

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2399

By Delegates Hillenbrand, Horst, Masters, Ward,

Mazzocchi, Cooper, and Kimble

[Originating in the Committee on Finance, March 20, 2025]

1 A BILL to amend and reenact §11-1C-10 and §11-1C-11 of the Code of West Virginia, 1931, as
2 amended, relating to changing frequency of landowner managed timberland certifications
3 required to be made to the Division of Forestry to every five years; and specifying
4 rulemaking authority for the State Tax Commissioner and the Division of Forestry.

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; managed timberland; rulemaking authority; penalties; methods;
values sent to assessors.**

1 (a) As used in this section:

2 "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 "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

subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by 60 percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

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

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must ~~annually~~ certify every five years, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall ~~promulgate rules for certification as managed timberland~~ propose rules for legislative approval in accordance with the provisions of §29A-3-1, et seq. of this code to administer the valuation and classification of managed timberland for purposes of taxation.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state ~~Division~~ Department of Environmental Protection and office of miners' health, safety and

training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state ~~Division~~ Department of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds \$2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding \$2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

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

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

(B) For the purposes of this subdivision:

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

(ii) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax

~~Department~~ Division based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

(iii) "Compression costs" are the actual costs in the process of raising the pressure of minerals.

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

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

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

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

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

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

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

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

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

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

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

(C) (i) For all assessments made on or after July 1, 2022, the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using

a yield capitalization model. The yield capitalization model shall be composed of a working interest model and a royalty interest model. The summation of the working interest model and the royalty interest model shall represent the fair market value of the property.

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

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

(II) The royalty interest model shall be calculated as the sum of the royalty interest receipts income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income series shall be calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of royalty interest receipts shall be the royalty interest receipts for that product multiplied by a six month capitalization rate multiplier and an 18 month decline rate multiplier.

In each subsequent term of the royalty interest receipts income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable 12-month decline rate multiplier.

(ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Companies may provide additional actual gross

receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

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

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

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

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

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures

commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

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

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

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

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

**§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent;
implementation; inspection and determination of qualification; creation of online
application renewal form; rulemaking authority.**

(a) The Legislature finds and declares that the public welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the state; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests; and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provisions of section fifty-three, article VI of the Constitution of West Virginia, the Legislature makes the following declarations of its intent:

(1) Notwithstanding the provisions of section twenty-four, article three of this chapter, timberland certified by the Division of Forestry as managed timberland shall be valued as managed timberland as provided in this article when it is managed under a cooperative contract with the Division of Forestry and the certification has not been surrendered by the owner of the property or revoked by the director of the Division of Forestry.

The Division of Forestry shall, at the time of contracting, notify the owner that the owner shall incur a penalty as set forth in §11-3-5a of this code if the owner fails to provide written notice to the county assessor of a change in use of the managed timberland.

(2) Property certified as managed timberland which prior to certification is properly taxed in Class II, as defined in §11-8-5a of this code and section one, article X of the Constitution of West Virginia, may not be reclassified to Class III or Class IV, as defined in §11-8-5 of this code, merely because the property is certified as managed timberland unless there is some other event or change in the use of the property that disqualifies it from being taxed in Class II.

(c) To aid the Legislature in assessing the impact of the managed timberland program on the State of West Virginia, the Division of Forestry and the Tax Commissioner, on or before

December 31, 2001, and on December 31, each year thereafter, shall report in writing to the Joint Committee on Government and Finance of the Legislature or its designated subcommittee. The Tax Commissioner shall include in his or her report a complete and accurate assessment of the impact of the managed timberland program on the tax collections of the state, including projected increases or decreases in tax collection. The Division of Forestry shall include in its report detailed information on the number of acres designated as managed timberland and any identified impacts of the program on the state's timber industry.

(d) In order to expedite the renewal process for the Managed Timberland Program, the Division of Forestry shall create and maintain an online renewal process no later than October 1, 2023. The first question on the online renewal form shall read "Has your information from last ~~year~~ submission changed?" If the answer is no, then the individual using the online renewal form shall have to check a box and submit the form, and that shall be a completed renewal application. If an individual's information has changed, then the individual shall have a space on the online form to complete that summarizes those changes. There shall be no charge to the individual for any submission of an online renewal form. This section does not affect the costs associated with the initial application.

(e) The Division of Forestry shall propose rules for legislative approval in accordance with the provisions of §29A-3-1, et seq. of this code to administer the designation and certification of forest land managed under a cooperative contract with the Division of Forestry, and valued as managed timberland for State tax purposes.