

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3294

By Delegates Anderson, Zatezalo, Westfall,
Fehrenbacher, Street, Crouse, Heckert, Bridges,
Holstein, Cooper, Hanshaw (Mr. Speaker)

[Introduced February 03, 2023; 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 amend
2 said code by adding thereto a new section, designated §11-12-4b; to amend said code by
3 adding thereto a new article, designated §11-12E-1, §11-12E-2, §11-12E-3, and §11-12E-
4 4; and to amend said code by adding thereto a new section, designated §36-4-20, all
5 relating to real property, tax, and registration requirements associated with carbon offset
6 agreements; defining terms; providing exceptions; requiring parties to current and new
7 carbon offset agreements to register with the State Tax Department; requiring reports by
8 Division of Forestry and State Tax Department; authorizing disclosure of information
9 between the Tax Commissioner and Division of Forestry; imposing an excise tax on
10 receipts derived from carbon offset agreements; setting forth reporting requirements;
11 defining "managed timberland" to exclude certain timberland subject to a carbon offset
12 agreement; specifying application of West Virginia Tax Procedure and Administration Act
13 and West Virginia Tax Crimes and Penalties Act; authorizing promulgation of rules;
14 providing legislative findings and declarations; providing that any covenant, restriction,
15 condition, easement, contract, lease, deed, agreement, option, or other governing
16 document, which is executed or recorded after the effective date, which effectively
17 prohibits or restricts the development of land and minerals or the harvesting of timber for
18 the purposes of carbon capture, carbon offset, and carbon sequestration is void and
19 unenforceable, unless said covenant, restriction, condition, easement, contract, lease,
20 deed, agreement, option, or other governing document is for an initial maximum term of 20
21 years or less; and providing that options to renew or continue such arrangements beyond
22 the maximum term of 20 years shall be valid only if the consideration is required to be
23 renegotiated to exercise the option and the option is for a maximum of 20 years or less;
24 and providing exceptions.

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 10
4 contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient
5 numbers of commercially valuable species of trees to constitute at least 40 percent normal
6 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 10 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 40
10 percent normal stocking of forest trees which are well distributed over the growing site and that is
11 managed pursuant to a plan provided for in section ten of this article: *Provided*, That none of the
12 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, lease, contract, option, agreement, or zoning regulation which limits
18 the use of that real estate in a way that precludes the commercial production and harvesting of
19 timber upon it; or

20 (3) Any tract or parcel of real estate, regardless of its size, which is subject to a carbon
21 offset agreement, as that term is defined in §11-12-4b of this code, which the Tax Commissioner, in
22 consultation with Division of Forestry, determines is incompatible with the managed timberland

23 program due to substantial restrictions on commercial production and harvesting of timber upon it.

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

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

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

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

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

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

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

43 The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning
44 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 including any type of minerals or growing timber,
5 and any other person, entity or company, with the intent of providing payment, compensation, or
6 remuneration for nondevelopment of a real estate interest in West Virginia to prevent the release
7 of carbon dioxide or other greenhouse gases into the atmosphere or to absorb, suppress, or
8 contain carbon dioxide or other greenhouse gases. A carbon offset agreement may be in the form
9 of a contract, lease, easement, covenant, option, or otherwise, with the form of the agreement not
10 being determinative of its status as a carbon offset agreement; *Provided*, That such agreements or
11 restrictions for the injection and containment of carbon dioxide or other greenhouse gases into
12 underground pore or container spaces are not carbon offset agreements.

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

15 (b) *Registration*.-- Any party or parties that enter into a carbon offset agreement, as that
16 term is defined in this section, with a West Virginia landowner and their assignees of rights, shall
17 apply to the Tax Commissioner for an initial business registration certificate within 60 days of
18 entering into such agreement or within 60 days of the effective date of this section, whichever is
19 later, on forms created through rulemaking authority by the State Tax Department. This
20 requirement applies to carbon offset agreements entered on or before the effective date of this
21 section and currently in effect, and new carbon offset agreements entered after the effective date
22 of this section. The application for the business registration certificate for carbon offset
23 agreements shall provide the following information:

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

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

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

- 29 (B) Tax parcel or other tax map identifier of the property, and
30 (C) Any other location information required by the Tax Commissioner;
31 (3) Term of the agreement in years;
32 (4) Identification of the carbon offset program or programs, if any, with which the
33 agreement is intended to comply;
34 (5) Identification and description of any and all restrictions placed on the West Virginia real
35 estate or other property by the carbon offset agreement;
36 (6) Any other information required by the Tax Commissioner.
37 (c) The party or parties that enter into a carbon offset agreement with a West Virginia
38 landowner and their assignees of rights shall inform the Tax Commissioner of any changes to the
39 agreement or assignments of rights under the agreement within 60 days of the change or
40 assignment taking effect.
41 (d) Registration.-- Notwithstanding any other provision of this code, the party or parties that
42 enter into a carbon offset agreement with a West Virginia landowner and their assignees of rights
43 to a carbon offset agreement shall apply to the Tax Commissioner for a new registration certificate
44 within five years of the effective date of the agreement, and at five-year intervals thereafter, unless
45 the agreement is terminated before that time.
46 (e) Reporting.-- Beginning on July 1, 2024, and on or before July 1 of every year thereafter,
47 the Tax Commissioner and Division of Forestry shall jointly submit a report to the Governor and the
48 Joint Committee on Government and Finance setting forth at a minimum the following information:
49 (1) The number and type of carbon offset agreements in effect burdening real estate in
50 West Virginia during the preceding calendar year,
51 (2) The number of acres of real estate burdened by carbon offset agreements during the
52 preceding calendar year and the counties in West Virginia in which they are found,
53 (3) The amount of money paid to West Virginia landowners under carbon offset
54 agreements during the preceding calendar year, and

55 (4) The amount of tax collected under article 12E of this code during the preceding
 56 calendar year.

57 (f) *Information disclosure.*-- Notwithstanding the provisions of §11-10-5d of this code and
 58 notwithstanding any other provision of this code, the Tax Commissioner and the Division of
 59 Forestry are authorized to disclose to each other such registration information and other
 60 information in each's possession as may be necessary to administer these provisions and compile
 61 the report required under this section.

ARTICLE 12E. EXCISE TAX ON CARBON OFFSET AGREEMENTS.

§11-12E-1. Tax levied; rate.

1 (a) For tax years beginning on and after January 1, 2023, 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 30
 4 percent of the gross payment under the agreement; *Provided*, That the carbon offset agreement
 5 prevents economic development or substantially restricts the severance of minerals or timber from
 6 the land. In such cases where the carbon offset agreement does not prevent economic
 7 development or does not substantially restrict the severance of minerals or timber from the land,
 8 an annual excise tax in the amount 15 percent of the gross payment is hereby levied.

9 (b) The tax shall be paid by the party desiring to sequester or prevent the release of carbon
 10 dioxide who enters into the agreement with the West Virginia landowner or property owner:
 11 *Provided*, That, should the payor fail to pay or remit the tax, the payor and the payee shall be jointly
 12 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 is
 3 in effect, file with the Tax Commissioner on a form acceptable to the Tax Commissioner, a return
 4 identifying the location, description, and acreage of the real estate subject to the agreement,

5 stating the gross payment made to the landowner under the contract in the previous calendar year,
 6 and remitting the tax imposed by section 1 of this article: *Provided*, That the Tax Commissioner
 7 may 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 and
 3 Penalties Act, set forth in §11-9-1 *et seq.* of this code, as if the provisions thereof were set forth *in*
 4 *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. Certain forest carbon capture and sequestration covenants and restrictions 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 and mineral development and forest management and timber harvesting for the
 3 economic benefit of the citizens of this state. The Legislature finds and declares that private
 4 landowners must be allowed to preserve the character, value, and use of land, but also allow
 5 future landowners to make decisions which allow for land and mineral development and timber
 6 harvesting.

7 (b) Any covenant, restriction, condition, easement, contract, lease, deed, agreement,

8 option, or other governing document, which is executed or recorded after the effective date of this
9 section, which effectively prohibits or restricts the development of land and minerals or the
10 harvesting of timber from forests with the intent and purposes of carbon capture, carbon offsets, or
11 carbon sequestration is void and unenforceable, unless said covenant, restriction, condition,
12 easement, contract, lease, deed, agreement, option, or other governing document is for a
13 maximum term of 20 years or less: *Provided*, That options, renewals, extensions, or continuations
14 of such arrangements beyond the maximum initial term of 20 years, shall be valid, so long as the
15 consideration is required to be renegotiated between all parties to exercise the option, renewal,
16 extension, or continuation and the option, renewal, extension, or continuation is for a maximum
17 term of 20 years or less: *Provided, however*, That such instruments for the injection and
18 containment of carbon dioxide or other greenhouse gases into underground pore or container
19 spaces are not subject to such limitations because these do no limit development of real estate.

NOTE: The purpose of this bill is to balance the interests of current landowners and future landowners to ensure surface, minerals, and forest land may be developed for future economic gain by limiting use restrictions for forest carbon capture and sequestration to a maximum term of 20 years. The bill defines certain terms. The bill requires parties to current and new carbon offset agreements to register with the State Tax Department. The bill requires reports by Division of Forestry and the State Tax Department. The bill authorizes the disclosure of information between the Tax Commissioner and 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. 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, minerals, and the harvesting of timber 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 20 years. The bill provides that options to renew or continue such arrangements beyond the initial maximum term of 20 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.