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In This Issue

[Ways And Means Takes Testimony On New Bill](#)

[House Ways and Means Committee Members](#)

[Plum Creek Says Its Expulsion Is Unconstitutional](#)

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Ways And Means Takes Testimony On New Bill

On Thursday, Feb. 24, the House Ways and Means Committee began work on a recently introduced current use reform bill, H.237, by taking testimony from Darby Bradley of the Vermont Land Trust and John Meyer of the Vermont Woodlands Association, who is co-chair of the Current Use Coalition (CUTC).

The Legislature will not be convening next week - it is taking its annual "Town Meeting Day" week off - but Ways and Means Committee clerk Alison Clarkson (D-Woodstock) said the committee plans to continue taking testimony on current use after it returns, during the week of March 7.

H.237, introduced by Clarkson last week, is similar in many respects to H.485, the current use bill that passed the Legislature last year and that was vetoed by then-Gov. Jim Douglas. However, it does not include any assessment on enrolled landowners (H.485 would have required each enrolled landowner to make a one-time \$128 payment to the state).

The bill also does not include some of the proposed changes that have been developed this year by the

Current Use Tax Coalition (CUTC) and discussed in prior issues of Vermont Current Use Report. The CUTC has been continuing to refine its proposal, and hopes to convince the Legislature to incorporate its ideas into H.237 as the legislative process unfolds.

One of the most controversial sections of last year's bill was the plan to change the so-called "development penalty" in a manner that would increase landowner payments when owners remove a portion of their enrolled land and develop it, as defined in statute. This year's bill, as introduced, mirrors H.485 on this point.

In both bills, the penalty would be changed to 10% of the fair market value of the enrolled land at the time it is developed, regardless of how long the property has been enrolled. A landowner could request to pay the penalty at some point before development.

When only a portion of an enrolled parcel is withdrawn, both bills would change the existing practice of calculating the value of the withdrawn land as a pro-rated portion of the entire parcel and instead calculate it based on the withdrawn land's fair market value as a stand-alone parcel. In most cases, this would increase the development penalty by a considerable amount.

While the CUTC supports making this change to the penalty calculation when a portion of enrolled land is withdrawn, it would like to see a graduated penalty percentage which drops the longer land is held, Meyer told the committee. Specifically, it is proposing that the penalty be 10% for land enrolled less than 12 years, 5% for land enrolled for 12 to 20 years, and 3% for land enrolled for more than 20 years.

The CUTC would make one other change affecting the penalty calculation. Presently, a person who buys land already enrolled in current use can count the time the property was enrolled before the purchase was made when it comes time to calculate a penalty. The CUTC would change that so the current use holding "clock" would begin anew every time the property is transferred, unless the transfer involves a family member.

H.485, H.237 and the CUTC proposal all have a similar "easy-out" provision. Landowners could remove all of their enrolled land before Nov. 1 following passage of the bill and not pay any penalty (such land could not be re-enrolled for five years). If only a portion of enrolled land is withdrawn before Nov. 1, existing penalty provisions - including its lower pro-rata calculations - would apply (though the CUTC would like the penalty for partial withdrawals before the deadline to be 10%; existing law would tax land enrolled less than 10 years at 20%).

All three reform proposals also include the concept of eliminating the special reduced property transfer tax of 0.5% on enrolled current use property. Current use land transfers would be taxed at the regular rate of 1.25%, effective on July 1 after passage of the bill. The additional money raised would be used to help fund electronic administration of the current use program.

At Thursday's hearing, Bradley said the provisions covering the property transfer tax increase and the appropriation of moneys for electronic administration could be removed from H.237 and added to the annual Miscellaneous Tax bill. This would mean that H.237 would not have to go before the House Appropriations Committee, and would mean the provisions would likely be enacted this year even if H.237 does not make it all the way through the Legislature this year.

To read a PDF of H.237 as introduced in its entirety, click the following link:

<http://www.leg.state.vt.us/docs/2012/bills/Intro/H-237.pdf>

House Ways and Means Committee Members

If it is to pass this year this year, the main current use bill - H.237 - will be reviewed by several House and Senate committees. As the bill progresses, we will try to provide contact information for the relevant committees.

Right now, H.237 is being reviewed by the House Ways

and Means Committee. The name, home phone number, and e-mail address of each member of that committee is listed below.

If you have opinions on what should or should not be done with the current use program, you may want to contact one or more members of the committee. Your comments will carry more weight if you identify yourself and explain yourself clearly and concisely.

- Rep. Janet Ancel (D-Calais), Chair, (802) 223-5350, janetancel@earthlink.net
- Rep. Carolyn Whitney Branagan (R-Georgia), Vice Chair, (802) 527-7694, cbranagan@comcast.net
- Rep. Dave Sharpe (D-Bristol), Ranking Member, (802) 453-2754, dsharpe@leg.state.vt.us
- Rep. Alison H. Clarkson (D-Woodstock), Clerk, (802) 457-4627, aclarkson@leg.state.vt.us
- Rep. Jim Condon (D-Colchester), (802) 655-5764, vab@together.net
- Rep. Adam Greshin (I-Warren), (802) 583-3223, adamgreshin@madriver.com
- Rep. William F. Johnson (R/D-Canaan), (802) 277-8329, no email provided
- Rep. Jim Masland (D-Thetford), (802) 785-4146, jamesq56@yahoo.com
- Rep. Oliver K. Olsen (R-Jamaica), (802) 444-9004, oliver@oliverolsen.com
- Rep. Rachel Weston (D-Burlington), no phone provided, rweston@leg.state.vt.us
- Rep. Jeff Wilson (D-Manchester), (802) 362-3786, jwilson@nerr.com

Plum Creek Says Its Expulsion Is Unconstitutional

In a memorandum filed Feb. 11 with the state Tax Department, David Grayck, the Vermont attorney for large timber firm Plum Creek, argues that the state's decision last summer to expel 56,604 acres of Plum Creek land from the Vermont current use program for five years violates the federal and state constitutions.

The state expelled the firm's Northeast Kingdom land because a logger hired by Plum Creek cut trees contrary to a state-approved harvest management plan on just under 140 acres of forestland, part of a 56,604-acre parcel that extends across several towns. The harvest management plan covered 471 acres.

Specifically, the memo says the state's action violates the Eighth Amendment to the federal Constitution (forbidding cruel and unusual punishment) and Chapter 11, Section 39 of the Vermont Constitution (which states that "all fines shall be proportioned to the offences.")

"These constitutional provisions prohibit punishment that is grossly disproportionate to the offense for which it is imposed," attorney Grayck wrote.

Because of the improper cutting on 140 acres and the expulsion of 56,604 of its enrolled acres, Plum Creek will pay about \$955,000 more in property taxes over the five-year period than it would if the land remained in current use, according to the company.

The memo argues that the action violates the intent of the Legislature when it enacted the current use program. "It would be both an absurd and illogical result to expel 56,464.44 acres for conduct on 139.54 acres given that 139.54 acres is two one-thousandths of 56,464.44 acres..." the memo states.

The memo also argues that the state's policy in this case "will cause investors to pay less for timber land" and creates "an immediate and serious threat to the viability of Vermont's timber products industry."

Plum Creek admits that the harvest management plan was not followed on the 139 acres, but says the amount of land that should be kicked of the program should be just the

471 acres that were covered by the forest management harvesting plan approved by the state (large landowners with blocks of land over 5,000 acres are not required to develop forest management plans for the entire parcel as other enrolled forestland owners must, but instead propose harvesting plans for certain areas each time some cutting is planned).

"As Plum Creek only had approval to harvest timber on the 471 acres, and not the remaining 56,133 acres, the 471 acres was the 'parcel' for purposes of" the current use law covering improper cutting, Plum Creek argues.

The state maintains that all contiguous enrolled land owned by Plum Creek should be expelled from the program. In addition to the 56,000 acres expelled, the company owns another 30,000 or so acres, which are enrolled in current use but are not contiguous to the over-cut land, and are therefore not affected by the state's action.

The Plum Creek memo was submitted to William Johnson, who is director of the Tax Department's Property Valuation and Review Division, following an appeal hearing before Johnson in January. He has not yet issued a decision.

Earlier, Plum Creek appealed the state's "adverse inspection report" on its land to the Vermont Department of Forest, Parks and Recreation (FPR). That appeal was denied (see VCUR 2010, No. 32).

Plum Creek has filed appeals of the FPR decision in the superior courts of both Essex and Orleans counties.

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