

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 157

BY SENATOR MAYNARD, *original sponsor*

[Passed March 12, 2016; in effect from passage]

1 An ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as
2 amended, relating generally to promulgation of administrative rules by Department of
3 Revenue; relating generally to repealing certain legislative, procedural or interpretive rules
4 promulgated by certain agencies and boards under the Department of Revenue which are
5 no longer authorized or are obsolete; authorizing certain of the agencies to promulgate
6 certain legislative rules in the form that the rules were filed in the State Register;
7 authorizing certain of the agencies to promulgate certain legislative rules with various
8 modifications presented to and recommended by the Legislative Rule-Making Review
9 Committee; authorizing certain of the agencies to promulgate certain legislative rules with
10 various amendments presented to and recommended by the Legislative Rule-Making
11 Review Committee; authorizing certain of the agencies to promulgate certain legislative
12 rules with various amendments recommended by the Legislature; directing various
13 agencies to amend and promulgate certain legislative rules; authorizing Alcohol Beverage
14 Control Commission to promulgate legislative rule relating to nonintoxicating beer
15 licensing and operations procedures; authorizing Alcohol Beverage Control Commission
16 to promulgate legislative rule relating to private club licensing; authorizing Alcohol
17 Beverage Control Commission to promulgate legislative rule relating to distilleries and
18 mini-distilleries; authorizing the Racing Commission to promulgate legislative rule relating
19 to thoroughbred racing; authorizing Racing Commission to promulgate legislative rule
20 relating to pari-mutuel wagering; authorizing Department of Revenue to promulgate
21 legislative rule relating to payment of taxes by electronic funds transfer; authorizing
22 Department of Revenue to promulgate legislative rule relating to an exchange of
23 information agreement between Commissioner of the Tax Division of the Department of
24 Revenue and Secretary of the Department of Commerce, Secretary of State, Secretary of
25 the Department of Environmental Protection, Director of the Division of Forestry of the
26 Department of Commerce and Commissioners of the Public Service Commission;

27 repealing certain legislative and procedural rule promulgated by certain agencies and
28 boards under the Department of Revenue; repealing the Tax Division legislative rule
29 relating to listing of interests in natural resources for purposes of first statewide appraisal;
30 repealing the Tax Division legislative rule relating to guidelines for assessors to assure fair
31 and uniform nonutility personal property values; repealing the Tax Division legislative rule
32 relating to review by circuit court on certiorari; repealing the Tax Division legislative rule
33 relating to review of appraisals by the county commission sitting as an administrative
34 appraisal review board; repealing the Tax Division legislative rule relating to additional
35 review and implementation of property appraisals; repealing the Tax Division legislative
36 rule relating to review by circuit court on certiorari; directing the State Tax Department to
37 amend and promulgate legislative rule relating to valuation of timberland and managed
38 timberland; repealing the Tax Division legislative rule relating to revision of levy estimates;
39 repealing the Tax Division legislative rule relating to inheritance and transfer tax; repealing
40 the Tax Division legislative rule relating to annual tax on incomes of certain carriers;
41 repealing the Tax Division legislative rule relating to the telecommunications tax; repealing
42 the Tax Division legislative rule relating to tax credit for employing former members of
43 Colin Anderson Center; repealing the Tax Division legislative rule relating to tax credits for
44 new value-added, wood manufacturing facilities; repealing the Tax Division legislative rule
45 relating to tax credits for new steel, aluminum and polymer manufacturing operations;
46 repealing the Tax Division legislative rule relating to the business investment and jobs
47 expansion tax credit, corporation headquarters relocation tax credit and small business
48 tax credit; repealing the Tax Division legislative rule relating to appraisal of property for
49 periodic statewide reappraisals for ad valorem property tax purposes; repealing the
50 Banking Commissioner legislative rule relating to the West Virginia Consumer Credit and
51 Protection Act; repealing the Banking Commissioner procedural rule relating to West
52 Virginia Board of Banking and Financial Institutions; repealing the Office of the Insurance

53 Commissioner legislative rule relating to utilization management; repealing the Office of
54 the Insurance Commissioner legislative rule relating to Medicare supplement insurance
55 coverage; and directing the Lottery Commission to amend and promulgate legislative rule
56 relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

1 That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE
LEGISLATIVE RULES, AND REPEAL OF UNAUTHORIZED AND
OBSOLETE RULES OF THE DEPARTMENT OF REVENUE.**

§64-7-1. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on July 31, 2015, authorized under the
2 authority of section twenty-two, article sixteen, chapter eleven of this code, modified by the
3 Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making
4 Review Committee and refiled in the State Register on November 4, 2015, relating to the Alcohol
5 Beverage Control Commission (nonintoxicating beer licensing and operations procedures, 176
6 CSR 1), is authorized.

7 (b) The legislative rule filed in the State Register on July 31, 2015, authorized under the
8 authority of section ten, article seven, chapter sixty of this code, relating to the Alcohol Beverage
9 Control Commission (private club licensing, 175 CSR 2), is authorized.

10 (c) The legislative rule filed in the State Register on July 31, 2015, authorized under the
11 authority of section sixteen, article two, chapter sixty of this code, modified by the Alcohol
12 Beverage Control Commission to meet the objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on November 4, 2015, relating to the Alcohol
14 Beverage Control Commission (distilleries and mini-distilleries, 175 CSR 10), is authorized.

§64-7-2. Racing Commission.

1 (a) The legislative rule filed in the State Register on July 22, 2015, authorized under the
2 authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing
3 Commission (thoroughbred racing, 178 CSR 1), is authorized.

4 (b) The legislative rule filed in the State Register on July 22, 2015, authorized under the
5 authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing
6 Commission (pari-mutuel wagering, 178 CSR 5), is authorized.

§64-7-3. Department of Revenue.

1 (a) The legislative rule filed in the State Register on July 29, 2015, authorized under the
2 authority of section five-t, article ten, chapter eleven of this code, modified by the Department of
3 Revenue to meet the objections of the Legislative Rule-Making Review Committee and refiled in
4 the State Register on September 18, 2015, relating to the Department of Revenue (payment of
5 taxes by electronic funds transfer, 110 CSR 10F), is authorized.

6 (b) The legislative rule filed in the State Register on July 29, 2015, authorized under the
7 authority of section five, article ten, chapter eleven of this code, relating to the Department
8 Revenue (exchange of information agreement between the Commissioner of the Tax Division of
9 the Department of Revenue and the Secretary of the Department of Commerce, the Secretary of
10 the Department of Environmental Protection, the Director of the Division of Forestry of the
11 Department of Commerce and the Commissioners of the Public Service Commission, 110 CSR
12 50H), is authorized, with the amendment set forth below:

13 On page one, subsection 3.1, line six, following the word "Commerce", by inserting the
14 words "Secretary of State".

15 (c) The legislative rule effective on June 12, 1987, authorized under the authority of section
16 one, article one-a, chapter eleven of this code, relating to the Tax Division (listing of interests in
17 natural resources for purposes of first statewide appraisal, 110 CSR 1B), is repealed.

18 (d) The legislative rule effective on May 13, 1987, authorized under the authority of section
19 twenty-nine-a, article one-a, chapter eleven of this code, relating to the Tax Division (guidelines
20 for assessors to assure fair and uniform nonutility personal property values, 110 CSR 1C), is
21 repealed.

22 (e) The legislative rule effective on June 12, 1987, authorized under the authority of
23 section one, article one-a, chapter eleven of this code, relating to the Tax Division (review by
24 circuit court on certiorari, 110 CSR 1D), is repealed.

25 (f) The legislative rule effective on June 12, 1987, authorized under the authority of section
26 one, article one-a, chapter eleven of this code, relating to the Tax Division (review of appraisals
27 by the county commission sitting as an administrative appraisal review board, 110 CSR 1E), is
28 repealed.

29 (g) The legislative rule effective on May 13, 1987, authorized under the authority of section
30 one, article one-a, chapter eleven of this code, relating to the Tax Division (additional review and
31 implementation of property appraisals, 110 CSR 1F), is repealed.

32 (h) The legislative rule effective on May 13, 1987, authorized under the authority of section
33 one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court
34 on certiorari, 110 CSR 1G), is repealed.

35 (i) The Legislature directs the Department of Revenue to promulgate the legislative rule
36 filed in the State Register on May 5, 1999, authorized under the authority of section five-a, article
37 one-c, chapter eleven, of this code, relating to the Department Revenue (Valuation of Timberland
38 and Managed Timberland, 110 CSR 1H), with the amendments set forth below:

39 **§110-1H-1. General.**

40 1.1 Scope. — This legislative rule establishes the procedure for the classification and
41 valuation of timberland and managed timberland.

42 1.2. Authority. — W. Va. Code §§11-1C-5(a)(2)(B), 11-1C-11(c)(1) and 11-1C-11b(c).

43 1.3. Filing Date. —

44 1.4. Effective Date. — July 1, 2016.

45 1.5. Repeal of former rule. — This legislative rule repeals and replaces WV 110 C.S.R.1H
46 “Valuation of Timberland and Managed Timberland” filed April 16, 1999 and effective May 1, 1999.

47 **§ 110-1H-2. Introduction.**

48 2.1. The appraised value of managed timberland shall be determined by the State Tax
49 Commissioner on the basis of the potential of the land to produce future income according to its
50 use and productive potential. Potential future net income is discounted to its present value
51 utilizing a discounted cash flow; this is the appraised value. The ability of a stand of timber to
52 produce wood products for sale or use depends primarily on the quality of the soil and certain
53 topographic and climatic features which can be expressed as a site index. Site index is the
54 principal criterion influencing the appraised value of managed timberland. These factors shall be
55 reviewed annually by the Tax Commissioner for necessary updating of the method described in
56 order to properly reflect future changes in the values of managed timberland.

57 2.2. The appraised value of timberland (woodland/wasteland) shall be determined on the
58 basis of market comparable derived through analysis of sales prices of comparable timberland
59 (forested) properties. Timberland appraisal value shall always be more than the appraised value
60 of equivalent grades of properties being classified as managed timberland in the county. The
61 appraised value of timberland shall be determined by the county assessor based upon the
62 Timberland Classification Schedule found in Appendix 1 of this rule.

63 2.3. The county assessor shall collect and analyze market data, including sales of
64 timberland, segregated into the classes contained in the previously referenced classification
65 schedule. Based upon this market analysis, the county assessor shall select the value for each
66 class of timberland that best reflects the market value of the property if exposed to the market for
67 sale as timberland. The values by class thus selected shall be entered, by the assessor, into the
68 respective county land pricing tables and shall be used by the assessor to estimate the appraised
69 value of timberland for property tax purposes.

70 **§ 110-1H-3. Definitions.**

71 As used in this rule and unless the context clearly requires a different meaning, the
72 following terms shall have the meaning ascribed in this section.

73 3.1. "Capitalization rate" means the rate used to convert an estimate of income into an
74 estimate of present value. Details of the procedure for determining the capitalization rate are
75 found in Section 12 of this rule.

76 3.2. "Certified managed timberland plan" means the managed timberland plan that is
77 certified by the landowner when the landowner certifies that the property is maintained as
78 managed timberland.

79 3.3. "Cost" means a component of management costs and property taxes.

80 3.4. "dbh" means the diameter of trees at breast height, which is 4.5' above ground level.

81 3.5. "Division of Forestry" means the West Virginia Bureau of Commerce, Division of
82 Forestry.

83 3.6. "Farm wood lot" means that portion of a farm in timber but may not include land used
84 primarily for the growing of timber for commercial purposes except that Christmas trees, or
85 nursery stock and woodland products, such as nuts or fruits harvested for human consumption,
86 shall be considered farm products and not timber products.

87 3.7. "Harvest income per acre" means the expected after tax revenue and accrued interest
88 for each harvesting interval. Interest is assumed to accrue at the rate of return from the period of
89 harvest to the end of the 80 year rotation cycle.

90 3.8 "Integrated Moisture Index" means soil moisture data derived from a methodology
91 described in "A GIS-Derived Integrated Moisture Index"; by Louis R. Iverson and Anantha M.
92 Prasad; USDA Forest Service, Northeastern Research Station, Delaware, Ohio; 2003, as the
93 same is refined and applied, from time to time, by subsequent professional studies conducted, or
94 contracted for, by the Division of Forestry to determine current measures of the same.

95 3.9 "MBF" means thousand board feet.

96 3.10. "Management cost" means the cost determined tri-annually by the Tax
97 Commissioner to be the average annual cost of maintaining and protecting a producing forest.
98 Maintenance costs may include costs of inventory, boundary survey, security, maps, and any
99 other items as can be shown to have been necessary. Protection may include costs of protection
100 against forest fires; harmful insect and tree diseases; costs of repair and replacement resulting
101 from damages reported to appropriate police agencies, including all-terrain vehicles (ATV's) and
102 other vehicular damages, and costs of replacing and replanting forest production and/or
103 plantations destroyed or injured by deer or other wild animals whose populations exceed the
104 maximum carrying capacity of the site. Management costs shall be determined as an average
105 for the entire State or by regions, by Managed Timberlands Productivity Grades or by parcel
106 acreage and shall be deducted from gross annual income per acre to obtain net annual income
107 per acre.

108 3.11. "Managed Timberland" means surface real property, except farm woodlots, of not
109 less than ten contiguous acres which is devoted primarily to forest use and which, in consideration
110 of their size, has sufficient numbers of commercially valuable species of trees to constitute at least
111 forty percent normal stocking of forest trees which are well distributed over the growing site, and
112 that it is managed pursuant to a plan as defined in subsection 3.12 and appendix 2 of this rule.

113 3.12. "Managed Timberland Plan" means the planned timberland management program
114 that conforms to the following standards established by the Division of Forestry in the plan:

115 3.12.1. Includes the owner's multipurpose objectives for the property;

116 3.12.2. Provides for the land:

117 3.12.2.a. to remain in at least 40% or greater forest cover of well distributed
118 commercially important trees,

119 3.12.2.b. to produce continuous crops of timber according to the site's productivity,
120 and,

121 3.12.2.c. to be monitored for and action taken against threats from injurious
122 agencies;

123 3.12.3. Ensures that harvesting will be done in a manner that assures regeneration of the
124 landowner's preferred species; and

125 3.12.4. Assures sustainability of forest resources and compliance with the Logging
126 Sediment control Act, W. Va. Code §19-1B-1 et seq.

127 3.13. "Managed Timberland Productivity Grades" means timberland classified as Grade
128 1 (excellent to very good), Grade 2 (good to fair), or Grade 3 (poor), according to the table in
129 Appendix 4 of this rule.

130 3.14. "Owner of surface less timber" means any person who owns an interest in the
131 surface where the timber rights have been sold to someone else.

132 3.15. "Owner of Timber" means any person who owns an interest in timber, including a
133 lessor or sublessor and an owner of a contract right to cut timber. The owner of timber must have
134 a right to cut timber for sale on his, her or its own account for use in his, hers, or its trade or
135 business in order to have property rights that are subject to ad valorem property taxes.

136 3.16. "Site Index" means a method of measuring the potential of a site to grow trees to
137 the height that the average dominant and co-dominant trees on the site will attain at a given age.
138 The site index will be determined using the applicable Integrated Moisture Index (IMI) as shown
139 on Appendix 4 of this rule.

140 3.17. "Stumpage Price" means the market value of standing trees (on the stump) prior to
141 felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal
142 purposes, real stumpage price will be adjusted to real price changes over various harvest periods
143 (i.e., 35, 45, 55 or 80 years) during the 80 year rotation cycle. The real price change shall be
144 determined using historical West Virginia saw timber and pulpwood prices based upon 16 inch
145 (dbh) logs provided by the West Virginia Division of Forestry (i.e. data from the last 20 years or
146 more depending on data availability). Stumpage price projections over various harvest periods

147 shall be calculated using the real price change derived from historical saw timber and pulpwood
148 prices in West Virginia. Thus, since stumpage prices provided by the Division of Forestry are in
149 nominal terms, those prices shall be converted to real dollars (i.e. real terms) before stumpage
150 projections are calculated. A five-year weighted moving average shall be computed in order to
151 minimize the effects of short-term fluctuations. Stumpage prices shall be computed for each
152 stumpage price region in order to reflect regional differences in markets, topography, and
153 accessibility.

154 3.18. "Stumpage Price Region" means a geographical region of the State, usually
155 consisting of several counties, in which conditions of the timber, timber markets, topography, and
156 accessibility are sufficiently similar to result in similar stumpage prices at any given time. The
157 counties involved in each stumpage price region have been identified by the Division of Forestry
158 and are found in Appendix 3 of this rule.

159 3.19. "Timber" means trees of any marketable species, whether planted or of natural
160 growth, standing or down, located on public or privately owned land, which are suitable for
161 commercial or industrial use.

162 3.20. "Timberland (Woodland/Wasteland)" means any surface real property, except
163 Managed Timberland and farm woodlots of not less than ten contiguous acres, which is primarily
164 in forest and which has, in consideration of their size, sufficient numbers of commercially-valuable
165 species of trees to constitute at least forty percent (40%) normal stocking of forest trees, as shown
166 Appendix 2 of this rule, which are well distributed over the growing site. Additionally, land that
167 has been recently harvested of merchantable timber and is growing into or being planted as a
168 new forest may be classified as timberland.

169 **§ 110-1H-4. Classification of Timberland and Managed Timberland.**

170 4.1. Managed Timberland. — For property to qualify for managed timberland valuation,
171 the owner of the surface real property identified on the county tax mapping system shall annually
172 certify in writing to the Division of Forestry that the property satisfies the requirements of managed

173 timberland, as defined in Section 3 of this rule, and enter into a contract with the Division of
174 Forestry to use the real estate in a planned program of multiple purpose forest management,
175 including erosion control during timbering operations, as specified in the West Virginia Forest
176 Practices Standards and the West Virginia Silvicultural Nonpoint Source Management Program,
177 and as explained in Section 13 of this rule. Multipurpose forest management contemplates the
178 periodic selection of timber on the property for harvesting as an integral part of silvicultural
179 management practices. The silvicultural manipulation subjects the property to periodic
180 commercial use that may have an effect on the property's classification for property tax purposes.
181 Therefore, in recognition of the silvicultural manipulation, the following guidelines shall be
182 observed by the Division of Forestry when classifying managed timberland for property tax
183 purposes.

184 4.1.1. Property containing managed timberland, which may have been properly taxed as
185 Class II property prior to the managed timberland application, shall remain as Class II property
186 unless there is some other event or change in the use of the property that disqualifies it from being
187 taxed as Class II property.

188 4.1.2. Property containing managed timberland, which may have been properly taxed as
189 Class III or Class IV property prior to the managed timberland application, shall be taxed as Class
190 III or Class IV property depending upon location.

191 4.2. Timberland. — Timberland shall be taxed as Class II, Class III, or Class IV property
192 in accordance with provisions of West Virginia Code § 11-8-5. In order for timberland to be taxed
193 as Class II property, the timberland shall be used and occupied by the owner exclusively for
194 residential purposes. (This section does not apply to farm woodlots - See, Valuation of Farmland
195 and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1H, § 110-
196 1H-5.)

197 4.3. Surface less timber — Property where the owner of the surface does not include the
198 timber rights is not eligible for managed timberland classification and shall be valued by the
199 assessor.

200 4.4. Timber — Property where the owner of the timber rights does not include the surface,
201 is not eligible for managed timberland classification and shall be valued by the assessor.

202 **§ 110-1H-5. Valuation of Farm Wood Lots.**

203 Farm wood lots shall be included in the valuation of farm property under W. Va. Code §11-
204 1A-10, except when the farm wood lot is a separate parcel or tract entered in the land books,
205 and/or except when the primary use of the farm wood lot is in commercial forestry or in a managed
206 timberland contract.

207 **§ 110-1H-6. Timberland Improvements.**

208 Improvements such as roads and service buildings that are a required (usual) part of
209 timber management operations are not subject to an additional market value appraisal over and
210 above the appraisal of the managed timberland. Improvements that are not a necessary part of
211 the timber management operations, such as dwellings, cottages, hunting camps, other
212 recreational facilities, and associated real estate are subject to additional market value appraisals.
213 Additionally, haul roads, strip and/or mountaintop removal mines, plant facilities, powerline and
214 gas/oil pipeline rights-of-way, and gas/oil well pads shall not be valued as managed timberland.

215 **§ 110-1H-7. Appraised Value of Timberland.**

216 The appraised value per acre of timberland shall be determined based upon market
217 comparables and shall be estimated by the county assessor. There are at least five (5) various
218 timberland rates based on the timberland classification schedule described in Appendix 1 of this
219 rule. Assessors shall tri-annually review and grade these non-managed timberland properties in
220 order to assign the proper rate per acre to the property. The rate per acre shall be established
221 by the assessor in conformity with requirements of subsection 2.2 of this rule.

222 **§ 110-1H-8. Valuation of Less Than 10 Acres.**

223 A parcel, or contiguous parcels, of timberland totaling less than ten (10) acres shall not be
224 considered for classification as managed timberland and shall be valued by the county assessor
225 based upon market comparables.

226 **§ 110-1H-9. Harvest Volumes Per Acre**

227 Harvest Volumes per acre shall be based on site index and the ability of the site to yield
228 timber measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre with
229 harvest intervals at thirty-five (35), fifty-five (55) and eighty (80) years for Grade 1 and Grade 2
230 soils, and at forty-five (45) and eighty (80) years for Grade 3 soil.

231 **§ 110-1H-10. Appraised Value Per Acre of Managed Timberland.**

232 The appraised value per acre of managed timberland is the present worth of an infinite
233 periodic net income from the land less a property tax adjustment for Class II, and a blend of Class
234 III and Class IV tax rates for Class III and Class IV properties using, for all measures required by
235 this rule to compute such appraised value per acre of managed timberland, real values and not
236 nominal values. Except as required by the provisions of subsection 2.2 of this rule, in no case
237 shall the appraised value per acre for any grade of managed timberland in any county be less
238 than eighty percent of the value per acre of the comparable grade of managed timberland in the
239 immediately preceding tax year in that same county. The appraised value is the net present
240 worth of all revenues and costs associated with growing timber on the land in perpetuity. Net
241 income is the difference between projected revenues (e.g. harvest revenues in years 35, 55 and
242 80) and projected costs (e.g. management costs).

243 **§ 110-1H-11. Procedure for Determining Value Per Acre of Managed Timberland.**

244 The following is a step-by-step procedure for determining the appraised value per acre of
245 managed timberland.

246 11.1. The Tax Commissioner shall enter the surface ownership maps (typically 1 inch =
247 400 feet or 1 inch = 800 feet) into a Geographic Information System (GIS). The GIS shall be used

248 to register the surface ownership parcels to the same geographic coordinate system and scale
249 as that of the Integrated Moisture Index. This process allows the calculation of the area of each
250 soil productivity grade in each parcel.

251 11.2. Average stumpage price (5 year weighted moving average) is determined by the
252 State Tax Commissioner, based on stumpage price reports from the Division of Forestry and other
253 available sources.

254 11.3. Total harvest income per acre over a rotation cycle of thirty-five (35) years, fifty-five
255 (55) years and eighty (80) years for Grade 1 and 2 soils, and forty-five (45) years and eighty (80)
256 years for Grade 3 soils shall be compounded at the end of the rotation (i.e. harvest income value
257 at year 80) less applicable state and federal tax payments, if any.

258 11.4. End of rotation (80 year) total management costs per acre shall be determined by
259 compounding the annual management costs at the end of the rotation (i.e. management cost
260 value in year 80) using the after tax management costs and accrued interest on those costs.

261 11.5. Appraised value per acre for managed timberland shall be determined by first
262 deducting the cumulative end of rotation total management costs from the cumulative end of
263 rotation total harvest income per acre as defined in paragraph 3.7 of this rule; second, calculating
264 the present worth of that difference, assuming an infinite periodic income from the managed
265 timberland; and third, adjusting that value by the annual ad valorem property tax rate (either Class
266 II or a blended Class III/IV).

267 11.6. The GIS shall be used to calculate the appraised value of managed timberland
268 property on an annual basis. The appraised value of each managed timberland property shall be
269 calculated using the formula found in Appendix 6 of this rule.

270 11.6.1. Those acreages involved in a managed timberland application where the use of
271 the property is not for managed timberland purposes (e.g., homesite, pasture, tillable, recreation,
272 stripmine, etc.) shall not be classified as managed timberland and shall be appraised by the
273 county assessor.

274 **§ 110-1H-12. Capitalization Rate.**

275 The average statewide capitalization rate (based on a 5-year weighted moving average of
276 various components) for managed timberland shall be determined annually by the Tax
277 Commissioner through the use of generally accepted methods of determining those rates. The
278 rate shall be based on the assumption of a discounted cash flow model based upon harvest
279 intervals reflected in Appendix 4 of this rule. The capitalization rate used to value managed
280 timberland shall be developed considering the following:

281 12.1. Discount Component. — The summation technique shall be used in developing a
282 discount component of the capitalization rate. The five subcomponents of the discount
283 component are:

284 12.1.1. Safe Rate. — The safe rate shall reflect a rate of return that an investor could
285 expect on an investment of minimal risk. This rate shall be developed through weighted averages
286 of interest rates offered on five-year United States Treasury Bills for the five years immediately
287 preceding the appraisal date.

288 12.1.2. Non-liquidity Premium. — The non-liquidity premium rate shall be developed
289 through an annual review to determine a reasonable estimate of time that timberland, when
290 exposed for sale, remains on the market before being sold. The time thus determined shall be
291 used to identify United States Treasury Bills with similar time differentials in excess of thirteen-
292 week Treasury Bills. The interest differential between these securities shall be used to represent
293 the nonliquidity rate. For example, if it is determined that a tract of timberland remains on the
294 market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be
295 derived by subtracting the rate on 13-week Treasury Bills from the rate on one year Treasury Bills.
296 This review shall consider the weighted average of these differences for a five year period
297 immediately preceding the appraisal date.

298 12.1.3 Default Risk Premium – The Default Risk Premium, being the premium added to
299 the safe rate to compensate for the chance that the obligor will default on a loan, is the difference

300 between the rate on a U.S. Treasury Bond and the average rate on investment grade corporate
301 bonds, (i.e. rate on AAA, AA, A and BBB rated bonds) of equal maturity and marketability. The
302 Default Risk Premium will take into account the weighted average of these differences for a five-
303 year period immediately preceding the appraisal date.

304 12.1.4. Management Rate. — The management rate represents the cost of managing the
305 investment, not the cost of managing the timberland. Historically, the management rate has been
306 one-half of one percent (0.5%); therefore, this rate shall be considered the industry standard for
307 current applications.

308 12.1.5. Discount Component. — In determining the discount component of the
309 capitalization rate, the Tax Commissioner shall take the sum of the safe rate, the nonliquidity rate,
310 the default risk rate, and the management rate. The resulting discount rate is a nominal discount
311 rate.

312 12.2. Property Tax Component. — The property tax component shall be derived by
313 multiplying the assessment rate by the statewide five year weighted average of tax rates on Class
314 II and on a blended rate for Class III and Class IV properties. The discounted property tax rates
315 shall be deducted from the discounted difference between total cumulative harvest income and
316 end of rotation management costs.

317 **§ 110-1H-13. Application for Certification and Valuation as Managed Timberland.**

318 In order to qualify, under the provisions of this rule, for managed timberland valuation
319 purposes, the owner of the timberland shall, on or before the first day of September, enter into a
320 contract with the Division of Forestry. The contract shall state that the real estate is being used
321 in a planned program of timber management and erosion control practices intended to enhance
322 the growth of commercially desirable species through generally accepted silvicultural practices
323 and the use of Best Management Practices as specified in the West Virginia Forest Practice
324 Standards and the West Virginia Nonpoint Source Management Program. The contract shall be
325 assignable with the sale of the land when the land is sold to be used for managed timberland

326 purposes. Annually, on or before September 1, the owner shall file an application for certification
327 as managed timberland with the Division of Forestry. The application shall include either (a) a
328 commitment to maintain and protect timberland certified as managed timberland by demonstrating
329 land-use objectives to include resource management and soil and water protection; or (b) a written
330 plan prepared by a professional forester. Falsification of certification or failure to follow a
331 professionally prepared plan shall result in loss of valuation as managed timberland. In any event,
332 the following information shall be provided:

333 13.1. The county, district, map, parcel number, deed book surface acreage and actual
334 surveyed surface acreage, if available, for each parcel that is to be valued as managed
335 timberland;

336 13.1.1. The amount of acreage in each parcel that should be classified as managed
337 timberland. For those properties where managed timberland acreage is different than deed
338 acreage, information identifying the use of the non-managed acreage is required;

339 13.1.2. The signature of owner (including all fractional interests) acknowledging that the
340 contract with the Division of Forestry has been annually reviewed and approved and that the
341 property is being managed in accordance with the Best Management Practices for forestry as
342 outlined in the West Virginia Forest Practice Standards and the Best Management Practices for
343 water quality as outlined in the West Virginia Nonpoint Source Management Program. If a written
344 plan is provided in accordance with Section 13 of this rule, that plan shall be approved and signed
345 by a registered timber management forester.

346 13.2. The Division of Forestry shall, on or before October 1 of each year, provide the State
347 Tax Commissioner with a copy of the certifications and reports and provide a list of those
348 properties certified as managed timberland and those denied certification. After the October 1
349 report is filed, the Division of Forestry has until January 15 of the next calendar year to review any
350 applications questioned by the State Tax Commissioner or county officials.

351 13.3. The property owner whose managed timberland application was denied or who has
352 been refused certification pending demonstration of specific facts may, on or before November 1
353 of the assessment year, file an appeal of the denial or file the requested data with the Director of
354 the Division of Forestry. On or before the following December 1, the Division of Forestry shall
355 advise the Tax Commissioner of any changes of application denials.

356 **§ 110-1H-14. Summary of Method of Determining Appraised Value.**

357 The formula to be used in determining the appraised value of property categorized as
358 managed timberland is found in Appendix 5 of this rule.

359 **APPENDIX 1**

360 **Timberland Classification Schedule**

361 **Class “A”**

362 This land is adaptable for use as forest property. It may be adaptable to other profitable
363 uses. There is a stand of trees of commercial species, the size being from fourteen (14) to twenty
364 (20) inches d.b.h. and above.

365 **Class “B”**

366 This land is also adaptable for use as forest property. It may be adaptable for other
367 profitable uses. There is a stand of trees of commercial species, the size being from ten (10) to
368 fourteen (14) inches d.b.h.

369 **Class “C”**

370 This land is adaptable for use as forest property. There is a stand of trees of commercial
371 species, the size being from six (6) to ten (10) inches d.b.h.

372 **Class “D”**

373 This land is adaptable for use as forest property. There is a stand of trees of commercial
374 species, the size being from four (4) to six (6) inches d.b.h.

375 **Class “E”**

376 This land is adaptable for use as forest property. There are trees of commercial species
 377 less than four (4) inches d.b.h. This class of timberland also includes clear cut property and
 378 property subjected to total harvest where the remaining commercial species are less than four (4)
 379 inches d.b.h.

380 **APPENDIX 2**

381 Minimum Number of Trees Required Per Acre to Determine
 382 30 Square Feet of Tree Basel Area of 40%
 383 Stocking for Classification as Forest Land

D.B.H Range	D.B.H. in 2" Classes	Basel Per Tree	Area Per Acre	Per 1/5 Acre	Per 1/10 Acre
Up to 2.9"	Seedlings		400	80	40
3.0-4.9"	4	0.0873	400	80	40
5.0-6.9"	6	0.1964	153	31	15
7.0-8.9"	8	0.3491	86	17	9
9.0-10.9"	10	0.5454	55	11	6
11.0-12.9"	12	0.7854	38	8	4
13.0-14.9"	14	1.0690	28	6	3
15.0"+	16+	1.3983+	21	4	2

384 NOTE:

- 385 (a) Area 1/5 acre, circle, diameter 105'4"; square 93.4" per side
- 386 (b) Area 1/10 acre; circle, diameter 74'6"; square 66'
- 387 (c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings
 388 would be equivalent of 7.5 square feet of basal area (25% x 30 - 7.5)
- 389 (d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine
 390 management is practiced a minimum of 250 well distributed pine seedlings will qualify.

391 **APPENDIX 3**

392 Stumpage Price Regions

Region 1	Region 2	Region 3	Region 4	Region 5
Brooke	Braxton	Barbour	Berkeley	Boone
Cabell	Calhoun	Greenbrier	Grant	Fayette
Hancock	Clay	Monroe	Hampshire	Kanawha

Jackson	Doddridge	Nicholas	Hardy	Lincoln
Marshall	Gilmer	Pendleton	Jefferson	Logan
Mason	Harrison	Pocahontas	Mineral	McDowell
Ohio	Lewis	Preston	Morgan	Mercer
Pleasants	Marion	Randolph		Mingo
Putnam	Monongalia	Tucker		Raleigh
Tyler	Ritchie	Upshur		Summers
Wetzel	Roane	Webster		Wayne
Wood	Taylor			Wyoming
	Wirt			

393 **APPENDIX 4**

394 TABLE OF HARVEST VOLUMES PER ACRE WITH HARVEST INTERVALS OVER AN 80
 395 YEARS ROTATION CYCLE

	35 Years	55 Years	80 Years	Total
Grade 1				
IMI ≥ 45	4.6 Cords	2.6 Cords	3.3 Cords	10.5 Cords
(Very Good to Excellent)	1.5 MBFs	4.4 MBFs	8.6 MBFs	14.5 MBFs
Grade 2				
IMI ≥ 30 AND ≤ 44.99	3.3 Cords	7.0 Cords	4.6 Cords	14.9 Cords
(Fair to Good)	1.0 MBFs	4.4 MBFs	8.6 MBFs	14.5 MBFs
Grade 3				
IMI ≤ 29.99	3.1 Cords	15.4 Cords	18.5 Cords	
(Poor)	8 MBFs	3.7 MBFs	4.5 MBFs	

396 Scribner rule. Schnur, G. Luther. UNITED STATES DEPARTMENT OF AGRICULTURE Tech.
 397 Bul. No. 560. 1937. The Tax Commissioner may adopt a different timber scale and revise yields
 398 as standards of timber utilization change or as new information becomes available on timber
 399 yields of forest stands.

400 **APPENDIX 5**

401 **For Class II Parcels:**

402 Appraised Value Per Acre = ((Future Value of Harvest Revenues – Future Value of
 403 Management Costs)/((1 + Real Discount Rate)ⁿ - 1)) less discounted property tax Class II rate.

404 Where:

405 n = 80 years

406 Future Value of Harvest Revenues – value of harvest revenues in year 80 using compounding
 407 formula below

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408 $V_n = V_o(1 + i)^n - 1$

409 Where: V_o = harvest revenue in year 0) (i.e. 35, 45, 55 or 80)

410 i = capitalization rate

411 n = rotation length

412 V_n = future value of harvest revenues

413 Future Value of Management Costs – value of management costs in year 80 using the formula

414 for calculating the future value of a terminating annual series as given below:

415 $V_n = a\{(1 + i)^n - 1/i\}$

416 Where: a = annual management costs

417 i = capitalization rate

418 n = rotation length

419 V_n = future value of management costs

420 **For Class III & IV Parcels:**

421 Same formula except the discounted property tax rate for Class III and Class IV properties is

422 used. Until the present natural resource and county computer systems can be programmed to

423 change appraisals based on tax classifications or until a new computerized appraisal system can

424 be put into effect, the property tax discount shall be a blended rate including both Class III and

425 Class IV rates.

426 **APPENDIX 6**

427 $AV = (P1V1) + (P2V2) + (P3V3)$

428 Where:

429 AV = Property Appraised Value

430 $P1$ = Total Acreage of Parcel in Soil Productivity Grade 1

431 $P2$ = Total Acreage of Parcel in Soil Productivity Grade 2

432 $P3$ = Total Acreage of Parcel in Soil Productivity Grade 3

433 $V1$ = Value of Soil Productivity Grade 1

434 V2 = Value of Soil Productivity Grade 2

435 V3 = Value of Soil Productivity Grade 3

436 (j) The legislative rule effective on June 29, 1964, authorized under the authority of article
437 one, chapter eleven of this code, relating to the Tax Division (revision of levy estimates, 110 CSR
438 8), is repealed.

439 (k) The legislative rule effective on September 16, 1966, authorized under the authority of
440 article ten, chapter eleven of this code, relating to the Tax Division (inheritance and transfer tax,
441 110 CSR 11), is repealed.

442 (l) The legislative rule effective on January 1, 1974, authorized under the authority of
443 section five-a, article ten, chapter eleven of this code, relating to the Tax Division (annual tax on
444 incomes of certain carriers, 110 CSR 12A), is repealed.

445 (m) The legislative rule effective on April 4, 1988, authorized under the authority of section
446 five, article ten, chapter eleven of this code, relating to the Tax Division (telecommunications tax,
447 110 CSR 13B), is repealed.

448 (n) The legislative rule effective on May 1, 1996, authorized under the authority of section
449 three, article thirteen-i, chapter eleven of this code, relating to the Tax Division (tax credit for
450 employing former members of Colin Anderson Center, 110 CSR 13I), is repealed.

451 (o) The legislative rule effective on May 1, 1999, authorized under the authority of section
452 seven, article thirteen-m, chapter eleven of this code, relating to the Tax Division (tax credits for
453 new value-added, wood manufacturing facilities, 110 CSR 13M), is repealed.

454 (p) The legislative rule effective on May 1, 1999, authorized under the authority of section
455 seven, article thirteen-n, chapter eleven of this code, relating to the Tax Division (tax credits for
456 new steel, aluminum and polymer manufacturing operations, 110 CSR 13N), is repealed.

457 (q) The legislative rule effective on May 1, 1995, authorized under the authority of section
458 five, article ten, chapter eleven of this code, relating to the Tax Division (business investment and

459 jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax
460 credit, 110 CSR 13C), is repealed.

461 (r) The legislative rule effective on April 4, 1988, authorized under the authority of section
462 one, article one-a, chapter eleven of this code, relating to the Tax Division (appraisal of property
463 for periodic statewide reappraisals for ad valorem property tax purposes, 110 CSR 1), is repealed.

§64-7-4. Banking Commissioner.

1 (a) The legislative rule effective on April 23, 1982, authorized under the authority of
2 section four, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner
3 (West Virginia Consumer Credit and Protection Act, 106 CSR 8), is repealed.

4 (b) The procedural rule effective on January 10, 1975, authorized under the authority of
5 section two, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner
6 (West Virginia Board of Banking and Financial Institutions, 107 CSR 5), is repealed.

§64-7-5. Office of the Insurance Commissioner.

1 (a) The legislative rule effective on May 16, 1997, authorized under the authority of section
2 four, article twenty-five-a, chapter thirty-three of this code, relating to the Office of the Insurance
3 Commissioner (utilization management, 114 CSR 51), is repealed.

4 (b) The legislative rule effective on December 28, 1981, authorized under the authority of
5 section ten, article two, chapter thirty-three of this code, relating to the Office of the Insurance
6 Commissioner (Medicare supplement insurance coverage, 114 CSR 17), is repealed.

§64-7-6. Lottery Commission.

1 The Legislature directs the Lottery Commission to promulgate the legislative rule filed in
2 the State Register on May 20, 2009, authorized under the authority of section four hundred two,
3 article twenty-two-b, chapter twenty-nine of this code, relating to the Lottery Commission (limited
4 video lottery, 179 CSR 5), with the amendment set forth below:

5 On page 3, after subsection 2.11, by adding a new subsection 12.2 to read as follows:

6 2.12. “Licensed limited video lottery location approved by the commission” as it appears
7 in W. Va. Code, §29-22B-1201(a) means the location in excess of the following straight-line
8 distances from any of the following places:

9 2.12.a. The location is at least one hundred fifty feet from, or has an external structural
10 connection not amounting to a common internal wall to, a premises that already has a retail
11 license for video lottery terminals or the perimeter of a public park;

12 2.12.b. The location is at least three hundred feet from a church, school or daycare center;
13 or

14 2.12.c. The location is at least one hundred fifty feet from a business that sells petroleum
15 products capable of being used as fuel in an internal combustion engine.

16 And,

17 By renumbering the remaining subsections.

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

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2016.

.....
Governor