

SB 151

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 151

(By Senators TOMBLIN, MR. PRESIDENT, AND
BUCKLEW, by REQUEST OF THE EXECUTIVE)

PASSED MARCH 3, 1998

In Effect From Passage

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STATE OF WEST VIRGINIA

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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
- 2 shall have the meanings hereafter ascribed to them unless
- 3 the context clearly indicates otherwise:
- 4 (a) "Timberland" means any surface real property except
- 5 farm woodlots of not less than ten contiguous acres which
- 6 is primarily in forest and which, in consideration of their
- 7 size, has sufficient numbers of commercially valuable
- 8 species of trees to constitute at least forty percent normal
- 9 stocking of forest trees which are well distributed over the
- 10 growing site.
- 11 (b) "Managed timberland" means surface real property,
- 12 except farm woodlots, of not less than ten contiguous
- 13 acres which is devoted primarily to forest use and which,
- 14 in consideration of their size, has sufficient numbers of
- 15 commercially valuable species of trees to constitute at

16 least forty percent normal stocking of forest trees which
17 are well distributed over the growing site, and that is
18 managed pursuant to a plan provided for in section ten of
19 this article.

20 (c) "Tax commissioner", "commissioner" or "tax depart-
21 ment" means the state tax commissioner or a designee of
22 the state tax commissioner.

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

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

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

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

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

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

1 (a) The Legislature finds and declares that the public

2 welfare is enhanced by encouraging and sustaining the
3 abundance of high quality forest land within the state;
4 that economic pressures may force industrial, residential
5 or other land development inconsistent with sustaining
6 the forests; and that tax policy should provide an incen-
7 tive for private owners of forest land to preserve the
8 character and use of land as forest land and to make
9 management decisions which enhance the quality of the
10 future forest.

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

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

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

28 (2) Property certified as managed timberland which
29 prior to certification is properly taxed in Class II, as
30 defined in section five, article eight of this chapter and
31 section one, article X of the constitution of West Virginia,
32 may not be reclassified to Class III or Class IV, as defined
33 in section five, article eight of this chapter, merely because
34 the property is certified as managed timberland unless
35 there is some other event or change in the use of the
36 property that disqualifies it from being taxed in Class II.

37 (c) To aid the Legislature in assessing the impact of the
38 managed timberland program on the state of West Vir-
39 ginia, the division of forestry and the tax commissioner,
40 on or before the thirty-first day of December, two thou-
41 sand one, and on the thirty-first day of December each
42 year thereafter, shall report in writing to the joint com-
43 mittee on government and finance of the Legislature or its
44 designated subcommittee. The tax commissioner shall
45 include in his or her report a complete and accurate
46 assessment of the impact of the managed timberland
47 program on the tax collections of the state, including
48 projected increases or decreases in tax collection. The
49 division of forestry shall include in its report detailed
50 information on the number of acres designated as man-
51 aged timberland and any identified impacts of the pro-
52 gram on the state's timber industry.

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

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

5 (b) The assessor, upon receipt of an appraisal or certifi-
6 cation of the timberland from the tax commissioner, shall
7 assess the property as managed timberland beginning with
8 the next ensuing assessment year. Except as otherwise
9 provided in this section, the classification of timberland
10 included in a certified managed timberland plan shall not
11 change for property tax purposes until such time as there
12 is: (1) A change in the use of the property which requires
13 a change in classification; (2) a change in the classification
14 of the property from Class III to Class IV; or (3) a change
15 in the classification of the property from Class IV to Class
16 III.

17 (c) If the director of the division of forestry determines
18 that the owner of timberland failed to implement a

19 certified managed timberland plan within twenty-four
20 months of certifying that the property meets the definition
21 of managed timberland, the director shall give written
22 notice to the owner by certified mail, return receipt
23 requested, that such certification is removed and the
24 owner of the timberland shall pay to the sheriff of the
25 county in which the property is located a fine equal to the
26 amount of property taxes saved due to the property being
27 assessed as managed timberland plus interest calculated
28 at the rate of nine percent per year. Additionally, the
29 assessor shall reassess the property. The amount of this
30 fine is equal to the sum of the following calculations:

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

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

43 (d) The sheriff shall deposit and account for the fines
44 collected under this section in the same manner as prop-
45 erty taxes.

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

1 (a) The tax commissioner shall establish by legislative
2 rule two methodologies for determining the appraised
3 value of managed timberland, based upon the land's
4 potential to produce future income according to its use

5 and productive potential as managed timberland and
6 whether the property is classified as Class II property or
7 as Class III or IV property for property tax purposes.
8 These values shall be determined by discounting the
9 potential future net income of the timberland to its
10 present value utilizing a discounted cash flow model based
11 upon whether the property is classified as Class II prop-
12 erty or as Class III or IV property for property tax pur-
13 poses.

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

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

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

30 (e) Any person aggrieved by any valuation of timberland
31 may file a written objection to the valuation with the
32 county assessor on or before the fifteenth day of January
33 of the assessment year. The written objection shall then
34 be treated as a protest filed by the taxpayer under section
35 twenty-four-a, article three of this chapter. If any person
36 fails to exhaust the administrative and judicial remedies
37 provided in said section, that person shall be barred from
38 taking any further administrative or judicial action
39 regarding the classification of the property for that
40 assessment year.

41 (f) Upon request of the tax commissioner or the assessor
42 or county commission of the county in which the managed
43 timberland is located, the director of the division of
44 forestry shall inspect the property and determine whether
45 or not the property continues to qualify for preferential
46 valuation as managed timberland under this article. In
47 the event the director of forestry determines that a
48 property does not qualify as managed timberland due to
49 a change in its use, or it is discovered that a material
50 misstatement of fact was made by the owner of the
51 property in the certification of the property as managed
52 timberland under subdivision (1), subsection (d), section
53 ten of this article, or it is discovered that the property
54 owner is not complying with the terms of the managed
55 timberland plan, including any period of time for coming
56 into compliance granted the owner by the director of
57 forestry, the director shall give written notice to the owner
58 of the property by certified mail, return receipt requested,
59 the tax commissioner and the assessor of each county in
60 which the property is located that the certification of the
61 property as managed timberland is revoked.

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

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

ARTICLE 3. ASSESSMENTS GENERALLY.

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

1 (a) Whenever property receiving preferential valuation
2 as managed timberland is converted to a use that disquali-

3 fies the property from treatment as managed timberland,
4 the person converting the real estate to another use shall
5 immediately, in writing, notify the county assessor of the
6 change in use. The county assessor or tax commissioner,
7 as the case may be, shall then determine the value and
8 classification of the property based upon its new use.

9 (b) If the director of the division of forestry has reason
10 to believe that managed timberland was or is being
11 converted to a use that disqualifies the property from
12 treatment as managed timberland, the director shall
13 investigate. If, upon investigation, the director determines
14 that the property no longer qualifies for treatment as
15 managed timberland, the director shall revoke the prop-
16 erty's certification as managed timberland. The director
17 shall give written notice to the owner of the property by
18 certified mail, return receipt requested, to the tax commis-
19 sioner and to the assessor of the county in which the
20 property is located that the property no longer qualifies
21 for valuation as managed timberland. If the property is
22 located in two or more counties, notice shall be given to
23 each assessor.

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

37 (d) This section shall apply to tax years beginning on or
38 after the first day of January, one thousand nine hundred

39 ninety-nine, and to changes in use occurring on or after
40 that day.

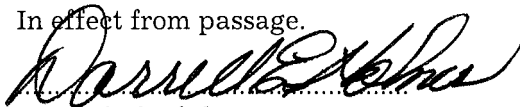
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

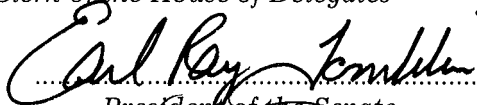

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Chairman House Committee


Originated in the Senate.

In effect from passage.

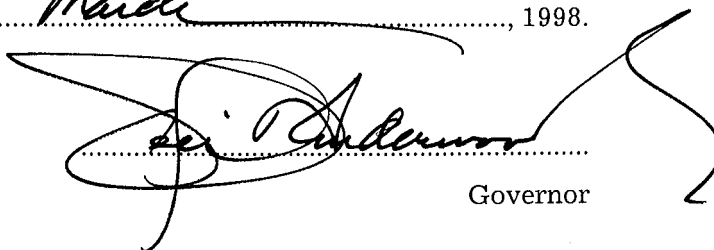

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 12th
March
day of, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/98

Time 9:25 am