

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: S3/22/11 H3/30/11*

# A Bill

SENATE BILL 597

5 By: Senator J. Dismang  
6

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THE PROCEDURE FOR QUIETING TITLE TO  
9 LANDS FORFEITED TO THE STATE OF ARKANSAS FOR  
10 NONPAYMENT OF TAXES; AND FOR OTHER PURPOSES.  
11

## Subtitle

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14 TO CLARIFY THE PROCEDURE FOR QUIETING  
15 TITLE TO LANDS FORFEITED TO THE STATE OF  
16 ARKANSAS FOR NONPAYMENT OF TAXES.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 26-38-201 is amended to read as follows:  
22 26-38-201. Suit to confirm title to land in state.

23 (a) ~~Whenever any~~ If real property, ~~sectional or town or city lots,~~ has  
24 been forfeited to the State of Arkansas and conveyed by certification to the  
25 Commissioner of State Lands for the nonpayment of taxes, the state or the  
26 purchaser, donee, or redeмпtor of the real property may file a suit for  
27 confirmation of title in the ~~chancery circuit court wherein~~ of the county  
28 where the real property lies, requesting that the title to the real property  
29 be confirmed and quieted in the State of Arkansas, in care of the  
30 Commissioner of State Lands, or in the purchaser, donee, or redeмпtor of the  
31 real property in fee simple.

32 (b) (1) Suit to confirm title ~~by the state in the State of Arkansas or~~  
33 in a purchaser, donee, or redeмпtor may be filed at any time ~~subsequent to~~  
34 after the conveyance by certification.

35 (2) ~~Further, the~~ The state may elect to file for confirmation  
36 ~~subsequent to~~ after conveyance from the state to ~~any a~~ a purchaser, donee, or



1 redeemptor.

2 (3) In the event If confirmation is filed following after a  
 3 conveyance from the state, the decree of confirmation ~~shall inure~~ inures to  
 4 the benefit of the purchaser, donee, or redeemptor of the ~~lands~~ real property.  
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6 SECTION 2. Arkansas Code § 26-38-202 is amended to read as follows:

7 26-38-202. ~~Petition~~ Complaint.

8 (a) The Commissioner of State Lands, on behalf of the State of  
 9 Arkansas, or the purchaser, donee, or redeemptor of the real property from the  
 10 state, shall file in the office of the clerk of the circuit court of the  
 11 county in which the forfeited real property is situated a ~~petition~~ complaint  
 12 requesting that title be quieted and confirmed ~~in~~ to the real property  
 13 described in the ~~petition~~ complaint.

14 (b)(1) The ~~petition~~ plaintiff shall ~~have~~ attach to the complaint a  
 15 certified list ~~attached to it,~~ from the Commissioner of State Lands  
 16 describing the real property and containing the years and the amounts for  
 17 which ~~each parcel~~ the real property was forfeited.

18 (2) A purchaser, donee, or redeemptor of real property from the  
 19 state shall attach to the complaint a copy of the limited warranty deed or  
 20 other documentation evidencing the transfer of the real property from the  
 21 state to the purchaser, donee, or redeemptor.

22 (c) The ~~petition~~ complaint may include as many parcels of ~~land~~ real  
 23 property as the Commissioner of State Lands or the purchaser, donee, or  
 24 redeemptor of real property from the state deems proper, so long as all  
 25 parcels lie within the county.

26 (d)(1) The certified list ~~shall be~~ is all the proof that ~~shall be~~ is  
 27 required to show prima facie title in the state.

28 (2) A limited warranty deed or a donation deed is all the proof  
 29 that is required to show prima facie title in a purchaser, donee, or  
 30 redeemptor.

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32 SECTION 3. Arkansas Code § 26-38-203 is amended to read as follows:

33 26-38-203. Publication of notice.

34 (a) Upon ~~the filing of the petition,~~ there shall be published a  
 35 complaint under § 26-38-202, the plaintiff shall publish for four (4)  
 36 consecutive weeks, ~~one~~ one (1) time per week, in a newspaper having general

1 circulation in the county wherein the real property is located, a notice  
2 calling on all persons, firms, corporations, or improvement districts who can  
3 set up any right to the real property so conveyed and forfeited to show cause  
4 why the title to the real property should not be confirmed, quieted, and  
5 vested in the ~~State of Arkansas~~ plaintiff in fee simple.

6 (b) The notice shall set forth the description of the real property  
7 and the name of the person, firm, or corporation that last paying paid the  
8 taxes on the real property thereon.

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10 SECTION 4. Arkansas Code § 26-38-204 is amended to read as follows:

11 26-38-204. ~~Parties~~ Additional parties to suit - Decree.

12 (a) ~~Any~~ A person, firm, corporation, or improvement district claiming  
13 ~~any an~~ an interest in ~~any a~~ a parcel of real property adverse to the ~~state~~  
14 plaintiff under § 26-38-202 shall ~~have the right to join or~~ be made a party  
15 ~~to a suit, and, if made a party, the claims of any such person, firm,~~  
16 ~~corporation, or improvement district shall be~~ and shall have the interest  
17 adjudicated in a suit under this subchapter.

18 (b) If ~~any a~~ a person, firm, corporation, or improvement district ~~sets~~  
19 ~~up the defense~~ claims that the conveyance of real property to the ~~state~~  
20 plaintiff was void ~~for any cause,~~ the person, firm, corporation, or  
21 improvement district shall tender to the clerk of the court the amount of  
22 taxes, penalties, interest, and costs due and owing on the ~~parcel~~ real  
23 property.

24 (c)(1) ~~In case any~~ If the person, firm, corporation, or improvement  
25 district ~~so~~ made a party defendant to the proceeding, ~~as provided in~~ under  
26 ~~this section, shall establish a valid defense,~~ establishes a superior claim  
27 to all or part of the real property, a the decree of the court shall:

28 (A) ~~be~~ Be rendered in favor of the party defendant, with  
29 respect to the ~~parcel so~~ affected, ~~and~~ real property;

30 (B) ~~the decree shall order~~ Order the defendant to pay all  
31 taxes, penalties, interest, and costs due on the ~~parcel,~~ affected real  
32 property;

33 (C) ~~Thereafter,~~ Order the Commissioner of State Lands  
34 ~~shall to~~ issue a deed of redemption to the party defendant for the affected  
35 real property; and

36 (D) Set aside the transfer from the state to the

1 purchaser, donee, or redelector of the affected real property.

2 (2) ~~In the event~~ If the party defendant fails to establish a  
3 valid defense, an order so stating will be entered, and the party defendant  
4 will be allowed to recover the funds tendered to the clerk ~~pursuant to~~ under  
5 subsection (b) of this section.

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7 SECTION 5. Arkansas Code § 26-38-206 is amended to read as  
8 follows:

9 26-38-206. Effect of the decree of confirmation.

10 (a) ~~The~~ Except as provided in this section and § 26-37-203, the decree  
11 of the ~~chancery~~ circuit court confirming the forfeiture and conveyance to the  
12 ~~state~~ plaintiff under § 26-38-202 of real property shall operate, ~~except only~~  
13 ~~as expressly provided in this section,;~~

14 (1) ~~as~~ As a complete bar, ~~both at law and in equity, against any~~  
15 ~~and~~ of a claim or defense of all persons, firms, corporations, quasi-  
16 corporations, associations, trustees, and holders of beneficial interests ~~who~~  
17 ~~may hereafter assert or defend claims to the~~ title of the real property; and

18 (2) ~~as a vesting of~~ To vest the complete and ~~indefensible~~  
19 indefeasible title to the real property in the ~~state~~ plaintiff under § 26-38-  
20 202 and ~~its~~ the plaintiff's grantees in fee simple, free and clear of all  
21 ~~such claims.~~

22 (b) ~~It shall so operate,~~ regardless of whether ~~such~~ the forfeiture and  
23 conveyance ~~may have been~~ is void or voidable because of ~~defects or~~  
24 ~~irregularities occurring~~ a defect or irregularity in the proceedings ~~therefor~~  
25 to forfeit and convey the real property.

26 (c)(1)(b) All parties ~~shall~~ have the right to appeal ~~any~~ a decree of  
27 confirmation under this subchapter pursuant to the Arkansas Rules of Civil  
28 Procedure.

29 ~~(2)(A)(c)(1)~~ Any The claim of a person, firm, corporation,  
30 quasi-corporation, association, trustee, or holder of a beneficial interest  
31 ~~whose interest in the property is~~ with a properly recorded interest in the  
32 real property that but who is not properly served with notice of the  
33 confirmation proceedings under this subchapter ~~shall have~~ is barred if not  
34 commenced within:

35 (A) ~~one~~ One (1) year of the posting of a notice of entry  
36 of the decree of confirmation under subdivision (c)(2) of this section; or

1 (B) Three (3) years from and after rendition to attack the  
2 date that the decree insofar as it relates to his real property is entered if  
3 a notice of entry of the decree of confirmation under subdivision (c)(2) of  
4 this section is not posted.

5 (2) If a notice of entry of a decree of confirmation is posted  
6 under this subsection:

7 (A) The notice shall be posted conspicuously on the  
8 property; and

9 (B) A sworn affidavit evidencing the posting shall be  
10 filed with the court in the quiet title action by the party that obtained  
11 title to the real property in the quiet title action.

12 ~~(B) All attacks upon the decree made after the one (1)~~  
13 ~~year period shall be taken to be collateral attacks and shall be wholly~~  
14 ~~ineffectual.~~

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16 SECTION 6. Arkansas Code § 26-38-208 is amended to read as follows:  
17 26-38-208. Severed mineral rights.

18 (a)(1) The Subject to the additional requirements of this section,  
19 ~~provisions of this subchapter shall be applicable~~ applies to severed mineral  
20 interests that are forfeited and conveyed to the state for the nonpayment of  
21 taxes.

22 (2) ~~Wherever~~ For purposes of this subchapter, wherever the terms  
23 “real property”, “parcel(s)”, or “parcel of real property” appear, the same  
24 terms also shall ~~also~~ mean severed mineral interests.

25 (b)(1) Upon filing a suit to confirm title in severed mineral  
26 interests, the plaintiff shall:

27 (A) Undertake a search of the records listed in § 18-60-  
28 502 to identify persons entitled to notice; and

29 (B) Provide notice to all persons that have or claim to  
30 have an interest in the severed mineral interests.

31 (2) The interested persons shall be:

32 (A) Summoned as defendants in the case; and

33 (B) Served in the manner required for other civil actions.

34 (3) At a minimum, the following persons shall be made defendants  
35 in a suit to confirm title to severed mineral interests:

36 (A) All lessors and lessees identified in a recorded and

1 unreleased oil, gas, or mineral lease pertaining to the severed mineral  
2 interests;

3 (B) All persons identified in the county real estate or  
4 county tax records as an owner of the severed mineral interests immediately  
5 before forfeiture of the severed mineral interests for nonpayment of taxes;  
6 and

7 (C) All heirs, successors, and assigns of the persons  
8 described in subdivisions (b)(3)(A) or (B), if the persons are deceased or  
9 have assigned or otherwise transferred their interest in the severed mineral  
10 interests.

11 (c)(1) In any suit to confirm title in severed mineral interests,  
12 proof that the forfeiture or conveyance sought to be confirmed is void and  
13 not merely voidable is a conclusive defense to the suit.

14 (2) Proof that the forfeiture or conveyance sought to be  
15 confirmed is merely voidable but not void shall be considered by the court  
16 and determined on the facts as justice and equity requires.

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18 /s/J.Dismang  
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