

In the message by which Governor Tomblin vetoed SB157 which contained the reformed managed timberland valuation rule the Governor stated in part, *“The authorization for this rule includes significant amendment to the rule, which is problematic for two reasons. First, these amendments occurred in the last days of the legislative session, not permitting those affected by such changes to fully appreciate or address the impacts of such changes. Second, these amendments will have a disproportionate and significant negative impact on the counties located in southern West Virginia. These amendments deserve further review before we make such sweeping changes in the law. For these reasons, I disapprove this bill.”*

From the perspective of the ad hoc group of landowners who, under the leadership of West Virginia Forestry Association (WVFA), sought changes to the rule, the Governor’s message greatly distorts the actual situation. In 2013 it became apparent that the existing rule was generating extremely erroneous results; sometimes yielding values that were too high and sometimes reducing values to allowable minimums. The Tax Department acknowledged that the results were flawed and for the next 2+ years worked with WVFA, WV Division of Forestry and WV University economist Dr. Kathryn Gazal to identify problems with the rule and to propose changes that would lead to reliably derived values with proper application of a reformed rule. Those changes represent not sweeping changes in the law but rather an effort to conform the rule to the law.

As that work was being carried out, the Tax Department voluntarily adjusted the erroneous values pending the approval of a perfected rule. After some negotiation and with a few remaining relatively minor disagreements, the Department proposed to promulgate a revised rule. The formal proposal was received by the WV Secretary of State on June 11, 2015. As required by law the proposed rule was submitted to the Legislative Rulemaking Review Committee and was considered in a public forum on November 18. It was approved by the Committee with amendments. The reformed rule was substantially as proposed.

Reportedly responding to appeals to the Governor from County Assessors who preferred to continue to use the flawed rule, the Tax Department withdrew the rule after the Committee had adjourned and legislators had left Charleston. Importantly, the rule as contained in SB 517 was in form and substance the same rule as had been approved by the Rulemaking Review Committee in November and the same as was contained in SB679 and HB4689 which were referred to their respective Finance Committees on February 22 and 23.

There has been no challenge to the technical and scientific merits of the revised rule; only objections to the assumed outcome. By virtue of replacing erroneous data and procedures with accurate and scientifically based inputs and methods, some changes in the resulting values should be expected. However, the locales and the amounts of the same, at this point are entirely speculative until the data for tax year 2017 are available.

Sadly, despite over two years of work with Governor Tomblin’s administration to fix the rule, the veto leaves the Tax Department with an incorrect and inappropriate procedure for carrying out a statutory duty.