

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 609

FISCAL
NOTE

BY SENATOR FACEMIRE, BALDWIN, BEACH, JEFFRIES, AND

ROMANO

[Introduced February 19, 2018; Referred
to the Committee on Natural Resources; and then to
the Committee on Finance]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §11-3-24 and §11-3-25 of said code; and to amend and reenact §11-
 3 10A-8 of said code, all relating generally to the valuation of natural resources property;
 4 establishing a yield capitalization process as an alternative method for the determination
 5 of the fair market value of oil, gas, and natural gas liquids producing properties; providing
 6 an alternate method of appeal concerning the valuation of natural resources property for
 7 ad valorem tax purposes; granting jurisdiction to the West Virginia Office of Tax Appeals
 8 to hear an appeal; and defining a term.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

**§11-1C-10. Valuation of industrial property and natural resources property by Tax
 Commissioner; penalties; methods; values sent to assessors.**

1 (a) As used in this section:

2 ~~(4)~~ "Industrial property" means real and personal property integrated as a functioning unit
 3 intended for the assembling, processing and manufacturing of finished or partially finished
 4 products.

5 ~~(2)~~ "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite,
 6 sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil
 7 shale, managed timberland as defined in §11-1C-4 of this code, and other minerals.

8 (b) All owners of industrial property and natural resources property each year shall make
 9 a return to the State Tax Commissioner and, if requested in writing by the assessor of the county
 10 where situated, to such county assessor at a time and in the form specified by the commissioner
 11 of all industrial or natural resources property owned by them. The commissioner may require any
 12 information to be filed which would be useful in valuing the property covered in the return. Any
 13 penalties provided for in this chapter or elsewhere in this code relating to failure to list any property
 14 or to file any return or report may be applied to any owner of property required to make a return

15 pursuant to this section.

16 (c) The State Tax Commissioner shall value all industrial property in the state at its fair
17 market value within three years of the approval date of the plan for industrial property required in
18 subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all
19 such property. The Tax Commissioner shall forward each industrial property appraisal to the
20 county assessor of the county in which that property is located and the assessor shall multiply
21 each such appraisal by 60 percent and include the resulting assessed value in the land book or
22 the personal property book, as appropriate for each tax year. However, the fair market value of
23 oil, gas liquids and/or natural gas producing property shall be determined through the process of
24 applying a yield capitalization model to the net proceeds (gross receipts less royalties paid less
25 operating expenses). For the purposes of this section operating expenses means all operating
26 expenses including, but not limited to, gathering, compression, processing and transportation
27 charges if such expenses are incurred to sell the oil, gas liquids and/or natural gas. The Tax
28 Commissioner shall, every five years or any year in which the average natural gas price changes
29 more than 20 percent from the year in which the last survey was completed, determine the
30 average annual industry operating expenses per well by providing a survey to all oil and/or natural
31 gas producers in the state. The survey shall solicit information pertaining to the “operating
32 expenses” described above for the following types of wells; conventional producing oil and gas
33 wells, coalbed methane wells, vertical and horizontal wells in the Marcellus or Utica shale or other
34 shale formations. The average annual industry operating expense shall be stated as a percentage
35 of gross receipts for each type of well listed above. The average annual industry operating
36 expenses for each type of well shall be deducted from the net proceeds to develop an income
37 stream for application of a yield capitalization model: *Provided*, That if the taxpayer provides the
38 actual operating expenses, the Tax Commissioner shall be required to use the actual operating
39 expenses to develop an income stream for the application of a yield capitalization procedure. The
40 commissioner shall supply support data that the assessor might need to evaluate the appraisal.

41 (d) Within three years of the approval date of the plan required for natural resources
42 property required pursuant to subsection (e) of this section, the State Tax Commissioner shall
43 determine the fair market value of all natural resources property in the state. The commissioner
44 shall thereafter maintain accurate values for all such property.

45 (1) In order to qualify for identification as managed timberland for property tax purposes
46 the owner must annually certify, in writing to the Division of Forestry, that the property meets the
47 definition of managed timberland as set forth in this article and contracts to manage property
48 according to a plan that will maintain the property as managed timberland. In addition, each
49 owner's certification must state that forest management practices will be conducted in accordance
50 with approved practices from the publication "Best Management Practices for Forestry". Property
51 certified as managed timberland shall be valued according to its use and productive potential.
52 The Tax Commissioner shall promulgate rules for certification as managed timberland.

53 (2) In the case of all other natural resources property, the commissioner shall develop an
54 inventory on a county by county basis of all such property and may use any resources, including,
55 but not limited to, geological survey information; exploratory, drilling, mining and other information
56 supplied by natural resources property owners; and maps and other information on file with the
57 state Division of Environmental Protection and office of miners' health, safety and training. Any
58 information supplied by natural resources owners or any proprietary or otherwise privileged
59 information supplied by the state Division of Environmental Protection and office of miner's health,
60 safety and training shall be kept confidential unless needed to defend an appraisal challenged by
61 a natural resources owner. Formulas for natural resources valuation may contain differing
62 variables based upon known geological or other common factors. The Tax Commissioner shall
63 forward each natural resources property appraisal to the county assessor of the county in which
64 that property is located and the assessor shall multiply each such appraisal by 60 percent and
65 include the resulting assessed value in the land book or the personal property book, as
66 appropriate, for each tax year. The commissioner shall supply support data that the assessor

67 might need to explain or defend the appraisal. The commissioner shall directly defend any
68 challenged appraisal when the assessed value of the property in question exceeds \$2 million or
69 an owner challenging an appraisal holds or controls property situated in the same county with an
70 assessed value exceeding \$2 million. At least every five years, the commissioner shall review
71 current technology for the recovery of natural resources property to determine if valuation
72 methodologies need to be adjusted to reflect changes in value which result from development of
73 new recovery technologies.

74 (e) The Tax Commissioner shall develop a plan for the valuation of industrial property and
75 a plan for the valuation of natural resources property. The plans shall include expected costs and
76 reimbursements, and shall be submitted to the property valuation training and procedures
77 commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such
78 plan shall be revised, resubmitted to the commission and approved every three years thereafter.

79 (f) To perform the valuation duties under this section, the State Tax Commissioner has the
80 authority to contract with a competent property appraisal firm or firms to assist with or to conduct
81 the valuation process as to any discernible species of property statewide if the contract and the
82 entity performing such contract is specifically included in a plan required by subsection (e) of this
83 section or otherwise approved by the commission. If the Tax Commissioner desires to contract
84 for valuation services only in one county or a group of counties, the contract must be approved
85 by the commission.

86 (g) The county assessor may accept the appraisal provided, pursuant to this section, by
87 the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal
88 provided by the State Tax Commissioner, the county assessor shall show just cause to the
89 valuation commission for the failure to accept such appraisal and shall further provide to the
90 valuation commission a plan by which a different appraisal will be conducted.

91 (h) The costs of appraising the industrial and natural resources property within each
92 county, and any costs of defending same shall be paid by the state: *Provided*, That the office of

93 the state Attorney General shall provide legal representation on behalf of the Tax Commissioner
94 or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged
95 in court.

96 (i) For purposes of revaluing managed timberland as defined in §11-1C-2 of this code, any
97 increase or decrease in valuation by the commissioner does not become effective prior to July 1,
98 1991. The property owner may request a hearing by the director of the Division of Forestry, who
99 may thereafter rescind the disqualification or allow the property owner a reasonable period of time
100 in which to qualify the property. A property owner may appeal a disqualification to the circuit court
101 of the county in which the property is located.

ARTICLE 3. ASSESSMENTS GENERALLY.

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

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

7 (b) At the first meeting of the board, the assessor shall submit the property books for the
8 current year, which shall be complete in every particular, except that the levies shall not be
9 extended. The assessor and the assessor's assistants shall attend and render every assistance
10 possible in connection with the value of property assessed by them.

11 (c) The board shall proceed to examine and review the property books, and shall add on
12 the books the names of persons, the value of personal property and the description and value of
13 real estate liable to assessment which was omitted by the assessor. The board shall correct all
14 errors in the names of persons, in the description and valuation of property, and shall cause to be
15 done whatever else is necessary to make the assessed valuations comply with the provisions of

16 this chapter. But in no case shall any question of classification or taxability be considered or
17 reviewed by the board.

18 (d) If the board determines that any property or interest is assessed at more or less than
19 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent
20 of its true and actual value: *Provided*, That no assessment shall be increased without giving the
21 taxpayer at least five days' notice, in writing, of the intention to make the increase and no
22 assessment shall be greater than 60 percent of the true and actual value of the property.

23 (e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or
24 her agent or attorney, if served in person, or if sent by registered or certified mail to the property
25 owner, his or her agent, or attorney, at the last known mailing address of the person as shown in
26 the records of the assessor or the tax records of the county sheriff. If such person cannot be found
27 and has no last known mailing address, then notice shall be given by publication thereof as a
28 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and
29 the publication area shall be the county. The date of the publication shall be at least five days, not
30 including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the
31 increase. When the board intends to increase the entire valuation in any one tax district by a
32 general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement
33 in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area shall be
34 the county. The date of the last publication shall be at least five days, not including a Saturday,
35 Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is
36 acted on by the board. When an increase is made, the same valuation shall not again be changed
37 unless notice is again given as heretofore provided.

38 The clerk of the county commission shall publish notice of the time, place and general
39 purpose of the meeting as a Class II legal advertisement in compliance with the provisions of §59-
40 3-1 *et seq.* of this code and the publication area shall be the county. The expense of publication
41 shall be paid out of the county treasury.

42 (f) Any person who receives notice as provided in subsection (e) of this section may
43 appear before the board at the time and place specified in the notice to object to the proposed
44 increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for
45 the proposed increase, the taxpayer may present his or her objection or objections to the increase
46 and the reason or reasons for the objections and may either orally or in writing advise the board
47 that the taxpayer elects for the matter to be heard in the fall of the tax year when the county
48 commission meets as a board of assessment appeals as provided in §11-3-24b of this code:
49 Provided, That if the property in question is natural resources property the taxpayer may at its
50 option request a hearing before the West Virginia Office of Tax Appeals under the provisions of
51 §11-10A-1 et seq. of this code; Provided, however, That the taxpayer's election shall not stay a
52 decision by the board to increase the assessed value of the property for the current tax year.

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

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

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

65 (j) A taxpayer who elects to have a hearing before the board of equalization and review
66 may appeal the board's order as provided in §11-3-25 of this code. A taxpayer who elects to have
67 a hearing before the board of assessment appeals may only appeal the assessed value as

68 provided in §11-3-24b of this code.

§11-3-25. Relief in circuit court against erroneous assessment.

1 (a) Any person claiming to be aggrieved by any assessment in any land or personal
2 property book of any county who shall have appeared and contested the valuation as provided in
3 §11-3-24 or §11-3-24a of this code, or whose assessment has been raised by the county
4 commission sitting as a Board of Equalization and Review above the assessment fixed by the
5 assessor may, at any time up to thirty days after the adjournment of the board sitting as a Board
6 of Equalization and Review, or at any time up to thirty days after the order of the Board of
7 Assessment Appeals is served on the parties, or at any time up to 30 days after the order of the
8 West Virginia Office of Tax Appeals is served on the parties, apply for relief to the circuit court of
9 the county in which the property books are made out; but any person applying for relief in circuit
10 court shall, before any application is heard, give 10 days' notice to the prosecuting attorney of the
11 county, whose duty it shall be to attend to the interests of the state, county and district in the
12 matter, and the prosecuting attorney shall give at least five days' notice of hearing to the Tax
13 Commissioner.

14 (b) The right of appeal from any assessment by the Board of Equalization and Review or
15 order of the Board of Assessment Appeals or The West Virginia Office of Tax Appeals as provided
16 in this section may be taken either by the applicant or by the state, and in case the applicant, by
17 his or her attorney, or in the case of the state, by its prosecuting attorney or other attorney
18 representing the Tax Commissioner. The party desiring to take an appeal from the decision of
19 either board or The West Virginia Office of Tax Appeals shall have the evidence taken at the
20 hearing of the application before either board or The West Virginia Office of Tax Appeals, including
21 a transcript of all testimony and all papers, motions, documents, evidence and records as were
22 before the board, certified by the county clerk or the Executive Director of the West Virginia Office
23 of Tax Appeals and transmitted to the circuit court as provided in §58-3-4 of this code, except
24 that, any other provision of this code notwithstanding, the evidence shall be certified by the county

25 clerk or Executive Director within 30 days after the county clerk or Executive Director receives
26 notice of such appeal together with a written request from the appealing party that the record be
27 certified and transmitted within 30 days after the petition for appeal is filed with the court or judge,
28 in vacation.

29 (c) If there was an appearance by or on behalf of the taxpayer before either board or The
30 West Virginia Office of Tax Appeals, or if actual notice, certified by the board, was given to the
31 taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the
32 court from the record as so certified: *Provided*, That in cases where the court determines that the
33 record made before the board Board of Equalization and Review or the Board of Assessment
34 Appeals is inadequate as a result of the parties having had insufficient time to present evidence
35 at the hearing before the board to make a proper record, as a result of the parties having received
36 insufficient notice of changes in the assessed value of the property and the reason or reasons for
37 the changes to make a proper record at the hearing before the board, as a result of irregularities
38 in the procedures followed at the hearing before the board, or for any other reason not involving
39 the negligence of the party alleging that the record is inadequate, the court may remand the
40 appeal back to the county commission of the county in which the property is located, even after
41 the county commission has adjourned *sine die* as a Board of Equalization and Review or a Board
42 of Assessment Appeals for the tax year in which the appeal arose, for the purpose of developing
43 an adequate record upon which the appeal can be decided. The county commission shall
44 schedule a hearing for the purpose of taking additional evidence at any time within 90 days of the
45 remand order that is convenient for the county commission and for the parties to the appeal. If,
46 however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the
47 taxpayer before the board Board of Equalization and Review, The Board of Assessment Appeals
48 or The West Virginia Office of Tax Appeals, or if a question of classification or taxability is
49 presented, the matter shall be heard de novo by the circuit court.

50 (d) If, upon the hearing of appeal, it is determined that any property has been assessed at

51 more than 60 percent of its true and actual value determined as provided in this chapter, the circuit
52 court shall, by an order entered of record, correct the assessment, and fix the assessed value of
53 the property at 60 percent of its true and actual value. A copy of the order or orders entered by
54 the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain
55 to real property, by the clerk within 20 days after the entering of the same, and every order or
56 judgment shall show that the prosecuting attorney or Tax Commissioner was present and
57 defended the interest of the state, county and district. If it be ascertained that any property has
58 been valued too high, and that the taxpayer has paid the excess tax, it shall be refunded or
59 credited to the taxpayer in accordance with the provisions of §11-3-24a of this code, and if not
60 paid, he or she shall be relieved from the payment thereof. If it is ascertained that any property is
61 valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix
62 it at 60 percent of its true and actual value. A copy of any order entered by any circuit court
63 increasing the valuation of property shall be certified within 20 days, if the order pertains to real
64 property, to the Auditor, the county clerk and the sheriff. However, if the order pertains only to
65 personal property, then the copy shall be certified within 20 days to the county clerk and to the
66 sheriff and it shall be the duty of the Auditor, the county clerk and the sheriff to charge the taxpayer
67 affected with the increase of taxes occasioned by the increase of valuation by applying the rate
68 of levies for every purpose in the district where the property is situated for the current year. The
69 order shall also be filed in the office of the Auditor and clerk of the county commission. The circuit
70 court shall review the record submitted from the board. If the court determines that the record is
71 adequate, it shall establish a briefing and argument schedule that will result in the appeal being
72 submitted to the court for decision within a reasonable time, but not to exceed eight months after
73 the appeal is filed. All final decisions or orders of the circuit court shall be issued within a
74 reasonable time, not to exceed 90 days, from the date the last brief is filed and the case is
75 submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of
76 valuation to the Supreme Court of Appeals if the assessed value of the property is \$50,000 or

77 more, and either party may appeal a question of classification or taxability.

78 (e) All persons applying for relief to the circuit court under this section shall be governed
79 by the same presumptions, burdens and standards of proof as established by law for taxpayers
80 applying for such relief.

81 (f) *Effective date.* -- The amendments to this section enacted in 2010 shall apply to tax
82 years beginning after December 31, 2011.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-8. Jurisdiction of Office of Tax Appeals.

1 The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine
2 all:

3 (1) Appeals from tax assessments issued by the Tax Commissioner pursuant to §11-10-
4 1 *et seq.* of this code;

5 (2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits
6 for all taxes administered in accordance with the provisions of §11-10-1 *et seq.* of this code;

7 (3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing
8 to renew any license or imposing any civil money penalty for violating the provisions of any
9 licensing law administered by the Tax Commissioner;

10 (4) Questions presented when a hearing is requested pursuant to the provisions of any
11 article of this chapter which is administered by the provisions of §11-10-1 *et seq.* of this code;

12 (5) Matters which the Tax Division is required by statute or legislatively approved rules to
13 hear, except employee grievances filed pursuant to §6C-2-1 *et seq.* of this code; ~~and~~

14 (6) Other matters which may be conferred on the office of tax appeals by statute or
15 legislatively approved rules; and

16 (7) Appeals by a taxpayer from proposed assessment of natural resources property for ad
17 valorem property tax purposes, as set forth in §11-3-24 of this code.

NOTE: The purpose of this bill is to establish a yield capitalization process as an alternative method for the determination of the fair market value of oil, gas and natural gas liquids producing properties. The bill provides an alternate method of appeal concerning the valuation of natural resources property for ad valorem tax purposes. The bill grants jurisdiction to the West Virginia Office of Tax Appeals to hear an appeal. The bill defines a term.

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