WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 157

(By Senators Johnson, the President Pro
Buckman, by request of the Executive)

PASSED March 3, 1998
In Effect From Passage
ENROLLED

Senate Bill No. 151

(By Senators Tomblin, Mr. President, and Buckalew, By Request of the Executive)

[Passed March 3, 1998; in effect from passage.]

AN ACT to amend and reenact sections two and eleven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eleven-a and eleven-b; and to amend article three of said chapter by adding thereto a new section, designated section five-a, all relating generally to taxation of real property; creating legislative findings and intent; adding definitions; classification of managed timberland for taxation; directing tax department to propose legislative rules relating to setting timberland tax values; requiring written report of impact of the program; setting requirements for county assessors applying certain valuations; providing for objection to assessor valuation by any person and for appeals; establishing appeal procedures for desig-
nating and changing uses of managed timberland property for tax purposes; establishing new taxing guidelines for managed timberland; collecting back taxes on property improperly classified; creating limitations and criteria for assessing back taxes; creating an appeal process for classification determinations; establishing rates and interest collected for taxes due; providing for collection and liens associated with back taxes; and establishing effective dates for the provisions of this article.

Be it enacted by the Legislature of West Virginia:

That sections two and eleven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections eleven-a and eleven-b; and that article three of said chapter be amended by adding thereto a new section, designated section five-a, all to read as follows:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at
least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for in section ten of this article.

(c) "Tax commissioner", "commissioner" or "tax department" means the state tax commissioner or a designee of the state tax commissioner.

(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.

(f) "Farm woodlot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-nine.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification.

(a) The Legislature finds and declares that the public
welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the state; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests; and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provisions of section fifty-three, article VI of the constitution of West Virginia, the Legislature makes the following declarations of its intent:

(1) Notwithstanding the provisions of section twenty-four, article three of this chapter, timberland certified by the division of forestry as managed timberland shall be valued as managed timberland as provided in this article when it is managed under a cooperative contract with the division of forestry and the certification has not been surrendered by the owner of the property or revoked by the director of the division of forestry.

The division of forestry shall, at the time of contracting, notify the owner that the owner shall incur a penalty as set forth in section five-a, article three of this chapter if the owner fails to provide written notice to the county assessor of a change in use of the managed timberland.

(2) Property certified as managed timberland which prior to certification is properly taxed in Class II, as defined in section five, article eight of this chapter and section one, article X of the constitution of West Virginia, may not be reclassified to Class III or Class IV, as defined in section five, article eight of this chapter, merely because the property is certified as managed timberland unless there is some other event or change in the use of the property that disqualifies it from being taxed in Class II.
(c) To aid the Legislature in assessing the impact of the managed timberland program on the state of West Virginia, the division of forestry and the tax commissioner, on or before the thirty-first day of December, two thousand one, and on the thirty-first day of December each year thereafter, shall report in writing to the joint committee on government and finance of the Legislature or its designated subcommittee. The tax commissioner shall include in his or her report a complete and accurate assessment of the impact of the managed timberland program on the tax collections of the state, including projected increases or decreases in tax collection. The division of forestry shall include in its report detailed information on the number of acres designated as managed timberland and any identified impacts of the program on the state’s timber industry.

§11-1C-11a. Certification of managed timberland; assessment of property; penalty for failure to comply.

(a) Any person who owns timberland comprising ten or more contiguous acres may qualify for identification as managed timberland for property tax purposes as set forth in subdivision (1), subsection (d), section ten of this article.

(b) The assessor, upon receipt of an appraisal or certification of the timberland from the tax commissioner, shall assess the property as managed timberland beginning with the next ensuing assessment year. Except as otherwise provided in this section, the classification of timberland included in a certified managed timberland plan shall not change for property tax purposes until such time as there is: (1) A change in the use of the property which requires a change in classification; (2) a change in the classification of the property from Class III to Class IV; or (3) a change in the classification of the property from Class IV to Class III.

(c) If the director of the division of forestry determines that the owner of timberland failed to implement a
certified managed timberland plan within twenty-four months of certifying that the property meets the definition of managed timberland, the director shall give written notice to the owner by certified mail, return receipt requested, that such certification is removed and the owner of the timberland shall pay to the sheriff of the county in which the property is located a fine equal to the amount of property taxes saved due to the property being assessed as managed timberland plus interest calculated at the rate of nine percent per year. Additionally, the assessor shall reassess the property. The amount of this fine is equal to the sum of the following calculations:

(1) For each assessment year, the county assessor shall determine the market value of the property and subtract from that value the value at which the property was appraised as managed timberland. This amount shall be multiplied by sixty percent. This result shall then be multiplied by the applicable levy rate.

(2) Interest shall be imposed on the amount calculated under subdivision (1) of this subsection at the rate of nine percent per annum beginning with the first day of October of the tax year in which the taxes should have been paid based upon the timberland value of the property. Interest shall continue to accrue until the day the fine is paid.

(d) The sheriff shall deposit and account for the fines collected under this section in the same manner as property taxes.

§11-1C-11b. Valuation; rulemaking; aggrieved person and taxpayer protests; exhaustion of remedies; compliance inspection; notice of revocation; appeal; effective date.

(a) The tax commissioner shall establish by legislative rule two methodologies for determining the appraised value of managed timberland, based upon the land’s potential to produce future income according to its use.
and productive potential as managed timberland and whether the property is classified as Class II property or as Class III or IV property for property tax purposes. These values shall be determined by discounting the potential future net income of the timberland to its present value utilizing a discounted cash flow model based upon whether the property is classified as Class II property or as Class III or IV property for property tax purposes.

(b) The tax commissioner shall also establish by legislative rule a method to determine the appraised value of timberland that is not certified as managed timberland. All timberland that is not certified as managed timberland shall be valued at its market value, except for farm woodlots which shall be valued as part of the farm.

(c) Notwithstanding the provisions of section five-a of this article, the legislative rules required by subsections (a) and (b) of this section may be promulgated as emergency legislative rules if they are filed in the state register on or before the first day of July, one thousand nine hundred ninety-eight.

(d) The value of an acre of managed timberland in a county shall always be less than the value of an acre of timberland of comparable soil quality in the county that is not certified as managed timberland.

(e) Any person aggrieved by any valuation of timberland may file a written objection to the valuation with the county assessor on or before the fifteenth day of January of the assessment year. The written objection shall then be treated as a protest filed by the taxpayer under section twenty-four-a, article three of this chapter. If any person fails to exhaust the administrative and judicial remedies provided in said section, that person shall be barred from taking any further administrative or judicial action regarding the classification of the property for that assessment year.
(f) Upon request of the tax commissioner or the assessor or county commission of the county in which the managed timberland is located, the director of the division of forestry shall inspect the property and determine whether or not the property continues to qualify for preferential valuation as managed timberland under this article. In the event the director of forestry determines that a property does not qualify as managed timberland due to a change in its use, or it is discovered that a material misstatement of fact was made by the owner of the property in the certification of the property as managed timberland under subdivision (1), subsection (d), section ten of this article, or it is discovered that the property owner is not complying with the terms of the managed timberland plan, including any period of time for coming into compliance granted the owner by the director of forestry, the director shall give written notice to the owner of the property by certified mail, return receipt requested, the tax commissioner and the assessor of each county in which the property is located that the certification of the property as managed timberland is revoked.

(g) The aggrieved owner of the property which had its managed timberland certification revoked pursuant to any provision of this code may, at any time up to sixty days from the date of notification from the director of forestry, petition the circuit court of the county in which the property is located for relief.

(h) The provisions of this section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-nine.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5a. Notification to assessor of changed use; independent action of director; penalties; effective date.

(a) Whenever property receiving preferential valuation as managed timberland is converted to a use that disquali-
(b) If the director of the division of forestry has reason to believe that managed timberland was or is being converted to a use that disqualifies the property from treatment as managed timberland, the director shall investigate. If, upon investigation, the director determines that the property no longer qualifies for treatment as managed timberland, the director shall revoke the property's certification as managed timberland. The director shall give written notice to the owner of the property by certified mail, return receipt requested, to the tax commissioner and to the assessor of the county in which the property is located that the property no longer qualifies for valuation as managed timberland. If the property is located in two or more counties, notice shall be given to each assessor.

(c) If any person fails to give written notice of the change in use of managed timberland as required in subsection (a) of this section, the person owning the property shall be subject to a penalty in an amount equal to the amount of additional taxes the person would have paid on the property if written notice had been timely given, plus interest calculated at the rate of nine percent per annum: Provided, That the maximum penalty under this section shall be five years of additional taxes plus interest. This penalty may be assessed in the same manner as back taxes are assessed under section five of this article for omitted property and interest shall accrue until the day the penalty is paid.

(d) This section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred
ninety-nine, and to changes in use occurring on or after that day.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... this the ......... day of ............... , 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/1/98
Time 9:25 AM