

H. B. 2840

(By Delegates Armstead, Raines, McCuskey,
Walters and Lane)

[Introduced March 6, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §11-1C-4 and §11-1C-9 the Code of West Virginia, 1931, as amended; and to amend and reenact §11-3-2a and §11-3-24 of said code; and to amend said code by adding thereto a new section, designated §11-3-24c, all relating to valuation and assessment of property for ad valorem property taxation; allowing a real property owner to submit an independent appraisal of the property to the assessor; providing for notice to an owner of an increase in the assessed value that is greater than sixty percent of the value determined by an independent appraisal; objections by property owners to an increase in the assessed value before the board of equalization and review; providing that the assessor bear the burden of proof to show that the value of the independent appraisal is incorrect; assessment of property when the independent appraisal thereof is found to be correct; burden

1 of proof in challenges to appraisals and assessments;
2 legislative findings; establishing the burden and degree of
3 proof necessary to challenge an assessment or appraisal of
4 property.

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

6 That §11-1C-4 and §11-1C-9 of the Code of West Virginia, 1931,
7 as amended, be amended and reenacted; and that §11-3-2a and §11-3-
8 24 of said code be amended and reenacted; and that said code be
9 amended by adding thereto a new section, designated §11-3-24c, all
10 to read as follows:

11 **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

12 **§11-1C-4. Commission powers and duties; rulemaking.**

13 (a) On or before October 1, 1990, and thereafter as necessary
14 the property valuation training and procedures commission shall
15 perform the following duties:

16 (1) Devise training and certification criteria for county
17 assessors and their employees and members of county commissions,
18 which shall include a definition of "appropriate staff member" as
19 the term is used in section six of this article relating to
20 required training, which definition shall include deputy assessors
21 as provided for in section three, article two of this chapter;

22 (2) Establish uniform, statewide procedures and methodologies
23 for the mapping, visitation, identification and collection of
24 information on the different species of property, which procedures

1 and methodologies shall include reasonable requirements for
2 visitation of property, including a requirement that a good faith
3 effort be made to contact any owner of owner-occupied residential
4 property or to evaluate independent property appraisals provided to
5 the commission as provided in section nine of this article:
6 *Provided*, That the commission is not authorized to establish the
7 methods to value real and personal property, but shall have the
8 authority to approve such methods;

9 (3) Develop an outline of items to be included in the county
10 property valuation plan required in section seven of this article,
11 which shall include information to assist the property valuation
12 training and procedures commission in its determination of the
13 distribution of state funds provided pursuant to section eight of
14 this article.

15 (b) On or before July 1, 1991, the commission shall establish
16 objective criteria for the evaluation of the performance of the
17 duties of county assessors and the Tax Commissioner.

18 (c) In the event the Tax Commissioner and a county assessor
19 cannot agree on the content of the plan required under section
20 seven of this article, the commission shall examine the plan and
21 the objections of the Tax Commissioner and shall resolve the
22 dispute on or before the first day of the fiscal year following the
23 fiscal year in which the plan was submitted to the commission for
24 resolution.

1 (d) The commission shall have the power to make such rules as
2 it deems necessary to carry out the provisions of this section,
3 which rules shall include procedures for the maintenance, use, sale
4 and reproduction of microfilm, photography and tax maps. Any rules
5 adopted by the commission prior to October 1, 1990, under
6 subsection (a) of this section are exempt from the provisions of
7 article three of chapter twenty-nine-a of this code: *Provided,*
8 That the commission shall file a copy of any rule so exempted from
9 the provisions of chapter twenty-nine-a of this code with the
10 Legislative Rule - Making Review Committee created pursuant to
11 section eleven, article three of said chapter prior to November 30,
12 1990.

13 (e) The commission shall have the authority to make and enter
14 into all contracts and agreements necessary or incidental to the
15 performance of its duties and the execution of its powers under
16 this article.

17 (f) In order to fund the costs of the requirements of this
18 article, the valuation commission shall have the authority, on a
19 one-time basis, to borrow \$5 million and to distribute such funds
20 according to need and the valuation plan submitted by the counties.
21 Upon request of the valuation commission, the state Board of
22 Investments shall loan, under commercially reasonable terms to be
23 determined by the parties, up to \$5 million to the valuation
24 commission, on a one-time basis, from one of the various funds

1 administered by the state Board of Investments.

2 (g) The commission shall be required, in the event that the
3 Tax Commissioner has failed to do so, to appoint one or more
4 special assessors if it is the determination of the commission that
5 an assessor has substantially failed to perform the duties required
6 by sections seven and eight of this article. A writ of mandamus
7 shall be the proper remedy if the commission fails to perform any
8 of its duties required by law.

9 **§11-1C-9. Periodic valuations.**

10 (a) After completion of the initial valuation required under
11 section seven of this article, each assessor shall maintain current
12 values on the real and personal property within the county. In
13 repeating three-year cycles, every parcel of real property shall be
14 visited by a member of the assessor's staff who has been trained
15 pursuant to section six of this article to determine if any changes
16 have occurred which would affect the valuation for the property:
17 Provided, That in lieu of a visit by a member of the assessor's
18 staff, the property owner may, at his or her own expense, have an
19 independent appraisal made of his or her property by a real estate
20 appraiser licensed in this state and provide the assessor with a
21 written appraisal of the fair market value of the property prior to
22 the date that the property would be assessed. With this
23 information and information such as sales ratio studies provided by
24 the Tax Commissioner, the assessor shall make such adjustments as

1 are necessary to maintain accurate, current valuations of all the
2 real and personal property in the county and shall adjust the
3 assessments accordingly.

4 (b) In any year the assessed value of a property or species of
5 property be less than or exceed sixty percent of current market
6 value, the Tax Commissioner shall direct the assessor to make the
7 necessary adjustments. If any assessor fails to comply with the
8 provisions of this section, the Tax Commissioner may, at the county
9 commission's expense, take reasonable steps to remedy the
10 assessment deficiencies.

11 **ARTICLE 3. ASSESSMENTS GENERALLY.**

12 **§11-3-2a. Notice of increased assessment required for real**
13 **property; exceptions to notice.**

14 (a) If the assessor determines the assessed valuation of any
15 item of real property appraised by him or her is more than ten
16 percent greater than the valuation assessed for that item in the
17 last tax year, the increase is \$1,000 or more or if the assessed
18 valuation is greater than sixty percent of the value of the
19 property as determined by an independent appraisal submitted by
20 the property owner pursuant to section nine, article one-c of this
21 chapter and the increase is entered in the property books as
22 provided in section nineteen of this article, the assessor shall
23 give notice of the increase to the person assessed or the person
24 controlling the property as provided in section two of this

1 article. The notice shall be given on or before January 15 of the
2 tax year and advise the person assessed or the person controlling
3 the property of his or her right to appear and seek an adjustment
4 in the assessment: *Provided*, That this notification requirement
5 does not apply to industrial or natural resources property
6 appraised by the Tax Commissioner under article six-k of this
7 chapter which is assessed at sixty percent of its true and actual
8 value. The notice shall be made by first-class United States
9 postage mailed to the address of the person assessed or the person
10 controlling the property for payment of tax on the item in the
11 previous year, unless there was a general increase of the entire
12 valuation in one or more of the tax districts in which case the
13 notice shall be by publication of the notice by a Class II-0 legal
14 advertisement in compliance with the provisions of article three,
15 chapter fifty-nine of this code. The area for the publication is
16 the county. The requirement of notice under this section is
17 satisfied and waived if personal notice of the increase is shown
18 by:

19 (1) The taxpayer having signed the assessment form after it
20 had been completed showing the increase;

21 (2) Notice was given as provided in section three-a of this
22 article; or

23 (3) The person assessed executing acknowledgment of the notice
24 of the increase.

1 (b) During the initial reappraisal of all property under
2 section seven, article one-c of this chapter, the Tax Commissioner
3 and each county assessor shall send every person owning or
4 controlling property appraised by the Tax Commissioner or the
5 county assessor a pamphlet which explains the reappraisal process
6 and its equalization goal in a detailed yet informal manner. The
7 property valuation training and procedures commission, created
8 under section three, article one-c of this chapter, shall design
9 the pamphlet for use in all counties while allowing individual
10 county information to be included if it determines that the
11 information would improve understanding of the process.

12 **ARTICLE 3. ASSESSMENTS GENERALLY.**

13 **§11-3-24. Review and equalization by county commission.**

14 (a) The county commission shall annually, not later than
15 February 1 of the tax year, meet as a board of equalization and
16 review for the purpose of reviewing and equalizing the assessment
17 made by the assessor. The board shall not adjourn for longer than
18 three business days at a time, not including a Saturday, Sunday or
19 legal holiday in this state, until this work is completed. The
20 board may adjourn sine die anytime after February 15 of the tax
21 year and shall adjourn sine die not later than the last day of
22 February of the tax year.

23 (b) At the first meeting of the board, the assessor shall
24 submit the property books for the current year, which shall be

1 complete in every particular, except that the levies shall not be
2 extended. The assessor and the assessor's assistants shall attend
3 and render every assistance possible in connection with the value
4 of property assessed by them.

5 (c) The board shall proceed to examine and review the property
6 books, and shall add on the books the names of persons, the value
7 of personal property and the description and value of real estate
8 liable to assessment which was omitted by the assessor. The board
9 shall correct all errors in the names of persons, in the
10 description and valuation of property, and shall cause to be done
11 whatever else is necessary to make the assessed valuations comply
12 with the provisions of this chapter. But in no case shall any
13 question of classification or taxability be considered or reviewed
14 by the board.

15 (d) If the board determines that any property or interest is
16 assessed at more or less than sixty percent of its true and actual
17 value as determined under this chapter, it shall fix it at sixty
18 percent of its true and actual value: *Provided*, That no assessment
19 shall be increased without giving the taxpayer at least five days'
20 notice, in writing, of the intention to make the increase and no
21 assessment shall be greater than sixty percent of the true and
22 actual value of the property.

23 (e) Service of notice of the increase upon the taxpayer shall
24 be sufficient, or upon his or her agent or attorney, if served in

1 person, or if sent by registered or certified mail to the property
2 owner, his or her agent, or attorney, at the last known mailing
3 address of the person as shown in the records of the assessor or
4 the tax records of the county sheriff. If such person cannot be
5 found and has no last known mailing address, then notice shall be
6 given by publication thereof as a Class I legal advertisement in
7 compliance with the provisions of article three, chapter fifty-nine
8 of this code and the publication area shall be the county. The
9 date of the publication shall be at least five days, not including
10 a Saturday, Sunday or legal holiday in this state, prior to the day
11 the board acts on the increase. When the board intends to increase
12 the entire valuation in any one tax district by a general increase,
13 notice shall be given by publication thereof as a Class II-0 legal
14 advertisement in compliance with the provisions of article three,
15 chapter fifty-nine of this code and the publication area shall be
16 the county. The date of the last publication shall be at least
17 five days, not including a Saturday, Sunday or legal holiday in
18 this state, prior to the meeting at which the increase in valuation
19 is acted on by the board. When an increase is made, the same
20 valuation shall not again be changed unless notice is again given
21 as heretofore provided.

22 The clerk of the county commission shall publish notice of the
23 time, place and general purpose of the meeting as a Class II legal
24 advertisement in compliance with the provisions of article three,

1 chapter fifty-nine of this code and the publication area shall be
2 the county. The expense of publication shall be paid out of the
3 county treasury.

4 (f) Any person who receives notice as provided in subsection
5 (e) of this section may appear before the board at the time and
6 place specified in the notice to object to the proposed increase in
7 the valuation of taxpayer's property. After hearing the board's
8 reason or reasons for the proposed increase, the taxpayer may
9 present his or her objection or objections to the increase and the
10 reason or reasons for the objections and may either orally or in
11 writing advise the board that the taxpayer elects for the matter to
12 be heard in the fall of the tax year when the county commission
13 meets as a board of assessment appeals as provided in section
14 twenty-four-b of this article: *Provided*, That taxpayer's election
15 shall not stay a decision by the board to increase the assessed
16 value of the property for the current tax year: *Provided, however,*
17 That in cases where the increase in assessed value of the property
18 is greater than sixty percent of the fair market value of the
19 property as determined by an independent appraisal provided to the
20 assessor pursuant to section nine, article one-c of this chapter,
21 the assessor bears the burden of proof, by a preponderance of the
22 evidence, to demonstrate that the independent appraisal is
23 incorrect and that the assessed value of the property should not be
24 calculated upon the value as determined by the independent

1 appraisal: *Provided further*, That if the board determines that the
2 assessor has not demonstrated that the fair market value of the
3 property as determined in the independent appraisal is incorrect,
4 the board shall adjust the assessment of the property calculated on
5 the fair market value of the property as determined by the
6 independent appraisal.

7 (g) The board may approve an agreement signed by the taxpayer
8 or taxpayer's representative and the assessor, and by a
9 representative of the Tax Commissioner when the property is
10 industrial property or natural resources property, that resolves a
11 valuation matter while the land and personal property books are
12 before the board for equalization and review.

13 (h) If any person fails to apply for relief at this meeting,
14 he or she shall have waived the right to ask for correction in the
15 assessment list for the current year, and shall not thereafter be
16 permitted to question the correctness of the list as finally fixed
17 by the board, except on appeal to the circuit court or as otherwise
18 provided in this article.

19 (i) After the board completes the review and equalization of
20 the property books, a majority of the board shall sign a statement
21 that it is the completed assessment of the county for the tax year.
22 Then the property books shall be delivered to the assessor and the
23 levies extended as provided by law.

24 (j) A taxpayer who elects to have a hearing before the board

1 of equalization and review may appeal the board's order as provided
2 in section twenty-five of this article. A taxpayer who elects to
3 have a hearing before the board of assessment appeals may only
4 appeal the assessed value as provided in section twenty-four-b of
5 this article.

6 **§11-3-24c. Burden of proof; standard of proof.**

7 (a) Legislative findings- The Legislature finds that the
8 Supreme Court of Appeals of West Virginia has held that the burden
9 of proof is upon a person challenging the correctness of an
10 assessment or valuation of property by an assessor or other taxing
11 authority for ad valorem property taxation to demonstrate, by clear
12 and convincing evidence, that the assessment or valuation is
13 erroneous. The Legislature further finds that this burden of proof
14 is an onerous burden to be met by persons challenging an assessment
15 valuation of property, who must use their own resources to produce
16 competent evidence to prove the value of their property. The
17 Legislature therefore finds that proof by a preponderance of the
18 evidence is a much more fair and reasonable burden of proof to
19 demonstrate the incorrectness of an assessment or valuation of
20 property by an assessor or other taxing authority.

21 (b) In a proceeding under the provisions of this article in
22 which a person is claiming to be aggrieved by, or is contesting the
23 assessment or valuation of property by the assessor or a taxing
24 authority and in which the person bears the burden of proof to

1 establish that the assessment or valuation is incorrect, the burden
2 of proof that the aggrieved person must meet is to establish, only
3 by a preponderance of the evidence, that the property was assessed
4 or valued too high or was otherwise improperly valued or assessed
5 upon the presentation of competent evidence.

NOTE: The purpose of this bill is to amend provisions relating to challenges to increases in valuation and assessment of property for ad valorem property taxation. The bill allows a real property owner to submit an independent appraisal of the property to the assessor. It provides for notice to an owner of an increase in the assessed value that is greater than sixty percent of the value determined by an independent appraisal. The bill also provides that the assessor bear the burden of proof to show that the value of the independent appraisal is incorrect before the board of equalization and review and that the board assess the property based on the independent appraisal if found correct. The bill also establishes burden and degree of proof necessary to challenge an assessment or appraisal of property for ad valorem property taxation to be proof by a preponderance of the evidence.

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

§11-3-24c is new; therefore, it has been completely underscored.