on such land at the time of such forfeiture or escheat and still
4 existing, shall be entitled to recover in whole or in part, the
5 excess of the sum for which the land may be sold over the taxes
6 charged and chargeable thereon, or which, if the land had not
7 been forfeited or escheated would have been charged or charge-
8 able thereon since the formation of this state, with interest at
9 the rate of twelve per cent per annum, and the costs of the suit,
10 if his claim be filed in the circuit court that decreed the sale,
11 within two years after the sale is confirmed. Such former owner,
12 his heirs, personal representatives or assigns, or any such credi-
13 tor, may, within the time aforesaid, file his petition in the suit
14 in such circuit court, stating in full his title to or lien upon
15 such lands, accompanied by the evidence thereof, and upon full
16 and satisfactory proof that, at the time the title to such land
17 vested in the state, such former owner had a good and valid
18 title thereto, legal or equitable, superior to that of any other
19 claimant thereof, the court shall order the excess mentioned
20 herein, or so much thereof as he may prove himself entitled to,
21 to be paid to such owner, his heirs, personal representatives,
22 assigns or creditors, as the case may be; and for the purpose of
23 ascertaining the same, the court may refer the several matters

CORRECTLY ENROLLED

James L. Smith
Henry D. Rogers

Chairman House Committee.

Chairman Senate Committee.

24 in question to a commissioner thereof; and upon a properly
25 certified copy of such order being presented to the auditor, he
26 shall draw his warrant on the treasury, in favor of such owner,
27 his heirs, devisees, personal representatives, assigns or such
28 creditors for such excess. And every such suit shall remain
29 upon the docket of the court for two years after the date of the
30 decree confirming any sale of land therein mentioned, in order
31 that opportunity be given for the filing of such petitions.

Sec. 29. The former owner, his heirs, devisees or assigns of
2 any real estate purchased for and forfeited to the state for the
3 nonpayment of taxes thereon, may, before suit is instituted for
4 the sale thereof, redeem such real estate so far only as the title
5 thereto is in the state, by payment to the state commissioner
6 of forfeited lands the taxes and interest charged or chargeable
7 thereon, costs for publication and a fee of one dollar for certi-
8 ficate of redemption where the taxes and interest are under
9 twenty dollars, three dollars where the taxes and interest are
10 more than twenty dollars and less than one hundred dollars,
11 and five dollars where the taxes and interest are more than
12 one hundred dollars. The certificates of redemption shall be
13 issued in quadruplicate, the original copy of which shall be

CORRECTLY ENROLLED

James D. Hyatt

James D. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

31

14 retained by the state commissioner of forfeited lands, the
15 duplicate copy shall be given to the redeмпtor, the triplicate
16 copy shall be sent to the clerk of the circuit court and the
17 quadruplicate copy shall be sent to the clerk of the county
18 court. After the first term of the circuit court, after the re-
19 ceipt of such record of redempptions, an order shall be entered
20 by the court, if so required, showing the manner of such re-
21 demption and disposing of such lands so redeemed as if re-
22 demption had been made pending suit; or, the former owner,
23 his heirs, devisees or assigns, of any real estate forfeited for
24 any cause to the state of West Virginia, may at any time dur-
25 ing the pendency of the suit for the sale thereof, and before
26 a decree for the confirmation thereof has been made and
27 entered by the court, file his petition therein in manner and
28 form as provided in the next preceding section in relation to
29 the excess of the proceeds of such sale, praying to be al-
30 lowed to redeem so much only of such real estate as to which
31 the title still remains in the state; and upon the filing of
32 such petition, and upon such proof being made as would
33 entitle the petitioner to the excess of the purchase money of
34 such real estate if the same had been sold, the court may,

CORRECTLY ENROLLED

James D. Byrnes

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

35 by a proper decree, permit the petitioner upon the payment
36 into court, the taxes charged and chargeable thereon, or which,
37 if the land had not been forfeited would have been charged
38 or chargeable thereon since the formation of this state, with
39 interest at the rate of twelve per cent per annum, the pub-
40 lication fees and the cost of the suit, to be fixed by the court
41 in its decree, to redeem the real estate mentioned in his pe-
42 tition. And upon such payment being made as aforesaid,
43 the court shall enter its decree declaring the redemption of
44 such real estate by such petitioner, so far only as the title
45 thereto is in the state, as provided in this chapter, and so far
46 as the petitioner has shown himself entitled to redeem the
47 same; which decree shall operate as a release of such for-
48 feiture of such real estate to the extent declared therein and
49 of all former taxes and interest charged and chargeable there-
50 on. And such petitioner shall acquire no other title to the
51 lands so redeemed than was vested in him immediately before
52 such forfeiture, but such redemption shall in nowise affect
53 or impair any right, title or interest any other person may
54 have in such real estate or any part thereof, by purchase

CORRECTLY ENROLLED

James A. Hyatt

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 109]

33

55 from the state, or under and by virtue of section three, article
56 thirteen of the constitution of this state.

57 Any person holding a valid and subsisting lien, lease or other
58 encumbrance on any such forfeited land, or any other per-
59 son being requested in writing so to do by any party entitled
60 to make redemption, upon like petition and like proof, and
61 upon payment to the sheriff of the taxes, interest and costs
62 and filing the sheriff's receipt therefor with the clerk of the
63 circuit court, may be permitted to make like redemption for
64 and in behalf of such former owner, his heirs, devisees or
65 assigns, and the amount so paid shall be a lien by recording an
66 abstract of such redemption within fifteen days of its date in
67 the office of the clerk of the county court on the land so re-
68 deemed, in favor of such lienholder, lessee or other encum-
69 brancer or other person so making redemption, superior to
70 all other liens, leases or other encumbrances except taxes and
71 other governmental assessments, but such lien shall in nowise
72 affect or impair any right, title or interest any other person
73 may have in such real estate or any part thereof, by pur-
74 chase from the state, or under and by virtue of section three,
75 article thirteen of the constitution of this state.

CORRECTLY ENROLLED

James L. Smith
James D. Hyman

Chairman House Committee.

Chairman Senate Committee.

76 The former owner, his heirs, devisees or assigns, of any
77 real estate forfeited for any cause to the state of West Vir-
78 ginia, may, at any time during the pendency of the suit for
79 the sale thereof and before a decree for the confirmation
80 thereof has been made and entered by the court, make in-
81 formal application to the clerk of the circuit court to be al-
82 lowed to redeem so much only of such real estate as to which
83 the title still remains in the state, and pay to the sheriff of
84 the county the amount of taxes, interest and costs properly
85 chargeable on the land sought to be redeemed, and file with
86 such clerk the sheriff's receipt for such money, if it shall
87 appear from the records in the office of the clerk of the county
88 court that such applicant is such former owner or an heir,
89 devisee or assignee thereof, and if there also appear on such
90 records in said county clerk's office a description of the land
91 sought to be redeemed sufficient to identify the same, and
92 those facts do not appear of record in the suit, the clerk of
93 the circuit court shall report those facts to the court, in-
94 cluding a description of the land sought to be redeemed suf-
95 ficient to identify the same and also all the taxes, interest and
96 costs which in his opinion should properly be charged, but if

CORRECTLY ENROLLED

James A. Higgins

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109]

35

97 any of those facts appear of record in the suit only such as
98 do not appear shall be reported; and if there be no other
99 person who is a party to the suit, or not being made a party,
100 who has appeared in the suit, claiming title to or the exclu-
101 sive right to redeem such real estate, and if there be no ob-
102 jection thereto, and the court shall find no cause for objection,
103 he may enter his decree declaring the redemption of such real
104 estate by such applicant, so far only as the title thereto is in
105 the state, and so far as the applicant is entitled to redeem
106 the same; which decree shall operate as a release of such for-
107 feiture of such real estate to the extent declared therein and
108 of all former taxes and interest charged and chargeable
109 thereon. And such applicant shall acquire no other title to
110 the land so redeemed than was vested in him immediately
111 before the forfeiture, but such redemption shall in nowise
112 affect or impair any right, title or interest any other person
113 may have in such real estate or any part thereof, by purchase
114 from the state, or under and by virtue of section three, ar-
115 ticle thirteen of the constitution of this state.

116 Any person holding, at the time of the forfeiture, a valid
117 and subsisting lien, lease or other encumbrance on any such

CORRECTLY ENROLLED

James L. Smith
D. H. Rogers

Chairman Senate Committee.

Chairman House Committee.

118 forfeited land, or any other person being requested in writing
119 so to do by any party entitled to make redemption, upon like
120 application for and in behalf of the former owner, his heirs,
121 devisees or assigns, may present to such clerk proof of his
122 lien, lease or other encumbrance and make like deposit with
123 the clerk of the circuit court, and if in the opinion of such
124 clerk such applicant's lien, lease or other encumbrance shall
125 be legally established, or that such other person has been so
126 requested, the clerk of the circuit court shall report that fact
127 and also the amount of all taxes, interest and costs which in his
128 opinion is properly chargeable on said land; and if there
129 be no other person who is a party to the suit or, not being
130 made a party, who has appeared in the suit, claiming title to
131 or the exclusive right to redeem such land, and if there be
132 no objection thereto, and the court shall find no cause for
133 objection, he may enter his decree declaring the redemption
134 of such land as provided hereinabove; and the amount paid
135 by such lienholder, lessee, or other encumbrancer, or by
136 such other person shall be a lien on the land so redeemed
137 superior to all other liens, leases and other encumbrances, ex-
138 cept taxes and other governmental assessments, but such lien

CORRECTLY ENROLLED

James D. Hays

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 109]

37

139 shall in nowise affect or impair any right, title or interest any
140 other person may have in such real estate or any part thereof,
141 by purchase from the state, or under and by virtue of sec-
142 tion three, article thirteen of the constitution of this state.

143 After payment to the sheriff of all taxes, interest and costs
144 properly chargeable on any such forfeited lands by any per-
145 son entitled to make redemption thereof, and such decree for
146 the redemption thereof shall have been made, such redemp-
147 tion shall not be invalid because no formal petition was
148 filed.

149 At the end of each year the auditor and circuit clerk shall
150 certify all redemptions made under the provisions of this sec-
151 tion to the clerk of the county court and the assessor of the
152 county in which the land is located and such assessor shall
153 enter all such land on the land books for taxation for the en-
154 suing tax year.

155 When the clerk of the circuit court shall receive any money
156 provided to be paid to him by this section, he shall immedi-
157 ately turn it over to the sheriff, who shall make distribution
158 of the same to the proper funds of his county and pay to the
159 state treasurer the portion thereof due the state.

CORRECTLY ENROLLED

James L. Smith

Chairman House Committee.

Henry A. Byrd

Chairman Senate Committee.

Sec. 31. In every such suit brought under the provisions of
2 this article, the court shall have full jurisdiction, power and
3 authority to hear, try and determine all questions of title, pos-
4 session and boundary which may arise therein, as well as any
5 and all conflicting claims whatever to the real estate in question
6 arising therein; and the court, in its discretion, may at any
7 time, regardless of the evidence, if any, already taken therein,
8 direct an issue to be made up and tried at its bar as to any
9 question, matter or thing arising therein, which, in the opinion
10 of the court, is proper to be tried by a jury and such evidence
11 already taken may be introduced to the jury. And every such
12 issue shall be proceeded in and the trial thereof shall be gov-
13 erned by the law and practice applicable to an issue out of
14 chancery and the court may grant new trials therein as in other
15 cases tried by a jury.

Sec. 35. If any debt of a person whose lands escheated to the
2 state at his death remain unpaid after all the personal estate of
3 such person has been applied to the payment of his debts, the
4 creditor may intervene in any proceeding by the state com-
5 missioner of forfeited lands under this article to sell such lands.
6 If the court shall be of opinion that the said debt, or any part

CORRECTLY ENROLLED

Anna D. Hyatt

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

Enrolled H. B. No. 109].

39

7 thereof, is due, the amount decreed to be due shall be paid by
8 such commissioner to the creditor. If the proceeds of the sale
9 shall have been paid into, and still remain in, the treasury of
10 the state, or to the benefit of the school fund, the creditor may
11 file his bill in equity against the state commissioner of for-
12 feited lands, to recover such debt, and if the court shall decree
13 that such debt, or any part thereof, is due, the amount decreed
14 to be due shall be paid to the creditor out of the treasury. If
15 such bill in equity be not filed within the period of limitation
16 applicable to such debt, such debt shall be forever barred.

See. 36. The state commissioner of forfeited lands shall
2 answer and defend, on the part of the state, any claim or suit
3 against him, under the preceding section, and shall be allowed
4 the costs incurred by him in defending the same.

See. 37. The state commissioner of forfeited lands shall add
2 to the total taxes and interest charged or chargeable on each
3 lot, tract or part of tract, forfeited to the state, costs of publi-
4 cations and the fees for certificates of redemptions as hereinbe-
5 fore provided. Such fees shall be credited to the general school
6 fund and be used as appropriated for the necessary expenses

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.
Henry D. Hyre
Chairman Senate Committee.

7 of administering forfeited lands by the state commissioner of
8 forfeited lands.

Sec. 38. A record of all tracts of forfeited lands offered for
2 sale as provided for in section twenty-two of this article and
3 purchased by the sheriff for the state on account of no bids
4 having been received thereon equal to the taxes, interest and
5 costs, shall be made from the report of the sale of the circuit
6 clerk to the commissioner of forfeited lands and shall be kept by
7 him in a well-bound book which shall show the status or dis-
8 position of such lands in the marginal space provided therefor.

Sec. 39. All lands forfeited and in the hands of school land
2 commissioners of the several counties and not finally disposed
3 of prior to the time this act becomes effective shall be admin-
4 istered according to the provisions of article three, chapter
5 thirty-seven of the code, and the amendments thereto, as pro-
6 vided in chapter forty-nine of the acts of one thousand nine
7 hundred thirty-one, or as otherwise provided by law. All lands
8 subsequently forfeited shall be administered according to the
9 provisions of this act.

Sec. 40. The various provisions of this act shall be construed
2 as separable and several, and should any of the provisions or

CORRECTLY ENROLLED

James L. Smith

Chairman House Committee.

James D. Hays

Chairman Senate Committee.

Enrolled H. B. No. 109]

41

3 parts thereof be construed or held to be unconstitutional, or for
4 any other reason invalid, the remaining provisions of this act
5 shall not be thereby affected.

6 All acts and parts of acts inconsistent with this act are hereby
7 repealed.

CORRECTLY ENROLLED

Adams
Chairman Senate Committee.

Wm. Shier
Speaker of the House of Delegates.

Geo. L. Hare
Clerk of the House of Delegates.

W. H. Mainwaring
President of the Senate.

Charles Smith
Clerk of the Senate.

James L. Smith
Chairman House Committee.

The within is.....

this.....day of....., 1933.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. JUN 12 1933
WM. S. O'BRIEN,
Secretary of State