

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2170**

By Delegate Criss

[Introduced January 11, 2023; Referred to the  
Committee on Energy and Manufacturing then  
Finance]

1 A BILL to amend and reenact §11-6K-1 and §11-6K-3 of the Code of West Virginia, 1931, as  
 2 amended, all generally relating to the assessment and valuation of industrial property and  
 3 natural resource property; for assessments made on or after July 1, 2024, providing that  
 4 the arithmetic means for annual production and average coal price to value coal properties  
 5 shall be based upon the full calendar year immediately preceding the July 1st assessment  
 6 date; providing that the Tax Commissioner shall utilize an average coal density of 1800  
 7 tons per acre foot, unless clear and convincing evidence is submitted by a tax payer  
 8 establishing a lower density value; providing that density information reported on returns,  
 9 due on or before May 1 of each year, shall be used to determine values for the immediately  
 10 following July 1 assessments; providing that the Tax Commissioner shall take into  
 11 consideration economic viability and engineering considerations when establishing values  
 12 for coal properties; providing that coal beds which are of a thickness of less than 35 inches  
 13 shall not be classified as mineable coal for valuation for property tax purposes unless there  
 14 is clear and convincing evidence to the contrary; providing that no permitted coal seam  
 15 may be classified for taxation as active until actual depletion of coal commences under a  
 16 permit; providing that for any owner, operator, or producer which fails to make a return  
 17 within the time required, any and all penalties imposed shall be equally and uniformly  
 18 applied across all forms of industrial property and natural resources property; and  
 19 specifying an effective date.

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

**ARTICLE 6K. ASSESSMENT OF INDUSTRIAL PROPERTY AND NATURAL  
 RESOURCES PROPERTY.**

**§11-6K-1. Time and basis of assessments; true and actual value; classifications and  
 valuation limitations; and returns of property to Tax Commissioner.**

1 (a) All industrial property and natural resources property shall be assessed annually as of  
 2 the July 1 assessment date at 60 percent of its true and actual value: Provided, That for

3 assessments made on or after July 1, 2024, the arithmetic means for annual production and  
4 average coal price used by the Tax Commissioner to value coal properties shall be based upon the  
5 full calendar year immediately preceding the July 1st assessment date: *Provided, however, That*  
6 for assessments made on or after July 1, 2024, the Tax Commissioner shall utilize an average coal  
7 density of 1800 tons per acre foot, unless clear and convincing evidence is submitted by a tax  
8 payer to the Tax Commissioner establishing a lower density value, and density information  
9 reported on returns, due on or before May 1 of each year, shall be used to determine values for the  
10 immediately following July 1 assessments: *Provided further, That for assessments made on or*  
11 after July 1, 2024, the Tax Commissioner shall take into consideration economic viability and  
12 engineering considerations when establishing values for coal properties: *And provided further,*  
13 That for assessments made on or after July 1, 2024, coal beds which are of a thickness of less  
14 than thirty-five inches (35") shall not be classified as mineable coal for valuation for property tax  
15 purposes unless there is clear and convincing evidence to the contrary: *And provided further, That*  
16 for assessments made on or after July 1, 2024, no permitted coal seam may be classified for  
17 taxation as active until actual depletion of coal commences under a permit.

18 (b) If required by the Tax Commissioner, all owners or operators of natural resources  
19 property, except oil-producing property, natural gas-producing property and managed timberland,  
20 shall, on or before May 1 preceding the July 1 assessment date, make a return to the Tax  
21 Commissioner and, if requested in writing by the assessor of the county where situated, to the  
22 county assessor, at a time and in the form specified by the Tax Commissioner, of all applicable  
23 natural resources property owned by them. Tax returns required to be filed pursuant to this section  
24 may be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may  
25 require the filing of all information which would be useful in valuing the property covered by the  
26 returns. Upon written application by the taxpayer filed prior to the due date of any return required to  
27 be filed by this section, the Tax Commissioner may for reasonable cause shown grant an  
28 extension of no more than one month in the due date of any return.

29 (c) If required by the Tax Commissioner, all owners or operators of industrial property, oil-  
30 producing property and natural gas-producing property, shall, on or before August 1 of the  
31 assessment year, make a return to the Tax Commissioner and, if requested in writing by the  
32 assessor of the county where situated, to the county assessor, at a time and in the form specified  
33 by the Tax Commissioner, of all industrial property, oil-producing property and natural gas-  
34 producing property, owned by them. Tax returns required to be filed pursuant to this section may  
35 be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may  
36 require the filing of all information which would be useful in valuing the property covered by the  
37 returns. Upon written application by the taxpayer filed prior to the due date of any return required to  
38 be filed by this section, the Tax Commissioner may for reasonable cause shown grant an  
39 extension of no more than one month in the due date of any return.

**§11-6K-3. Form and manner of making return; failure to timely make return; penalties.**

1 (a) All returns required to be made to the Tax Commissioner under this article shall be  
2 made in conformity with any reasonable requirements of the Tax Commissioner of which the  
3 person making the return shall have had notice, and shall be made upon forms prescribed by the  
4 Tax Commissioner who is invested with full power and authority to prescribe the forms required  
5 from any owner, operator or producer that may be of use to the Tax Commissioner in determining  
6 the true and actual value of the properties of the owners, operators or producers.

7 (b) All returns shall be signed and sworn to by the owner, operator or producer if a natural  
8 person, or, if the owner, operator or producer shall be a limited liability company, corporation,  
9 partnership, joint venture or other enterprise, shall be signed and sworn to by its president, vice  
10 president, secretary or other individual authorized to act on behalf of the taxpayer.

11 (c) If any owner, operator or producer fails to make a return within the time required by  
12 section one of this article, it shall be the duty of the Tax Commissioner to take steps as necessary  
13 to compel compliance and to enforce any and all penalties imposed by law for failure to do so:  
14 Provided, That any and all penalties imposed upon nonfiling parties under this article shall be

15 equally and uniformly applied across all forms of industrial property and natural resources  
16 property.

17 (d) Any owner, operator, or producer, whether a natural person, limited liability company,  
18 corporation, partnership, joint venture, or other enterprise, willfully failing to make a return within  
19 thirty days from the day it is herein required shall be guilty of a misdemeanor and, upon conviction  
20 thereof, fined \$100 for each month the failure continues. In addition, any penalties provided in this  
21 chapter or elsewhere in this code relating to failure to list any property or to file any return or report  
22 for ad valorem taxation purposes may be applied to any owner of property required to make a  
23 return pursuant to this section.

NOTE: The purpose of this bill is, for assessments made on or after July 1, 2024, to provide that the arithmetic means for annual production and average coal price to value coal properties shall be based upon the full calendar year immediately preceding the July 1st assessment date; to provide that the Tax Commissioner shall utilize an average coal density of 1800 tons per acre foot, unless clear and convincing evidence is submitted by a tax payer establishing a lower density value; to provide that density information reported on returns, due on or before May 1 of each year, shall be used to determine values for the immediately following July 1 assessments; to provide that the Tax Commissioner shall take into consideration economic viability and engineering considerations when establishing values for coal properties; to provide that coal beds which are of a thickness of less than 35 inches shall not be classified as mineable coal for valuation for property tax purposes unless there is clear and convincing evidence to the contrary; to provide that no permitted coal seam may be classified for taxation as active until actual depletion of coal commences under a permit; to provide that for any owner, operator, or producer which fails to make a return within the time required, any and all penalties imposed shall be equally and uniformly applied across all forms of industrial property and natural resources property; and to specify an effective date.

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