1 HB354
2 188661-2
3 By Representatives Ellis, Faust, Drake, Jackson, Weaver,
4 Wilcox, Williams (JW), Tuggle, Sessions, Davis, McMillan,
5 Shiver, Baker and England
6 RFD: County and Municipal Government
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SYNOPSIS: Under existing law, counties have the option to sell their outstanding tax liens on real property. The purchaser of the tax liens obtains the right to collect all delinquent taxes, penalties, interest, and costs with respect to the property.

This bill would revise the tax lien sale procedures for counties to authorize tax liens to be sold at auction to the bidder with the lowest interest rate.

A BILL TO BE ENTITLED AN ACT Relating to tax lien sales; to amend Sections 40-10-180, 40-10-181, 40-10-182, 40-10-183, 40-10-184, 40-10-185, 40-10-186, 40-10-187, 40-10-188, 40-10-189, 40-10-190, 40-10-191, 40-10-192, 40-10-193, 40-10-194, 40-10-195, 40-10-196, 40-10-197, and 40-10-198, Code of
Alabama 1975; to add Sections 40-10-199 and 40-10-200 to the
Code of Alabama 1975; to provide an auction process for the
sale of tax liens; to provide for counties to issue tax lien
certificates for certain fees on the lands which have been
sold at certain sales to individuals; to prescribe the
significance of and authority associated with a tax lien
certificate; to provide for payment of taxes on lands
purchased at tax lien sales by holders of tax lien
certificates; to provide for distribution of monies received
from tax lien sales and to provide for certain redemption
procedures including a procedure to allow the holder of a tax
lien certificate to foreclose redemption rights after a period
of time.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-10-180, 40-10-181, 40-10-182,
40-10-183, 40-10-184, 40-10-185, 40-10-186, 40-10-187,
40-10-188, 40-10-189, 40-10-190, 40-10-191, 40-10-192,
40-10-193, 40-10-194, 40-10-195, 40-10-196, 40-10-197, and
40-10-198, Code of Alabama 1975, are amended to read as
follows:

"§40-10-180.

"The Legislature finds all of the following:

"(1) It is estimated that Alabama counties, which
collect tax for themselves and other governmental entities
within their counties, have several million dollars
outstanding as accounts receivable from unpaid secured roll
real property tax obligations. These obligations owed to
Alabama counties have largely been under-performing assets that could be converted to cash and provide counties and other governmental entities with much needed revenues.

"(2) Many counties and other governmental entities have had to reduce essential services and curtail some functions that have historically been performed by government. Public protection agencies in many of these counties and other governmental entities have had law enforcement positions reduced or eliminated.

"(3) The Legislature declares that the purpose of Act 95-408 this article is to provide counties with an alternative remedy for collecting delinquent property taxes by the sale of a tax lien the option of selling their outstanding secured roll real property tax accounts receivable and thereby realize immediate cash in order to meet the ongoing services required by counties and the other governmental entities for which the counties collect tax. Upon such a sale, the purchaser of the receivables obtains the right to collect all outstanding delinquent taxes, penalties, interest, and costs with respect thereto.

"§40-10-181.

"For purposes of Act 95-408, this article, the following terms shall have the following meanings: "tax lien"

"(1) TAX COLLECTING OFFICIAL. The elected or appointed person responsible for collecting ad valorem taxes in a county.
(2) TAX LIEN. means the The perpetual first priority lien provided by Section 40-1-3 against any parcel of real property representing taxes assessed and levied against the property, together with interest, penalties, fees, and costs applicable by law to the taxes.

(3) TAX LIEN AUCTION. The public sale of all tax liens advertised under Section 40-10-182 and held no earlier than March 1 or later than June 15 of the current ad valorem tax year where the awarding of the tax lien certificate is based on the lowest interest rate bid on a tax lien.

(4) TAX LIEN SALE. The sale of an unsold tax lien by private sale between a tax collecting official and the purchaser of a tax lien under Section 40-10-199.

(5) UNIFORM PARCEL NUMBER. The unique parcel identification number assigned to the parcel of property for ad valorem tax purposes based on the tax lien date of the current tax year.

§40-10-182.

(a) All tax liens representing unpaid and delinquent taxes on real property shall be subject to a tax lien auction or a tax lien sale as provided in Act 95-408.

(b)(1) The tax collector collecting official of any county shall conduct a public auction may adopt a procedure for the sale and transfer of delinquent tax liens by the tax collector, subject to Act 95-408. Tax liens may be sold individually or in any lot or block to any person and pursuant to any procedure deemed appropriate by the tax collector. Any
procedure for the The sale of tax liens adopted pursuant to this section shall provide for notice to tax collecting official shall notify the delinquent taxpayer of the sale auction at least seven days prior to the tax lien auction by first class mail and by any one of the following:

"a. Advertising for one week in a newspaper with general circulation in the county where the property is located.

"b. Advertising on an online website controlled by the tax collecting official.

"c. Posting at the courthouse of the county and if possible in a public place in the precinct where the property is located.

"(2) The notices shall declare the time and location of the auction, in a manner and at a time deemed appropriate by the tax collector.

"(c) The tax collector collecting official may auction or sell tax liens representing delinquent taxes for any prior year taxes are delinquent and unpaid of assessment, provided that any single tax lien to be sold shall relate to only one year of assessment and shall not be aggregated with any other tax lien for another year on the same parcel.

"(d) Except as otherwise provided in Act 95-408, a tax lien sale with respect to any delinquent property shall be in lieu of all other remedies provided by law for the collection of delinquent taxes for the relevant year of assessment by the county or the tax collector.
"§40-10-183.

"Prior to any tax lien sale auction, the tax collector collecting official shall prepare and maintain a list of all tax liens. The list shall be known as the tax lien sale auction list and shall contain all of the following:

"(1) The names of the several persons appearing in the latest tax roll as the respective owners of tax-delinquent properties.

"(2) A description of each property as it appears in the latest tax roll.

"(3) The year or years for which taxes are delinquent on each property.

"(4) The principal amount of the delinquent taxes and the amount of accrued and accruing interest thereon and penalties, fees, and costs to the day of the proposed tax lien sale auction relating to each year of assessment.

"§40-10-184.

"(a) Tax lien sales shall be conducted by the tax collector on the dates and times directed by the tax collector. On the day and time designated for a tax lien sale auction, the tax collector collecting official shall proceed to sell auction, pursuant to the procedure adopted by him or her, all tax liens described in the tax lien sale auction list compiled as provided in Section 40-10-183, except those for which the taxes, penalties, interest, fees, and costs thereon have been paid or deferred. Any delinquent property for which a tax lien remains unsold after a tax lien sale auction shall
be subject to any other remedies provided by law for the
collection of the delinquent taxes retained by the county for
future auction or sale as provided in this article.

"(b) Where two or more lots or parcels are assessed
as one parcel, the tax liens on them may be sold as a single
tax lien on one parcel. A tax lien shall be sold at auction
pursuant to this article to the person who pays all taxes,
interest, penalties, fees, and costs due on the property,
including an origination cost of twenty dollars ($20) as of
the date of auction and a twenty dollar ($20) auction fee, and
who in addition bids the lowest interest rate on the amount
paid to redeem the property from the sale. The beginning
interest rate bid shall not exceed a rate of 12 percent and
additional bids may be made at a rate less than the
immediately preceding bid.

"(c) The sale of a tax lien does not extinguish any
deed restriction, deed covenant, or easement on or appurtenant
to the parcel. A tax lien offered for auction or sale shall be
identified by a Uniform Parcel Number and a legal description.

"§40-10-185.

"When a tax lien is offered for auction or sale, it
shall not be necessary to list, auction, or sell it as being
against the property of any specific person. The auction or
sale is not invalid by reason of the fact that the property
was assessed in the name of a person other than the rightful
owner or to a person unknown, if the description and the
Uniform Parcel Number of the real estate in the tax lien sale
auction list is sufficient to identify it and includes the amount of taxes, interest, penalties, fees, and costs for which its tax lien is to be auctioned or sold.

"§40-10-186.

"(a) The purchase price for a tax lien shall be the amount of delinquent taxes plus any interest, penalties, fees, and costs incurred by the tax collector accrued as of the date of the auction or sale.

"(b) The purchase price for a tax lien shall be paid to the tax collector collecting official in cash or immediately available certified funds not later than one hour before close of business on the date of the auction or sale.

"(c) The purchase price for a tax lien received by the tax collector collecting official shall be credited to the tax collector collecting official for purposes of calculating commissions, if any, on taxes collected by the tax collector collecting official pursuant to Section 40-5-4.

"§40-10-187.

"(a) The tax collector collecting official shall make, execute, and deliver a tax lien certificate to each purchaser at the a tax lien sale or auction or to each assignee thereafter and shall collect from the purchaser or assignee a fee of one dollar ($1) five dollars ($5) for each tax lien certificate. The tax lien certificate shall be in a form provided by the Department of Revenue and shall also include a certificate of redemption form as provided in Section 40-10-194.
"(b) A tax lien certificate shall evidence the auction or sale or assignment to the holder of the tax lien certificate of the delinquent and unpaid taxes, penalties, interest, fees, and costs set forth therein and represented by the tax lien, and the right to receive amounts in respect thereof as provided in Act 95-408.

"(c) A tax lien certificate shall bear the interest at the rate of 12 percent per annum as bid on by the purchaser at the tax lien auction or as agreed upon by the purchaser at the tax lien sale, on the amount of all taxes, penalties, interest, and costs due on the property from the date of the sale of the tax lien to the original purchaser until the tax lien certificate is redeemed as provided pursuant to Section 40-10-193 by law, or the property is sold pursuant to a decree for sale of real estate required by Section 40-10-11.

"(d) The tax lien certificate shall do all of the following:

"(i) describe the real property on which a tax lien is auctioned or sold as it is described in the tax lien sale auction list.

"(ii) specify the date on which the tax lien was auctioned or sold to the original purchaser.

"(iii) specify the year of assessment to which the tax lien relates and the amount for which the tax lien was auctioned or sold to the original purchaser.

"(iv) recite the amount of all taxes, penalties, interest, fees, and costs due on the property,
which relate to the year of assessment described in (iii) above subdivision (3), as of the date specified in (ii) above subdivision (2), and .

"(v) recite (5) Recite that the certificate bears interest at the rate per annum bid on by the purchaser at the tax lien auction of 12 percent per annum or agreed upon at the tax lien sale on the amount described in (iv) above subdivision (4) from the date specified in (ii) above subdivision (2).

"(e) The purchaser of a tax lien certificate may transfer and assign the certificate to any person, and the transferee of a tax lien certificate may subsequently transfer the certificate to any other person. The transferor of a tax lien certificate shall endorse the certificate and shall swear to the endorsement before a notary public or other officer empowered to administer oaths. The transferee shall present the endorsed tax lien certificate to the tax collector collecting official who prepared and sold executed the certificate, or his or her successor, who, for a fee of one dollar ($1) five dollars ($5), shall acknowledge the transfer on the certificate and shall make note of the transfer on the record of tax lien auctions and sales kept as provided in Section 40-10-188. An assignment and transfer as provided in this subsection shall vest in the assignee all the right and title of the original purchaser.
"(f) A security interest in a tax lien certificate may be created and perfected in the manner provided for general intangibles under Title 7.

(g) Within 10 days of a completed tax lien auction or sale, the tax collecting official shall send notice to the property owner for whom the property was assessed informing the property owner that the tax lien has been auctioned or sold. The notice shall include the date of auction or sale and the name and address of the purchaser and shall be made by first class mail to the address listed in the assessment.

§40-10-188.

"The tax collector collecting official shall make a correct record of all auctions and sales of tax liens pursuant to Act 95-408 in a durable book or an electronic file, which shall be known as the record of tax lien auctions and sales, containing all of the following:

"(1) The date of auction or sale.

"(2) A description of each parcel and uniform parcel number on which a tax lien was auctioned or sold.

"(3) The year of assessment to which the tax lien relates.

"(4) The name and address of the property owner for whom the property was assessed, if known.

"(5) The name and address of the original purchaser of the tax lien.

"(6) The total amount of taxes, interest, penalties, fees, and costs due on the tax lien, which relate to the year.
of assessment, as described in Section 40-10-187, as of the
date of the auction or sale of the tax lien to the original
purchaser.

"(7) The interest rate bid on by the purchaser at
the tax lien auction or as agreed by the purchaser at the tax
lien sale.

"(7) (8) The amount of any subsequent taxes,
penalties, interest, fees, and costs paid by the original
purchaser, or assignee, of the tax lien certificate as
provided in Section 40-10-191 and the year of assessment to
which the payment relates.

"(8) (9) The name and address of the assignee, if
any, and the date of assignment of the tax lien certificate.

"(9) (10) The name and address of the person
redeeming and the date of redemption.

"(10) (11) The total amount paid for redemption.

"(11) The date of any decree of sale pursuant to
Section 40-10-11 with respect to the property.

§40-10-189.

"For purposes of Act 95-408, The "holder of the tax
lien certificate" means the original purchaser of a tax lien
or any assignee thereof as described in the record of tax lien
auctions and sales kept by the tax collector collecting
official pursuant to Section 40-10-188.

§40-10-190.

"When a tax lien certificate is lost or destroyed,
the holder of the tax lien certificate may file a notarized
affidavit with the tax collector collecting official attesting to the loss of the certificate. Upon presentation of the notarized affidavit, the tax collector collecting official, shall on payment of a fee of ten fifty dollars ($10) ($50), shall issue to the holder thereof an exact duplicate of the tax lien certificate.

"§40-10-191.

"(a) The holder of an outstanding a tax lien certificate shall have the first right to purchase the tax lien relating to a subsequent delinquency on the property described in the tax lien certificate of the holder, by notifying the tax collector within the time allowed by the procedures established by the tax collector pursuant to Act 95-408. A holder of the certificate who exercises this right shall be entitled to the same interest rate as shown on the previous tax lien certificate. The owner of the property may pay the current year taxes due once the property owner redeems all outstanding tax liens on the property.

"(b) If the holder fails to acquire the subsequent tax lien within the time period specified in subsection (a), the tax collector shall be free to pursue any other remedy provided by law for the collection of the delinquent tax. A mortgagee as the holder of a tax lien certificate may add all costs, fees, interest, penalties, and taxes regarding the tax sale to the principal of the loan.

"(c) A holder of a tax lien certificate may abandon the certificate at any time upon notification given to the tax
collecting official and the surrender of the tax lien
certificate. Abandonment of a tax lien certificate
relinquishes all rights of recovery of any monies or expenses.

"§40-10-192.
"All monies collected or received by the tax
collector as proceeds of a tax sale lien
auction or sale pursuant to Act 95-408 shall be distributed in
the same manner and proportions as the tax collector
is required by law to distribute other
monies collected by him or her in satisfaction of ad valorem
taxes. All penalties, costs, and fees collected by the tax
collector shall be paid to the general fund of the
county.

"§40-10-193.
"(a)(1) Tax liens auctioned or sold under Act 95-408
may be redeemed by any of the following:

"a. the owner, or his or her agent, assignee, or
attorney, heirs or personal representative.

"b. Any mortgagee or purchaser of the property or
any portion of the property.

"c. or by any Any other person who would be entitled
to redeem under subsection (a) of Section 40-10-120, Code of
Alabama 1975, if the property had been sold for taxes, having
a legal or equitable claim in the underlying property, at any
time prior to entry of a decree of sale in an action
authorized by Section 40-10-11
"(2) Property may be redeemed under subdivision (1) by payment to the tax collector collecting official of the amount specified on the tax lien certificate as the total amount of delinquent tax, interest, penalty, penalties, fees, and costs due on the delinquent property paid to purchase the tax lien, plus interest at the rate specified in the tax lien certificate, plus any current and unpaid taxes, interest, penalties, fees, and costs due. The tax collecting official shall provide a separate receipt for any current taxes, interest, penalties, fees, or costs paid.

"(b) Statutory fees paid by the holder of the tax lien certificate in connection with the tax lien certificate shall be added to the amount payable on redemption and shall also bear interest at the rate of interest specified in the tax lien certificate.

"§40-10-194.

"(a) The tax collector collecting official shall, upon application to redeem a tax lien sold under Act 95-408, and upon being satisfied that the person applying has the right to redeem the tax lien, and upon payment of the amount due, issue to the person a certificate of redemption appended to a copy of the certificate of tax lien describing the parcel on which the tax lien is redeemed, giving the date of redemption, the amount paid, and by whom redeemed, and shall make the proper entries in the record of tax lien auctions or sales in his or her office.
(b) For each certificate of redemption, the tax collector collecting official shall collect from the person to whom the certificate of redemption is issued a fee of ten dollars ($10) equal to the redemption fee charged for redemption of property sold to the state.

"(c) The holder of a certificate of redemption may record the certificate with the recording officer of the county."

"§40-10-195.

"A person owning an interest less than the whole in real property may redeem a tax lien pursuant to Section 40-10-193 against his or her interest, if the interest can be ascertained by legal description provided to the tax collector, by paying the proportionate part of the whole amount due, and shall receive a certificate of redemption for his or her interest in the manner provided by Act 95-408.

"§40-10-196.

"Within 10 days of issuance of any certificate of redemption, the tax collector collecting official shall mail a copy of the certificate of redemption to the holder of the tax lien certificate related thereto at the address specified in the record of tax lien auctions and sales kept as provided in Section 40-10-188. On demand of any person entitled to redemption money held by the tax collector the holder of the tax lien certificate, the tax collector collecting official shall pay the redemption money to the person holder upon surrender of the original tax lien certificate for the
1 redeemed tax lien. If only a portion of the tax lien on the
2 property described in the tax lien certificate has been
3 redeemed, the tax collector shall endorse on the tax lien
4 certificate the portion redeemed and the amount of money paid
5 to the holder of the tax lien certificate, and shall take a
6 receipt therefor.
7
8 "$40-10-197.
9
10 "Each holder of a tax lien certificate, desiring to
11 have the probate court order the sale of property for the
12 payment of taxes, shall provide written notice to the tax
13 collector on or before February 1 which contains the following
14 information: (i) A description of the parcel to which the tax
15 lien certificate relates; (ii) the year of assessment to which
16 the tax lien certificate relates; (iii) the name and address
17 of the holder of the tax lien certificate; and (iv) a
18 statement by the holder of the tax lien certificate that he or
19 she is unable to collect the delinquent taxes described in his
20 or her tax lien certificate without a sale of the property and
21 requesting that the tax collector list the property in the
22 book of lands prepared pursuant to Section 40-10-2, and
23 delivered to the judge of probate pursuant to Section 40-10-3.
24
25 "(a) At any time not less than three years after the
26 auction or sale of a tax lien but not later than 10 years
27 after the auction or sale, if the tax lien is not redeemed,
28 the holder of the tax lien certificate may bring in the
29 circuit court of the county in which the property is located
30 an action to foreclose the right to redeem. If any applicable
law or court order prohibits bringing an action to foreclose the right to redeem, the limitation provided in this section shall be extended 12 months following the termination of the prohibition.

"(b)(1) At least 30 days before filing an action to foreclose the right to redeem under this article, but not more than 180 days before the action is commenced, the holder of the tax lien certificate shall send notice of intent to file the foreclosure action by certified mail to all of the following:

"a. The property owner of record, according to the property tax records of the county in which the property is located, at the owner's address shown in the records and at the street address of the property if different.

"b. All holders of outstanding mortgages, judgment liens, or other lines on the property as recorded in the probate office of the county in which the property is located.

"c. The tax collecting official of the county in which the property is located.

"(2) The notice shall include the property owner's name, the Uniform Parcel Number, the legal description of the property, the name and address of the holder of the tax lien certificate, and a statement that the holder proposes to file an action to foreclose the tax lien between 30 and 180 days after the date of mailing of the notice. If the holder fails to send the notice required by this subsection, the court
shall dismiss any action filed to foreclose the right to
redeem the property under this article.

"(c) The holder shall name as parties defendant to
the foreclosure action all persons entitled to redeem under
this article. Upon filing the foreclosure action, the holder
shall file a notice as provided by Section 35-4-131.

"(d)(1) In an action to foreclose the right to
redeem, if the court finds that the tax lien auction or sale
is valid, that proper notice has been given, and that the tax
lien has not been redeemed, the court shall enter judgment
foreclosing the right of the defendant or defendants to redeem
and shall direct the circuit clerk to execute and deliver to
the party in whose favor judgment is entered a deed conveying
the interests of the defendants in the property described in
the tax lien certificate.

"(2) After entry of judgment, a party whose rights
to redeem the tax lien are foreclosed has no further legal or
equitable right, title, or interest in the property subject to
the right of appeal and stay of execution as in other civil
actions.

"(e) The foreclosure of the right to redeem does not
extinguish any easement or right-of-way on or appurtenant to
the property or rights of any public utility or governmental
entity in the property, nor does it affect the rights of
holders of prior tax lien certificates.

"(f)(1) The clerk's deed executed in accordance with
subsection (d) shall include all of the following information:
"a. The date of the judgment.
"b. The number and style of the case.
"c. The name of the plaintiff who shall be known as the grantee.
"d. The legal description of the property.
"e. The Uniform Parcel Number of the property.
"f. The date of the conveyance.
"g. The original deed shall be delivered to the plaintiff for recording in the probate records in the county in which the property is located.

"h. Any person who is entitled to redeem under this article may redeem at any time before judgment is entered, notwithstanding that an action to foreclose has been commenced. If the person who redeems has been served personally or by publication in the action, or if the person became an owner after the action began and redeems after a notice is recorded pursuant to subsection (c), judgment shall be entered in favor of the plaintiff against the person for the costs incurred by the plaintiff in the action, including reasonable attorney fees to be determined by the court.

"(h) If a tax lien that was purchased pursuant to this article is not redeemed and the holder of the tax lien certificate fails to commence an action to foreclose the right of redemption on or before 10 years from the date of the tax lien certificate, the tax lien certificate shall expire and the lien shall become void.
"(i) If a judicial proceeding prohibits bringing an action to foreclose the right to redeem, the time of expiration under this section shall be extended by 12 months following the completion of the judicial proceeding.

§40-10-198.

"(a) Each holder of a tax lien certificate shall be entitled to the same rights and remedies with respect to the collection of the amounts due on such tax lien certificate as are available to the tax collector collecting official with respect to the collection of delinquent taxes, including, but not limited to, the right to institute garnishment proceedings against the taxpayer for the payment of taxes. Furthermore, the

"(b) The holder of a tax lien certificate shall not be entitled to charge the taxpayer for the release or satisfaction of the tax lien any amount more than what would otherwise have been available to the tax collector collecting official with respect to the collection of the delinquent tax."

Section 2. Sections 40-10-199 and 40-10-200 are added to the Code of Alabama 1975, to read as follows:

§40-10-199.

(a) Tax liens that are not sold at the tax lien auction conducted by the tax collecting official shall be separated in the tax lien auction list as prescribed by Section 40-10-183 and the county shall retain the lien pursuant to Section 40-1-3. The tax collecting official,
within 45 days after the tax lien auction date, may sell at private sale an unsold tax lien for no less than all taxes, interest, penalties, costs, and fees. The purchaser at private sale shall be entitled to interest on the amount paid at a rate agreed to by the tax collecting official, not to exceed 12 percent. All private tax lien sales shall be entered in the record of tax lien auctions and sales, as provided in Section 40-10-188.

(b) All tax liens that remain unsold by the tax lien auction or sale shall be included in all future tax lien auctions or sales until sold.

(c) Any tax lien that does not sell at auction shall be reported to the county commission when seeking approval of errors in assessments, litigations, or insolvents as the tax collecting official will be allowed credit for taxes due to this state upon final settlement with the Comptroller.

§40-10-200.

If any tax assessor, tax collecting official, commissioner of revenue, officer of the court with jurisdiction, or any employee of any of those offices is directly or indirectly concerned or has an interest in the purchase of any tax lien sold for delinquent taxes, the sale shall be void, and the sureties on his or her official bond shall be liable for a penalty not to exceed five hundred dollars ($500) and to be fixed by the circuit judge with jurisdiction in the county. The penalty shall be remitted to the general fund of the county.
Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.