

1 **H. B. 3064**

2  
3 (By Delegate Manypenny)

4 [Introduced March 22, 2013; referred to the  
5 Committee on Natural Resources then the Judiciary.]

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10 A BILL to amend and reenact §11-1C-10 and §11-1C-11 of the Code of  
11 West Virginia, 1931, as amended, all relating to requiring  
12 owners of property with four thousand or more acres certified  
13 as managed timberland to allow the general public to use the  
14 land for certain recreational purposes for that property to  
15 maintain its preferential tax status as managed timberland;  
16 findings; and rules.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §11-1C-10 and §11-1C-11 of the Code of West Virginia,  
19 1931, as amended, be amended and reenacted, all to read as follows:

20 **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

21 **§11-1C-10. Valuation of industrial property and natural resources**  
22 **property by Tax Commissioner; penalties; methods;**  
23 **values sent to assessors.**

1 (a) As used in this section:

2 (1) "Industrial property" means real and personal property  
3 integrated as a functioning unit intended for the assembling,  
4 processing and manufacturing of finished or partially finished  
5 products.

6 (2) "Natural resources property" means coal, oil, natural gas,  
7 limestone, fireclay, dolomite, sandstone, shale, sand and gravel,  
8 salt, lead, zinc, manganese, iron ore, radioactive minerals, oil  
9 shale, managed timberland as defined in section two of this  
10 article, and other minerals.

11 (b) All owners of industrial property and natural resources  
12 property each year shall make a return to the State Tax  
13 Commissioner and, if requested in writing by the assessor of the  
14 county where situated, to such county assessor at a time and in the  
15 form specified by the commissioner of all industrial or natural  
16 resources property owned by them. The commissioner may require any  
17 information to be filed which would be useful in valuing the  
18 property covered in the return. Any penalties provided ~~for~~ in this  
19 chapter or elsewhere in this code relating to failure to list any  
20 property or to file any return or report may be applied to any  
21 owner of property required to make a return pursuant to this  
22 section.

23 (c) The State Tax Commissioner shall value all industrial  
24 property in the state at its fair market value within three years

1 of the approval date of the plan for industrial property required  
2 in subsection (e) of this section. The commissioner shall  
3 thereafter maintain accurate values for all such property. The Tax  
4 Commissioner shall forward each industrial property appraisal to  
5 the county assessor of the county in which that property is located  
6 and the assessor shall multiply each such appraisal by sixty  
7 percent and include the resulting assessed value in the land book  
8 or the personal property book, as appropriate for each tax year.  
9 The commissioner shall supply support data that the assessor might  
10 need to evaluate the appraisal.

11 (d) Within three years of the approval date of the plan  
12 required for natural resources property required pursuant to  
13 subsection (e) of this section, the State Tax Commissioner shall  
14 determine the fair market value of all natural resources property  
15 in the state. The commissioner shall thereafter maintain accurate  
16 values for all such property.

17 (1) (A) In order to qualify for identification as managed  
18 timberland for property tax purposes the owner must annually  
19 certify, in writing to the Division of Forestry, that the property  
20 meets the definition of managed timberland as set forth in this  
21 article and contracts to manage property according to a plan that  
22 will maintain the property as managed timberland. In addition,  
23 each owner's certification must state that forest management  
24 practices will be conducted in accordance with approved practices

1 from the publication "Best Management Practices for Forestry".  
2 Property certified as managed timberland shall be valued according  
3 to its use and productive potential. The Tax Commissioner shall  
4 promulgate rules for certification as managed timberland.

5 (B) No parcels of property comprised of four thousand or more  
6 acres may be classified as managed timberland unless the forest  
7 lands are open to public outdoor recreational activities such as  
8 hunting, fishing, hiking, cross country skiing, photography and  
9 other similar outdoor recreational activities. A property owner  
10 permitting public recreational activities on managed timberland  
11 pursuant to this article is accorded limited liability under the  
12 provisions of article twenty-five, chapter nineteen of this code as  
13 to those persons recreating on the property. The Director of the  
14 Division of Forestry shall propose rules for legislative approval  
15 in accordance with the provisions of article three, chapter twenty-  
16 nine-b of this code to provide standards for public use of managed  
17 timberland for outdoor recreational activities.

18 (2) In the case of all other natural resources property, the  
19 commissioner shall develop an inventory on a county by county basis  
20 of all such property and may use any resources, including, but not  
21 limited to, geological survey information; exploratory, drilling,  
22 mining and other information supplied by natural resources property  
23 owners; and maps and other information on file with the State  
24 Division of Environmental Protection and Office of Miners' Health,

1 Safety and Training. Any information supplied by natural resources  
2 owners or any proprietary or otherwise privileged information  
3 supplied by the State Division of Environmental Protection and  
4 Office of Miner's Health, Safety and Training shall be kept  
5 confidential unless needed to defend an appraisal challenged by a  
6 natural resources owner. Formulas for natural resources valuation  
7 may contain differing variables based upon known geological or  
8 other common factors. The Tax Commissioner shall forward each  
9 natural resources property appraisal to the county assessor of the  
10 county in which that property is located and the assessor shall  
11 multiply each such appraisal by sixty percent and include the  
12 resulting assessed value in the land book or the personal property  
13 book, as appropriate, for each tax year. The commissioner shall  
14 supply support data that the assessor might need to explain or  
15 defend the appraisal. The commissioner shall directly defend any  
16 challenged appraisal when the assessed value of the property in  
17 question exceeds \$2 million ~~dollars~~ or an owner challenging an  
18 appraisal holds or controls property situated in the same county  
19 with an assessed value exceeding \$2 million ~~dollars~~. At least  
20 every five years, the commissioner shall review current technology  
21 for the recovery of natural resources property to determine if  
22 valuation methodologies need to be adjusted to reflect changes in  
23 value which result from development of new recovery technologies.

24 (e) The Tax Commissioner shall develop a plan for the

1 valuation of industrial property and a plan for the valuation of  
2 natural resources property. The plans shall include expected costs  
3 and reimbursements, and shall be submitted to the property  
4 valuation training and procedures commission on or before the first  
5 day of January, one thousand nine hundred ninety-one, for its  
6 approval on or before the first day of July of such year. Such  
7 plan shall be revised, resubmitted to the commission and approved  
8 every three years thereafter.

9 (f) To perform the valuation duties under this section, the  
10 State Tax Commissioner has the authority to contract with a  
11 competent property appraisal firm or firms to assist with or to  
12 conduct the valuation process as to any discernible species of  
13 property statewide if the contract and the entity performing such  
14 contract is specifically included in a plan required by subsection  
15 (e) of this section or otherwise approved by the commission. If  
16 the Tax Commissioner desires to contract for valuation services  
17 only in one county or a group of counties, the contract must be  
18 approved by the commission.

19 (g) The county assessor may accept the appraisal provided,  
20 pursuant to this section, by the State Tax Commissioner: *Provided,*  
21 That if the county assessor fails to accept the appraisal provided  
22 by the State Tax Commissioner, the county assessor shall show just  
23 cause to the valuation commission for the failure to accept such  
24 appraisal and shall further provide to the valuation commission a

1 plan by which a different appraisal will be conducted.

2 (h) The costs of appraising the industrial and natural  
3 resources property within each county, and any costs of defending  
4 same shall be paid by the state: *Provided*, That the office of the  
5 State Attorney General shall provide legal representation on behalf  
6 of the Tax Commissioner or assessor, at no cost, in the event the  
7 industrial and natural resources appraisal is challenged in court.

8 (i) For purposes of revaluing managed timberland as defined in  
9 section two of this article, any increase or decrease in valuation  
10 by the commissioner does not become effective prior to July 1,  
11 1991. The property owner may request a hearing by the Director of  
12 the Division of Forestry, who may thereafter rescind the  
13 disqualification or allow the property owner a reasonable period of  
14 time in which to qualify the property. A property owner may appeal  
15 a disqualification to the circuit court of the county in which the  
16 property is located.

17 **§11-1C-11. Managed timberland; findings, purposes and declaration**  
18 **of legislative intent; implementation; inspection and**  
19 **determination of qualification.**

20 (a) The Legislature finds and declares that the public welfare  
21 is enhanced by encouraging and sustaining the abundance of high  
22 quality forest land within the state; that economic pressures may  
23 force industrial, residential or other land development

1 inconsistent with sustaining the forests; and that tax policy  
2 should provide an incentive for private owners of forest land to  
3 preserve the character and use of land as forest land and to make  
4 management decisions which enhance the quality of the future  
5 forest. The Legislature further recognizes the importance of  
6 outdoor recreational activities such as hunting, fishing, hiking,  
7 biking and photography to our state's economy. It also recognizes  
8 the number of acres of forest land that are open to public use, and  
9 outdoor recreation, is slowly diminishing. The Legislature finds  
10 that tax policy should provide an incentive to private owners of  
11 forest land to open their lands for public recreational purposes,  
12 in return for preferential tax treatment.

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

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

24 The Division of Forestry shall, at the time of contracting,



1 notify the owner that the owner shall incur a penalty as set forth  
2 in section five-a, article three of this chapter if the owner fails  
3 to provide written notice to the county assessor of a change in use  
4 of the managed timberland.

5       (2) Property certified as managed timberland which prior to  
6 certification is properly taxed in Class II, as defined in section  
7 five, article eight of this chapter and section one, article X of  
8 the Constitution of West Virginia, may not be reclassified to Class  
9 III or Class IV, as defined in section five, article eight of this  
10 chapter, merely because the property is certified as managed  
11 timberland unless there is some other event or change in the use of  
12 the property that disqualifies it from being taxed in Class II.

13       (c) To aid the Legislature in assessing the impact of the  
14 managed timberland program on the State of West Virginia, the  
15 Division of Forestry and the Tax Commissioner, on or before the  
16 thirty-first day of December, two thousand one, and on the  
17 thirty-first day of December each year thereafter, shall report in  
18 writing to the Joint Committee on Government and Finance of the  
19 Legislature or its designated subcommittee. The Tax Commissioner  
20 shall include in his or her report a complete and accurate  
21 assessment of the impact of the managed timberland program on the  
22 tax collections of the state, including projected increases or  
23 decreases in tax collection. The Division of Forestry shall  
24 include in its report detailed information on the number of acres

1 designated as managed timberland and any identified impacts of the  
2 program on the state's timber industry.

NOTE: The purpose of this bill require owners of property having 4000 or more acres certified as managed timberland to allow the general public to use the land for certain recreational purposes for that property to maintain its preferential tax status as managed timberland.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.