

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 333

(By Mr. Vickers, Mr. President)



PASSED March 8, 1947

In Effect from Passage



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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:

Article 3. Sale of Land for Taxes.

Section 8. *Redemption from Purchase by or Forfeiture*

2 *ture to the State; Lands Made Irredeemable.* The former
3 owner of any real estate so purchased by the state, or
4 any other person who was entitled to pay the taxes
5 thereon, may redeem such real estate from the auditor
6 at any time within eighteen months after the date of such
7 purchase. Thereafter such real estate shall be irredeem-
8 able and subject to transfer or sale under the provisions
9 of sections three and four, article thirteen of the consti-
10 tution.

11 The former owner of any real estate forfeited to the
12 state for nonentry, or any other person who was entitled
13 to pay the taxes thereon, may redeem such real estate
14 from the auditor at any time prior to its certification by
15 the auditor for sale for the benefit of the school fund as
16 provided in article four of this chapter, but such redemp-
17 tion shall be subject to any prior transfer under the pro-
18 visions of section three, article thirteen of the constitu-
19 tion.

20 In order to redeem the person seeking redemption must
21 pay to the auditor such of the following amounts as may
22 be due: (1) The taxes, interest and charges for which

23 the real estate was sold, with interest at the rate of
24 twelve per cent per annum from the date of sale. (2)
25 All taxes assessed thereon for the year in which the sale
26 occurred, with interest at the rate of twelve per cent per
27 annum from the date on which they became delinquent,
28 except when such taxes are currently due and payable to
29 the sheriff. (3) All taxes except those for the current
30 year which would have been assessed thereon since the
31 sale had the sale not occurred, or which, in the case of
32 land forfeited for nonentry, would have been assessed
33 thereon had the land been properly entered, with interest
34 at the rate of twelve per cent per annum from the date
35 on which they would have become delinquent. (4) The
36 fee provided by the following section for the issuance by
37 the auditor of the certificate of redemption.

38 In computing the amount due under number three on
39 real estate purchased by the state, the auditor shall use
40 as the basis for computation the classification and valua-
41 tion placed thereon by the assessor for each year since
42 the sale. If such valuation and classification have not
43 been made, he shall use the last valuation and classifica-

44 tion appearing on the property books. In computing
45 the amount due under number three on real estate for-
46 feited for nonentry, the auditor shall use as the basis for
47 computation such classification and valuation as may, at
48 the request of the auditor or the person redeeming, be
49 certified to the auditor by the assessor as the classifica-
50 tion and valuation which in his opinion would be proper
51 for each year of nonentry.

52 In the case of partial redemption, he must pay only
53 that proportion of such taxes as are chargeable to the
54 part or interest redeemed, but must pay all of the other
55 charges and the fee required for redemption of the
56 whole. However, redemption of an undivided interest
57 included in a group assessment or of part of a tract or
58 lot the whole of which was assessed in the name of a
59 person other than the owner shall not be permitted until
60 the applicable provisions of section nine or of section
61 ten, article one of this chapter, have been complied with,
62 except that instead of presenting the assessor's certificate
63 to the sheriff as therein required, the person redeeming
64 shall present it to the auditor, who, after making the

65 necessary changes in the land book, and in the record of
66 delinquent lands kept in his office, shall compute the
67 taxes due on the part or interest redeemed.

Article 4. Sale of Lands for School Fund.

Sec. 1. *Declaration of Legislative Purpose.* In fur-
2 therance of the policy declared in section one, article
3 three of this chapter, it is the intent and purpose of the
4 Legislature to establish a judicial proceeding for the
5 sale of land for the school fund, which will be as expe-
6 ditious, inexpensive and informal as possible without
7 violating any claim which may fairly and properly be
8 made on behalf of the former owner. The procedure
9 provided for in this article is designed to convey to the
10 purchaser not an original but merely a derivative title,
11 transferring only such interest in the land as may at the
12 time of the sale be vested in the state under its constitu-
13 tion and laws, or otherwise.

Sec. 2. *Forfeiture of Lands for Nonentry.* It is the
2 duty of the owner of land to have his land entered for
3 taxation on the land books of the appropriate county,
4 have himself charged with the taxes due thereon, and

5 pay the same. Land which for any five successive years
6 shall not have been so entered and charged shall by opera-
7 tion of law, without any proceedings therefor, be for-
8 feited to the state as provided in section six, article
9 thirteen of the constitution, and shall thereafter be sub-
10 ject to transfer or sale under the provisions of sections
11 three and four of such article.

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

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

Sec. 4. *State Commissioner of Forfeited and Delin-*
2 *quent Lands.* The state auditor shall ex officio be state
3 commissioner of forfeited and delinquent lands. The
4 term "auditor", whenever used in this chapter in connec-
5 tion with the subject of forfeited, delinquent, escheated,
6 or waste and unappropriated lands, shall be construed to
7 refer to the auditor in his capacity as state commissioner
8 of forfeited and delinquent lands.

9 The auditor is empowered, and it shall be his duty,
10 through the land department in his office, to administer
11 and carry into execution the laws with reference to such
12 lands. The auditor on behalf of the state shall have
13 power to hold and manage such lands, and to exercise all
14 other powers incident to the general ownership of land.

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

15 Appointments shall be limited to persons duly licensed
16 to practice law in the state, and so far as possible shall be

17 made for each county from among attorneys residing and
18 practicing law therein. If, however, there is in the
19 opinion of the auditor no qualified lawyer in a county
20 available for appointment, he shall appoint a member of
21 the bar of another county, preferably in the same judicial
22 circuit.

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

32 The deputy commissioner shall be subject to the orders
33 and control of the auditor, shall be accountable to him,
34 and shall serve as his local agent within the county. It
35 shall be his duty to do whatever is required of him by
36 the auditor or by the provisions of this article. The
37 deputy commissioner before entering upon his duties

38 shall give a bond, with satisfactory corporate surety,
39 conditioned upon the faithful performance of his duties
40 and the payment of any forfeitures incurred. The
41 penalty of such bond shall be not less than two thousand
42 dollars nor more than ten thousand dollars, as the auditor
43 may direct. The premium therefor, shall be paid by the
44 auditor out of the operating fund for the land depart-
45 ment in his office.

Sec. 6. *Land Record in Auditor's Office.* The auditor
2 shall prepare and keep in his office a permanent record of
3 all forfeited, delinquent, escheated, and waste and un-
4 appropriated lands. The record shall as to every tract
5 or lot listed set forth the information available as to
6 quantity, local description, and, except in the case of
7 waste and unappropriated lands, the name of the former
8 owner and the respective dates of nonentry and forfei-
9 ture, or delinquency and sale to the state, or escheat, as
10 the case may be. The record shall be prima facie evi-
11 dence of all matters required by this section to be set
12 forth therein, including the correctness of the description
13 of lands as forfeited, delinquent, escheated, or waste and

14 unappropriated.

Sec. 7. *Operating Fund for Land Department in*
2 *Auditor's Office.* The auditor shall set up a special
3 operating fund for the land department in his office.
4 He shall pay into such fund all redemption fees, all
5 publication or other charges collected by him, if such
6 charges were paid by or were payable to him, and all
7 payments made to him by sheriffs under the provisions
8 of section thirty-six of this article and by general
9 receivers of the circuit court under the provisions of
10 sections twenty-eight and twenty-nine of this article,
11 except such part thereof as represents state taxes and
12 interest and the surplus proceeds of the sale of any
13 forfeited, escheated, or waste and unappropriated lands.
14 All payments so excepted shall be credited by the auditor
15 to the general school fund or other proper state fund.

16 The operating fund shall be used by the auditor to pay
17 any balances due to deputy commissioners for services
18 rendered under the provisions of this article, to pay fees
19 due surveyors under the provisions of the following sec-
20 tion, and to pay for the operation and maintenance of

21 the land department in his office. The surplus over and
22 above the amount of twenty-five thousand dollars, re-
23 maining in the fund at the end of any fiscal year, shall be
24 paid by the auditor into the general school fund.

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

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

8 Whenever the deputy commissioner learns of the exist-
9 ence of any waste and unappropriated lands within his
10 county, except lands lying under the bed of a navigable
11 stream, he shall direct the county surveyor, or some
12 other competent surveyor, to make a survey, plat and
13 report thereof, listing all discovered claims of title there-
14 to. The deputy commissioner shall promptly transmit
15 to the auditor a copy of the survey, plat and report. For
16 his services in making the survey, plat and report, the
17 surveyor shall be entitled to a fee of twenty-five dollars,

18 and such additional compensation as the deputy commis-
19 sioner may recommend and the auditor approve, to be
20 paid out of the operating fund for the land department
21 in the auditor's office.

Sec. 9. *Auditor to Certify List of Lands to Be Sold;*
2 *Lands Heretofore Certified Made Irredeemable and Sub-*
3 *ject to Transfer or Sale.* On or after the first day of
4 July and on or before the first day of December of each
5 year, the auditor shall certify to the circuit court of each
6 county a list of all lands in the county subject to sale
7 under this article, except that forfeited, escheated, or
8 waste and unappropriated lands may be certified by the
9 auditor at any time after they are brought to his atten-
10 tion. He shall note the fact of certification on the land
11 record in his office. Upon completion of a list for certi-
12 fication, a charge of one dollar shall be added to the
13 taxes, interest and charges already due on each item
14 listed, to cover the costs incurred by the auditor in the
15 preparation of the list, and in the event of sale or redemp-
16 tion, the same shall be collected and paid into the ope-
17 rating fund provided for in this article.

18 Escheated lands and waste and unappropriated lands
19 shall be listed separately. The list shall be arranged by
20 districts and, except in the case of waste and unappro-
21 priated lands, alphabetically by name of the former
22 owner. The list shall state as to each item listed the
23 information required by section six of this article to be
24 set forth in the land record in the auditor's office, and
25 shall specify as to each tract listed as forfeited or
26 delinquent the amount of taxes and interest due or
27 chargeable thereon on the date of certification, the publi-
28 cation and other charges due, with interest, and the total
29 currently due. The specification of taxes due or charge-
30 able shall as to delinquent land commence with those for
31 nonpayment of which it was sold, and as to forfeited land
32 with those properly chargeable to it for the first year of
33 nonentry.

34 All items certified to each circuit court shall be num-
35 bered consecutively, and all subsequent orders, entries,
36 applications or proceedings under this article in respect
37 to any item shall refer to its number and to the year of
38 certification. All tracts, lots, or parcels sold to the state

39 as a unit may be treated by the auditor as a single item
40 for purposes of certification. Subject to the provisions
41 of this section, the auditor shall prescribe a form for the
42 list and shall provide in such form adequate space to
43 show the subsequent history and final disposition of each
44 item certified.

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

58 All forfeited or delinquent lands heretofore certified
59 by the auditor to the circuit courts under the provisions

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

Sec. 10. *Suit for Sale of Lands.* As soon as possible
2 after receipt of the certified list, the deputy commis-
3 sioner, shall institute in the circuit court of his county

4 a suit or suits in chancery, in the name of the State of
5 West Virginia, for the sale for benefit of the school fund
6 of all the lands included in the list. Except as herein-
7 after provided, not more than twenty-five items as certi-
8 fied by the auditor shall be included in one suit, and
9 whenever the deputy commissioner deems it advisable a
10 suit may be instituted in respect to any number less than
11 twenty-five. In the case of forfeited or delinquent un-
12 divided interests in a single tract or lot, one suit may be
13 brought for the sale of all such interests regardless of
14 the number involved. In a suit for the sale of any
15 escheated lands or of any waste and unappropriated
16 lands, no lands of any other sort shall be included.

Sec. 11. *Parties Defendant; Right to Intervene.* In

2 a suit for the sale of any forfeited or delinquent land, the
3 deputy commissioner shall name as a party defendant
4 the former owner in whose name the land was forfeited,
5 or was returned delinquent and sold, as the case may
6 be.

7 In all such cases and in the case of escheated land or
8 waste and unappropriated lands, the deputy commissioner

10 that the
 11 state of West Virginia has instituted a suit for the sale,
 12 for benefit of the school fund, of the lands listed in a
 13 notice of the institution of such suit soon to be published
 14 in one or more newspapers in the county pursuant to
 15 an order of publication, and you are further commanded
 16 to summon each of the persons named above, if he be
 17 found in your bailiwick, to appear before the judge of
 18 the circuit court of.....County, at rules to
 19 be held in the clerk's office of such court on the first Mon-
 20 day in.....next, to answer the bill in
 21 chancery of the state of West Virginia, exhibited therein
 22 against him, and show cause, if any there be, why a
 23 decree should not be entered for the sale of such land or
 24 lands in respect to which he claims any interest, and have
 25 then and there this writ.

26 WITNESS:, Clerk of the
 27 circuit court of.....County, at the
 28 courthouse thereof, on this the day of
 29, 19, and in the
 30 year of the state.

31 _____, Clerk

32 By _____, Deputy.

33 The summons shall be served on the named defendants
34 in the manner provided by law for the service of process
35 in other chancery suits. For serving the summons the
36 sheriff shall be paid the fee provided by law for service
37 of process in other chancery suits, and the costs thereof
38 shall be taxed to the state as part of its costs in the suit
39 and paid as hereinafter provided.

40 The clerk of the circuit court shall at the same time
41 that he issues such summons enter an order of publica-
42 tion, without the filing of any affidavit by the deputy
43 commissioner as required in other cases. Such order of
44 publication shall give the style of the suit, as, State of
45 West Virginia v. A. B., *et al.*; shall state that the object
46 of the suit is to obtain a decree of the circuit court order-
47 ing the sale for the benefit of the school fund of all lands
48 included in the suit; shall list all such lands, setting forth
49 as to each item its local description, the former owner in
50 whose name the land was forfeited, or was returned
51 delinquent and sold, or escheated, as the case may be,

52 and the names of such other defendants as may be inter-
53 ested therein; and shall require all the named defendants,
54 and all unknown parties who are or may be interested
55 in any of the lands included in the suit to appear within
56 one month after the date of the first publication thereof
57 and do what is necessary to protect their interests.

58 The order shall be published once a week for three
59 successive weeks in two newspapers of opposite politics
60 published in the county, if such there be; otherwise, this
61 requirement shall be satisfied by such publication in any
62 one newspaper published in the county, and if no news-
63 paper is published in the county, or if none therein will
64 publish the order at the legal rate or for the time re-
65 quired, then in such newspaper of general circulation in
66 the county as the clerk of the court in which the cause is
67 pending may direct. The costs of such publication shall be
68 at the rate provided for in section thirty-four, article one,
69 chapter fifty-nine of this code, shall be charged ratably to
70 each item listed in the suit, and shall be taxed to the state
71 as part of its costs in the suit and paid as hereinafter
72 provided.

73 In view of the fact that the state has absolute title to
74 all forfeited land, to all land sold to the state for non-
75 payment of taxes and become irredeemable, to all
76 escheated land, and to all waste and unappropriated land,
77 and must under the constitution have such an absolute
78 title before the land may be sold for the benefit of the
79 school fund; and in view of the fact that the former
80 owner of any such land, or any person claiming under
81 him, has no further interest therein nor rights in respect
82 thereto except such privilege of redemption as may be
83 extended to him by the Legislature as an act of grace;
84 and in view of the further fact that all parties known
85 and unknown who may claim an interest in any of the
86 lands included in the suit are given notice thereof by the
87 order of publication provided for above; therefore, the
88 Legislature deems it both expedient and necessary to
89 provide that failure to name any such person as a defend-
90 ant, or failure to serve the summons on any named de-
91 fendant, shall in no wise affect the validity of any of the
92 proceedings in the suit for the sale of the state's title to
93 such land.

Sec. 13. *Averments and Prayer of Bill.*—In all suits for
2 the sale of lands as provided in this article, the bill shall,
3 except as hereinafter provided, contain an averment that
4 all land included in the suit is, as certified to the court by
5 the auditor, subject to sale for the benefit of the school
6 fund. The bill shall also contain a list of the lands in-
7 cluded in the suit, setting forth as to each item certified
8 the total amount due and indicating whether the land is
9 forfeited, delinquent, escheated, or waste and unappro-
10 priated, its certification number, location and descrip-
11 tion, the name of the former owner, if any, and in the
12 case of forfeited or delinquent land, the year of forfei-
13 ture or sale to the state. Whenever possible the bill
14 shall state as to each item, by reference to the former
15 owner's source of title, that the particular land is the
16 same land described, by reference or otherwise, in the
17 deed or other writing dated.....,
18 and recorded on page....., volume....., of the
19 records in the county clerk's office. The bill shall also
20 state that there may be unknown parties who have or
21 claim an interest in the lands included in the suit and

22 shall in respect to such unknown parties pray that all
23 right, title and interest of such of them as fail to appear
24 and defend be forever foreclosed and held for nought.

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

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

Sec. 15. *Certified List Made Exhibit and Part of Bill.*
2 The list of lands certified to the circuit court by the audi-
3 tor shall be considered to be an exhibit, and a part of the
4 bill, in every suit for the sale of any lands included there-

5 in. Such list shall be prima facie evidence of everything
6 required by section nine of this article to be stated con-
7 cerning each item, including the correctness of the
8 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
3 proceedings for the sale of lands under this article shall
4 be entered by the clerk of the court in a separate
5 chancery order books, to be labeled "Chancery Order
6 Book for Sales of Lands for School Fund". Every order
7 shall specify the certification number of each item to
8 which the order is applicable. The clerk of the court
9 shall index the order book by the certification number of
10 each item and by the name of the former owner.

Sec. 17. *Compensation of Deputy Commissioner;*

2 *Court Costs.* As compensation for his services, the
3 deputy commissioner shall be entitled to an attorney's
4 fee of ten dollars for each item included in the suit and
5 in addition thereto a commission of ten per cent of all
6 moneys paid for the redemption or purchase of any lands

7 included in the suit. Such compensation, together with
8 a charge of one dollar payable to the clerk of the circuit
9 court for each item included in the suit, shall be taxed to
10 the state as part of its costs in the suit and shall be paid
11 as hereinafter provided. Except as otherwise provided
12 in this article, no other court costs shall be taxed.

Sec. 18. *Application for Permission to Redeem.*—The
2 former owner of any forfeited or delinquent land, or any
3 other person who was entitled to redeem such land under
4 the provisions of section eight, article three of this
5 chapter, may file his petition in such suit with the circuit
6 court at any time before confirmation of sale thereof re-
7 questing permission to redeem such land to the extent
8 that title thereto remains in the state. The court may, by
9 proper decree, permit the petitioner to redeem the land
10 upon payment to the sheriff of the total amount of taxes,
11 interest and charges properly due or chargeable thereon
12 on the date of redemption and all court costs taxable in
13 respect thereto under the provisions of this article, which
14 amount shall be fixed by the court in its order.
15 Upon payment being made, the court shall enter a

16 decree declaring the redemption of such land by the
17 petitioner, so far only as the title thereto remains in the
18 state, and dismissing the suit in respect thereto. If
19 redemption was allowed after sale, the decree shall also
20 direct the sheriff to return the purchase money to the
21 purchaser. Such decree shall operate as a release of all
22 the right title and interest of the state in and to such
23 land, but shall in no wise affect or impair any right, title
24 or interest which any other person may have therein.

Sec. 19. *Application for Dismissal of Suit.* Any
2 person substantially interested may apply to the circuit
3 court at any time before the sale for an order dismissing
4 the suit for the sale of any land as to which he makes one
5 or more of the following claims: (1) That all taxes
6 due thereon were paid before sale to the state. (2)
7 That the land was redeemed after sale to the state. (3)
8 That the land has not escheated. (4) That the land
9 has not been forfeited for nonentry. (5) That the
10 land was sold to him at a former circuit court sale for the
11 benefit of the school fund and has not thereafter been
12 sold to the state for nonpayment of taxes nor forfeited

13 for nonentry. (6) That he has acquired title to the
14 land by transfer under the provisions of section three,
15 article thirteen of the constitution. The application
16 shall state briefly the facts on which the claim is based.
17 The deputy commissioner may also apply for such an
18 order whenever on any of these grounds, or because the
19 land is nonexistent or the subject of a duplicate assess-
20 ment, he is satisfied that the land should not be sold.

Sec. 20. *Procedure upon Application for Dismissal;*

2 *Order of Reference.* Whenever application is made by
3 the deputy commissioner for an order dismissing the suit
4 as to any lands, he shall state briefly the reasons for his
5 application, and the court, if satisfied therewith, shall
6 enter the order applied for. No order of reference shall
7 be made in respect to applications by the deputy com-
8 missioner.

9 Whenever such an application is made by a person
10 substantially interested, the court shall make a decree of
11 reference as to the land involved, directing a commis-
12 sioner in chancery to ascertain the facts and report to
13 the court concerning the matter in dispute, unless the

14 court by reason of the fact that the right claimed by the
15 applicant is clearly established, or for some other reason,
16 is of the opinion that an order of reference need not be
17 made as to such land. The costs in connection with an
18 application by an interested party and those in connec-
19 tion with the reference to a commissioner in chancery,
20 if a reference is made, shall be taxed to the applicant.

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

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

14 Whenever, on the basis of the report of the commis-

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

Sec. 22. *Decree of Sale.* Whenever, in respect to
2 any land included in the suit, the court shall find as
3 alleged in the bill that the land is subject to sale for the
4 benefit of the school fund, it shall enter a decree ordering
5 that such land be sold by the deputy commissioner at
6 public auction to the highest bidder. In every such
7 decree the court shall fix the time and place of the sale.

8 The court may order the sale of any one or more of the
9 items included in the suit without waiting for the termi-
10 nation of the suit as to other items included therein. It
11 may also order that lands included in several suits be
12 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
4 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

23 be taxed to the state as part of its costs in the suit and
24 shall be paid as hereinafter provided.

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

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

18 The deputy commissioner shall prepare a report for
19 the circuit court which shall show what was done with

20 respect to all lands ordered to be sold. The report shall
21 state as to each item whether it was redeemed before sale
22 or was sold, and the name of the purchaser and the
23 amount of his bid. The report shall, within ten days
24 after the sale, be filed with the clerk of the circuit court.

Sec. 25. *Return of Purchase Money.* Whenever,
2 after sale and before confirmation thereof, it is dis-
3 covered that the land sold was nonexistent, or that it
4 had been the subject of a duplicate or improper assess-
5 ment, or was transferred to others under the provisions
6 of section three, article thirteen of the constitution, the
7 purchaser shall be entitled to a return of the purchase
8 money. Upon request of a purchaser so entitled, it shall
9 be the duty of the deputy commissioner to apply to the
10 circuit court for an order directing the sheriff to return
11 the purchase money. If satisfied that the application is
12 proper, the court shall enter the order applied for, but no
13 costs shall be taxed in connection with such an applica-
14 tion. If the ground for entering the order was that the
15 land was nonexistent or the subject of a duplicate assess-
16 ment, the order shall also direct the assessor to drop the

17 erroneous entry of such lands from the land books.

Sec. 26. *Co-owner Free to Purchase at Sale.* Any
2 co-owner, except a coparcener, in the absence of satis-
3 factory proof of a fiduciary relationship, shall be entitled
4 to purchase at the sale for his own account the interest
5 of any, or all, of his co-owners in any real estate, without
6 being required to hold such interest or interests under a
7 constructive trust. There shall be a prima facie pre-
8 sumption against the existence of any such constructive
9 trust.

Sec. 27. *Purchase by Former Owner or by Deputy
2 Commissioner and Other Officers Prohibited.* It shall
3 be illegal for a former owner, in whose name any real
4 estate was forfeited or was sold to the state, his heirs or
5 assigns, or his or their agent, to purchase such real estate
6 at the sale. No deputy commissioner, sheriff, clerk of
7 the county or circuit court, assessor, nor deputy of either
8 shall directly or indirectly become the purchaser, or be
9 interested in the purchase of any real estate at the sale.
10 Any such person or officer so purchasing shall for each
11 offense forfeit one hundred dollars, to be collected as

12 other forfeitures are collected. The sale of any real
13 estate to one of the persons or officers named in this sec-
14 tion shall be voidable at the instance of any person hav-
15 ing the right to redeem until such real estate reaches the
16 hands of a bona fide purchaser.

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

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

Sec. 29. *Right of Creditor of Former Owner of*

2 *Escheated Land.* Any surplus proceeds arising from the
3 sale of escheated land, after payment of all court costs in
4 the suit in which such land was sold, shall be paid by the

5 sheriff to the general receiver of the circuit court. Upon
6 application to the court within a year after the sale, such
7 surplus may be applied to the satisfaction of the claims
8 of creditors of the decedent who had a lien on the land at
9 the time of his death, or who, being general creditors,
10 have properly proved their claims against his estate and
11 have been unable to obtain payment out of the personalty.
12 In the disposition of any such surplus, due preference
13 shall be given to lien creditors over general creditors.
14 Any part of such surplus thereafter remaining shall be
15 paid to the auditor by the general receiver for credit to
16 the general school fund.

Sec. 30. *Application to Set Aside Sale.* Any person
2 entitled under the provisions of section nineteen of this
3 article to apply for an order dismissing the suit for the
4 sale of any land, but who did not learn of the suit in time
5 to protect himself by making such application, may, at
6 any time after the sale and before confirmation thereof,
7 apply to the court for an order setting aside the sale.
8 Notice in writing of such application shall be given to
9 the purchaser, his heirs or assigns. The notice shall

10 state the facts which are the basis of the claimed right
11 to have the sale set aside, shall require the person served
12 to appear before the circuit court on a day to be named
13 in the notice and protect whatever rights were acquired
14 at the sale, and shall be served at least ten days before
15 the day on which it is returnable. Until a decision on
16 such application has been made, the sale may not be
17 confirmed.

18 If the decision be in favor of the claimant, the court
19 shall enter an order setting aside the sale, and directing
20 the sheriff to return the purchase money to the pur-
21 chaser, his heirs or assigns.

Sec. 31. *Confirmation of Sale.*—As soon as possible
2 after the report of the sale has been filed with the clerk
3 of the circuit court, the deputy commissioner shall apply
4 to the court for an order confirming the sale of each
5 item sold. If satisfied that the purchase price was as
6 high as might reasonably be expected, the court shall
7 enter an order confirming the sale and directing the
8 deputy commissioner to execute and deliver to the pur-
9 chaser, or to his heirs or assigns, a deed as provided in

10 the following section. If, however, the court shall be of
 11 the opinion that the purchase price was too low, it may
 12 refuse to confirm the sale and shall enter an order
 13 directing the deputy commissioner to sell the land again
 14 at his next sale and directing the sheriff to return the
 15 purchase money to the purchaser, his heirs or assigns.

16 After the court has acted, the clerk shall promptly
 17 mark on his certified list whether the sale was confirmed
 18 or disaffirmed, giving the date of the order, and if the
 19 sale was confirmed, the date of the deed to the purchaser.

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

6 This deed made this _____ day of _____,
 7 19____, by and between _____, deputy
 8 commissioner of forfeited and delinquent lands for
 9 _____ County, West Virginia, acting for
 10 and on behalf of the State of West Virginia, grantor, and
 11 _____ purchaser, (or _____,

12 heir, devisee or assignee of _____,

13 purchaser,) grantee, witnesseth that

14 Whereas, In pursuance of and in accordance with the

15 statutes in such case made and provided, the above

16 named deputy commissioner did, by order of the Circuit

17 Court of _____ County, in the month of

18 _____, in the year 19____, sell the real

19 estate, hereinafter mentioned and described, for the

20 benefit of the school fund, and _____,

21 (here insert name of purchaser) for the sum of

22 \$_____, that being the amount of purchase

22 money paid, did become the purchaser of such real estate

23 (or of an undivided _____ interest in such real

24 estate) which was sold to the state for nonpayment of

25 taxes in the name of _____;

26 (or which was forfeited to the state for nonentry in the

27 name of _____; or which

28 escheated to the state in the name of _____;

29 or which was waste and unappropriated land belonging

30 to the state;) and

31 Whereas, By an order entered on the _____ day

32 of _____, 19____, in the case of State
 33 of West Virginia v. (A. B., et al.), the Circuit Court of
 34 _____ County has confirmed the sale
 35 and has ordered that this deed be executed.

36 Now, therefore, the grantor, for and in consideration
 37 of the premises and in pursuance of the statute, doth
 38 grant and convey unto _____, grantee,
 39 his heirs and assigns forever, the real estate so pur-
 40 chased, situate in the county of _____, bounded
 41 and described as follows: _____

42 _____

43 Witness the following signature:

44 _____

45 Deputy Commissioner of Forfeited and
 46 Delinquent Lands for _____ County

47 After execution and acknowledgment of the deed, the
 48 deputy commissioner shall ascertain from the clerk of
 49 the county court the total amount of the transfer fee, the
 50 fee for recording the deed, and if the grantee was an
 51 assignee of the purchaser, the fee for recording the
 52 assignment, and shall notify the grantee to pay such

53 amount to the clerk of the county court. Upon such
54 payment and upon payment by the grantee to the deputy
55 commissioner of a fee of five dollars as his compensation
56 for preparing and executing the deed, the deputy com-
57 missioner shall have the deed and the assignment, if any,
58 recorded by the clerk of the county court before delivery
59 of the deed to the grantee. The purchaser shall have the
60 right to examine the deed before it is recorded.

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

Sec. 33. *Title Acquired; Effect of Irregularity.*

2 Whenever, under the provisions of this article, a pur-
3 chaser, his heirs or assigns, shall have obtained a deed
4 for any real estate from the deputy commissioner, he or
5 they shall thereby acquire all such right, title and interest
6 in and to the real estate as was, at the time of the execu-
7 tion and delivery of the deed, vested in or held by the
8 state or by any person who was entitled to redeem,
9 unless such person is one who, being required by law to

10 have his interest separately assessed and taxed, has done
11 so and has paid all the taxes due thereon, or unless the
12 rights of such person are expressly saved by the provi-
13 sions of sections twenty-seven or thirty-four of this
14 article. The deed shall be conclusive evidence of the
15 acquisition of such title. The title so acquired shall
16 relate back to the date of the sale.

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

Sec. 34. *Redemption by Persons Under Disability.*

2 In addition to and notwithstanding any other provisions
3 of this article, any infant or insane person, the former
4 owner of any forfeited or delinquent land which during
5 such disability was sold as provided in this article, may
6 redeem such land from the purchaser, his heirs or
7 assigns, at any time before the expiration of one year
8 after removal of the disability but in no event more than
9 twenty years after the sale was confirmed, by paying

10 such an amount as is required for redemption under the
11 provisions of section thirty-five, article three of this
12 chapter.

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

Sec. 35. *Annual Report of Deputy Commissioner to*
2 *Auditor.* In December of each year the deputy commis-
3 sioner shall prepare a report, on forms to be furnished
4 by the auditor, of all lands previously certified to the
5 circuit court of his county, which have been redeemed,
6 sold, held not liable for sale, or otherwise finally disposed
7 of since his last annual report. The report shall as to
8 each item show the year it was certified and its certifica-
9 tion number.

10 Such report shall be prepared in quintuplet. On or
11 before the last day of December the original shall be sent
12 to the auditor, one copy to the clerk of the county court,
13 and one copy to the clerk of the circuit court, each of
14 whom shall make the necessary notations on his certified

15 list. The fourth copy shall be sent to the assessor, who
16 shall make the necessary changes in his land books, and
17 the fifth copy shall be retained by the deputy commis-
18 sioner. For failure to make the report required by this
19 section, the deputy commissioner shall forfeit one
20 hundred dollars.

Sec. 36. *Sheriff to Keep Proceeds in Separate*
2 *Accounts; Disposition.* The sheriff shall keep in a sepa-
3 rate fund the proceeds of all redemptions and sales paid
4 to him under the provisions of this article, and shall
5 keep a separate account of the proceeds of the sales and
6 redemptions of all lands included in each suit. Out of
7 the total proceeds of each suit he shall in the order of
8 priority stated below credit the following amounts, for
9 payment as hereinafter provided: (1) To the clerk
10 of the circuit court, such part of the court costs taxed in
11 the suit as represents the publication charges incurred
12 under the provisions of sections twelve and twenty-three
13 of this article, and the charge of one dollar per item
14 provided for in section seventeen of this article. (2)
15 To the sheriff, such part of the court costs taxed in the

16 suit as represents the fees due him under the provisions
17 of section twelve of this article. (3) To the deputy
18 commissioner, such part of the court costs as represents
19 compensation due him under the provisions of section
20 seventeen of this article. (4) To the auditor, such
21 part as represents any charges which were paid by or
22 which are payable to him. (5) To the general county
23 fund, such part as represents costs paid out of such fund
24 for publishing the sheriff's delinquent and sales list.
25 (6) To the auditor for credit to the general school
26 fund, such part as represents all taxes and interest
27 chargeable in respect to any forfeited lands, and all
28 surplus proceeds of the sale of any waste and unappro-
29 priated lands.

30 The balance, if any, of the proceeds of the lands in-
31 cluded in each suit shall be prorated among the various
32 taxing units on the basis of the total amount of taxes due
33 them in respect to the lands that were sold or redeemed.

34 The amounts so determined shall be credited as follows,
35 for payment as hereinafter provided: (1) To the
36 auditor, such part as represents state taxes and interest.

37 (2) To the fund kept by the sheriff for each local taxing
38 unit, such part as represents taxes and interest payable
39 to such unit.

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

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

Sec. 37. *Disposition of Pending Suits; Former Sales*
2 *Confirmed.* All suits now pending in any circuit court
3 for the sale of lands for the benefit of the school fund
4 shall be and are hereby discontinued and dismissed.
5 Any circuit court in which such a suit is pending shall

6 make all necessary orders for such discontinuance and
7 dismissal.

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

Sec. 38. *Liability of Officer Failing to Perform Duty;*
2 *Penalty.* If the deputy commissioner or any other
3 officer mentioned in this article shall refuse to perform
4 any duty required of him, he shall forfeit not less than
5 twenty-five nor more than one hundred dollars for each
6 such failure or refusal, unless a different penalty is
7 imposed by the provisions of this article.

Sec. 39. *Release of Taxes and Interest.* In view of
2 the great uncertainty and confusion existing in the
3 auditor's records of delinquent lands for the years prior
4 to one thousand nine hundred thirty-six, due to the in-
5 sufficient and inadequate reports by former school land
6 commissioners and the doubtful status of delinquent or
7 forfeited undivided interests, the Legislature finds that
8 it will be impossible to provide a speedy method for dis-
9 posing of delinquent and forfeited lands and for convey-
10 ing to the purchasers of such lands a secure title, unless
11 some action is taken to prevent the certification and sale
12 of lands which were formerly redeemed from or were
13 sold by such commissioners, but which appear on the
14 auditor's records, as unsold and unredeemed. Where-
15 fore it is the purpose and intent of the Legislature to
16 release all taxes, interest and charges that may be due
17 on any real estate in this state for the assessment year
18 one thousand nine hundred thirty-five and for all years
19 prior thereto, and all such taxes, interest and charges
20 are hereby declared to be fully paid. If all the taxes due
21 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

43 section three, article thirteen of the constitution.

Sec. 40. *Separability*.—If part of this article is de-
2 clared unconstitutional, such declaration shall in no way
3 affect any other part thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McNear
Chairman Senate Committee

R. S. Matthews
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Myers
Clerk of the Senate

Lasupp
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 13
day of March, 1947.

James Meadows
Governor.

Filed in the Office of the Secretary of State
of West Virginia **MAR 13 1947**
WM. S. O'BRIEN,
SECRETARY OF STATE