

WITHDRAWN

The House Committee on Judiciary offers the following substitute to SB 13:

A BILL TO BE ENTITLED**AN ACT**

1 To amend Code Sections 9-13-161 and 44-14-162 and Chapter 4 of Title 48 of the Official
2 Code of Georgia Annotated, relating to where and when sales under execution held and
3 change of place of public sales by court order, sales made on foreclosure under power of sale,
4 and tax sales, respectively, so as to authorize online public sales under tax levies and
5 executions; to provide a time frame for sales of real estate under foreclosure powers; to
6 provide for procedures for an appointed levying officer to conduct certain sales; to require
7 registration to participate in sales conducted in a certain manner; to provide for registration
8 requirements; to replace constables with sheriffs as the proper officer for collecting and
9 levying tax executions on behalf of the tax collector or tax commissioner; to provide for
10 related matters; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Code Section 9-13-161 of the Official Code of Georgia Annotated, relating to where and
14 when sales under execution held and change of place of public sales by court order, is
15 amended by revising subsections (a) and (b) as follows:

S. B. 13 (SUB)

16 "(a)(1) Unless otherwise provided, sales of property taken under execution shall be made
17 by the sheriffs ~~or coroners only~~ at the courthouse of the county where the levy was made
18 on the first Tuesday ~~in each of the~~ month, between the hours of 10:00 A.M. and 4:00
19 P.M.; at a time and place ordered by the court; or at a time and place within the discretion
20 of the sheriff, and at public outcry; provided, however, that, ~~should~~ if the first Tuesday
21 of the month ~~fall falls~~ on New Year's Day or Independence Day, such sales shall take
22 place on the immediately following Wednesday. A change in the time of such sales from
23 the first Tuesday of the month to the first Wednesday of the month as provided in this
24 subsection shall also apply to all public sales within the county required to be conducted
25 at the time of the sheriff's sales.

26 (2)(A) Sales of property taken under execution, as provided for in paragraph (1) of this
27 subsection, may also, at the discretion of the sheriff, be conducted through internet
28 enabled technology and digital media, including, but not limited to, websites and
29 consumer applications accessible through computers, smartphones, or other electronic
30 devices.

31 (B) Sales conducted pursuant to this paragraph shall require a bidder to register prior
32 to participation. Such registration shall require submission of:

33 (i) A completed Internal Revenue Service Form W-9;

34 (ii) The name, address, and telephone number of the bidder; and

35 (iii) Proof of:

36 (I) Lawful residence in this state or valid registration with the Secretary of State
37 required of a corporation, limited liability company, or partnership authorized to
38 transact business in this state; and

39 (II) Compliance with the tax withholding requirements set forth in Code
40 Section 48-7-128.

41 (C) Any fee, including, but not limited to, a buyer's premium, charged to any purchaser
 42 for a sale conducted pursuant to this subsection shall be applied at the time of the sale
 43 and shall not exceed \$250.00.

44 (b) In all cases where any sheriff, ~~coroner~~, or other levying officer shall levy any execution
 45 or other legal process upon any corn, lumber, timber of any kind, bricks, machinery, or
 46 other articles difficult and expensive to transport, the officer may sell the property without
 47 carrying and exposing the same at the courthouse door on the day of sale, but the levying
 48 officer shall give a full description of the property and the place where it is located in the
 49 advertisement of the sale."

50

SECTION 2.

51 Code Section 44-14-162 of the Official Code of Georgia Annotated, relating to sales made
 52 on foreclosure under power of sale, manner of advertisement and conduct necessary for
 53 validity, and filing, is amended by revising subsection (a) as follows:

54 "(a) No sale of real estate under powers contained in mortgages, deeds, or other lien
 55 contracts shall be valid unless the sale shall be advertised and conducted at the ~~time and~~
 56 ~~place and in the usual manner of the sheriff's sales~~ courthouse in the county in which such
 57 real estate or a part thereof is located ~~and~~ on the first Tuesday of the month, between the
 58 hours of 10:00 A.M. and 4:00 P.M., and at public outcry; provided, however, that, if the
 59 first Tuesday of the month falls on New Year's Day or Independence Day, such sale shall
 60 take place on the immediately following Wednesday; provided, further, that no such sale
 61 shall be valid unless notice of the sale shall have been given as required by Code
 62 Section 44-14-162.2. If the advertisement contains the street address, city, and ZIP Code
 63 of the property, such information shall be clearly set out in bold type. In addition to any
 64 other matter required to be included in the advertisement of the sale, if the property
 65 encumbered by the mortgage, security deed, or lien contract has been transferred or
 66 conveyed by the original debtor to a new owner and an assumption by the new owner of

67 the debt secured by said mortgage, security deed, or lien contract has been approved in
68 writing by the secured creditor, then the advertisement should also include a recital of the
69 fact of such transfer or conveyance and the name of the new owner, as long as information
70 regarding any such assumption is readily discernable by the foreclosing creditor. Failure
71 to include such a recital in the advertisement, however, shall not invalidate an otherwise
72 valid foreclosure sale."

73 **SECTION 3.**

74 Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to tax sales, is
75 amended in Code Section 48-4-1, relating to procedures for sales under tax levies and
76 executions, by revising subsection (a) as follows:

77 "(a)(1) Except as otherwise provided in this title, when a levy is made upon real or
78 personal property, the property shall be advertised and sold in the same manner as
79 provided for executions and judicial sales. Except as otherwise provided in this title, the
80 sale of real or personal property under a tax execution shall be made in the same manner
81 as provided for judicial sales; provided, however, that, in addition to such other notice as
82 may be required by law, in any sale under a tax execution made pursuant to this chapter,
83 the defendant shall be given ten days' written notice of such sale by registered or certified
84 mail or statutory overnight delivery, return receipt requested. The notice required by this
85 Code section shall be sent:

86 (A) In cases of executions issued by a county officer for ad valorem taxes, to the
87 defendant's last known address as listed in the records of the tax commissioner of the
88 county that issued the tax execution;

89 (B) In cases of executions issued by a municipal officer for ad valorem taxes, to the
90 defendant's last known address as listed in the records of the municipal officer of the
91 municipality that issued the tax execution; or

92 (C) In cases of executions issued by a state officer, to the defendant's last known
93 address as listed in the records of the department headed by the issuing officer.

94 (2) A copy of the notice provided for in paragraph (1) of this subsection shall also be sent
95 by the same tax officer sending the notice to the defendant to the appropriate tax official
96 of the state, county, or municipality which also has issued an execution with respect to
97 such property.

98 (3)(A) A sale for taxes due may be conducted by the tax commissioner or tax collector
99 or his or her duly authorized officer and may be held in the office of the tax
100 commissioner or tax collector or at such other location as may be identified in the
101 notice required by this Code section. Such notice shall also be posted in a conspicuous
102 location in the appropriate courthouse.

103 (B) Sales for taxes due pursuant to this subsection may also, at the discretion of the tax
104 commissioner or tax collector, be conducted through internet enabled technology and
105 digital media, including, but not limited to, websites and consumer applications
106 accessible through computers, smartphones, or other electronic devices. Sales
107 conducted pursuant to this subparagraph shall require a bidder to register prior to
108 participation. Such registration shall require submission of:

109 (i) A completed Internal Revenue Service Form W-9;

110 (ii) The name, address, and telephone number of the bidder; and

111 (iii) Proof of:

112 (I) Lawful residence in this state or valid registration with the Secretary of State
113 required of a corporation, limited liability company, or partnership authorized to
114 transact business in this state; and

115 (II) Compliance with the tax withholding requirements set forth in Code
116 Section 48-7-128."

117 **SECTION 4.**

118 Said chapter is further amended by revising Code Section 48-4-3, relating to duties of
119 levying officers, as follows:

120 "48-4-3.

121 The tax collector or tax commissioner may place his or her executions in the hands of ~~any~~
122 ~~constable~~ the sheriff of the county or a levying officer, who shall be authorized to collect
123 or levy the executions in any part of the county. The ~~constable~~ sheriff or other levying
124 officer to whom the tax collector or tax commissioner delivers the tax executions for
125 collection shall proceed promptly to enforce by levy and sale the collection of the
126 executions. Such sheriff or other levying officer shall be authorized to conduct any sale
127 in the same manner and under the same conditions as set forth in subsection (a) of Code
128 Section 48-4-1. The levying or collecting officer shall make prompt settlements with the
129 tax collector or tax commissioner and in no event shall be allowed longer than 90 days
130 from the time the executions are placed in his or her hands within which to make final
131 settlement with the tax collector or tax commissioner and return to the tax collector or tax
132 commissioner the tax collected and the uncollected executions with proper entries on the
133 executions. Any ~~constable~~ sheriff or other levying officer who fails or refuses to make a
134 final return or settlement within the time provided in this Code section shall forfeit all costs
135 due him or her on the executions and shall be subject to be ruled before any court of
136 competent jurisdiction and made to account as required by this Code section."

137 **SECTION 5.**

138 All laws and parts of laws in conflict with this Act are repealed.