



## Vermont Current Use Report 2011

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### Current Use Bill Still Under Review By Ways And Means; Will Time Run Out?

The House Ways and Means Committee took more testimony on H.237, the current use bill, on two different days last week and plans to review a new draft of the bill with minor changes early in the coming week.

But in a committee discussion on Friday, it became apparent there is not yet any consensus on what penalty to apply when land is developed or removed from the program. Unless the committee passes the bill soon, it may prove too late to get a current use bill through the full Legislature, which could adjourn for the year as early as May 7.

Rep. Jim Condon (D-Colchester) said as much Friday, telling his colleagues on the committee that he thought there was not enough time left in the session to get H.237 enacted into law. Rep. Bill Johnson (R/D-Canaan) then offered the opinion that perhaps there was still time to have the House pass H.237 this year, then have the Senate take up the bill next year.

Another possibility, not mentioned by any committee member, is that a study of current use that is called for in

the bill could go forward this summer, perhaps including a review of penalty options, and then the current use topic could be taken up by Ways and Means again in 2012.

The committee is considering two options for changing the development penalty, which is officially known as the "land use change tax" and is applied when land is "developed" - as defined in current use law - or when a landowner asks to withdraw land from the program and have their current use lien removed.

H.237 as originally introduced would use a 10% rate for all properties, regardless of time enrolled in the program (under existing law, there are two levels of penalty: 20% for property enrolled 10 years or less, and 10% for land enrolled longer than that).

The Current Use Tax Coalition (CUTC) has proposed a tiered penalty, and its recommendation has been drafted into a proposed amendment to H.237. The amendment would set a penalty of 10% for land enrolled less than 12 years, 5% for land enrolled 12 to 20 years, and 3% for land enrolled more than 20 years.

While both penalty proposals are lower than under existing law, H.237 would also change the way the penalty is calculated when only a portion of enrolled land is developed or has its lien paid off. That change would usually result in a much higher valuation of the land, and in many cases a higher penalty, even with lower penalty rates.

Mark Perrault of the Legislature's Joint Fiscal Office (JFO) told the committee Wednesday that he estimates that after a few years the 10% penalty in H.237 as introduced would yield about \$3 to \$3.5 million more annually than it does now. Under H.237, each penalty collected would be split between the state and the town where the property was located.

If the bill were amended to include the CUTC's recommendation for tiered penalties, the estimated additional yield in H.237 would be reduced by 32%, to between \$2 and \$2.4 million, Perrault said.

On Friday, at least four committee members said they had reservations about the CUTC's proposed tiered penalty scheme. Two others noted that rejecting or modifying the tiered plan could cause the CUTC to oppose the bill.

Perrault also told the committee that if H.237 passed, the state and towns might see an additional \$1.8 million in property tax revenues, resulting from people withdrawing land from current use to take advantage of so-called "easy-out" options in the bill, and thus becoming subject to full taxation. Of that extra revenue, \$1.4 million would be state education property taxes, and about \$0.4 million would be municipal property taxes, he said.

Perrault added: "This is based on assumptions about people's behavior, so these are soft estimates."

### **Forester Criticizes Capital Gains Tax Proposal**

Forester John Meyer testified before the House Ways and Means Committee recently that the income tax reform plan it has been considering - in particular changes to the capital gains tax and elimination of the property tax deduction - would be bad for Vermont and the timber industry.

The changes would come at a bad time for timberland owners, he said. "The collapse of the housing market has depressed the price of lumber," Meyer said. "Stumpage prices have dropped in half in the last five years, which means the value of all standing timber in Vermont has dropped 50%."

The Ways and Means Committee has been considering significant changes to the state's income tax system, though it is not clear whether a bill on the subject will emerge this year. The proposal would shift the income tax system to one based on "adjusted gross income" (AGI) rather than "taxable income," which is the amount left over after various federal deductions are taken. As a result, rates could be lowered somewhat.

The AGI proposal would mean that Vermont's income tax system would no longer have a deduction for property taxes (or mortgage interest, for that matter). The removal of the property tax deduction would be harmful to timberland owners, Meyer testified, including those who own timber through a sub-S corporation or LLC.

To collect more revenue, especially from high-income Vermonters, Ways and Means has also talked about eliminating the 40% long-term capital gains tax exemption for most assets that currently qualify, including land and timber cut on land not owned by a logger. An alternative proposal would reduce the exemption to 20%, with an option to take an exemption of the first \$5,000 of any long-term capital gains instead.

Meyer argued that timberland owners should continue to be able to qualify for the 40% exemption, even if they are not loggers. He said timber that is cut has usually been growing for ten to 30 years, so it is a long-term investment that entails taking risks.

He also noted that some of the gain that occurs when timber is harvested is "phantom income," due to the fact that inflation has eroded the value of the dollars being collected at harvesting compared to the value of the original dollars when the property was purchased.

Meyer said he found "very depressing" both the potential elimination of the ability to deduct property taxes and other costs associated with owning timberland, and the talk of eliminating the 40% capital gains exemption for the sale of timber by someone who is not a logger.

He said that at a December conference about the future of Vermont, participants spoke of the need to maintain the state's "working landscape." To keep Vermont's farms and forests in production, he said, "we need predictability and stability."

During discussion after Meyer's testimony, Rep. Carolyn Branagan (R-Georgia) said the committee might end up having to make a choice between helping timberland owners through a current use bill or via an income tax bill, but not both.

Another committee member, Rep. Bill Johnson (R/D-Canaan), noted that some other states make use of other mechanisms for taxing timber sales, such as a severance tax applied when timber is cut. Meyer said he might be able to support such a tax if the capital gains tax on timber sales was eliminated entirely.

At a later committee meeting, Rep. Jim Masland (D-Thetford) wondered if there was some way a severance tax could be incorporated into the current use program.

While Ways and Means is still talking about possible income tax changes, it removed them from the earlier Miscellaneous Tax Bill, and the committee has not produced a draft of stand-alone income tax bill. There may not be enough time left in the session for such a major bill to pass the Legislature this year.

However, there is concern in the Legislature that federal budget cuts for the federal fiscal year 2012 budget could impact Vermont to such an extent that the Legislature may need to return for a special session in the fall to raise more revenues. One possibility is that a revenue-raising bill could include a switch to an AGI system and a severe pruning of the assets eligible for the 40% capital gains exemption.

### **Plum Creek Gets Stay; Tax Department Denies Appeal; Legislative Relief In Play**

There have been several developments recently in the case of Plum Creek, a real estate investment trust which had over 56,000 acres of Northeast Kingdom land kicked out of the current use program due to improper cutting on 140 acres of that land. If the state's decision stands, Plum Creek would not be able to re-enroll the acreage for five years, and in the meantime says it would be forced to pay over \$950,000 in additional property taxes than if the acreage were allowed to remain in current use.

One major recent development was that Plum Creek was able to obtain a court stay preventing the state from removing the 56,000 acres from the program. The stay

came in Plum Creek's appeal of a decision last fall by the Forest and Parks Department. In that decision, the Department affirmed its own filing of an "adverse inspection report" regarding improper timber harvesting by Plum Creek.

According to Bill Johnson, Director of the Property Valuation and Review Division of the Vermont Tax Department, the court action means the state has had to tell affected towns to reinstate Plum Creek's land status in the current use program for now. The land was to be removed from eligibility as of April 1, 2011.

Separately, Johnson issued a decision March 31 denying an appeal by Plum Creek of the Department's decision to expel all of Plum Creek's land that was contiguous to the acreage that was improperly cut. The Department said it found Plum Creek's arguments unpersuasive, and ruled that the current use statutes and rules require all contiguous land to be removed from the program when there is a violation. Plum Creek is expected to appeal this decision as well.

Meanwhile, a legislative amendment surfaced recently in the Senate Agriculture Committee that would substantially reduce the amount of Plum Creek's land that would be removed from the program due to the improper cutting. The committee decided Friday to recommend that the Senate Committee on Economic Development, Housing and General Affairs insert the amendment language into H.287, a jobs promotion bill.

In the case of large landowners who own more than 5,000 acres, the amendment calls for a first penalty for improper cutting of three times the portion specifically authorized for cutting. The amendment would be retroactive to Dec. 1, 2007. If passed, Plum Creek would have three times the 471 acres approved for cutting in this case, or 1,413 acres, removed from the program for five years, far less than the 56,000 acres the state wants to remove.

For a second violation, such as an adverse inspection report, the penalty for large landowners would increase to removal of one-half of the entire parcel of managed forest land remaining in the program. For a third violation, the

entire parcel could be removed for at least five years.

This is Plum Creek's first official current use violation in Vermont, but in its decision about the adverse inspection report, the Forest and Parks Department said it has "overlooked past infractions" by Plum Creek, and environmental groups in Maine allege that the large timber company has improperly cut in several deer yards there, and violated Maine environmental laws more than once.

### **Landowner Summit April 30 In Fairlee**

A full-day conference is being held at the Lake Morey Inn in Fairlee, VT on Saturday, April 30 to help owners of Vermont forestland plan for the future of their properties. Vermont has over 30,000 owners of parcels of 20 or more acres.

The summit will include a keynote speech, panel discussions and hands-on workshops covering options that can help family unity, ease property tax and inheritance tax burdens, and maintain the character of the land. The event is being co-sponsored by Vermont Coverts, the Vermont Natural Resources Council and the Vermont Department of Forest Parks and Recreation.

The cost to attend is \$30, including lunch, and there is some scholarship money available for families of three or more to attend together. To learn more or to register for the summit, go to [www.vnrc.org/forest/landowner-summit](http://www.vnrc.org/forest/landowner-summit), or call Lisa at (802) 388-3880.

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