SB233

ID716WZ-1

By Senators Coleman-Madison, Smitherman, Elliott

RFD: County and Municipal Government

First Read: 19-Mar-24

SYNOPSIS:

Under existing law, a fee is required to record certain mortgages, deeds of trust, contracts of conditional sale, or other instruments of like character which is given to secure the payment of any debt which conveys any real or personal property.

This bill would increase the fee for recording of certain mortgages, deeds of trust, contracts of conditional sale, or other instruments of like character which is given to secure the payment of any debt which conveys any real or personal property.

This bill would modify the rate and distribution of the mortgage record tax in order to provide a dedicated revenue for the Alabama Housing Trust Fund.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 40-22-2, Code of Alabama 1975; to increase the fee for recording of certain mortgages, deeds of

trust, contracts of conditional sale, or other instruments of like character which is given to secure the payment of any debt which conveys any real or personal property; and to modify the rate and distribution of the mortgage record tax in order to provide a dedicated revenue for the Alabama Housing Trust Fund.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-22-2, Code of Alabama 1975, is amended to read as follows:

"§40-22-2

No mortgage, deed of trust, contract of conditional sale, or other instrument of like character which is given to secure the payment of any debt which conveys any real or personal property situated within this state or any interest therein or any security agreement or financing statement provided for by the Uniform Commercial Code, except a security agreement or a financing statement relating solely to security interests in accounts, contract rights, or general intangibles, as these~~such~~ terms are defined in the Uniform Commercial Code, and except for the re-recordation of corrected mortgages, deeds, or instruments executed for the purpose of perfecting the title to real or personal property, specifically, but not limited to, corrections of maturity dates thereof, shall be received for record or for filing in the office of any probate judge of this state unless the following privilege or license taxes shall have been paid upon such instrument before the same shall be received for record or for filing:

(1)a. Upon all ~~such~~ instruments which are executed to secure or to evidence the securing of an initial indebtedness which shall not exceed one hundred dollars ($100), there shall be paid the sum of ~~$.15~~thirty cents ($.30), and upon all instruments which shall be executed to secure or to evidence the securing of an initial indebtedness of more than one hundred dollars ($100), there shall be paid the sum of ~~$.15~~thirty cents ($.30) for each one hundred dollars ($100) of such initial indebtedness or fraction thereof.

b. Upon all such instruments which are executed to secure or to evidence the securing of an open end or revolving indebtedness with any interest in property, at the option of the person offering the instrument for record or for filing, (i) there shall be paid the sum of ~~$.15~~thirty cents ($.30) for each one hundred dollars ($100) of such initial indebtedness or fraction thereof and the procedures set forth in paragraphs ~~a, b, and c~~a., b.,and c. of subdivision (2) of this section shall be applicable; or, in lieu thereof, (ii) there shall be paid the sum of ~~$.15~~thirty cents ($.30) for each one hundred dollars ($100) of maximum principal indebtedness, or fraction thereof, to be secured by such instrument at any one time as stated in the instrument or any amendment thereto. In any event, the privilege or license tax to be paid upon such instruments securing or evidencing the securing of open end or revolving indebtedness with any interest in property shall not exceed the amount of ~~$.15~~thirty cents ($.30) for each one hundred dollars ($100) of maximum principal indebtedness, or fraction thereof, to be secured by such instrument at any one

time as stated in the instrument or any amendment thereto, irrespective of the cumulative amount advanced from time to time thereunder.

(2)a. If subdivision (1)b.(i) applies and any part of the indebtedness which the mortgagor or debtor in any instrument conveying any real property situated within this state, or any interest therein, other than fixtures under the Uniform Commercial Code, is authorized to incur under the terms of the instrument has not been or will not be presently incurred at the time the~~such~~ instrument is offered for record, the tax shall be paid on the amount of indebtedness presently incurred, and the Department of Revenue, upon the petition of the owner of any such instrument or upon the petition of the agent or attorney of the~~such~~ owner, shall ascertain to its own satisfaction the amount then taxable and the amount to be incurred thereafter and determine the amount upon which the tax shall be paid at the time the~~such~~ instrument is offered and shall endorse its findings on the~~such~~ instrument. Upon the presentation of the~~such~~ instrument with the~~such~~ endorsement thereon, the probate judge of any county in which the instrument is offered, upon the payment of the tax upon the amount so ascertained by the Department of Revenue and the recording fees of the probate judge, shall accept the same for record. The Department of Revenue shall also require the owner of the~~such~~ instrument to execute a bond in an amount sufficient to secure to the state the privilege tax to become due and payable under this section upon the amount of the indebtedness to be incurred thereafter, such bond to be

approved by the Department of Revenue and payable to the State of Alabama and conditioned that the owner of the~~such~~ instrument will promptly report to the~~said~~ Department of Revenue and to the probate judge of the county where the~~said~~ instrument is first filed for record, whenever the~~such~~ owner or his successor in interest incurs any additional indebtedness thereunder, and the amount so incurred; and that the ~~said~~ owner of the~~such~~ instrument will pay or cause to be paid to the probate judge of the county in which said instrument is first filed the privilege or license tax required under this section upon the accrual of any additional indebtedness, and the said owner of such instrument will report to the said probate judge and the Department of Revenue during the month of September of each year the amount of all indebtedness and all bonds, debentures, notes or other forms of indebtedness incurred or certified and delivered under said instrument to such date, and the amount so certified and delivered during the preceding 12 months, and the aggregate of all such evidence of indebtedness certified and delivered under such instrument prior to such year. The bond executed to secure payment of the tax herein required shall cover a term of five years; and, after the expiration of the~~said~~ term of five years, the owner of the instrument offered for record shall execute such further bond as may be required by the Department of Revenue covering the succeeding term of five years, and thereafter every term of five years, in the same manner so long as any of the indebtedness authorized to be incurred by the~~such~~ instrument has not been incurred with like

condition and in the~~such~~ sum as the ~~said~~ department may prescribe.

b. Notwithstanding ~~the provisions of~~ paragraph a. ~~of this subdivision~~, any bank, savings and loan association, insurance company, or other financial institution organized and established under the laws of the State of Alabama or the United States which is the owner of the~~such~~ instrument, in lieu of the foregoing procedures, may certify the amount of indebtedness presently incurred, and the probate judge of any county in which the instrument is offered, upon payment of the tax upon the amount so certified and the recording fees of the probate judge, shall accept the instrument for record. During the month of September of each year, any such bank, savings and loan association, insurance company, or other financial institution which has recorded such instruments as described hereinabove shall report to the appropriate probate judge the amount of additional indebtedness incurred under the instrument and pay any tax required upon the additional indebtedness.

c. Each probate judge will forward to the State Banking Department by the end of October a statement showing the amounts certified to him or her by each forenamed organization. The State Banking Department will then have the authority to make unannounced audits on any organization electing to use this system of reporting indebtedness. Any organization which is found to have willfully certified less than the true amount it should have certified shall be required to pay a fine equal to three times the amount of tax

due on the amount of indebtedness not certified to the probate judge. This fine shall be paid into the State General Fund ~~of Alabama~~. In addition, any organization so fined must pay an auditing fee in accordance with established Banking Department audit fees into the funds of the State Banking Department.

(3) When any deed is filed for record which recites that part of the purchase money is unpaid, such deed to the extent of such unpaid balance shall be held and treated as a mortgage, and the mortgage tax shall be collected by the probate judge in addition to the tax for recording the instrument as a deed before recording the same, unless the balance of purchase money shall be secured by mortgage or deed of trust which has already been filed for record, and the tax thereon paid, and the fact of such prior payment shall be endorsed on the deed. When any such deed is recorded and the tax thereon is paid, and thereafter a mortgage securing the debt is filed for record, the same shall be admitted to record without the payment of the mortgage tax and the fact of the~~such~~ prior payment shall be endorsed on the deed.

(4) The privilege taxes herein imposed shall not be required on or for the filing of any such instrument, providing additional or substitute security for any indebtedness secured by, or the securing of which is evidenced by, an instrument previously filed, upon the filing of which the taxes provided by law have been paid or which was filed at a time when no such privilege taxes were required by law; provided, that the secured indebtedness remains unchanged in amount and in time of maturity.

(5) Upon the filing for record of such instrument and upon the payment of the tax thereon, the probate judge or his or her clerk shall certify on the instrument the fact that the ~~said~~ tax has been paid, and when so certified by the probate judge or his or her clerk, the~~such~~ instrument shall be admitted to record in any county wherein any of the property mentioned in the instrument is situated without the payment of any further tax thereon, except the fee to the probate judge for recording the~~such~~ instrument, and the~~such~~ certificate of the probate judge shall be recorded by such probate judge when such instrument is recorded. Upon the filing for record of any instrument which has been exempted by law from the payment of the tax provided for in this section, the probate judge shall certify thereon that no tax has been paid and shall stamp in bold letters on the face of the~~said~~ instrument "No Tax Collected," and the certificate shall be recorded with and as a part of such instrument, and thereafter the~~such~~ instrument shall be received for record in any county in this state without the payment of any further tax thereon, when submitted by a tax-exempt institution, but if submitted by or transferred to an institution or person not exempt from the payment of the tax levied under this section, the probate judge shall collect the tax levied by this section upon the then unpaid balance of the secured debt together with the fee of the probate judge for recording such instrument before it will be admitted to record. The tax herein provided for shall be paid upon all contracts for the sale of real or personal property, whether the same are in the nature of a conditional

sale or a bond for title, and no such contract shall be received for record until such tax shall have been paid.

(6) When the time for the payment of the indebtedness secured by, or the securing of which is evidenced by, any such instrument is extended or renewed, and the extension or renewal contract is offered for filing or for record, the tax required in this section shall be paid on the amount of indebtedness so extended or renewed; and the same shall be governed in all respects by ~~the provisions of~~ this article. No state, county, or municipal ad valorem tax shall be payable on any such instrument upon which the tax prescribed by this section shall have been paid, on the debt secured or evidenced thereby or on the security agreement evidenced thereby.

(7) ~~Of the taxes collected by the probate judge under this section there shall be paid to the county treasurer of the county in which such taxes are collected one-third of the amount collected, to be accounted for by the judge of probate, and the remaining two-thirds of the amount collected to the State Treasury. The probate judge shall receive five percent of the amount collected as compensation for services in collecting the money and certifying the instrument, the five percent to be retained by the judge of probate out of the money collected under this section; but when the property described in the instrument is situated within different counties within this state, then the probate judge who collects the taxes shall pay over to the county treasurer of each of the different counties in which the property is situated an amount of the taxes that would be in proportion to~~

~~the value of the property therein as compared to the whole property within this state described in the instrument.~~Revenues from the mortgage record tax shall be divided between four recipients: The judges of probate, the Alabama Housing Trust Fund, county treasuries, and the State Treasury. Five percent of all mortgage record taxes collected shall be distributed to the judges of probate, 25 percent of all mortgage record taxes collected shall be distributed to the Alabama Housing Trust Fund, 33 percent of all mortgage record taxes collected shall be distributed to the county treasurer in the county in which the tax is collected, and 37 percent of all mortgage record taxes collected shall be distributed to the State Treasury. If the property described in the instrument is situated within different counties within this state, then the judge of probate who collects the taxes shall pay over to the county treasurer of each of the different counties in which the property is situated an amount of the taxes that would be in proportion to the value of the property therein as compared to the whole property within this state described in the instrument.

(8) If any part of the property embraced or described in any instrument which is required under this section to pay a record privilege tax is located without this state, the indebtedness upon which the tax shall be paid for the privilege of recording such instrument shall be that proportion of the indebtedness secured by the instrument which the value of the property located in this state bears to the whole property described in the instrument. The Department of

Revenue may ascertain the value of the whole property and of that part of it which is located within this state for the purpose of ascertaining the amount of the indebtedness upon which the tax shall be paid, and the value of that part of the property located within this state and the amount of the indebtedness upon which such tax shall be paid shall be ascertained in the following manner: First, the owner of any such instrument or his or her agent or attorney may petition the Department of Revenue to ascertain the value of the whole property and of that part of which is located within this state and the amount of the indebtedness upon which such tax shall be paid, and the Department of Revenue, after hearing such evidence as may be offered or as may be before it, shall fix and determine the value of that part of the property located within this state and the amount of the indebtedness upon which the tax shall be paid and shall endorse its findings on such instrument, and upon the presentation of the instrument, with such endorsements to the probate judge of the county in which any part of the property is located, such instrument shall be accepted for record upon the payment of the tax upon the amount of such indebtedness as so ascertained by the Department of Revenue and of the recording fees of the probate judge; or, second, the owner of any such instrument or his or her agent or attorney may have such instrument recorded by paying to the probate judge of the county in which the instrument is offered for record the privilege tax on the entire amount of the indebtedness secured by such instrument, and may thereupon present a petition to the Department of

Revenue within 30 days after such instrument is recorded, and it shall be the duty of the Department of Revenue to ascertain the value of the whole property and of that part of it located within this state, and to fix and determine the amount of the indebtedness upon which the tax shall be paid, and the department shall thereupon ascertain such valuation and fix and determine such indebtedness and shall order the probate judge to refund the excess of privilege tax collected—, and the probate judge shall comply with such order; and the tax paid upon the entire amount of such indebtedness shall be held by the probate judge until the Department of Revenue determines the amount of the indebtedness upon which such tax shall be paid.

(9) Any probate judge who shall file for record or shall receive any such instrument for record or for filing, without collecting the recording or registration tax provided for the filing, recording, or registration of such instrument, or who shall fail to certify the fact that such tax has been paid before filing such instrument shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars ($10) nor more than one thousand dollars ($1,000).

(10) Every petition filed with the Department of Revenue to ascertain the amount of the mortgage tax due to be paid under this section shall, when the property conveyed in the instrument offered for record is located in more than one county of the state, show the value of the property conveyed in each county in which the instrument is to be recorded.

(11) Any probate judge who fails to keep the abstract

of mortgages or other instruments intended to secure the payment of monies~~moneys~~ which are filed in his or her office for filing or for record, as he or she is required by law to keep, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500)."

Section 2. This act shall become effective on October 1, 2024.