



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

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

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

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

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

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

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

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

1 visitation of property, including a requirement that a good faith  
2 effort be made to contact any owner of owner-occupied residential  
3 property or to evaluate independent property appraisals provided to  
4 the commission as provided in section nine of this article:

5 *Provided*, That the commission is not authorized to establish the  
6 methods to value real and personal property, but shall have the  
7 authority to approve such methods;

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

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

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

24       (d) The commission shall have the power to make such rules as

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

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

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

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

8 **§11-1C-9. Periodic valuations.**

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

1 real and personal property in the county and shall adjust the  
2 assessments accordingly.

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

10 **ARTICLE 3. ASSESSMENTS GENERALLY.**

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

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

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

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

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

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

24 (b) During the initial reappraisal of all property under

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

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

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

21 (b) At the first meeting of the board, the assessor shall  
22 submit the property books for the current year, which shall be  
23 complete in every particular, except that the levies shall not be  
24 extended. The assessor and the assessor's assistants shall attend

1 and render every assistance possible in connection with the value  
2 of property assessed by them.

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

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

21       (e) Service of notice of the increase upon the taxpayer shall  
22 be sufficient, or upon his or her agent or attorney, if served in  
23 person, or if sent by registered or certified mail to the property  
24 owner, his or her agent, or attorney, at the last known mailing

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

20       The clerk of the county commission shall publish notice of the  
21 time, place and general purpose of the meeting as a Class II legal  
22 advertisement in compliance with the provisions of article three,  
23 chapter fifty-nine of this code and the publication area shall be  
24 the county. The expense of publication shall be paid out of the

1 county treasury.

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

1 property as determined in the independent appraisal is incorrect,  
2 the board shall adjust the assessment of the property calculated on  
3 the fair market value of the property as determined by the  
4 independent appraisal.

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

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

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

22 (j) A taxpayer who elects to have a hearing before the board  
23 of equalization and review may appeal the board's order as provided  
24 in section twenty-five of this article. A taxpayer who elects to

1 have a hearing before the board of assessment appeals may only  
2 appeal the assessed value as provided in section twenty-four-b of  
3 this article.

4 **§11-3-24c. Burden of proof; standard of proof.**

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

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

1 by a preponderance of the evidence, that the property was assessed  
2 or valued too high or was otherwise improperly valued or assessed  
3 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.