

1 HB487
2 198824-1
3 By Representatives Rafferty and England
4 RFD: County and Municipal Government
5 First Read: 23-APR-19

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

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

20 This bill would also modify the rate and
21 distribution of the Mortgage Record Tax in order to
22 provide a dedicated revenue for the Alabama Housing
23 Trust Fund.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to the Mortgage Record Tax; to amend
3 Section 40-22-2, Code of Alabama 1975, to increase the fee for
4 recording of certain mortgages, deeds of trust, contracts of
5 conditional sale, or other instruments of like character which
6 is given to secure the payment of any debt which conveys any
7 real or personal property and modify the rate and distribution
8 of the Mortgage Record Tax in order to provide a dedicated
9 revenue for the Alabama Housing Trust Fund.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§40-22-2.

14 "No mortgage, deed of trust, contract of conditional
15 sale, or other instrument of like character which is given to
16 secure the payment of any debt which conveys any real or
17 personal property situated within this state or any interest
18 therein or any security agreement or financing statement
19 provided for by the Uniform Commercial Code, except a security
20 agreement or a financing statement relating solely to security
21 interests in accounts, contract rights, or general
22 intangibles, as such terms are defined in the Uniform
23 Commercial Code, and except for the re-recording of
24 corrected mortgages, deeds, or instruments executed for the
25 purpose of perfecting the title to real or personal property,
26 specifically, but not limited to, corrections of maturity
27 dates thereof, shall be received for record or for filing in

1 the office of any probate judge of this state unless the
2 following privilege or license taxes shall have been paid upon
3 such instrument before the same shall be received for record
4 or for filing:

5 "(1)a. Upon all such instruments which are executed
6 to secure or to evidence the securing of an initial
7 indebtedness which shall not exceed one hundred dollars
8 (\$100), there shall be paid the sum of ~~\$.15~~ twenty cents
9 (\$.20), and upon all instruments which shall be executed to
10 secure or to evidence the securing of an initial indebtedness
11 of more than one hundred dollars (\$100), there shall be paid
12 the sum of ~~\$.15~~ twenty cents (\$.20) for each one hundred
13 dollars (\$100) of such initial indebtedness or fraction
14 thereof.

15 "b. Upon all such instruments which are executed to
16 secure or to evidence the securing of an open end or revolving
17 indebtedness with any interest in property, at the option of
18 the person offering the instrument for record or for filing,
19 ~~(i)~~1. there shall be paid the sum of ~~\$.15~~ twenty cents (\$.20)
20 for each one hundred dollars (\$100) of such initial
21 indebtedness or fraction thereof and the procedures set forth
22 in paragraphs a, b, and c of subdivision (2) of this section
23 shall be applicable; or, in lieu thereof, ~~(ii)~~2. there shall
24 be paid the sum of ~~\$.15~~ twenty cents (\$.20) for each one
25 hundred dollars (\$100) of maximum principal indebtedness, or
26 fraction thereof, to be secured by such instrument at any one
27 time as stated in the instrument or any amendment thereto. In

1 any event, the privilege or license tax to be paid upon such
2 instruments securing or evidencing the securing of open end or
3 revolving indebtedness with any interest in property shall not
4 exceed the amount of ~~\$.15~~ twenty cents (\$.20) for each one
5 hundred dollars (\$100) of maximum principal indebtedness, or
6 fraction thereof, to be secured by such instrument at any one
7 time as stated in the instrument or any amendment thereto,
8 irrespective of the cumulative amount advanced from time to
9 time thereunder.

10 "(2)a. If ~~subdivision~~ subparagraph (1)b.(i)1.
11 applies and any part of the indebtedness which the mortgagor
12 or debtor in any instrument conveying any real property
13 situated within this state, or any interest therein, other
14 than fixtures under the Uniform Commercial Code, is authorized
15 to incur under the terms of the instrument has not been or
16 will not be presently incurred at the time such instrument is
17 offered for record, the tax shall be paid on the amount of
18 indebtedness presently incurred, and the Department of
19 Revenue, upon the petition of the owner of any such instrument
20 or upon the petition of the agent or attorney of such owner,
21 shall ascertain to its own satisfaction the amount then
22 taxable and the amount to be incurred thereafter and determine
23 the amount upon which the tax shall be paid at the time such
24 instrument is offered and shall endorse its findings on such
25 instrument. Upon the presentation of such instrument with such
26 endorsement thereon, the probate judge of any county in which
27 the instrument is offered, upon the payment of the tax upon

1 the amount so ascertained by the Department of Revenue and the
2 recording fees of the probate judge, shall accept the same for
3 record. The Department of Revenue shall also require the owner
4 of such instrument to execute a bond in an amount sufficient
5 to secure to the state the privilege tax to become due and
6 payable under this section upon the amount of the indebtedness
7 to be incurred thereafter, such bond to be approved by the
8 Department of Revenue and payable to the State of Alabama and
9 conditioned that the owner of such instrument will promptly
10 report to said Department of Revenue and to the probate judge
11 of the county where said instrument is first filed for record,
12 whenever such owner or his successor in interest incurs any
13 additional indebtedness thereunder, and the amount so
14 incurred; and that the said owner of such instrument will pay
15 or cause to be paid to the probate judge of the county in
16 which said instrument is first filed the privilege or license
17 tax required under this section upon the accrual of any
18 additional indebtedness, and the said owner of such instrument
19 will report to the said probate judge and the Department of
20 Revenue during the month of September of each year the amount
21 of all indebtedness and all bonds, debentures, notes or other
22 forms of indebtedness incurred or certified and delivered
23 under said instrument to such date, and the amount so
24 certified and delivered during the preceding 12 months, and
25 the aggregate of all such evidence of indebtedness certified
26 and delivered under such instrument prior to such year. The
27 bond executed to secure payment of the tax herein required

1 shall cover a term of five years; and, after the expiration of
2 said term of five years, the owner of the instrument offered
3 for record shall execute such further bond as may be required
4 by the Department of Revenue covering the succeeding term of
5 five years, and thereafter every term of five years, in the
6 same manner so long as any of the indebtedness authorized to
7 be incurred by such instrument has not been incurred with like
8 condition and in such sum as the said department may
9 prescribe.

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

1 "c. Each probate judge will forward to the State
2 Banking Department by the end of October a statement showing
3 the amounts certified to him or her by each forenamed
4 organization. The State Banking Department will then have the
5 authority to make unannounced audits on any organization
6 electing to use this system of reporting indebtedness. Any
7 organization which is found to have willfully certified less
8 than the true amount it should have certified shall be
9 required to pay a fine equal to three times the amount of tax
10 due on the amount of indebtedness not certified to the probate
11 judge. This fine shall be paid into the General Fund of
12 Alabama. In addition, any organization so fined must pay an
13 auditing fee in accordance with established Banking Department
14 audit fees into the funds of the State Banking Department.

15 "(3) When any deed is filed for record which recites
16 that part of the purchase money is unpaid, such deed to the
17 extent of such unpaid balance shall be held and treated as a
18 mortgage, and the mortgage tax shall be collected by the
19 probate judge in addition to the tax for recording the
20 instrument as a deed before recording the same, unless the
21 balance of purchase money shall be secured by mortgage or deed
22 of trust which has already been filed for record, and the tax
23 thereon paid, and the fact of such prior payment shall be
24 endorsed on the deed. When any such deed is recorded and the
25 tax thereon is paid, and thereafter a mortgage securing the
26 debt is filed for record, the same shall be admitted to record

1 without the payment of the mortgage tax and the fact of such
2 prior payment shall be endorsed on the deed.

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

12 "(5) Upon the filing for record of such instrument
13 and upon the payment of the tax thereon, the probate judge or
14 his or her clerk shall certify on the instrument the fact that
15 the said tax has been paid, and when so certified by the
16 probate judge or his or her clerk, such instrument shall be
17 admitted to record in any county wherein any of the property
18 mentioned in the instrument is situated without the payment of
19 any further tax thereon, except the fee to the probate judge
20 for recording such instrument, and such certificate of the
21 probate judge shall be recorded by such probate judge when
22 such instrument is recorded. Upon the filing for record of any
23 instrument which has been exempted by law from the payment of
24 the tax provided for in this section, the probate judge shall
25 certify thereon that no tax has been paid and shall stamp in
26 bold letters on the face of said instrument "No Tax
27 Collected," and the certificate shall be recorded with and as

1 a part of such instrument, and thereafter such instrument
2 shall be received for record in any county in this state
3 without the payment of any further tax thereon, when submitted
4 by a tax-exempt institution, but if submitted by or
5 transferred to an institution or person not exempt from the
6 payment of the tax levied under this section, the probate
7 judge shall collect the tax levied by this section upon the
8 then unpaid balance of the secured debt together with the fee
9 of the probate judge for recording such instrument before it
10 will be admitted to record. The tax herein provided for shall
11 be paid upon all contracts for the sale of real or personal
12 property, whether the same are in the nature of a conditional
13 sale or a bond for title, and no such contract shall be
14 received for record until such tax shall have been paid.

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

1 ~~"(7) Of the taxes collected by the probate judge~~
2 ~~under this section there shall be paid to the county treasurer~~
3 ~~of the county in which such taxes are collected one-third of~~
4 ~~the amount collected, to be accounted for by the judge of~~
5 ~~probate, and the remaining two-thirds of the amount collected~~
6 ~~to the State Treasury. The probate judge shall receive five~~
7 ~~percent of the amount collected as compensation for services~~
8 ~~in collecting the money and certifying the instrument, the~~
9 ~~five percent to be retained by the judge of probate out of the~~
10 ~~money collected under this section; but when the property~~
11 ~~described in the instrument is situated within different~~
12 ~~counties within this state, then the probate judge who~~
13 ~~collects the taxes shall pay over to the county treasurer of~~
14 ~~each of the different counties in which the property is~~
15 ~~situated an amount of the taxes that would be in proportion to~~
16 ~~the value of the property therein as compared to the whole~~
17 ~~property within this state described in the instrument.~~

18 Revenues from the Mortgage Record Tax shall be divided between
19 the following recipients in the following amounts:

20 "a.1. The judges of probate of the county where the
21 taxes are paid shall receive 3.75 percent.

22 "2. If the property described in the instrument is
23 situated within different counties within this state, then the
24 judge of probate who collects the taxes shall pay to the
25 county treasurer of each of the different counties in which
26 the property is situated an amount of the taxes that would be
27 in proportion to the value of the property therein as compared

1 to the whole property within this state described in the
2 instrument.

3 "b. The Alabama Housing Trust Fund shall receive 25
4 percent.

5 "c. The county treasurer of the county where the
6 taxes are paid shall receive 23.75 percent.

7 "d. The State Treasury shall receive 47.5 percent.

8 "(8) If any part of the property embraced or
9 described in any instrument which is required under this
10 section to pay a record privilege tax is located without this
11 state, the indebtedness upon which the tax shall be paid for
12 the privilege of recording such instrument shall be that
13 proportion of the indebtedness secured by the instrument which
14 the value of the property located in this state bears to the
15 whole property described in the instrument. The Department of
16 Revenue may ascertain the value of the whole property and of
17 that part of it which is located within this state for the
18 purpose of ascertaining the amount of the indebtedness upon
19 which the tax shall be paid, and the value of that part of the
20 property located within this state and the amount of the
21 indebtedness upon which such tax shall be paid shall be
22 ascertained in the following manner: First, the owner of any
23 such instrument or his or her agent or attorney may petition
24 the Department of Revenue to ascertain the value of the whole
25 property and of that part of which is located within this
26 state and the amount of the indebtedness upon which such tax
27 shall be paid, and the Department of Revenue, after hearing

1 such evidence as may be offered or as may be before it, shall
2 fix and determine the value of that part of the property
3 located within this state and the amount of the indebtedness
4 upon which the tax shall be paid and shall endorse its
5 findings on such instrument, and upon the presentation of the
6 instrument, with such endorsements to the probate judge of the
7 county in which any part of the property is located, such
8 instrument shall be accepted for record upon the payment of
9 the tax upon the amount of such indebtedness as so ascertained
10 by the Department of Revenue and of the recording fees of the
11 probate judge; or, second, the owner of any such instrument or
12 his or her agent or attorney may have such instrument recorded
13 by paying to the probate judge of the county in which the
14 instrument is offered for record the privilege tax on the
15 entire amount of the indebtedness secured by such instrument,
16 and may thereupon present a petition to the Department of
17 Revenue within 30 days after such instrument is recorded, and
18 it shall be the duty of the Department of Revenue to ascertain
19 the value of the whole property and of that part of it located
20 within this state, and to fix and determine the amount of the
21 indebtedness upon which the tax shall be paid, and the
22 department shall thereupon ascertain such valuation and fix
23 and determine such indebtedness and shall order the probate
24 judge to refund the excess of privilege tax collected , and
25 the probate judge shall comply with such order; and the tax
26 paid upon the entire amount of such indebtedness shall be held
27 by the probate judge until the Department of Revenue

1 determines the amount of the indebtedness upon which such tax
2 shall be paid.

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

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

17 "(11) Any probate judge who fails to keep the
18 abstract of mortgages or other instruments intended to secure
19 the payment of moneys which are filed in his or her office for
20 filing or for record, as he or she is required by law to keep,
21 shall be guilty of a misdemeanor and, upon conviction, shall
22 be fined not less than ten dollars (\$10) nor more than five
23 hundred dollars (\$500)."

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.