

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4483

BY DELEGATES ANDERSON, J. KELLY, GRAVES, FERRELL,

HOLSTEIN, WAMSLEY, MANDT, CLARK, ZATEZALO AND

HOWELL

[Introduced February 1, 2022; referred to
the Committee on Energy and Manufacturing then
Finance.]

1 A BILL to amend and reenact §11-1C-2 of the Code of West Virginia, 1931, as amended, to
2 amend said code by adding thereto a new section, designated §11-12-4b; to amend said
3 code by adding thereto a new article, designated §11-12E-1, §11-12E-2, §11-12E-3, and
4 §11-12E-4; and to amend said code by adding thereto a new section, designated §36-4-
5 20; all relating to real property, tax and registration requirements associated with carbon
6 offset agreements; defining terms; requiring parties to current and new carbon offset
7 agreements to register with the State Tax Department for tax years beginning on and after
8 January 1, 2022, and retroactive to such date; requiring reports by Division of Forestry;
9 authorizing disclosure of information by Tax Commissioner to Division of Forestry;
10 imposing excise tax on receipts derived from carbon offset agreements; setting forth
11 reporting requirements; providing an effective date of January 1, 2022, and with retroactive
12 effect to such date; defining “managed timberland” to exclude timberland that is subject to
13 a carbon offset agreement; specifying application of West Virginia Tax Procedure and
14 Administration Act and West Virginia Tax Crimes and Penalties Act; authorizing
15 promulgation of rules; providing legislative findings and declarations; providing that any
16 covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or
17 other governing document, which is executed or recorded after the effective date, which
18 effectively prohibits or restricts the development of land and the harvesting of timber from
19 forests for the purposes of forest carbon capture, carbon offset, and carbon sequestration
20 is void and unenforceable, unless said covenant, restriction, condition, easement,
21 contract, lease, deed, agreement, option, or other governing document is for a maximum
22 term of 30 years; and providing that options to renew or continue such arrangements
23 beyond the maximum term of 30 years shall be valid only if the consideration is required
24 to be renegotiated to exercise the option.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words shall have the meanings hereafter
2 ascribed to them unless the context clearly indicates otherwise:

3 (a) "Timberland" means any surface real property except farm woodlots of not less than
4 ten contiguous acres which is primarily in forest and which, in consideration of their size, has
5 sufficient numbers of commercially valuable species of trees to constitute at least forty percent
6 normal stocking of forest trees which are well distributed over the growing site.

7 (b) "Managed timberland" means surface real property, except farm woodlots, of not less
8 than ten contiguous acres which is devoted primarily to forest use and which, in consideration of
9 their size, has sufficient numbers of commercially valuable species of trees to constitute at least
10 forty percent normal stocking of forest trees which are well distributed over the growing site and
11 that is managed pursuant to a plan provided for in section ten of this article: *Provided*, That none
12 of the following may be considered as managed timberland within the meaning of this article:

13 (1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision
14 that is approved or exempted from approval pursuant to the provisions of a planning ordinance
15 adopted under the provisions of §8-24-1 *et seq* of this code; or

16 (2) Any tract or parcel of real estate, regardless of its size, which is subject to a deed
17 restriction, deed covenant or zoning regulation which limits the use of that real estate in a way
18 that precludes the commercial production and harvesting of timber upon it; or

19 (3) Any tract or parcel of real estate, regardless of its size, which is subject to a carbon
20 offset agreement, as that term is defined in §11-12-4b of this code.

21 (c) "Tax Commissioner," "commissioner" or "tax department" means the State Tax
22 Commissioner or a designee of the State Tax Commissioner.

23 (d) "Valuation commission" or "commission" means the commission created in section
24 three of this article.

25 (e) "County board of education" or "board" means the duly elected board of education of
26 each county.

27 (f) "Farm woodlot" means that portion of a farm in timber but may not include land used
28 primarily for the growing of timber for commercial purposes except that Christmas trees, or
29 nursery stock and woodland products, such as nuts or fruits harvested for human consumption,
30 shall be considered farm products and not timber products.

31 (g) "Owner" means the person who is possessed of the freehold, whether in fee or for life.
32 A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability
33 is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee
34 or trustee shall be deemed the owner. A person who has an equitable estate of freehold or is a
35 purchaser of a freehold estate who is in possession before transfer of legal title is also deemed
36 the owner.

37 (h) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
38 optical, electromagnetic or similar capabilities.

39 (i) "Paper" means a tax map or document that is not electronic.

40 The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning
41 on or after January 1, 2001.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4b. Parties to carbon offset agreements required to register.

1 (a) Definitions.

2 (1) "Carbon offset agreement" means any agreement, whether designated as a carbon
3 capture agreement, carbon sequestration agreement, or otherwise, entered into between an
4 owner of an interest in real estate in West Virginia or an owner of an interest in growing timber,
5 or any other botanical, agricultural, horticultural or plant species in West Virginia, and any other

6 person, entity or company, with the intent of providing payment, compensation or remuneration
7 for the absorption, suppression or containment of carbon dioxide or other greenhouse gases, and
8 so prevent contamination or spoliation of the atmosphere. The term includes carbon offset
9 agreements regardless of whether the carbon capture, carbon sequestration, or carbon storage
10 is achieved by biological or geological means or by injection underground. A carbon offset
11 agreement may be in the form of a lease, conservation easement, protective covenant, option, or
12 otherwise, with the form of agreement not being determinative of its status as a carbon offset
13 agreement.

14 (2) "Greenhouse gases" means any of various gaseous or vaporous compounds such as
15 carbon dioxide or methane that absorb infrared radiation and trap heat in Earth's atmosphere.

16 (b) Registration. Every person who is a party to a carbon offset agreement, as that term
17 is defined in this section, shall apply to the Tax Commissioner for an initial business registration
18 certificate within 30 days of entering into such agreement or within 30 days of the effective date
19 of this section, whichever is later. This requirement applies to carbon offset agreements entered
20 into before January 1, 2022, and currently in effect, and applies to new carbon offset agreements
21 entered into on or after January 1, 2022. The application for the business registration certificate
22 for carbon offset agreements shall provide the following information:

23 (1) Legal names, addresses and other contact information of all parties to the carbon offset
24 agreement.

25 (2) Location of the real estate in West Virginia covered by the carbon offset agreement,
26 including:

27 (A) Postal address of the property, if available,

28 (B) Tax parcel or other tax map identifier of the property, and

29 (C) Any other location information required by the Tax Commissioner;

30 (3) Term of the agreement in years;

31 (4) Identification of the carbon offset program with which the agreement is intended to

32 comply;

33 (5) Identification of any and all restrictions placed on the West Virginia real estate or other
34 property by the carbon offset agreement;

35 (6) Any other information required by the Tax Commissioner.

36 (c) All parties to a carbon offset agreement must inform the Tax Commissioner of any
37 changes to the agreement within 30 days of the change taking effect.

38 (d) Registration. Notwithstanding any other provision of this code, all parties to a carbon
39 offset agreement must apply to the Tax Commissioner for a new registration certificate within five
40 years of the effective date of the agreement, and at five-year intervals thereafter, unless the
41 agreement is terminated before that time.

42 (e) Reporting. Beginning on July 1, 2023, and on or before July 1 of every year thereafter,
43 the Division of Forestry shall submit a report to the Governor and the Joint Committee on
44 Government and Finance setting forth the following information:

45 (1) The number of carbon offset agreements in effect with regard to real estate in West
46 Virginia during the preceding calendar year,

47 (2) The number of acres of real estate in West Virginia covered by carbon offset
48 agreements during the preceding calendar year,

49 (3) The amount of money paid to West Virginia landowners under carbon offset
50 agreements during the preceding calendar year,

51 (4) The amount of tax collected under article 12E of this code during the preceding
52 calendar year, and

53 (5) An estimate, in aggregate, of the foregone income from alternate uses of the real estate
54 subject to the carbon offset agreements during the preceding calendar year.

55 (f) Information disclosure. Notwithstanding the provisions of §11-10-5d of this code and
56 notwithstanding any other provision of this code, the Tax Commissioner is authorized to disclose
57 to the Division of Forestry such tax information and other information in the possession of the Tax

58 Division as may be necessary for the Division of Forestry to compile the report required under
59 this section.

ARTICLE 12E. EXCISE TAX ON CARBON OFFSET AGREEMENTS.

§11-12E-1. Tax levied; rate.

1 For tax years beginning on and after January 1, 2022, and with retroactive effect to such
2 date, there is hereby levied on every carbon offset agreement regarding, or relating to, real estate
3 in West Virginia or other property in West Virginia, an annual excise tax in the amount of one
4 percent of the gross payment under the agreement. The tax shall be paid by the party desiring to
5 sequester carbon dioxide who enters into the agreement with the landowner or property owner:
6 Provided, That, should the payor fail to pay or remit the tax, the payor and the payee shall be
7 jointly and severally liable for payment of the tax.

§11-12E-2. Return required; payment due.

1 The party that enters into a carbon offset agreement with a West Virginia landowner shall,
2 no later than February 1 of each year following every year in which the carbon offset agreement
3 is in effect, file with the Tax Commissioner on a form acceptable to the Tax Commissioner, a
4 return identifying the location and acreage of the real estate subject to the agreement, stating the
5 gross payment made to the landowner under the contract in the previous calendar year, and
6 remitting the tax imposed by section 1 of this article: Provided, That, the Tax Commissioner may
7 prescribe an alternative schedule for filing and payment under such terms as the Tax
8 Commissioner may prescribe, and may prescribe electronic or other filing and payment methods.

§11-12E-3. Application of the West Virginia Tax Procedure and Administration Act and **West Virginia Tax Crimes and Penalties Act.**

1 The provisions of this article are subject to the West Virginia Tax Procedure and
2 Administration Act, set forth in §11-10-1 et seq. of this code, and the West Virginia Tax Crimes
3 and Penalties Act, set forth in §11-9-1 et seq. of this code, as if the provisions thereof were set
4 forth in extenso in this article.

§11-12E-4. Rulemaking.

1 In order to effectuate the purposes of this article, the Tax Commissioner may promulgate
 2 procedural rules, interpretive rules and legislative rules, including emergency rules, or any
 3 combination thereof, in accordance with §29A-3-1 et seq. of this code.

CHAPTER 36. ESTATES AND PROPERTY.**ARTICLE 4. COVENANTS.****§36-4-20. Forest carbon capture and sequestration covenants void and unenforceable; penalty.**

1 (a) The Legislature finds and declares that it is the policy of the state to promote and
 2 encourage land development, forest management and timber harvesting for the economic benefit
 3 of the citizens of this state. The Legislature finds and declares that private landowners must be
 4 allowed to preserve the character and use of land as forest land but also allow future landowners
 5 to make decisions which allow for land development and timber harvesting.

6 (b) Any covenant, restriction, condition, easement, contract, lease, deed, agreement,
 7 option, or other governing document, which is executed or recorded after the effective date of this
 8 section, which effectively prohibits or restricts the development of land or the harvesting of timber
 9 from forests with the intent and purposes of forest carbon capture, carbon offsets, or carbon
 10 sequestration is void and unenforceable, unless said covenant, restriction, condition, easement,
 11 contract, lease, deed, agreement, option, or other governing document is for a maximum term of
 12 30 years: *Provided*, That options to renew or continue such arrangements beyond the maximum
 13 term of 30 years, shall be valid only if the consideration is required to be renegotiated to exercise
 14 the option.

NOTE: The purpose of this bill is to balance the interests of current landowners and future landowners to ensure forest land may be developed for future economic gain by limiting use restrictions for forest carbon capture and sequestration to a maximum term of 30 years. The bill defines certain terms. The bill requires parties to current and new carbon offset agreements to register with the State Tax Department for tax years beginning on and after January 1, 2022, and retroactive to such date. The bill requires reports by Division of Forestry. The bill authorizes the disclosure of information by the Tax Commissioner to

Division of Forestry. The bill imposes excise tax on receipts derived from carbon offset agreements. The bill sets forth reporting requirements. The bill provides an effective date of January 1, 2022, and with retroactive effect to such date. The bill defines “managed timberland” to exclude timberland that is subject to a carbon offset agreement. The bill specifies application of West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act. The bill authorizes promulgation of rules. The bill provides legislative findings and declarations. The bill provides that any covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document, which is executed or recorded after the effective date, which effectively prohibits or restricts the development of land and the harvesting of timber from forests for the purposes of forest carbon capture, carbon offset, and carbon sequestration is void and unenforceable, unless said covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document is for a maximum term of 30 years. The bill provides that options to renew or continue such arrangements beyond the maximum term of 30 years shall be valid only if the consideration is required to be renegotiated to exercise the option.

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