

1 SB242  
2 190547-1  
3 By Senator Coleman-Madison  
4 RFD: Finance and Taxation General Fund  
5 First Read: 30-JAN-18

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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 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           To amend Section 40-22-2, Code of Alabama 1975; to  
3 increase the fee for recording of certain mortgages, deeds of  
4 trust, contracts of conditional sale, or other instruments of  
5 like character which is given to secure the payment of any  
6 debt which conveys any real or personal property; and to  
7 modify the rate and distribution of the mortgage record tax in  
8 order to provide a dedicated revenue for the Alabama Housing  
9 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~~ thirty cents  
9  (\$.30), 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~~ thirty cents  (\$.30) 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) there shall be paid the sum of ~~\$.15~~ thirty cents  (\$.30)  
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) there shall be  
24 paid the sum of ~~\$.15~~ thirty cents  (\$.30) for each one hundred  
25 dollars (\$100) of maximum principal indebtedness, or fraction  
26 thereof, to be secured by such instrument at any one time as  
27 stated in the instrument or any amendment thereto. In any

1 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~~ thirty cents (\$.30) 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 (1)b.(i) applies and any part  
11 of the indebtedness which the mortgagor or debtor in any  
12 instrument conveying any real property situated within this  
13 state, or any interest therein, other than fixtures under the  
14 Uniform Commercial Code, is authorized to incur under the  
15 terms of the instrument has not been or will not be presently  
16 incurred at the time such instrument is offered for record,  
17 the tax shall be paid on the amount of indebtedness presently  
18 incurred, and the Department of Revenue, upon the petition of  
19 the owner of any such instrument or upon the petition of the  
20 agent or attorney of such owner, shall ascertain to its own  
21 satisfaction the amount then taxable and the amount to be  
22 incurred thereafter and determine the amount upon which the  
23 tax shall be paid at the time such instrument is offered and  
24 shall endorse its findings on such instrument. Upon the  
25 presentation of such instrument with such endorsement thereon,  
26 the probate judge of any county in which the instrument is  
27 offered, upon the payment of the tax upon the amount so

1       ascertained by the Department of Revenue and the recording  
2       fees of the probate judge, shall accept the same for record.  
3       The Department of Revenue shall also require the owner of such  
4       instrument to execute a bond in an amount sufficient to secure  
5       to the state the privilege tax to become due and payable under  
6       this section upon the amount of the indebtedness to be  
7       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           four recipients: The judges of probate, the Alabama Housing  
20           Trust Fund, county treasuries, and the State Treasury. Five  
21           percent of all mortgage record taxes collected shall be  
22           distributed to the judges of probate, 25 percent of all  
23           mortgage record taxes collected shall be distributed to the  
24           Alabama Housing Trust Fund, 33 percent of all mortgage record  
25           taxes collected shall be distributed to the county treasurer  
26           in the county in which the tax is collected, 37 percent of all  
27           mortgage record taxes collected shall be distributed to the

1 State Treasury. If the property described in the instrument is  
2 situated within different counties within this state, then the  
3 judge of probate who collects the taxes shall pay over to the  
4 county treasurer of each of the different counties in which  
5 the property is situated an amount of the taxes that would be  
6 in proportion to the value of the property therein as compared  
7 to the whole property within this state described in the  
8 instrument.

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

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

1 by the probate judge until the Department of Revenue  
2 determines the amount of the indebtedness upon which such tax  
3 shall be paid.

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

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

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

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

