

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4336

BY DELEGATES GRAVES, FOSTER, STEELE,
BURKHAMMER, CLARK, BRIDGES, CRISS, ANDERSON,
J. KELLY, BARRETT AND HOUSEHOLDER

[Originating in the Committee on Finance,

February 25, 2022]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; relating
2 generally to valuation and assessment regarding personal property taxation; providing for
3 a revised methodology to value property producing oil, natural gas, and natural gas liquids
4 by the Tax Commissioner for property tax assessments; providing for methods, limitations,
5 calculation requirements, and definitions, all of which are used to determine fair market
6 value, net proceeds, actual annual operating costs, a capitalization rate, production
7 decline rates, a yield capitalization model, a working interest model, and a royalty interest
8 model; providing for a safe harbor for marginal wells costs; providing limitations on
9 calculations by the commissioner; providing for annualized gross receipts and actual
10 annual operating expenses before calculation of the models; providing limitations on
11 minimum valuations of wells; providing for reporting by the Tax Commissioner of certain
12 information; providing for rule-making; providing a sunset date; and providing multiple
13 effective dates.

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 (1) "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 section two of this article, 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 sixty percent and include the resulting assessed value in the land book or
22 the personal property book, as appropriate for each tax year. The commissioner shall supply
23 support data that the assessor might need to evaluate the appraisal.

24 (d) Within three years of the approval date of the plan required for natural resources
25 property required pursuant to subsection (e) of this section, the State Tax Commissioner shall
26 determine the fair market value of all natural resources property in the state and thereafter
27 maintain accurate values for all such property.

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

36 (2) In the case of all other natural resources property, the commissioner shall develop an
37 inventory on a county by county basis of all such property and may use any resources, including,
38 but not limited to, geological survey information; exploratory, drilling, mining and other information
39 supplied by natural resources property owners; and maps and other information on file with the
40 state Division of Environmental Protection and office of miners' health, safety and training. Any
41 information supplied by natural resources owners or any proprietary or otherwise privileged
42 information supplied by the state Division of Environmental Protection and office of miner's health,
43 safety and training shall be kept confidential unless needed to defend an appraisal challenged by
44 a natural resources owner. Formulas for natural resources valuation may contain differing
45 variables based upon known geological or other common factors. The Tax Commissioner shall
46 forward each natural resources property appraisal to the county assessor of the county in which
47 that property is located and the assessor shall multiply each such appraisal by sixty percent and
48 include the resulting assessed value in the land book or the personal property book, as
49 appropriate, for each tax year. The commissioner shall supply support data that the assessor
50 might need to explain or defend the appraisal. The commissioner shall directly defend any
51 challenged appraisal when the assessed value of the property in question exceeds \$2 million or
52 an owner challenging an appraisal holds or controls property situated in the same county with an
53 assessed value exceeding \$2 million. At least every five years, the commissioner shall review
54 current technology for the recovery of natural resources property to determine if valuation
55 methodologies need to be adjusted to reflect changes in value which result from development of
56 new recovery technologies.

57 (3) Property producing oil, natural gas, natural gas liquids-

58 (A) The Tax Commissioner shall, ~~no later than July 1, 2021, propose emergency rules in~~
59 ~~accordance with §29A-3-15 of this code regarding valuation of~~ value ~~property producing oil,~~
60 ~~natural gas, natural gas liquids, or any combination thereof~~ in the state at its. ~~For purposes of the~~
61 ~~emergency rules required by this subdivision regarding valuation of property producing oil, natural~~

62 ~~gas, natural gas liquids, or any combination thereof, fair market value shall be determined through~~
63 ~~the process of applying a yield capitalization model to the net proceeds. Net proceeds shall mean~~
64 ~~actual gross receipts on a sales volume basis determined from the actual price received by the~~
65 ~~taxpayers as reported on the taxpayer's returns, less royalties, and less actual annual operating~~
66 ~~costs as reported on the taxpayer's returns. For the purposes of this subdivision:~~

67 (B) For the purposes of this subdivision:

68 ~~(A)~~ (i) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred
69 to as condensate), or a combination of them that are subject to recovery from raw gas liquids by
70 processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling
71 plants.

72 ~~(B)~~ (ii) "Actual annual operating costs" shall only include, without limitation, all lease
73 operating expenses, lifting costs, gathering, compression, processing, separation, fractionation,
74 and transportation charges—costs; as further defined herein.

75 (iii) "Net proceeds" means actual gross receipts on a sales volume basis determined from
76 the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty
77 interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

78 (iv) "Royalty interest receipts" means the fractional interest in production of oil, natural gas,
79 natural gas liquids, or any combination thereof, that may or may not be subject to development
80 costs or operating expenses and extends undiminished over the life of the property. Typically, it
81 is retained by the mineral owner, mineral lessor, or both.

82 (v) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas,
83 and natural gas liquids producing property, which shall be determined annually by the Tax
84 Department based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

85 (vi) "Lease operating expenses" means the actual costs incurred to bring the subsurface
86 minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to
87 marketable products. Lease operating expenses refers to the costs of operating the wells and

88 equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials,
89 rent or supplies, which are directly related to the production, processing, or transportation of oil,
90 natural gas, natural gas liquids, or any combination thereof and that can be documented by the
91 producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses,
92 ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles
93 or other tangible personal property not permanently used in the production of oil, natural gas,
94 natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

95 (vii) "Lifting costs" means the actual costs incurred to operate a well during production.

96 (viii) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural
97 gas liquids, condensate, or any combination thereof from multiple wells by separate and individual
98 pipelines to a central point of accumulation, dehydration, compression, separation, heating and
99 treating or storage.

100 (ix) "Compression costs" are the actual costs in the process of raising the pressure of
101 minerals.

102 (x) "Processing, Separation and Fractionation costs" means de-ethnization fees,
103 processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees
104 charged by a processing or fractionation plant to the producer.

105 (xi) "Fractionation costs" means the actual costs incurred by the producer in fractionation.
106 Fractionation is the separating of components of a mixture through differences in physical or
107 chemical properties. Fractionation is the process by which raw hydrocarbons are separated into
108 products.

109 (xii) "Processing costs" means the actual costs incurred by the producer for activities
110 occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that
111 changes the physical or chemical characteristics, enhances the marketability, or enhances the
112 value of the separate components. Processing costs are limited to the costs for the following
113 activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration

114 within a processing facility, beneficiation, stabilizing, compression, and separation which occurs
115 within a processing facility.

116 (xiii) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas
117 liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point
118 of sale.

119 (xiv) "Marginal well" means in the calendar year immediately preceding the July 1
120 assessment date a well with an average daily production of 2 barrels of oil or less and an average
121 daily production of 10 MCF or less of natural gas.

122 (C) (i) For all assessments made on or after July 1, 2022, the valuation of property
123 producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using
124 a yield capitalization model. The yield capitalization model shall be composed of a working interest
125 model and a royalty interest model. The summation of the working interest model and the royalty
126 interest model shall represent the fair market value of the property.

127 (I) The working interest model shall be calculated as the sum of the working interest net
128 proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income
129 series shall be calculated as a terminating series of net proceeds discounted by applying a
130 capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series
131 of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization
132 rate multiplier and an eighteen month decline rate multiplier.

133 In each subsequent term of the net proceeds income series, the calculation shall use the
134 value from the previous term and multiply that term by a capitalization rate multiplier and an
135 applicable twelve-month decline rate multiplier.

136 (II) The royalty interest model shall be calculated as the sum of the royalty interest receipts
137 income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income
138 series shall be calculated as a terminating series of royalty interest receipts discounted by
139 applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the

140 terminating series of royalty interest receipts shall be the royalty interest receipts for that product
141 multiplied by a six month capitalization rate multiplier and an eighteen month decline rate
142 multiplier.

143 In each subsequent term of the royalty interest receipts income series, the calculation shall
144 use the value from the previous term and multiply that term by a capitalization rate multiplier and
145 an applicable twelve-month decline rate multiplier.

146 (ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall
147 annualize gross receipts and actual annual operating expenses before calculation of the working
148 interest model and the royalty interest model for wells that produced for less than 12 months
149 during the first calendar year of production or during the first calendar year of production after
150 being shut-in during the previous calendar year. Companies may provide additional actual gross
151 receipts and actual operating expense information that will be supplemented or used in lieu of the
152 Tax Commissioner annualization calculations.

153 (iii) For all assessments made on or after July 1, 2024, but not before, the Tax
154 Commissioner may not include a minimum valuation for any calculation related to determining the
155 value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall
156 exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of
157 natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated
158 on or about December 22, 2021.

159 (D) *Safe harbor.* – The Tax Commissioner shall annually determine a safe harbor amount
160 for actual annual operating costs to be published in the State Register for all marginal wells
161 producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of
162 marginal wells choosing to use the safe harbor amount rather than calculate their actual annual
163 operating costs, that safe harbor amount will be considered the costs associated with the
164 production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the
165 producing geographical area and geological strata.

166 (E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of
167 Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter,
168 all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation
169 of property producing oil, natural gas, natural gas liquids, or any combination thereof.

170 (F) This subdivision shall be effective for all assessments made on or after July 1, 2022
171 and shall have no further force or effect for any assessments made on or after July 1, 2025, unless
172 reenacted by the legislature.

173 (G) The Tax Commissioner shall propose rules required to administer this subdivision,
174 including emergency rules, in accordance with §29A-3-1 et seq. of this code, regarding valuation
175 of property producing oil, natural gas, natural gas liquids, or any combination thereof.

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

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

188 (g) The county assessor may accept the appraisal provided, pursuant to this section, by
189 the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal
190 provided by the State Tax Commissioner, the county assessor shall show just cause to the

191 valuation commission for the failure to accept such appraisal and shall further provide to the
192 valuation commission a plan by which a different appraisal will be conducted.

193 (h) The costs of appraising the industrial and natural resources property within each
194 county, and any costs of defending same shall be paid by the state: *Provided*, That the office of
195 the state Attorney General shall provide legal representation on behalf of the Tax Commissioner
196 or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged
197 in court.

198 (i) For purposes of revaluing managed timberland as defined in section two of this article,
199 any increase or decrease in valuation by the commissioner does not become effective prior to
200 July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry,
201 who may thereafter rescind the disqualification or allow the property owner a reasonable period
202 of time in which to qualify the property. A property owner may appeal a disqualification to the
203 circuit court of the county in which the property is located.

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