WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 333

(By Mr. [Signature]

PASSED March 8, 1947

In Effect from Passage
ENROLLED

Senate Bill No. 333

(By Mr. Vickers, Mr. President)

[Passed March 8, 1947, in effect from passage.]

AN ACT to amend and reenact section eight, article three, and all of article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection and enforcement of property taxes, including the redemption of forfeited, and delinquent lands and the sale of forfeited, delinquent, escheated, and waste and unappropriated lands for the benefit of the school fund.

Be it enacted by the Legislature of West Virginia:

That section eight, article three, and all of article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:


Section 8. Redemption from Purchase by or Forfei-
ture to the State; Lands Made Irredeemable. The former owner of any real estate so purchased by the state, or any other person who was entitled to pay the taxes thereon, may redeem such real estate from the auditor at any time within eighteen months after the date of such purchase. Thereafter such real estate shall be irredeemable and subject to transfer or sale under the provisions of sections three and four, article thirteen of the constitution.

The former owner of any real estate forfeited to the state for nonentry, or any other person who was entitled to pay the taxes thereon, may redeem such real estate from the auditor at any time prior to its certification by the auditor for sale for the benefit of the school fund as provided in article four of this chapter, but such redemption shall be subject to any prior transfer under the provisions of section three, article thirteen of the constitution.

In order to redeem the person seeking redemption must pay to the auditor such of the following amounts as may be due: (1) The taxes, interest and charges for which
the real estate was sold, with interest at the rate of
twelve per cent per annum from the date of sale. (2)
All taxes assessed thereon for the year in which the sale
occurred, with interest at the rate of twelve per cent per
annum from the date on which they became delinquent,
except when such taxes are currently due and payable to
the sheriff. (3) All taxes except those for the current
year which would have been assessed thereon since the
sale had the sale not occurred, or which, in the case of
land forfeited for nonentry, would have been assessed
thereon had the land been properly entered, with interest
at the rate of twelve per cent per annum from the date
on which they would have become delinquent. (4) The
fee provided by the following section for the issuance by
the auditor of the certificate of redemption.

In computing the amount due under number three on
real estate purchased by the state, the auditor shall use
as the basis for computation the classification and valua-
tion placed thereon by the assessor for each year since
the sale. If such valuation and classification have not
been made, he shall use the last valuation and classifica-
tion appearing on the property books. In computing the amount due under number three on real estate forfeited for nonentry, the auditor shall use as the basis for computation such classification and valuation as may, at the request of the auditor or the person redeeming, be certified to the auditor by the assessor as the classification and valuation which in his opinion would be proper for each year of nonentry.

In the case of partial redemption, he must pay only that proportion of such taxes as are chargeable to the part or interest redeemed, but must pay all of the other charges and the fee required for redemption of the whole. However, redemption of an undivided interest included in a group assessment or of part of a tract or lot the whole of which was assessed in the name of a person other than the owner shall not be permitted until the applicable provisions of section nine or of section ten, article one of this chapter, have been complied with, except that instead of presenting the assessor's certificate to the sheriff as therein required, the person redeeming shall present it to the auditor, who, after making the
necessary changes in the land book, and in the record of delinquent lands kept in his office, shall compute the taxes due on the part or interest redeemed.


Sec. 1. Declaration of Legislative Purpose. In furtherance of the policy declared in section one, article three of this chapter, it is the intent and purpose of the Legislature to establish a judicial proceeding for the sale of land for the school fund, which will be as expeditious, inexpensive and informal as possible without violating any claim which may fairly and properly be made on behalf of the former owner. The procedure provided for in this article is designed to convey to the purchaser not an original but merely a derivative title, transferring only such interest in the land as may at the time of the sale be vested in the state under its constitution and laws, or otherwise.

Sec. 2. Forfeiture of Lands for Nonentry. It is the duty of the owner of land to have his land entered for taxation on the land books of the appropriate county, have himself charged with the taxes due thereon, and
pay the same. Land which for any five successive years shall not have been so entered and charged shall by operation of law, without any proceedings therefor, be forfeited to the state as provided in section six, article thirteen of the constitution, and shall thereafter be subject to transfer or sale under the provisions of sections three and four of such article.

Sec. 3. Lands Subject to Sale Under This Article.

All lands purchased by the state for nonpayment of taxes and become irredeemable, or forfeited for nonentry, or escheated, or waste and unappropriated, title to which remains in the state, are subject to sale as provided in this article.

Sec. 4. State Commissioner of Forfeited and Delinquent Lands. The state auditor shall ex officio be state commissioner of forfeited and delinquent lands. The term "auditor", whenever used in this chapter in connection with the subject of forfeited, delinquent, escheated, or waste and unappropriated lands, shall be construed to refer to the auditor in his capacity as state commissioner of forfeited and delinquent lands.
The auditor is empowered, and it shall be his duty, through the land department in his office, to administer and carry into execution the laws with reference to such lands. The auditor on behalf of the state shall have power to hold and manage such lands, and to exercise all other powers incident to the general ownership of land.

Sec. 5. *Deputy Commissioners of Forfeited and Delinquent Lands; Bond.* There shall be for each county in the state a deputy commissioner of forfeited and delinquent lands. The auditor shall appoint such deputies as soon as may be after this act takes effect, and shall make new appointments from time to time thereafter whenever vacancies occur, or when in his judgment it is deemed advisable. The auditor may make rules respecting the tenure of deputy commissioners. In the absence of such rules, the deputy for each county shall, so long as he satisfies the requirements of this section in respect to professional qualifications and bonding, continue to act without reappointment until the auditor designates his successor.

Appointments shall be limited to persons duly licensed to practice law in the state, and so far as possible shall be
made for each county from among attorneys residing and
practicing law therein. If, however, there is in the
opinion of the auditor no qualified lawyer in a county
available for appointment, he shall appoint a member of
the bar of another county, preferably in the same judicial
circuit.

Whenever in respect to any land the deputy commis-
sioner, in his own judgment or in the opinion of the
auditor, is disqualified because of his personal interest,
or because of his representation of clients in matters
affecting such land, the auditor may appoint a special
deputy to deal with that land. All provisions of this
article in respect to the rights, duties, liabilities and
qualifications of the deputy commissioner shall be appli-
cable to the special deputy.

The deputy commissioner shall be subject to the orders
and control of the auditor, shall be accountable to him,
and shall serve as his local agent within the county. It
shall be his duty to do whatever is required of him by
the auditor or by the provisions of this article. The
deputy commissioner before entering upon his duties
shall give a bond, with satisfactory corporate surety, conditioned upon the faithful performance of his duties and the payment of any forfeitures incurred. The penalty of such bond shall be not less than two thousand dollars nor more than ten thousand dollars, as the auditor may direct. The premium therefor, shall be paid by the auditor out of the operating fund for the land department in his office.

Sec. 6. Land Record in Auditor's Office. The auditor shall prepare and keep in his office a permanent record of all forfeited, delinquent, escheated, and waste and unappropriated lands. The record shall as to every tract or lot listed set forth the information available as to quantity, local description, and, except in the case of waste and unappropriated lands, the name of the former owner and the respective dates of nonentry and forfeiture, or delinquency and sale to the state, or escheat, as the case may be. The record shall be prima facie evidence of all matters required by this section to be set forth therein, including the correctness of the description of lands as forfeited, delinquent, escheated, or waste and
Sec. 7. Operating Fund for Land Department in Auditor's Office. The auditor shall set up a special operating fund for the land department in his office. He shall pay into such fund all redemption fees, all publication or other charges collected by him, if such charges were paid by or were payable to him, and all payments made to him by sheriffs under the provisions of section thirty-six of this article and by general receivers of the circuit court under the provisions of sections twenty-eight and twenty-nine of this article, except such part thereof as represents state taxes and interest and the surplus proceeds of the sale of any forfeited, escheated, or waste and unappropriated lands. All payments so excepted shall be credited by the auditor to the general school fund or other proper state fund.

The operating fund shall be used by the auditor to pay any balances due to deputy commissioners for services rendered under the provisions of this article, to pay fees due surveyors under the provisions of the following section, and to pay for the operation and maintenance of
the land department in his office. The surplus over and
above the amount of twenty-five thousand dollars, re-
mainning in the fund at the end of any fiscal year, shall be
paid by the auditor into the general school fund.

Sec. 8. Officers to Report Lands Subject to Sale.

Whenever an assessor, or clerk of the county court, or
county surveyor learns of the existence within the county
of any forfeited land, he shall promptly report that fact
to the auditor, together with his information relating
thereto. The assessor, as escheator, shall likewise report
all lands which escheat to the state.

Whenever the deputy commissioner learns of the exist-
ence of any waste and unappropriated lands within his
county, except lands lying under the bed of a navigable
stream, he shall direct the county surveyor, or some
other competent surveyor, to make a survey, plat and
report thereof, listing all discovered claims of title there-
to. The deputy commissioner shall promptly transmit
to the auditor a copy of the survey, plat and report. For
his services in making the survey, plat and report, the
surveyor shall be entitled to a fee of twenty-five dollars,
and such additional compensation as the deputy commis-
ioner may recommend and the auditor approve, to be
paid out of the operating fund for the land department
in the auditor's office.

Sec. 9. **Auditor to Certify List of Lands to Be Sold;**

**Lands Heretofore Certified Made Irredeemable and Sub-
ject to Transfer or Sale.** On or after the first day of
July and on or before the first day of December of each
year, the auditor shall certify to the circuit court of each
county a list of all lands in the county subject to sale
under this article, except that forfeited, escheated, or
waste and unappropriated lands may be certified by the
auditor at any time after they are brought to his atten-
tion. He shall note the fact of certification on the land
record in his office. Upon completion of a list for certi-
fication, a charge of one dollar shall be added to the
taxes, interest and charges already due on each item
listed, to cover the costs incurred by the auditor in the
preparation of the list, and in the event of sale or redemp-
tion, the same shall be collected and paid into the ope-
rating fund provided for in this article.
Escheated lands and waste and unappropriated lands shall be listed separately. The list shall be arranged by districts and, except in the case of waste and unappropriated lands, alphabetically by name of the former owner. The list shall state as to each item listed the information required by section six of this article to be set forth in the land record in the auditor's office, and shall specify as to each tract listed as forfeited or delinquent the amount of taxes and interest due or chargeable thereon on the date of certification, the publication and other charges due, with interest, and the total currently due. The specification of taxes due or chargeable shall as to delinquent land commence with those for nonpayment of which it was sold, and as to forfeited land with those properly chargeable to it for the first year of nonentry.

All items certified to each circuit court shall be numbered consecutively, and all subsequent orders, entries, applications or proceedings under this article in respect to any item shall refer to its number and to the year of certification. All tracts, lots, or parcels sold to the state
as a unit may be treated by the auditor as a single item for purposes of certification. Subject to the provisions of this section, the auditor shall prescribe a form for the list and shall provide in such form adequate space to show the subsequent history and final disposition of each item certified.

The list shall be made in quadruplicate. The auditor shall keep the original and shall send one copy to the clerk of the circuit court, one to the clerk of the county court, and one to the deputy commissioner. The clerk of the circuit court and the clerk of the county court shall each bind his copy in a permanent book to be labeled "Report of State Commissioner of Forfeited and Delinquent Lands", and the clerk of the county court shall note the fact of the certification of each item on his record of delinquent lands. Such copies shall become permanent records, and shall be preserved as such in the offices of the auditor, the county clerk and the circuit clerk.

All forfeited or delinquent lands heretofore certified by the auditor to the circuit courts under the provisions
of former law may be redeemed at any time on or before
the thirtieth day of June, one thousand nine hundred
forty-seven, by paying to the sheriff upon order of the
deputy commissioner the amount required for redemp-
tion under the provisions of chapter one hundred forty,
acts of the Legislature, regular session, one thousand
nine hundred forty-five, and for this purpose and no
other such provisions in respect to redemption shall re-
main in full force and effect until the thirtieth day of June,
one thousand nine hundred forty-seven. Thereafter, the
deputy commissioner shall allow no further redemptions,
and all such delinquent land shall on the first day of July
become irredeemable and subject to transfer or sale under
the provisions of sections three and four, article thirteen
of the constitution. Thereafter the deputy commissioner
shall proceed as provided in this article to institute suits
for the sale of lands heretofore certified by the auditor
which are subject to sale under the provisions hereof.

Sec. 10. Suit for Sale of Lands. As soon as possible

after receipt of the certified list, the deputy commis-
sioner, shall institute in the circuit court of his county
a suit or suits in chancery, in the name of the State of West Virginia, for the sale for benefit of the school fund of all the lands included in the list. Except as hereinafter provided, not more than twenty-five items as certified by the auditor shall be included in one suit, and whenever the deputy commissioner deems it advisable a suit may be instituted in respect to any number less than twenty-five. In the case of forfeited or delinquent undivided interests in a single tract or lot, one suit may be brought for the sale of all such interests regardless of the number involved. In a suit for the sale of any escheated lands or of any waste and unappropriated lands, no lands of any other sort shall be included.

Sec. 11. *Parties Defendant; Right to Intervene.* In a suit for the sale of any forfeited or delinquent land, the deputy commissioner shall name as a party defendant the former owner in whose name the land was forfeited, or was returned delinquent and sold, as the case may be.

In all such cases and in the case of escheated land or waste and unappropriated lands, the deputy commissioner
shall make parties defendant all unknown claimants of any interest in such lands. He shall also name as a party defendant all other persons who, according to his knowledge however acquired, have or claim an interest in any of the land included in the suit.

Any person claiming an interest in any land included in a suit instituted under the provisions of the preceding section may intervene at any stage of the proceeding by filing his petition in the suit stating what interest he claims, and thereupon he shall become a party defendant with the same rights as if he had originally been named a defendant.

Sec. 12. Summons; Service; Publication. The summons in such suits shall be in form and effect as follows:

SUMMONS IN CHANCERY

STATE OF WEST VIRGINIA:

To the Sheriff of ______________ County, Greetings:

You are hereby commanded in the name of the state of West Virginia to notify ________________ _________________________________.

(Here list all defendants in the suit.)
that the state of West Virginia has instituted a suit for the sale, for benefit of the school fund, of the lands listed in a notice of the institution of such suit soon to be published in one or more newspapers in the county pursuant to an order of publication, and you are further commanded to summon each of the persons named above, if he be found in your bailiwick, to appear before the judge of the circuit court of ______ County, at rules to be held in the clerk's office of such court on the first Monday in ______ next, to answer the bill in chancery of the state of West Virginia, exhibited therein against him, and show cause, if any there be, why a decree should not be entered for the sale of such land or lands in respect to which he claims any interest, and have then and there this writ.

WITNESS: ______, Clerk of the circuit court of ______ County, at the courthouse thereof, on this the ______ day of ______, 19____, and in the year of the state.
The summons shall be served on the named defendants in the manner provided by law for the service of process in other chancery suits. For serving the summons the sheriff shall be paid the fee provided by law for service of process in other chancery suits, and the costs thereof shall be taxed to the state as part of its costs in the suit and paid as hereinafter provided.

The clerk of the circuit court shall at the same time that he issues such summons enter an order of publication, without the filing of any affidavit by the deputy commissioner as required in other cases. Such order of publication shall give the style of the suit, as, State of West Virginia v. A. B., et al.; shall state that the object of the suit is to obtain a decree of the circuit court ordering the sale for the benefit of the school fund of all lands included in the suit; shall list all such lands, setting forth as to each item its local description, the former owner in whose name the land was forfeited, or was returned delinquent and sold, or escheated, as the case may be,
and the names of such other defendants as may be interested therein; and shall require all the named defendants, and all unknown parties who are or may be interested in any of the lands included in the suit to appear within one month after the date of the first publication thereof and do what is necessary to protect their interests.

The order shall be published once a week for three successive weeks in two newspapers of opposite politics published in the county, if such there be; otherwise, this requirement shall be satisfied by such publication in any one newspaper published in the county, and if no newspaper is published in the county, or if none therein will publish the order at the legal rate or for the time required, then in such newspaper of general circulation in the county as the clerk of the court in which the cause is pending may direct. The costs of such publication shall be at the rate provided for in section thirty-four, article one, chapter fifty-nine of this code, shall be charged ratably to each item listed in the suit, and shall be taxed to the state as part of its costs in the suit and paid as hereinafter provided.
In view of the fact that the state has absolute title to all forfeited land, to all land sold to the state for non-payment of taxes and become irredeemable, to all escheated land, and to all waste and unappropriated land, and must under the constitution have such an absolute title before the land may be sold for the benefit of the school fund; and in view of the fact that the former owner of any such land, or any person claiming under him, has no further interest therein nor rights in respect thereto except such privilege of redemption as may be extended to him by the Legislature as an act of grace; and in view of the further fact that all parties known and unknown who may claim an interest in any of the lands included in the suit are given notice thereof by the order of publication provided for above; therefore, the Legislature deems it both expedient and necessary to provide that failure to name any such person as a defendant, or failure to serve the summons on any named defendant, shall in no wise affect the validity of any of the proceedings in the suit for the sale of the state's title to such land.
Sec. 13. _Averments and Prayer of Bill._—In all suits for the sale of lands as provided in this article, the bill shall, except as hereinafter provided, contain an averment that all land included in the suit is, as certified to the court by the auditor, subject to sale for the benefit of the school fund. The bill shall also contain a list of the lands included in the suit, setting forth as to each item certified the total amount due and indicating whether the land is forfeited, delinquent, escheated, or waste and unappropriated, its certification number, location and description, the name of the former owner, if any, and in the case of forfeited or delinquent land, the year of forfeiture or sale to the state. Whenever possible the bill shall state as to each item, by reference to the former owner’s source of title, that the particular land is the same land described, by reference or otherwise, in the deed or other writing dated ____________________________ and recorded on page_______, volume_______, of the records in the county clerk’s office. The bill shall also state that there may be unknown parties who have or claim an interest in the lands included in the suit and
shall in respect to such unknown parties pray that all right, title and interest of such of them as fail to appear and defend be forever foreclosed and held for nought.

If the deputy commissioner learns that any land included in the suit is not subject to sale, the bill shall state that fact and the reasons for the deputy commissioner's conclusion. In such case, the prayer of the bill shall be that the court enter an order dismissing the suit in respect to such land. In respect to all other land listed in the bill, the prayer shall be that the court enter a decree ordering the sale thereof for benefit of the school fund, as required by the constitution.

Sec. 14. Procedure. Except as otherwise specifically provided in this article, all suits instituted under the provisions thereof shall in all respects be commenced, proceeded in, heard and determined in like manner as other suits in chancery.

Sec. 15. Certified List Made Exhibit and Part of Bill. The list of lands certified to the circuit court by the auditor shall be considered to be an exhibit, and a part of the bill, in every suit for the sale of any lands included there-
5 in. Such list shall be prima facie evidence of everything required by section nine of this article to be stated concern-
7 ing each item, including the correctness of the description of any land as forfeited, delinquent,
9 escheated, or waste and unappropriated.

Sec. 16. *Separate Order Book to Be Kept by Clerk.*
2 All orders or decrees made by the court in respect to proceedings for the sale of lands under this article shall be entered by the clerk of the court in a separate chancery order books, to be labeled “Chancery Order Book for Sales of Lands for School Fund”. Every order shall specify the certification number of each item to which the order is applicable. The clerk of the court shall index the order book by the certification number of each item and by the name of the former owner.

Sec. 17. *Compensation of Deputy Commissioner; Court Costs.* As compensation for his services, the deputy commissioner shall be entitled to an attorney’s fee of ten dollars for each item included in the suit and in addition thereto a commission of ten per cent of all moneys paid for the redemption or purchase of any lands
included in the suit. Such compensation, together with a charge of one dollar payable to the clerk of the circuit court for each item included in the suit, shall be taxed to the state as part of its costs in the suit and shall be paid as hereinafter provided. Except as otherwise provided in this article, no other court costs shall be taxed.

Sec. 18. Application for Permission to Redeem.—The former owner of any forfeited or delinquent land, or any other person who was entitled to redeem such land under the provisions of section eight, article three of this chapter, may file his petition in such suit with the circuit court at any time before confirmation of sale thereof requesting permission to redeem such land to the extent that title thereto remains in the state. The court may, by proper decree, permit the petitioner to redeem the land upon payment to the sheriff of the total amount of taxes, interest and charges properly due or chargeable thereon on the date of redemption and all court costs taxable in respect thereto under the provisions of this article, which amount shall be fixed by the court in its order.

Upon payment being made, the court shall enter a
decree declaring the redemption of such land by the petitioner, so far only as the title thereto remains in the state, and dismissing the suit in respect thereto. If redemption was allowed after sale, the decree shall also direct the sheriff to return the purchase money to the purchaser. Such decree shall operate as a release of all the right title and interest of the state in and to such land, but shall in no wise affect or impair any right, title or interest which any other person may have therein.

Sec. 19. Application for Dismissal of Suit. Any person substantially interested may apply to the circuit court at any time before the sale for an order dismissing the suit for the sale of any land as to which he makes one or more of the following claims: (1) That all taxes due thereon were paid before sale to the state. (2) That the land was redeemed after sale to the state. (3) That the land has not escheated. (4) That the land has not been forfeited for nonentry. (5) That the land was sold to him at a former circuit court sale for the benefit of the school fund and has not thereafter been sold to the state for nonpayment of taxes nor forfeited
for nonentry. (6) That he has acquired title to the land by transfer under the provisions of section three, article thirteen of the constitution. The application shall state briefly the facts on which the claim is based. The deputy commissioner may also apply for such an order whenever on any of these grounds, or because the land is nonexistent or the subject of a duplicate assessment, he is satisfied that the land should not be sold.

Sec. 20. Procedure upon Application for Dismissal; Order of Reference. Whenever application is made by the deputy commissioner for an order dismissing the suit as to any lands, he shall state briefly the reasons for his application, and the court, if satisfied therewith, shall enter the order applied for. No order of reference shall be made in respect to applications by the deputy commissioner.

Whenever such an application is made by a person substantially interested, the court shall make a decree of reference as to the land involved, directing a commissioner in chancery to ascertain the facts and report to the court concerning the matter in dispute, unless the
court by reason of the fact that the right claimed by the
applicant is clearly established, or for some other reason,
is of the opinion that an order of reference need not be
made as to such land. The costs in connection with an
application by an interested party and those in connec-
tion with the reference to a commissioner in chancery,
if a reference is made, shall be taxed to the applicant.

Sec. 21. *Execution of Reference; Report.* Before
proceeding to discharge his duties under the order of
reference, the commissioner in chancery shall give at
least ten days' notice in writing to all parties of record
who have appeared in the suit and are interested in any
of the lands included in the reference, of the time and
place at which he will so proceed. Like notice shall be
given to the deputy commissioner.

As soon after the hearing as may be practicable, the
commissioner in chancery shall prepare and file his
report with the court, and may do so as to one or more of
the items included in the reference, without waiting to
complete his report as to all of them.

Whenever, on the basis of the report of the commis-
sioner in chancery, or otherwise, the court shall find that
the applicant has established the claim made by him in
respect to any land, the court shall enter an order dis-
missing the suit as to such land. If the ground for
entering the order was that the land was nonexistent or
the subject of a duplicate assessment, the order shall
also direct the assessor to drop the erroneous entry of
such lands from the land books.

Sec. 22. Decree of Sale. Whenever, in respect to
any land included in the suit, the court shall find as
alleged in the bill that the land is subject to sale for the
benefit of the school fund, it shall enter a decree ordering
that such land be sold by the deputy commissioner at
public auction to the highest bidder. In every such
decree the court shall fix the time and place of the sale.
The court may order the sale of any one or more of the
items included in the suit without waiting for the termi-
nation of the suit as to other items included therein. It
may also order that lands included in several suits be
sold at the same sale.

Sec. 23. Notice of Sale. In order to encourage
2 attendance and bidding at the sale, the deputy commis-
3 sioner shall, beginning at least fifteen days before the
day on which the court has ordered that any lands be
5 sold, publish once a week for two successive weeks a list
6 of all such lands in two newspapers of opposite politics,
7 if such there be in the county. At the head of the list
8 shall be a notice of the sale in form or effect as follows:
9 Notice is hereby given that, pursuant to the order of
10 the Circuit Court of________________________________County, the
11 following described tracts or lots of land, or undivided
12 interests therein, will unless sooner redeemed be sold
13 for cash to the highest bidder. Such sale will be held at
14 __________________________________________________________
15 (here insert place of sale fixed by the court)
16 beginning at ten o'clock in the morning on the__________
17 day of____________________, 19______.
18 The list shall set forth as to each item its quantity,
19 local description and, except in the case of waste and
20 unappropriated lands, the name of the former owner.
21 The cost of such publication, not to exceed twenty-five
22 cents per item for each insertion in each newspaper, shall
be taxed to the state as part of its costs in the suit and
shall be paid as hereinafter provided.

Sec. 24. *Sale by Deputy Commissioner; Receipt for
Purchase Price; Report to Circuit Court.* On the day
fixed by order of the court the deputy commissioner shall
sell, in the manner specified in the notice of sale, each
unredeemed item included in the published list of lands
to be sold. If the sale is not completed on that day, it
shall be continued from day to day until all the land has
been offered for sale. If in respect to any land no bid is
made, the deputy commissioner shall report that fact to
the court, and the court may order that such land be
sold at a subsequent sale.

For the purpose of receiving the proceeds of the sale,
it shall be the duty of the sheriff or one of his deputies to
attend all sales conducted by the deputy commissioner in
his county. The sheriff or deputy shall issue to the
purchaser a receipt for the purchase money. The
auditor may prescribe the form of the receipt.

The deputy commissioner shall prepare a report for
the circuit court which shall show what was done with
respect to all lands ordered to be sold. The report shall state as to each item whether it was redeemed before sale or was sold, and the name of the purchaser and the amount of his bid. The report shall, within ten days after the sale, be filed with the clerk of the circuit court.

Sec. 25. Return of Purchase Money. Whenever, after sale and before confirmation thereof, it is discovered that the land sold was nonexistent, or that it had been the subject of a duplicate or improper assessment, or was transferred to others under the provisions of section three, article thirteen of the constitution, the purchaser shall be entitled to a return of the purchase money. Upon request of a purchaser so entitled, it shall be the duty of the deputy commissioner to apply to the circuit court for an order directing the sheriff to return the purchase money. If satisfied that the application is proper, the court shall enter the order applied for, but no costs shall be taxed in connection with such an application. If the ground for entering the order was that the land was nonexistent or the subject of a duplicate assessment, the order shall also direct the assessor to drop the
erroneous entry of such lands from the land books.

Sec. 26. **Co-owner Free to Purchase at Sale.** Any co-owner, except a coparcener, in the absence of satisfactory proof of a fiduciary relationship, shall be entitled to purchase at the sale for his own account the interest of any, or all, of his co-owners in any real estate, without being required to hold such interest or interests under a constructive trust. There shall be a prima facie presumption against the existence of any such constructive trust.

Sec. 27. **Purchase by Former Owner or by Deputy Commissioner and Other Officers Prohibited.** It shall be illegal for a former owner, in whose name any real estate was forfeited or was sold to the state, his heirs or assigns, or his or their agent, to purchase such real estate at the sale. No deputy commissioner, sheriff, clerk of the county or circuit court, assessor, nor deputy of either shall directly or indirectly become the purchaser, or be interested in the purchase of any real estate at the sale. Any such person or officer so purchasing shall for each offense forfeit one hundred dollars, to be collected as
other forfeitures are collected. The sale of any real
estate to one of the persons or officers named in this sec-
tion shall be voidable at the instance of any person hav-
ing the right to redeem until such real estate reaches the
hands of a bona fide purchaser.

Sec. 28. Right of Former Owner to Surplus Proceeds.

If upon the sale of any forfeited or delinquent lands a
surplus is realized over and above the total amount due
on such land including all court costs in the suit in which
such land was sold, the sheriff shall pay such surplus to
the general receiver of the circuit court. The former
owner of such land, his heirs or assigns, shall be entitled
to the surplus upon application to the circuit court, if
application is made within two years after the sale. If
no application is made within two years, the general
receiver shall pay such surplus to the auditor for credit
to the general school fund.

Sec. 29. Right of Creditor of Former Owner of
Escheated Land. Any surplus proceeds arising from the
sale of escheated land, after payment of all court costs in
the suit in which such land was sold, shall be paid by the
sheriff to the general receiver of the circuit court. Upon
application to the court within a year after the sale, such
surplus may be applied to the satisfaction of the claims
of creditors of the decedent who had a lien on the land at
the time of his death, or who, being general creditors,
have properly proved their claims against his estate and
have been unable to obtain payment out of the personalty.
In the disposition of any such surplus, due preference
shall be given to lien creditors over general creditors.
Any part of such surplus thereafter remaining shall be
paid to the auditor by the general receiver for credit to
the general school fund.

Sec. 30. Application to Set Aside Sale. Any person
titled under the provisions of section nineteen of this
article to apply for an order dismissing the suit for the
sale of any land, but who did not learn of the suit in time
to protect himself by making such application, may, at
any time after the sale and before confirmation thereof,
apply to the court for an order setting aside the sale.
Notice in writing of such application shall be given to
the purchaser, his heirs or assigns. The notice shall
state the facts which are the basis of the claimed right to have the sale set aside, shall require the person served to appear before the circuit court on a day to be named in the notice and protect whatever rights were acquired at the sale, and shall be served at least ten days before the day on which it is returnable. Until a decision on such application has been made, the sale may not be confirmed.

If the decision be in favor of the claimant, the court shall enter an order setting aside the sale, and directing the sheriff to return the purchase money to the purchaser, his heirs or assigns.

Sec. 31. Confirmation of Sale.—As soon as possible after the report of the sale has been filed with the clerk of the circuit court, the deputy commissioner shall apply to the court for an order confirming the sale of each item sold. If satisfied that the purchase price was as high as might reasonably be expected, the court shall enter an order confirming the sale and directing the deputy commissioner to execute and deliver to the purchaser, or to his heirs or assigns, a deed as provided in
the following section. If, however, the court shall be of the opinion that the purchase price was too low, it may refuse to confirm the sale and shall enter an order directing the deputy commissioner to sell the land again at his next sale and directing the sheriff to return the purchase money to the purchaser, his heirs or assigns. After the court has acted, the clerk shall promptly mark on his certified list whether the sale was confirmed or disaffirmed, giving the date of the order, and if the sale was confirmed, the date of the deed to the purchaser.

Sec. 32. Deed to Purchaser; Record. Whenever ordered to do so as provided in the preceding section, the deputy commissioner shall make and deliver to the person entitled thereto a deed in form or effect as follows:

This deed made this____ day of______________________, 19____ by and between__________________________ , deputy commissioner of forfeited and delinquent lands for __________________________ County, West Virginia, acting for and on behalf of the State of West Virginia, grantor, and __________________________ purchaser, (or_____________________,
Whereas, In pursuance of and in accordance with the statutes in such case made and provided, the above named deputy commissioner did, by order of the Circuit Court of __________ County, in the month of __________, in the year 19______, sell the real estate, hereinafter mentioned and described, for the benefit of the school fund, and ____________________________ , (here insert name of purchaser) for the sum of $__________________________, that being the amount of purchase money paid, did become the purchaser of such real estate (or of an undivided ___________________________ interest in such real estate) which was sold to the state for nonpayment of taxes in the name of ________________________________; (or which was forfeited to the state for nonentry in the name of __________________________________________________________________; or which escheated to the state in the name of ________________; or which was waste and unappropriated land belonging to the state;) and

Whereas, By an order entered on the __________ day
of ____________, 19___, in the case of State of West Virginia v. (A. B., et al.), the Circuit Court of ____________ County has confirmed the sale and has ordered that this deed be executed.

Now, therefore, the grantor, for and in consideration of the premises and in pursuance of the statute, doth grant and convey unto ______________, grantee, his heirs and assigns forever, the real estate so purchased, situate in the county of ____________, bounded and described as follows: ________________________________

Witness the following signature:

__________________________________________
Deputy Commissioner of Forfeited and Delinquent Lands for ____________ County

After execution and acknowledgment of the deed, the deputy commissioner shall ascertain from the clerk of the county court the total amount of the transfer fee, the fee for recording the deed, and if the grantee was an assignee of the purchaser, the fee for recording the assignment, and shall notify the grantee to pay such
amount to the clerk of the county court. Upon such payment and upon payment by the grantee to the deputy commissioner of a fee of five dollars as his compensation for preparing and executing the deed, the deputy commissioner shall have the deed and the assignment, if any, recorded by the clerk of the county court before delivery of the deed to the grantee. The purchaser shall have the right to examine the deed before it is recorded.

The clerk of the county court shall index the deed in the grantor's index under the name of the former owner mentioned in the deed as well as under the name "State of West Virginia."

Sec. 33. Title Acquired; Effect of Irregularity.

Whenever, under the provisions of this article, a purchaser, his heirs or assigns, shall have obtained a deed for any real estate from the deputy commissioner, he or they shall thereby acquire all such right, title and interest in and to the real estate as was, at the time of the execution and delivery of the deed, vested in or held by the state or by any person who was entitled to redeem, unless such person is one who, being required by law to
have his interest separately assessed and taxed, has done
so and has paid all the taxes due thereon, or unless the
rights of such person are expressly saved by the provi-
sions of sections twenty-seven or thirty-four of this
article. The deed shall be conclusive evidence of the
acquisition of such title. The title so acquired shall
relate back to the date of the sale.

Except as otherwise provided in this section, no irregu-
larity, error or mistake in respect to any step in the
procedure leading up to and including confirmation of the
sale or delivery of the deed shall invalidate the title
thereby acquired.

Sec. 34. Redemption by Persons Under Disability.

In addition to and notwithstanding any other provisions
of this article, any infant or insane person, the former
owner of any forfeited or delinquent land which during
such disability was sold as provided in this article, may
redeem such land from the purchaser, his heirs or
assigns, at any time before the expiration of one year
after removal of the disability but in no event more than
twenty years after the sale was confirmed, by paying
such an amount as is required for redemption under the provisions of section thirty-five, article three of this chapter.

As an alternative to the right of redemption provided by this section, such infant or insane person may elect to redeem forfeited land as provided in section six, article thirteen of the constitution.

Sec. 35. Annual Report of Deputy Commissioner to Auditor. In December of each year the deputy commissioner shall prepare a report, on forms to be furnished by the auditor, of all lands previously certified to the circuit court of his county, which have been redeemed, sold, held not liable for sale, or otherwise finally disposed of since his last annual report. The report shall as to each item show the year it was certified and its certification number.

Such report shall be prepared in quintuplet. On or before the last day of December the original shall be sent to the auditor, one copy to the clerk of the county court, and one copy to the clerk of the circuit court, each of whom shall make the necessary notations on his certified
list. The fourth copy shall be sent to the assessor, who shall make the necessary changes in his land books, and the fifth copy shall be retained by the deputy commissioner. For failure to make the report required by this section, the deputy commissioner shall forfeit one hundred dollars.

Sec. 36. Sheriff to Keep Proceeds in Separate Accounts; Disposition. The sheriff shall keep in a separate fund the proceeds of all redemptions and sales paid to him under the provisions of this article, and shall keep a separate account of the proceeds of the sales and redemptions of all lands included in each suit. Out of the total proceeds of each suit he shall in the order of priority stated below credit the following amounts, for payment as hereinafter provided: (1) To the clerk of the circuit court, such part of the court costs taxed in the suit as represents the publication charges incurred under the provisions of sections twelve and twenty-three of this article, and the charge of one dollar per item provided for in section seventeen of this article. (2) To the sheriff, such part of the court costs taxed in the
suit as represents the fees due him under the provisions of section twelve of this article. (3) To the deputy commissioner, such part of the court costs as represents compensation due him under the provisions of section seventeen of this article. (4) To the auditor, such part as represents any charges which were paid by or which are payable to him. (5) To the general county fund, such part as represents costs paid out of such fund for publishing the sheriff's delinquent and sales list. (6) To the auditor for credit to the general school fund, such part as represents all taxes and interest chargeable in respect to any forfeited lands, and all surplus proceeds of the sale of any waste and unappropriated lands.

The balance, if any, of the proceeds of the lands included in each suit shall be prorated among the various taxing units on the basis of the total amount of taxes due them in respect to the lands that were sold or redeemed. The amounts so determined shall be credited as follows, for payment as hereinafter provided: (1) To the auditor, such part as represents state taxes and interest.
(2) To the fund kept by the sheriff for each local taxing unit, such part as represents taxes and interest payable to such unit.

All amounts which under the provisions of this section were so credited by the sheriff to the clerk of the circuit court, to the sheriff, and to the deputy commissioner shall be paid to them quarterly; those credited to the auditor shall be paid to him semiannually; and those credited to the various local taxing units shall be transferred semiannually by the sheriff to the fund kept by him for each such taxing unit.

The tax commissioner, in cooperation with the land department in the auditor's office, shall prescribe the form of the records to be kept by the sheriff for the purposes of this section, and the method to be used by him in making the necessary pro rata distributions.

Sec. 37. Disposition of Pending Suits; Former Sales Confirmed. All suits now pending in any circuit court for the sale of lands for the benefit of the school fund shall be and are hereby discontinued and dismissed. Any circuit court in which such a suit is pending shall
make all necessary orders for such discontinuance and
dismissal.

All sales, conveyances, and orders or decrees adjudicating title made in any former circuit court suits for
the sale of lands for the benefit of the school fund are
hereby confirmed. Whatever right, title or interest the
state had in any such lands shall be deemed to have
vested in the purchaser, grantee or transferee thereof.
Notwithstanding any irregularity, error or mistake in
such suit or in the tax enforcement proceedings prior
thereto, such title shall not hereafter be subject to
attack. This paragraph is enacted in furtherance of
the purpose and policy set forth in section one, article
three of this chapter.

Sec. 38. Liability of Officer Failing to Perform Duty;
Penalty. If the deputy commissioner or any other
officer mentioned in this article shall refuse to perform
any duty required of him, he shall forfeit not less than
twenty-five nor more than one hundred dollars for each
such failure or refusal, unless a different penalty is
imposed by the provisions of this article.
Sec. 39. *Release of Taxes and Interest.* In view of
the great uncertainty and confusion existing in the
auditor's records of delinquent lands for the years prior
to one thousand nine hundred thirty-six, due to the insuffi-
cient and inadequate reports by former school land
commissioners and the doubtful status of delinquent or
forfeited undivided interests, the Legislature finds that
it will be impossible to provide a speedy method for dis-
posing of delinquent and forfeited lands and for convey-
ing to the purchasers of such lands a secure title, unless
some action is taken to prevent the certification and sale
of lands which were formerly redeemed from or were
sold by such commissioners, but which appear on the
auditor's records, as unsold and unredeemed. Where-
fore it is the purpose and intent of the Legislature to
release all taxes, interest and charges that may be due
on any real estate in this state for the assessment year
one thousand nine hundred thirty-five and for all years
prior thereto, and all such taxes, interest and charges
are hereby declared to be fully paid. If all the taxes due
on any land for the assessment year one thousand nine
22 hundred thirty-six and for all years subsequent thereto
23 have been paid, all title to any such land theretofore
24 acquired by the state shall be and is hereby released.
25 The auditor, in computing the amount necessary for
26 redemption as provided in section eight, article three of
27 this chapter, and in preparing the list of lands for certi-
28 fication to the circuit court as provided in section nine of
29 this article, shall use the assessment year one thousand
30 nine hundred thirty-six as the initial year for which
31 taxes are to be charged. He shall specify the year in
32 which the state acquired title, but if such year was prior
33 to one thousand nine hundred thirty-six, shall charge no
34 taxes for any year prior thereto, nor shall he charge any
35 interest, fees, penalties or costs for any years prior to
36 the year one thousand nine hundred thirty-six, but all
37 interest, fees, penalties and costs provided by law shall
38 be charged for all years subsequent to the year one
39 thousand nine hundred thirty-five.
40 Nothing contained in this section shall be held or
41 construed to affect in any way the right of a person
42 claiming title to any land by transfer, as provided in
section three, article thirteen of the constitution.

Sec. 40. *Separability.*—If part of this article is declared unconstitutional, such declaration shall in no way affect any other part thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest S. McCann  
Chairman Senate Committee

R. S. Matthews  
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Myers  
Clerk of the Senate

Lawrence  
Clerk of the House of Delegates

Arnold M. Vikers  
President of the Senate

John E. Amos  
Speaker House of Delegates

The within approved this the 13th day of March, 1947.

Governor.

Filed in the Office of the Secretary of State of West Virginia  
WM. S. O'Brien,  
Secretary of State  
MAR 13 1947