

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3334

By Delegates Storch, Criss, Hardy, Capito, Barnhart,

Riley, Fluharty, Kelly, Fast, and Willis

[Introduced February 08, 2023; Referred to the

Committee on Energy and Manufacturing then

Finance]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended, relating
 2 to valuation of industrial property and natural resources property by Tax Commissioner;
 3 providing that appraised value of the royalty interest may not exceed the average actual
 4 sale price of similarly situated and like royalty interests.; and that this subdivision shall be
 5 effective for all assessments made on or after July 1, 2022.

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 a
 9 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 of
 11 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 the
22 personal property book, as appropriate for each tax year. The commissioner shall supply support
23 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 the
29 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. The
35 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 a

44 natural resources owner. Formulas for natural resources valuation may contain differing variables
45 based upon known geological or other common factors. The Tax Commissioner shall forward each
46 natural resources property appraisal to the county assessor of the county in which that property is
47 located and the assessor shall multiply each such appraisal by sixty percent and include the
48 resulting assessed value in the land book or the personal property book, as appropriate, for each
49 tax year. The commissioner shall supply support data that the assessor might need to explain or
50 defend the appraisal. The commissioner shall directly defend any challenged appraisal when the
51 assessed value of the property in question exceeds \$2 million or an owner challenging an
52 appraisal holds or controls property situated in the same county with an assessed value exceeding
53 \$2 million. At least every five years, the commissioner shall review current technology for the
54 recovery of natural resources property to determine if valuation methodologies need to be
55 adjusted to reflect changes in value which result from development of new recovery technologies.

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

57 (A) The Tax Commissioner shall value property producing oil, natural gas, natural gas
58 liquids, or any combination thereof in the state at its fair market value determined through the
59 process of applying a yield capitalization model to the net proceeds.

60 (B) For the purposes of this subdivision:

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

65 (ii) "Actual annual operating costs" shall include, without limitation, all lease operating
66 expenses, lifting costs, gathering, compression, processing, separation, fractionation, and
67 transportation costs; as further defined herein.

68 (iii) "Net proceeds" means actual gross receipts on a sales volume basis determined from
69 the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty

70 interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

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

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

78 ~~(vi)~~ "Lease operating expenses" means the actual costs incurred to bring the subsurface
79 minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to
80 marketable products. Lease operating expenses refers to the costs of operating the wells and
81 equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials, rent
82 or supplies, which are directly related to the production, processing, or transportation of oil, natural
83 gas, natural gas liquids, or any combination thereof and that can be documented by the producer.
84 For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad valorem
85 taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other
86 tangible personal property not permanently used in the production of oil, natural gas, natural gas
87 liquids, or any combination thereof shall not be included as lease operating expenses.

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

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

93 ~~(ix)~~ "Compression costs" ~~are~~ means the actual costs in the process of raising the pressure
94 of minerals.

95 ~~(x)~~ "Processing, Separation and Fractionation costs" means de-ethnization fees,

96 processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees
97 charged by a processing or fractionation plant to the producer.

98 ~~(xi)~~ "Fractionation costs" means the actual costs incurred by the producer in fractionation.

99 Fractionation is the separating of components of a mixture through differences in physical or
100 chemical properties. Fractionation is the process by which raw hydrocarbons are separated into
101 products.

102 ~~(xii)~~ "Processing costs" means the actual costs incurred by the producer for activities
103 occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that
104 changes the physical or chemical characteristics, enhances the marketability, or enhances the
105 value of the separate components. Processing costs are limited to the costs for the following
106 activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration
107 within a processing facility, beneficiation, stabilizing, compression, and separation which occurs
108 within a processing facility.

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

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

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

120 (I) The working interest model shall be calculated as the sum of the working interest net
121 proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income

122 series shall be calculated as a terminating series of net proceeds discounted by applying a
123 capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series
124 of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization
125 rate multiplier and an 18 month decline rate multiplier.

126 In each subsequent term of the net proceeds income series, the calculation shall use the
127 value from the previous term and multiply that term by a capitalization rate multiplier and an
128 applicable 12-month decline rate multiplier.

129 (II) The royalty interest model shall be calculated as the sum of the royalty interest receipts
130 income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income
131 series shall be calculated as a terminating series of royalty interest receipts discounted by
132 applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the
133 terminating series of royalty interest receipts shall be the royalty interest receipts for that product
134 multiplied by a six month capitalization rate multiplier and an eighteen month decline rate
135 multiplier. However, in no case may the appraised value of the royalty interest exceed the average
136 actual sale price of similarly situated and like royalty interests.

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

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

147 ~~(iii) For all assessments made on or after July 1, 2024, but not before, the Tax~~

148 ~~Commissioner may not include a minimum valuation for any calculation related to determining the~~
149 ~~value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall~~
150 ~~exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of~~
151 ~~natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated~~
152 ~~on or about December 22, 2021~~

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

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

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

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

170 (e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a
171 plan for the valuation of natural resources property. The plans shall include expected costs and
172 reimbursements, and shall be submitted to the property valuation training and procedures
173 commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such

174 plan shall be revised, resubmitted to the commission and approved every three years thereafter.

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

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

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

192 (i) For purposes of revaluing managed timberland as defined in section two of this article,
193 any increase or decrease in valuation by the commissioner does not become effective prior to July
194 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who
195 may thereafter rescind the disqualification or allow the property owner a reasonable period of time
196 in which to qualify the property. A property owner may appeal a disqualification to the circuit court
197 of the county in which the property is located.

NOTE: The purpose of this bill is to provide that valuation of industrial property and natural

resources property by Tax Commissioner interest may not exceed the average actual sale price of similarly situated and like royalty interests; and that this subdivision shall be effective for all assessments made on or after July 1, 2022.

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