

HB 2189 * VETO *

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2189

(By Delegate S Martin, Williams, Douglas,
Mezzatesta, Michael and Willison)



Passed _____ April 12, _____ 1997

In Effect _____ From _____ Passage

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OFFICE OF LEGISLATIVE
SERVICES

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COMMITTEE SUBSTITUTE

FOR

H. B. 2189

(BY DELEGATES MARTIN, WILLIAMS, DOUGLAS,
MEZZATESTA, MICHAEL AND WILLISON)

[Passed April 12, 1997; 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 there two new sections, designated sections eleven-a and eleven-b; and that article three of said chapter be amended by adding thereto two new sections, designated sections five-a and thirty-two, all relating generally to taxation of real property; creating legislative findings and intent; adding definitions; establishing criteria and classification of managed timberland for taxation; directing tax department to propose legislative rules relating to setting timberland tax values; setting requirements and penalties for county assessors applying certain valuations; providing public access to property classifications and for appeals thereof; clarifying activities considered farm use; requiring farm land be appraised based on type of farming use; defining residential property use; establishing procedures for designating and changing uses of property for tax purposes; establishing new taxing guidelines for managed timberland; establishing a procedure for reassessing taxes upon alteration of use of all or parts of a parcel of property and collecting roll-back taxes relating thereto; creating limitations and criteria for assessing

roll-back taxes; creating an appeal process for classification determinations; establishing rates and interest collected for taxes due; providing for reclassification of tax classes for property when the property use changes or the property is subdivided or otherwise transferred; providing for collection and liens associated with roll-back taxes; and establishing effective dates for the provisions of this act.

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 two new sections, designated sections five-a and thirty-two, 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) "County board of education" or "board"
5 means the duly elected board of education of each coun-
6 ty.

7 (b) "Farm" means a tract or contiguous tract of
8 land used for agriculture, horticulture or grazing and
9 includes:

10 (1) Land currently being used primarily for farming
11 purposes, whether by the owner or a bona fide tenant, and
12 which has been so used for at least seasonally during the
13 year next preceding the then current tax year, but shall not
14 include lands used primarily in commercial forestry or the
15 growing of timber for commercial purposes; and shall not
16 include one acre surrounding the principal residence situ-
17 ated on a farm which shall be valued as a homesite in the
18 same manner as surrounding homes and properties not
19 situated on farmland, taking into consideration such vari-
20 ables as location, resale value and accessibility. The com-

21 missioner of agriculture shall formulate criteria upon
22 which a parcel of land qualifies as a "farm". The county
23 assessor may require the assistance of the commissioner of
24 agriculture in making a determination of whether a parcel
25 of land qualifies as a "farm"; and

26 (2) All real property designated as "wetlands" by
27 the United States army corps of engineers or the United
28 States fish and wildlife service. The commissioner of
29 agriculture shall formulate criteria upon which a parcel of
30 land qualifies as a "farm". The county assessor may
31 require the assistance of the commissioner of agriculture
32 in making a determination of whether a parcel of land
33 qualifies as a "farm".

34 (c) "Farming purposes" means the utilization of
35 land to produce for sale, consumption or use, any agricul-
36 tural products, including, but not limited to, livestock,
37 poultry, fruit, vegetables, grains or hays or any of the
38 products derived from any of the foregoing, tobacco,
39 syrups, honey, and all horticultural and nursery stock,
40 christmas trees, all sizes of ornamental trees, sod, seed and
41 any and all similar commodities or products, including
42 farm wood lots and parts of a farm which are lands lying
43 fallow, or in timber or in wastelands.

44 (d) "Managed timberland" means surface real
45 property, except farm woodlots, of not less than ten con-
46 tiguous acres which is devoted primarily to forest use and
47 which, in consideration of their size, has sufficient num-
48 bers of commercially valuable species of trees to constitute
49 at least forty percent normal stocking of forest trees which
50 are well distributed over the growing site, and that is man-
51 aged pursuant to a plan provided for in section ten of this
52 article.

53 (e) "Owner" means the person who is possessed of
54 the freehold, whether in fee or for life. A person seized or
55 entitled in fee subject to a mortgage or deed of trust secur-
56 ing a debt or liability is deemed the owner until the mort-
57 gagee or trust takes possession, after which such mortgag-
58 ee or trustee shall be deemed the owner. A person who
59 has an equitable estate of freehold, or is a purchaser of a
60 freehold estate who is in possession before transfer of

61 legal title is also deemed the owner.

62 (f) "Tax commissioner," "commissioner," or "tax
63 department" means the state tax commissioner or a
64 designee of the state tax commissioner.

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

72 (h) "Used and occupied by the owner thereof exclu-
73 sively for residential purposes" means actual habitation
74 by the owner of all or a portion of a parcel of real proper-
75 ty as a place of abode to the exclusion of any commercial
76 use: *Provided*, That mere entry into a contract to manage
77 timberland according to a plan that will maintain the prop-
78 erty as managed timberland shall not result in reclassifica-
79 tion of the property to class three or class four, absent
80 some other event or a change in the use of the property
81 that disqualifies it from being valued as residential proper-
82 ty and from being taxed in class two. If a license is re-
83 quired for an activity on the premises or if an activity is
84 conducted thereon which involves the use of equipment of
85 a character not commonly employed solely for domestic
86 purposes as distinguished from commercial purposes, the
87 use may not be construed to be exclusively residential.

88 (i) "Valuation commission" or "commission"
89 means the commission created in section three of this
90 article.

91 (j) "Wood lot" means that portion of a farm in
92 timber but may not include land used primarily for the
93 growing of timber for commercial purposes except that
94 christmas trees, or nursery stock and woodland products,
95 such as nuts or fruits harvested for human consumption,
96 shall be considered farm products and not timber prod-
97 ucts.

98 Amendments to this section in the year one thousand

99 nine hundred ninety-seven shall apply to tax years begin-
100 ning on or after the first day of January, one thousand
101 nine hundred ninety-eight.

§11-1C-11. Managed timberland; findings, purposes and declaration 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; that
4 economic pressures may force industrial, residential or
5 other land development inconsistent with sustaining the
6 forests; and that tax policy should provide an incentive for
7 private owners of forest land to preserve the character and
8 use of land as forest land and to make management deci-
9 sions which enhance the quality of the future forest.

10 (b) In exercising the authority granted by the provi-
11 sions of section fifty-three, article six of the Constitution
12 of West Virginia, the Legislature makes the following
13 declarations of its intent:

14 (1) Notwithstanding the provisions of section twenty-
15 four, article three of this chapter, managed timberland
16 embraced in a cooperative contract with the division of
17 forestry shall be valued as managed timberland as provid-
18 ed in this article and rules of the tax commissioner pro-
19 mulgated thereunder.

20 (2) Property certified as managed timberland which
21 prior to certification is properly taxed in class two, as de-
22 fined in section five, article eight of this chapter and sec-
23 tion one, article ten of the Constitution of West Virginia,
24 may not be reclassified to class three or class four, as de-
25 fined in section one of said chapter eight, merely because
26 the property is certified as managed timberland unless
27 there is some other event or change in the use of the prop-
28 erty that disqualifies it from being taxed in class two.

29 (c) To implement this legislative intent:

30 (1) The tax commissioner shall establish by legisla-
31 tive rule a methodology to appraise managed timberland
32 based upon the value of the land's potential to produce

33 future income according to its use and productive poten-
34 tial as managed timberland, which value shall be deter-
35 mined by discounting the potential future net income to
36 its present value utilizing a discounted cash flow model.
37 All timberland that does not qualify as managed timber-
38 land shall be valued at market value except for farm wood
39 lots which shall be valued as part of the farm. The tax
40 commissioner shall also establish by legislative rule a
41 method to determine the market value of timberland that
42 is not certified as managed timber land. The value of an
43 acre of managed timberland shall always be less than the
44 value of an acre of timberland of comparable soil quality
45 in the county that is not certified as managed timberland.
46 Notwithstanding the provisions of section five-a of this
47 article, these methodologies may be promulgated as emer-
48 gency rules if they are filed in the state register on or
49 before the first day of July, one thousand nine hundred
50 ninety-seven.

51 (2) The tax commissioner shall establish by legisla-
52 tive rule a methodology for determining the value of man-
53 aged timberland taxed in class two and a methodology for
54 determining the value of managed timberland not taxed in
55 class two. Notwithstanding the provisions of section five-a
56 of this article, these methodologies may be promulgated as
57 emergency rules if they are filed in the state register on or
58 before the first day of July, one thousand nine hundred
59 ninety-seven.

60 (3) In the event the tax commissioner determines as
61 the result of a survey or other investigation that a county
62 assessor is systematically undervaluing timberland in his
63 or her county that is not managed timberland, the tax
64 commissioner may not authorize payment to that assessor
65 of the additional compensation allowed under section six-
66 a, article seven, chapter seven of this code.

67 (4) Any person owning real property in a county
68 may apply to the assessor for information regarding the
69 classification of real property owned by that person or the
70 classification of any other real property in the county. If
71 the person is dissatisfied with the classification of any real
72 property in the county, the person may file written objec-

73 tions to the classification with the county assessor on or
74 before the fifteenth day of January of the assessment year.
75 The written objection shall then be treated as a protest
76 filed by a taxpayer under section twenty-four-a, article
77 three of this chapter. If any person fails to exhaust the
78 administrative and judicial remedies provided in section
79 twenty-four-a of said article three, that person shall be
80 barred from taking any further administrative or judicial
81 action regarding the classification of the property for that
82 assessment year.

83 (d) Upon request of state, county or other taxing
84 authorities of appropriate jurisdiction, the division of for-
85 estry shall inspect property under contract as managed
86 timberland and shall have the authority and responsibility
87 to determine whether or not such properties do qualify for
88 preferential valuation as managed timberland. In the
89 event that a property is found to not qualify by reason of
90 a change in its use, or it is discovered that a material mis-
91 statement of fact was made by the owner in the certifica-
92 tion required in subdivision (1), subsection (d), section ten
93 of this article, or it is discovered that the property owner is
94 not complying with the terms of the managed timberland
95 plan, including any period of time for coming into compli-
96 ance granted the owner by the division of forestry, the
97 division of forestry shall notify the state tax commissioner
98 that the property is disqualified from its identification as
99 managed timberland.

100 (e) Amendments to this section in the year one thou-
101 sand nine hundred ninety-seven shall apply to tax years
102 beginning on or after the first day of January, one thou-
103 sand nine hundred ninety-eight.

§11-1C-11a. Valuation of farm real property.

1 (a) The appraised value of real property used for
2 farming purposes shall be its fair and reasonable value for
3 farming purposes regardless of what the value of the prop-
4 erty would be if used for some other purpose. This value
5 shall be arrived at by giving consideration to the fair and
6 reasonable income which the property might be expected
7 to earn in the locality where the property is situated, if
8 rented. The fair and reasonable value for farming purpos-

9 es shall be deemed to be the market value of such proper-
10 ty for appraisement purposes.

11 (1) A person is not engaged in farming if the person
12 is primarily engaged in forestry or growing timber. Mere
13 entry into a contract to manage timberland according to a
14 plan that will maintain the property as managed timber-
15 land shall not result in reclassification of the property to
16 class three or class four absent some other event or a
17 change in the use of the property that disqualifies it from
18 being valued as a farm and from being taxed in class two.

19 (2) A corporation or limited liability company is not
20 engaged in farming unless its principal activity is the busi-
21 ness of farming, and in the event that the controlling stock
22 or membership interest in the corporation or limited liabil-
23 ity company is owned by another corporation or limited
24 liability company, the corporation or limited liability com-
25 pany owning the controlling interest must also be primari-
26 ly engaged in the business of farming.

27 (b) This section shall apply to tax years beginning on
28 or after the first day of January, one thousand nine hun-
29 dred ninety-eight.

§11-1C-11b. Valuation of residential property.

1 Residential real property shall be valued as residential
2 property so long as the property is owned, used and occu-
3 pied by the owner exclusively for residential purposes and
4 shall not be assessed in accordance with some other meth-
5 od of valuation until the property ceases to be used for
6 residential purposes. This section shall apply to tax years
7 beginning on or after the first day of January, one thou-
8 sand nine hundred ninety-eight.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5a. Change in use.

1 (a) Whenever real property that has qualified for
2 taxation in class two or for use valuation is converted to
3 another use, the person converting the real estate to anoth-
4 er use shall immediately, in writing, notify the county
5 assessor of the change in use. The county assessor shall, at

6 the appropriate time, determine the value and classification
7 of the property based upon its new use.

8 (b) Upon receipt of a notice from a person that real
9 property classified for taxation in class two or for use
10 valuation is being converted to a new use the director of
11 the division of forestry shall notify the assessor or asses-
12 sors in which such property is situate of such change in
13 use.

14 (c) If any person fails to give written notice of a
15 change in use of property as required in subsection (a) of
16 this section, the person shall be subject to a penalty in an
17 amount equal to the additional taxes that the person would
18 have paid if written notice been timely given plus interest
19 calculated at the rate of six percent per year: *Provided,*
20 That the maximum penalty under this section shall be
21 seven years of back taxes plus interest calculated as pro-
22 vided in this subsection (c). This penalty may be assessed
23 in the same manner as back taxes are assessed as provided
24 in section five of this article for omitted property.

25 (d) This section shall apply to tax years beginning on
26 or after the first day of January, one thousand nine hun-
27 dred ninety-eight.

§11-3-32. Roll-back tax.

1 (a) The division of a part of the land by deed or
2 other legal transfer which is being valued, assessed and
3 taxed as class two property or which is being valued as
4 managed timberland and taxed in class three or four shall,
5 except when the division occurs through condemnation,
6 subjects the land so divided and the entire parcel from
7 which the land was divided to liability for the roll-back
8 taxes as set forth in subsection (g) of this section, except as
9 provided in subsection (b) of this section.

10 (b) The owner of property subject to preferential
11 assessment or preferential classification may divide land
12 covered by the preferential assessment or preferential
13 classification: *Provided,* That the tract of land so divided
14 shall not exceed two acres annually and may only be used
15 for class two purposes during such time as the land re-

16 tained shall continue to receive preferential tax assessment
17 or preferential classification and the construction of a
18 residential dwelling to be occupied by the person to whom
19 the property is transferred: *Provided, however,* That the
20 total parcel or parcels of land so split off under the provi-
21 sions of this subsection (b) shall not exceed ten percent or
22 ten acres, whichever is less, of the entire tract subject to
23 preferential tax assessment or preferential classification.
24 Any person may bring an action in the circuit court for
25 the county in which the property is located to enjoin any
26 use of land inconsistent with the use provided in this sub-
27 section (b). Such land shall be subject to roll-back taxes
28 due for each divided parcel and for such period of time as
29 provided by subsection (g) of this section. The division of
30 a parcel of land which meets the requirements of this sub-
31 section (b) shall not invalidate the preferential assessment
32 or preferential classification and the land retained by the
33 landowner shall continue to be eligible for special use
34 valuation or taxation in class two if it continues to meet the
35 requirements for the special use valuation or for taxation
36 in class two.

37 (c) The owner of property subject to a preferential
38 use assessment or preferential classification may separate
39 by use, land covered by the preferential use assessment or
40 preferential classification. When a separation by use oc-
41 curs, all tracts formed thereby shall continue to receive
42 preferential assessment or preferential classification, unless
43 a subsequent abandonment of preferential use occurs
44 within seven years of the separation. Such abandonment
45 shall subject the entire tract of land so separated to liability
46 for the roll-back taxes, which are to be paid by the person
47 changing the use, as set forth in subsection (g) of this
48 section. After seven years from the date of the occurrence
49 of the separation of use, only that portion whose use has
50 been abandoned shall be subject to roll-back taxes as set
51 forth in subsection (g) of this section.

52 (d) When property subject to preferential assessment
53 is separated by use among the spouse, parents, children or
54 grandchildren, or any combination of these persons, the
55 owner receiving the benefit of preferential tax assessment
56 or preferential classification as a result of the death of the

57 owner a subsequent change in the use of one such benefi-
58 ciary's portion of the property shall not subject any other
59 beneficiary's portion of the property due roll-back taxes.
60 Roll-back taxes shall be due only in accordance with the
61 provisions of subsection (g) of this section on the tract
62 held by the beneficiary who changes the use of any por-
63 tion of his or her inheritance.

64 (e) Any change in use of land subject to preferential
65 use assessment or preferential classification shall be in
66 compliance with any applicable zoning laws then in effect.

67 (f) Where contiguous land taxed in class two or man-
68 aged timberland taxed in class three or four is located in
69 more than one county, compliance with any minimum
70 area requirement shall be determined on the basis of the
71 total area of such land and not the area which is located in
72 any particular county.

73 (g)(1) When any tract of land taxed in class two or
74 any tract of land certified as managed timberland taxed in
75 class three or class four is applied to a use that disqualifies
76 it from being taxed in class two except for a change that
77 merely involves cessation of occupancy of a residence or
78 from being valued based upon its use, except condemna-
79 tion thereof, the entire tract of land shall no longer be
80 valued based upon its use or taxed in class two. The land
81 so removed and the entire tract of which it was a part shall
82 be subject to taxes in an amount equal to the difference,
83 hereinafter referred to as roll-back taxes, if any, between
84 the taxes paid or payable on the basis of the valuation and
85 the classification authorized under this chapter. This tax
86 assessment will be determined by computing the taxes that
87 would have been paid or payable had that land been val-
88 ued and taxed as other comparable land in class three or
89 four in the county in the current tax year, the year of
90 change, and in six of the previous tax years or the number
91 of years of preferential valuation or preferential classifica-
92 tion up to seven plus interest on each year's roll-back tax.
93 The rate of interest shall be six percent per year. After the
94 first seven years of preferential valuation or preferential
95 classification, the roll-back shall apply to the seven most
96 recent tax years.

97 (2) Unpaid roll-back taxes shall be a lien upon the
98 property collectible in the manner provided by law for the
99 collection of delinquent taxes. Roll-back taxes shall be-
100 come due on the date of change of use, or any other ter-
101 mination of preferential valuation or preferential classifi-
102 cation and shall be paid by the owner of the land at the
103 time of change in use, or any other termination of prefer-
104 ential valuation or preferential classification, to the county
105 sheriff, whose responsibility it shall be to make proper
106 distribution of the taxes on the property and interest to the
107 levying bodies.

108 (3) Within five working days after receipt of a notice
109 from the owner of a property, which is preferentially val-
110 ued or preferentially classified, of a proposed change in
111 the use of the land to one not meeting the requirements
112 for use valuation or preferential taxation, or of a separa-
113 tion of the land or a split-off of a portion of the land, the
114 county assessor shall:

115 (A) Calculate by years the total of all roll-back taxes
116 due at the time of change and shall notify the property
117 owner of such amounts. In the case of a conveyance of all
118 or part of such land, the county assessor shall notify the
119 prospective buyer, if known, of such amounts.

120 (B) With respect to the roll-back taxes for the current
121 year, the county assessor shall notify the levying bodies of
122 the county in which the property is located of the addi-
123 tional amount of assessment upon which taxes and interest
124 shall be levied and collected. The assessor shall also noti-
125 fy the sheriff of the additional taxes and interest to be
126 collected.

127 (C) With respect to roll-back taxes for years prior to
128 the current year which the county assessor has determined
129 to be due, the assessor shall file a lien for such amounts
130 with the county clerk, which upon filing shall constitute a
131 lien having the same force and effect as a lien for payment
132 of real property taxes.

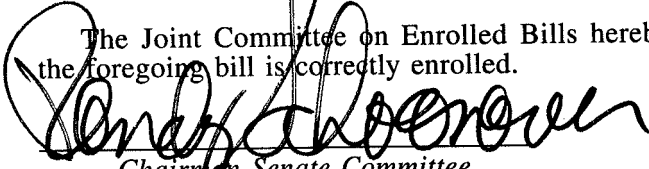
133 (h) The assessment, collection, apportionment and
134 payment over of roll-back taxes imposed by section thir-
135 teen shall be governed by the procedures provided for the

136 assessment and taxation of omitted property under section
137 five of this article.

138 (i) This section shall apply to tax years beginning on
139 or after the first day of January, one thousand nine hun-
140 dred ninety-eight.

Enr. Com. Sub. for H. B. 2189] 14

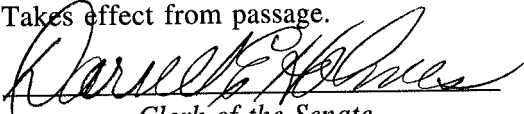
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

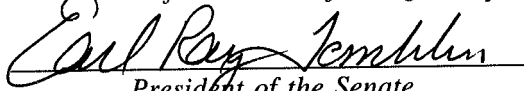

Chairman House Committee


Originating in the House.

Takes effect from passage.

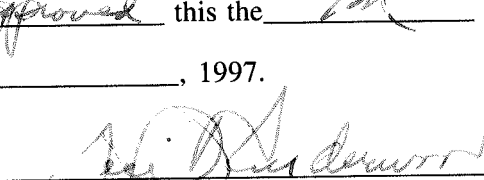

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is disapproved this the 2nd
day of May, 1997.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/21/97

Time 11:36 am