

1 **ENROLLED**

2 **Senate Bill No. 601**

3 (BY SENATOR PALUMBO)

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5 [Passed March 8, 2014; in effect ninety days from passage.]  
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10 AN ACT to amend and reenact §11-3-25 of the Code of West Virginia,  
11 1931, as amended, relating to appeals of assessments by the  
12 Board of Equalization and Review or order of the Board of  
13 Assessment Appeals; removing a phrase giving appeal authority  
14 to an entity's agent, which the Supreme Court of Appeals of  
15 West Virginia interpreted as unconstitutional; and clarifying  
16 that appeals must be made by attorneys.

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

18 That §11-3-25 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 3. ASSESSMENTS GENERALLY.**

21 **§11-3-25. Relief in circuit court against erroneous assessment.**

22 (a) Any person claiming to be aggrieved by any assessment in  
23 any land or personal property book of any county who shall have

1 appeared and contested the valuation as provided in section twenty-  
2 four or twenty-four-a of this article, or whose assessment has been  
3 raised by the county commission sitting as a Board of Equalization  
4 and Review above the assessment fixed by the assessor may, at any  
5 time up to thirty days after the adjournment of the board sitting  
6 as a Board of Equalization and Review, or at any time up to thirty  
7 days after the order of the Board of Assessment Appeals is served  
8 on the parties, apply for relief to the circuit court of the county  
9 in which the property books are made out; but any person applying  
10 for relief in circuit court shall, before any application is heard,  
11 give ten days' notice to the prosecuting attorney of the county,  
12 whose duty it shall be to attend to the interests of the state,  
13 county and district in the matter, and the prosecuting attorney  
14 shall give at least five days' notice of hearing to the Tax  
15 Commissioner.

16 (b) The right of appeal from any assessment by the Board of  
17 Equalization and Review or order of the Board of Assessment Appeals  
18 as provided in this section may be taken either by the applicant or  
19 by the state, and in case the applicant, by his or her attorney, or  
20 in the case of the state, by its prosecuting attorney or other  
21 attorney representing the Tax Commissioner. The party desiring to  
22 take an appeal from the decision of either board shall have the  
23 evidence taken at the hearing of the application before either

1 board, including a transcript of all testimony and all papers,  
2 motions, documents, evidence and records as were before the board,  
3 certified by the county clerk and transmitted to the circuit court  
4 as provided in section four, article three, chapter fifty-eight of  
5 this code, except that, any other provision of this code  
6 notwithstanding, the evidence shall be certified and transmitted  
7 within thirty days after the petition for appeal is filed with the  
8 court or judge, in vacation.

9 (c) If there was an appearance by or on behalf of the taxpayer  
10 before either board, or if actual notice, certified by the board,  
11 was given to the taxpayer, the appeal, when allowed by the court or  
12 judge, in vacation, shall be determined by the court from the  
13 record as so certified: *Provided*, That in cases where the court  
14 determines that the record made before the board is inadequate as  
15 a result of the parties having had insufficient time to present  
16 evidence at the hearing before the board to make a proper record,  
17 as a result of the parties having received insufficient notice of  
18 changes in the assessed value of the property and the reason or  
19 reasons for the changes to make a proper record at the hearing  
20 before the board, as a result of irregularities in the procedures  
21 followed at the hearing before the board, or for any other reason  
22 not involving the negligence of the party alleging that the record  
23 is inadequate, the court may remand the appeal back to the county

1 commission of the county in which the property is located, even  
2 after the county commission has adjourned *sine die* as a Board of  
3 Equalization and Review or a Board of Assessment Appeals for the  
4 tax year in which the appeal arose, for the purpose of developing  
5 an adequate record upon which the appeal can be decided. The  
6 county commission shall schedule a hearing for the purpose of  
7 taking additional evidence at any time within ninety days of the  
8 remand order that is convenient for the county commission and for  
9 the parties to the appeal. If, however, there was no actual notice  
10 to the taxpayer, and no appearance by or on behalf of the taxpayer  
11 before the board, or if a question of classification or taxability  
12 is presented, the matter shall be heard de novo by the circuit  
13 court.

14 (d) If, upon the hearing of appeal, it is determined that any  
15 property has been assessed at more than sixty percent of its true  
16 and actual value determined as provided in this chapter, the  
17 circuit court shall, by an order entered of record, correct the  
18 assessment, and fix the assessed value of the property at sixty  
19 percent of its true and actual value. A copy of the order or  
20 orders entered by the circuit court reducing the valuation shall be  
21 certified to the Auditor, if the order or orders pertain to real  
22 property, by the clerk within twenty days after the entering of the  
23 same, and every order or judgment shall show that the prosecuting

1 attorney or Tax Commissioner was present and defended the interest  
2 of the state, county and district. If it be ascertained that any  
3 property has been valued too high, and that the taxpayer has paid  
4 the excess tax, it shall be refunded or credited to the taxpayer in  
5 accordance with the provisions of section twenty-five-a of this  
6 article, and if not paid, he or she shall be relieved from the  
7 payment thereof. If it is ascertained that any property is valued  
8 too low, the circuit court shall, by an order entered of record,  
9 correct the valuation and fix it at sixty percent of its true and  
10 actual value. A copy of any order entered by any circuit court  
11 increasing the valuation of property shall be certified within  
12 twenty days, if the order pertains to real property, to the  
13 Auditor, the county clerk and the sheriff. However, if the order  
14 pertains only to personal property, then the copy shall be  
15 certified within twenty days to the county clerk and to the sheriff  
16 and it shall be the duty of the Auditor, the county clerk and the  
17 sheriff to charge the taxpayer affected with the increase of taxes  
18 occasioned by the increase of valuation by applying the rate of  
19 levies for every purpose in the district where the property is  
20 situated for the current year. The order shall also be filed in  
21 the office of the Auditor and clerk of the county commission. The  
22 circuit court shall review the record submitted from the board. If  
23 the court determines that the record is adequate, it shall

1 establish a briefing and argument schedule that will result in the  
2 appeal being submitted to the court for decision within a  
3 reasonable time, but not to exceed eight months after the appeal is  
4 filed. All final decisions or orders of the circuit court shall be  
5 issued within a reasonable time, not to exceed ninety days, from  
6 the date the last brief is filed and the case is submitted to the  
7 court for decision. The state or the aggrieved taxpayer may appeal  
8 a question of valuation to the Supreme Court of Appeals if the  
9 assessed value of the property is \$50,000 or more, and either party  
10 may appeal a question of classification or taxability.

11 (e) All persons applying for relief to the circuit court under  
12 this section shall be governed by the same presumptions, burdens  
13 and standards of proof as established by law for taxpayers applying  
14 for such relief.

15 (f) *Effective date.* -- The amendments to this section enacted  
16 in 2010 shall apply to tax years beginning after December 31, 2011.