

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949

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## ENROLLED

SENATE BILL No. 276

(By Mr. Eddy.....)

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PASSED March 11..... 1949

In Effect ..... from ..... Passage



**ENROLLED**

**Senate Bill No. 276**

(By MR. EDDY)

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[Passed March 11, 1949; in effect from passage.]

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AN ACT to amend and reenact sections twelve and thirty-six, 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 sections twelve and thirty-six, 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 12. *Service of Process by Publication.*—Upon  
2 the institution of a suit as provided in section ten of this

3 article, the clerk of the circuit court shall enter an order  
4 of publication, without the filing of any affidavit by the  
5 deputy commissioner as required in other cases. Such or-  
6 der of publication shall give the style of the suit, as, State  
7 of West Virginia v. A. B., *et al.*; shall state that the object  
8 of the suit is to obtain a decree of the circuit court order-  
9 ing the sale for the benefit of the school fund of all lands  
10 included in the suit; shall list all such lands, setting forth  
11 as to each item its local description, the former owner in  
12 whose name the land was forfeited, or was returned de-  
13 linquent and sold, or escheated, as the case may be, and  
14 the names of such other defendants as may be interested  
15 therein; and shall require all the named defendants, and  
16 all unknown parties who are or may be interested in any  
17 of the lands included in the suit to appear within one  
18 month after the date of the first publication thereof and  
19 do what is necessary to protect their interests.

20 The order shall be published once a week for three suc-  
21 cessive weeks in two newspapers of opposite politics pub-  
22 lished in the county, if such there be; otherwise, this re-  
23 quirement shall be satisfied by such publication in any

24 one newspaper published in the county, and if no news-  
25 paper is published in the county, or if none therein will  
26 publish the order at the legal rate or for the time required,  
27 then in such newspaper of general circulation in the  
28 county as the clerk of the court in which the cause is  
29 pending may direct. The costs of such publication shall  
30 be at the rate provided for in section thirty-four, article  
31 one, chapter fifty-nine of this code, shall be charged  
32 ratably to each item listed in the suit, and shall be taxed  
33 to the state as part of its costs in the suit and paid as here-  
34 inafter provided.

35 In view of the fact that the state has absolute title to all  
36 forfeited land, to all land sold to the state for nonpayment  
37 of taxes and become irredeemable, to all escheated land,  
38 and to all waste and unappropriated land, and must under  
39 the constitution have such an absolute title before the  
40 land may be sold for the benefit of the school fund; and  
41 in view of the fact that the former owner of any such  
42 land, or any person claiming under him, has no further  
43 interest therein nor rights in respect thereto except such  
44 privilege of redemption as may be extended to him by the

45 Legislature as an act of grace; and in view of the further  
46 fact that all parties known and unknown who may claim  
47 an interest in any of the lands included in the suit are  
48 given notice thereof by the order of publication provided  
49 for above; therefore, the Legislature deems it both ex-  
50 pedit and necessary to provide that failure to name any  
51 such person as a defendant shall in no wise affect the  
52 validity of any of the proceedings in the suit for the sale  
53 of the state's title to such land; and in view of the fact  
54 that the supreme court of appeals in a decision just ren-  
55 dered has held that there is no constitutional requirement  
56 that the former owner or any other interested person be  
57 personally served with process in a suit for the sale  
58 for the benefit of the school fund of lands that are and  
59 must be the absolute property of the state; and in view  
60 of the further fact that in its last previous enactment of  
61 this section the Legislature had no intention of requiring  
62 that personal service of process on named defendants in  
63 such a suit should be a mandatory condition precedent to  
64 the validity of any step or proceeding in such suit, but on  
65 the contrary expressly stated that failure to serve the

66 summons on any named defendant should in no wise  
67 affect the validity thereof; now therefore, the Legislature  
68 also deems it both expedient and necessary to provide  
69 that the failure to obtain such personal service on any  
70 named defendant in any suit instituted under the provi-  
71 sions of this article prior to the effective date hereof shall  
72 in no way affect the validity of any step or proceeding  
73 in any such suit or the validity of the title acquired by the  
74 purchaser of land sold under any decree made or to be  
75 made in any such suit.

*Sec. 36. Sheriff to Keep Proceeds in Separate Accounts;*

2 *Disposition.*—The sheriff shall keep in a separate fund the  
3 proceeds of all redemptions and sales paid to him under  
4 the provisions of this article, and shall keep a separate  
5 account of the proceeds of the sales and redemptions of  
6 all lands included in each suit. Out of the total proceeds  
7 of each suit he shall in the order of priority stated below  
8 credit the following amounts, for payment as hereinafter  
9 provided: (1) To the clerk of the circuit court, such part  
10 of the court costs taxed in the suit as represents the pub-  
11 lication charges incurred under the provisions of sections

12 twelve and twenty-three of this article, and the charge of  
13 one dollar per item provided for in section seventeen of  
14 this article. (2) To the deputy commissioner, such part  
15 of the court costs as represents compensation due him  
16 under the provisions of section seventeen of this article.  
17 (3) To the auditor, such part as represents any charges  
18 which were paid by or which are payable to him. (4) To  
19 the general county fund, such part as represents costs  
20 paid out of such fund for publishing the sheriff's delin-  
21 quent and sales list. (5) Surplus proceeds from the sale  
22 of delinquent, forfeited and escheated lands shall be held  
23 by the sheriff for the periods provided for in sections  
24 twenty-eight and twenty-nine of this article, and if no  
25 application is made to the circuit court within the time  
26 therein specified, such surplus shall be paid to the auditor  
27 for credit to the general school fund. (6) To the auditor  
28 for credit to the general school fund, such part as repre-  
29 sents all taxes and interest chargeable in respect to any  
30 forfeited lands, and all surplus proceeds of the sale of any  
31 waste and unappropriated lands.

32 The balance, if any, of the proceeds of the lands included

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

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

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



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

*James F. McMan*  
Chairman Senate Committee

*R. Matthews*  
Chairman House Committee

Originated in the Senate.

Takes effect *from* \_\_\_\_\_ passage.

*Howard Myers*  
Clerk of the Senate

*J. A. Huff*  
Clerk of the House of Delegates

*Francis H. Chesnut*  
President of the Senate

*W. E. Lammery*  
Speaker House of Delegates

The within *Approved* this the *18th*

day of *MARCH*, 1949.

*Chas. L. Patterson*  
Governor.



Filed in the Office of the Secretary of State  
of West Virginia

**MAR 18 1949**

**D. PITT O'BRIEN,**  
SECRETARY OF STATE