

# Senate Bill No. 601

(By Senator Palumbo)

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[Introduced February 14, 2014; referred to the Committee on  
the Judiciary.]

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A BILL to amend and reenact §11-3-25 of the Code of West Virginia, 1931, as amended, relating to appeals of assessments by the Board of Equalization and Review or order of the Board of Assessment Appeals; removing a phrase giving appeal authority to an entity's agent, which the Supreme Court of Appeals of West Virginia interpreted as unconstitutional; and clarifying that appeals must be made by attorneys.

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

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

## **ARTICLE 3. ASSESSMENTS GENERALLY.**

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

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

20 (b) The right of appeal from any assessment by the Board  
21 of Equalization and Review or order of the Board of  
22 Assessment Appeals as provided in this section, may be taken  
23 either by the applicant or by the state, and in case the  
24 applicant, by his or her ~~agent~~ or attorney, or in the case of the  
25 state, by its prosecuting attorney or other attorney  
26 representing the Tax Commissioner. ~~desires to take an appeal~~  
27 ~~from the decision of the either board~~; The party desiring to  
28 take an appeal from the decision of either board shall have  
29 the evidence taken at the hearing of the application before  
30 either board, including a transcript of all testimony and all  
31 papers, motions, documents, evidence and records as were  
32 before the board, certified by the county clerk and  
33 transmitted to the circuit court as provided in section four,  
34 article three, chapter fifty-eight of this code, except that, any  
35 other provision of this code notwithstanding, the evidence  
36 shall be certified and transmitted within thirty days after the  
37 petition for appeal is filed with the court or judge, in  
38 vacation.

39 (c) If there was an appearance by or on behalf of the  
40 taxpayer before either board, or if actual notice, certified by  
41 the board, was given to the taxpayer, the appeal, when  
42 allowed by the court or judge, in vacation, shall be  
43 determined by the court from the record as so certified:  
44 *Provided*, That in cases where the court determines that the  
45 record made before the board is inadequate as a result of the  
46 parties having had insufficient time to present evidence at the  
47 hearing before the board to make a proper record, as a result  
48 of the parties having received insufficient notice of changes  
49 in the assessed value of the property and the reason or  
50 reasons for the changes to make a proper record at the  
51 hearing before the board, as a result of irregularities in the  
52 procedures followed at the hearing before the board, or for  
53 any other reason not involving the negligence of the party  
54 alleging that the record is inadequate, the court may remand  
55 the appeal back to the county commission of the county in  
56 which the property is located, even after the county  
57 commission has adjourned sine die as a Board of

58 Equalization and Review or a Board of Assessment Appeals  
59 for the tax year in which the appeal arose, for the purpose of  
60 developing an adequate record upon which the appeal can be  
61 decided. The county commission shall schedule a hearing for  
62 the purpose of taking additional evidence at any time within  
63 ninety days of the remand order that is convenient for the  
64 county commission and for the parties to the appeal. If,  
65 however, there was no actual notice to the taxpayer, and no  
66 appearance by or on behalf of the taxpayer before the board,  
67 or if a question of classification or taxability is presented, the  
68 matter shall be heard de novo by the circuit court.

69 (d) If, upon the hearing of appeal, it is determined that  
70 any property has been assessed at more than sixty percent of  
71 its true and actual value determined as provided in this  
72 chapter, the circuit court shall, by an order entered of record,  
73 correct the assessment, and fix the assessed value of the  
74 property at sixty percent of its true and actual value. A copy  
75 of the order or orders entered by the circuit court reducing  
76 the valuation shall be certified to the Auditor, if the order or

77 orders pertain to real property, by the clerk within twenty  
78 days after the entering of the same, and every order or  
79 judgment shall show that the prosecuting attorney or Tax  
80 Commissioner was present and defended the interest of the  
81 state, county and district. If it be ascertained that any  
82 property has been valued too high, and that the taxpayer has  
83 paid the excess tax, it shall be refunded or credited to the  
84 taxpayer in accordance with the provisions of section twenty-  
85 five-a of this article, and if not paid, he or she shall be  
86 relieved from the payment thereof. If it is ascertained that  
87 any property is valued too low, the circuit court shall, by an  
88 order entered of record, correct the valuation and fix it at  
89 sixty percent of its true and actual value. A copy of any  
90 order entered by any circuit court increasing the valuation of  
91 property shall be certified within twenty days, if the order  
92 pertains to real property, to the Auditor, the county clerk and  
93 the sheriff. However, if the order pertains only to personal  
94 property, then the copy shall be certified within twenty days  
95 to the county clerk and to the sheriff and it shall be the duty

96 of the Auditor, the county clerk and the sheriff to charge the  
97 taxpayer affected with the increase of taxes occasioned by the  
98 increase of valuation by applying the rate of levies for every  
99 purpose in the district where the property is situated for the  
100 current year. The order shall also be filed in the office of the  
101 Auditor and clerk of the county commission. The circuit  
102 court shall review the record submitted from the board. If the  
103 court determines that the record is adequate, it shall establish  
104 a briefing and argument schedule that will result in the appeal  
105 being submitted to the court for decision within a reasonable  
106 time, but not to exceed eight months after the appeal is filed.  
107 All final decisions or orders of the circuit court shall be  
108 issued within a reasonable time, not to exceed ninety days,  
109 from the date the last brief is filed and the case is submitted  
110 to the court for decision. The state or the aggrieved taxpayer  
111 may appeal a question of valuation to the Supreme Court of  
112 Appeals if the assessed value of the property is \$50,000 or  
113 more, and either party may appeal a question of classification  
114 or taxability.

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

119 (f) *Effective date.* – The amendments to this section  
120 enacted in 2010 shall apply to tax years beginning after  
121 December 31, 2011.

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(NOTE: The purpose of this bill is to correct the code in light of a Supreme Court decision in *Shenandoah Sales & Service, Inc. v. assessor of Jefferson County*, 228 W. Va. 762, 724 S.E.2d 733 (2012), regarding the Constitutionality of whether an agent could appeal a decision on behalf of an entity.

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