

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4460

**FISCAL
NOTE**

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KESSINGER AND GRAVES

[Introduced January 22, 2020; Referred to the

Committee on Energy then Finance]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; to
 2 amend said code by adding thereto a new section designated §11-1C-10a; to amend and
 3 reenact §11-3-24 and §11-3-25 of said code; to amend reenact §11-10A-8 of said code,
 4 all relating to the valuation of natural resources property and providing an alternate method
 5 of appeal of proposed valuation natural resources property for ad valorem property tax
 6 purposes; and providing for the confidentiality of annual industry operating expenses
 7 survey information used for property tax purposes.

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
 9 a 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
 11 of 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
22 the personal property book, as appropriate for each tax year. The commissioner shall supply
23 support 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. With regard to oil,
27 natural gas, or both, producing property fair market value shall be determined through the process
28 of applying a yield capitalization model to the net proceeds (gross receipts less royalties paid less
29 operating expenses). Operating Expenses shall include all operating expenses, including, but not
30 limited to, lease operating expenses, lifting costs, gathering, compression, processing, and
31 transportation charges, if such expenses are incurred to sell the oil or natural gas to the “point of
32 sale.” “Point of sale” is defined as the point where the buyer of the oil or natural gas takes
33 ownership of and assumes the responsibility for such oil or natural gas. The Tax Commissioner
34 shall every three years, or any year in which the average of the monthly last day settle price of
35 natural gas contracts or the average oil price traded on the New York Mercantile Exchange
36 (NYMEX) changes more than 20 percent from that average for the year in which the last survey
37 was completed, determine the average annual industry operating expenses per well by providing
38 a survey to all oil, natural gas, or both, producers in the state. The survey shall solicit information
39 pertaining to the “operating expenses” described above for the following types of wells;
40 conventional producing oil and gas wells, coalbed methane wells, vertical and horizontal wells in
41 the Marcellus or Utica shale or other shale formations with the horizontal wells divided into

42 separate well categories based upon the total lateral length of each lateral well creating a separate
43 category of lateral well separating such wells based upon total lateral length increments of 3,000
44 feet. For example, one category shall contain lateral wells with a total lateral length increment
45 between zero feet and 3,000 feet and a second category with a total lateral length increment
46 between 3,001 feet and 6,000 feet. Such average annual industry operating expense shall be
47 stated as a specific monetary amount for each type of well listed above. The average annual
48 industry operating expenses for each type of well shall be deducted from the gross proceeds to
49 develop an income stream for application of a yield capitalization model. The commissioner shall
50 thereafter maintain accurate values for all such property.

51 (1) In order to qualify for identification as managed timberland for property tax purposes
52 the owner must annually certify, in writing to the Division of Forestry, that the property meets the
53 definition of managed timberland as set forth in this article and contracts to manage property
54 according to a plan that will maintain the property as managed timberland. In addition, each
55 owner's certification must state that forest management practices will be conducted in accordance
56 with approved practices from the publication "Best Management Practices for Forestry". Property
57 certified as managed timberland shall be valued according to its use and productive potential.
58 The Tax Commissioner shall promulgate rules for certification as managed timberland.

59 (2) In the case of all other natural resources property, the commissioner shall develop an
60 inventory on a county by county basis of all such property and may use any resources, including,
61 but not limited to, geological survey information; exploratory, drilling, mining and other information
62 supplied by natural resources property owners; and maps and other information on file with the
63 state Division of Environmental Protection and office of miners' health, safety and training. Any
64 information supplied by natural resources owners or any proprietary or otherwise privileged
65 information supplied by the state Division of Environmental Protection and office of miner's health,
66 safety and training shall be kept confidential unless needed to defend an appraisal challenged by
67 a natural resources owner. Formulas for natural resources valuation may contain differing

68 variables based upon known geological or other common factors. The Tax Commissioner shall
69 forward each natural resources property appraisal to the county assessor of the county in which
70 that property is located and the assessor shall multiply each such appraisal by 60 percent and
71 include the resulting assessed value in the land book or the personal property book, as
72 appropriate, for each tax year. The commissioner shall supply support data that the assessor
73 might need to explain or defend the appraisal. The commissioner shall directly defend any
74 challenged appraisal when the assessed value of the property in question exceeds \$2 million or
75 an owner challenging an appraisal holds or controls property situated in the same county with an
76 assessed value exceeding \$2 million. At least every five years, the commissioner shall review
77 current technology for the recovery of natural resources property to determine if valuation
78 methodologies need to be adjusted to reflect changes in value which result from development of
79 new recovery technologies.

80 (e) The Tax Commissioner shall develop a plan for the valuation of industrial property and
81 a plan for the valuation of natural resources property. The plans shall include expected costs and
82 reimbursements, and shall be submitted to the property valuation training and procedures
83 commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such
84 plan shall be revised, resubmitted to the commission and approved every three years thereafter.

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

92 (g) The county assessor may accept the appraisal provided, pursuant to this section, by
93 the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal

94 provided by the State Tax Commissioner, the county assessor shall show just cause to the
95 valuation commission for the failure to accept such appraisal and shall further provide to the
96 valuation commission a plan by which a different appraisal will be conducted.

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

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

§ 11-1C-10a. Confidentiality of annual industry operating expenses survey information.

1 (a) Financial information and other data of oil and natural gas producers disclosed to the
2 Tax Commissioner pursuant to the average annual industry operating expenses survey required
3 under §11-1C-10 of this code shall be considered confidential and exempt from §29B-1-1 et seq.
4 of this code.

5 (b) Any information disclosed to the Tax Commissioner pursuant to the survey required
6 under §11-1C-10 of this code shall have the confidentiality protections given to a return under
7 §11-10-5d of this code and any disclosure of such information not authorized by this section shall
8 be subject to the penalties provided for unlawful disclosure of a return. The term return, for
9 purposes of this section, shall have the meaning set forth in §11-10-5d of this code.

10 (c) Notwithstanding any provision of this code to the contrary, the Tax Commissioner shall
11 annually provide a report with non-proprietary financial information and other data disclosed by

12 oil and natural gas producers pursuant to the survey required by §11-1C-10 of this code to the
13 Joint Committee on Government and Finance on or before September 30 of each year. The Tax
14 Commissioner shall provide a report to the Joint Committee on Government and Finance
15 explaining in detail how it calculated the average annual industry operating expenses described
16 under §11-1C-10 of this code. The Tax Commissioner's detailed explanation of its calculations of
17 average annual industry operating expenses shall be broken down by the well types referenced
18 in §11-1C-10 of this code, including, conventional producing oil and gas wells, coalbed methane
19 wells, vertical and horizontal wells in the Marcellus or Utica shale or other shale formations. As
20 referenced in §11-1C-10 of this code, the information for horizontal wells shall be further divided
21 into separate well categories based upon the total lateral length of each lateral well creating a
22 separate category of lateral well separating such horizontal wells based upon total lateral length
23 increments of 3,000 feet. The Tax Commissioner's detailed explanation shall demonstrate how
24 the specific monetary amount for each type of well was calculated and shall include the financial
25 information and other data submitted by each individual producer, without including any
26 proprietary information or other identifying information about the oil and natural gas producers
27 that submitted surveys.

28 Any disclosure of financial information or other data provided to the Tax Commissioner
29 pursuant to the survey required by §11-1C-10 of this code that is not specifically authorized
30 pursuant to this section shall be a violation of the tax information confidentiality provisions of §11-
31 10-5d of this code.

32 (d) Nothing in this section may be construed to prohibit the publication, release or other
33 disclosure of the non-proprietary financial information and other data by the Joint Committee on
34 Government and Finance.

35 (e) While the survey required under §11-1C-10 of this code shall be submitted to the Tax
36 Commissioner every three years, the report to the Joint Committee on Government and Finance
37 shall be filed annually to reflect the Tax Commissioner's authority to annually amend the amount

38 of average annual industry operating expenses for oil and natural gas wells.

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§ 11-3-24. Review and equalization by county commission.

1 (a) The county commission shall annually, not later than February 1 of the tax year, meet
2 as a board of equalization and review for the purpose of reviewing and equalizing the assessment
3 made by the assessor. The board shall not adjourn for longer than three business days at a time,
4 not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The
5 board may adjourn *sine die* anytime after February 15 of the tax year and shall adjourn *sine die*
6 not later than the last day of February of the tax year.

7 (b) At the first meeting of the board, the assessor shall submit the property books for the
8 current year, which shall be complete in every particular, except that the levies shall not be
9 extended. The assessor and the assessor's assistants shall attend and render every assistance
10 possible in connection with the value of property assessed by them.

11 (c) The board shall proceed to examine and review the property books, and shall add on
12 the books the names of persons, the value of personal property and the description and value of
13 real estate liable to assessment which was omitted by the assessor. The board shall correct all
14 errors in the names of persons, in the description and valuation of property, and shall cause to be
15 done whatever else is necessary to make the assessed valuations comply with the provisions of
16 this chapter. But in no case shall any question of classification or taxability be considered or
17 reviewed by the board.

18 (d) If the board determines that any property or interest is assessed at more or less than
19 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent
20 of its true and actual value: *Provided*, That no assessment shall be increased without giving the
21 taxpayer at least five days' notice, in writing, of the intention to make the increase and no
22 assessment shall be greater than 60 percent of the true and actual value of the property.

23 (e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or

24 her agent or attorney, if served in person, or if sent by registered or certified mail to the property
25 owner, his or her agent, or attorney, at the last known mailing address of the person as shown in
26 the records of the assessor or the tax records of the county sheriff. If such person cannot be found
27 and has no last known mailing address, then notice shall be given by publication thereof as a
28 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and
29 the publication area shall be the county. The date of the publication shall be at least five days, not
30 including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the
31 increase. When the board intends to increase the entire valuation in any one tax district by a
32 general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement
33 in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area shall be
34 the county. The date of the last publication shall be at least five days, not including a Saturday,
35 Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is
36 acted on by the board. When an increase is made, the same valuation shall not again be changed
37 unless notice is again given as heretofore provided.

38 The clerk of the county commission shall publish notice of the time, place and general
39 purpose of the meeting as a Class II legal advertisement in compliance with the provisions of §59-
40 3-1 *et seq.* of this code and the publication area shall be the county. The expense of publication
41 shall be paid out of the county treasury.

42 (f) Any person who receives notice as provided in subsection (e) of this section may
43 appear before the board at the time and place specified in the notice to object to the proposed
44 increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for
45 the proposed increase, the taxpayer may present his or her objection or objections to the increase
46 and the reason or reasons for the objections and may either orally or in writing advise the board
47 that the taxpayer elects for the matter to be heard in the fall of the tax year when the county
48 commission meets as a board of assessment appeals as provided in §11-3-24b of this code;
49 Provided, That if the property in question is natural resources property the taxpayer may, at its

50 option, request a hearing before the West Virginia Office of Tax Appeals under the provisions of
51 §11-10A-1 et seq. of this code: Provided, however, That taxpayer's election shall not stay a
52 decision by the board to increase the assessed value of the property for the current tax year.

53 (g) The board may approve an agreement signed by the taxpayer or taxpayer's
54 representative and the assessor, and by a representative of the Tax Commissioner when the
55 property is industrial property or natural resources property, that resolves a valuation matter while
56 the land and personal property books are before the board for equalization and review.

57 (h) If any person fails to apply for relief at this meeting, he or she shall have waived the
58 right to ask for correction in the assessment list for the current year, and shall not thereafter be
59 permitted to question the correctness of the list as finally fixed by the board, except on appeal to
60 the circuit court or as otherwise provided in this article.

61 (i) After the board completes the review and equalization of the property books, a majority
62 of the board shall sign a statement that it is the completed assessment of the county for the tax
63 year. Then the property books shall be delivered to the assessor and the levies extended as
64 provided by law.

65 (j) A taxpayer who elects to have a hearing before the board of equalization and review
66 may appeal the board's order as provided in §11-3-25 of this code. A taxpayer who elects to have
67 a hearing before the board of assessment appeals may only appeal the assessed value as
68 provided in §11-3-24b of this code.

§11-3-25. Relief in circuit court against erroneous assessment based upon alleged error in valuation.

1 (a) Any person claiming to be aggrieved by any assessment in any land or personal
2 property book of any county who shall have appeared and contested the valuation as provided in
3 §11-3-24 or §11-3-24a of this code, or whose assessment has been raised by the county
4 commission sitting as a Board of Equalization and Review above the assessment fixed by the
5 assessor may, at any time up to 30 days after the adjournment of the board sitting as a Board of

6 Equalization and Review, or at any time up to 30 days after the order of the Board of Assessment
7 Appeals is served on the parties, or at any time up to 30 days after the order of the West Virginia
8 Office of Tax Appeals is served on the parties, apply for relief to the circuit court of the county in
9 which the property books are made out; but any person applying for relief in circuit court shall,
10 before any application is heard, give 10 days' notice to the prosecuting attorney of the county,
11 whose duty it shall be to attend to the interests of the state, county and district in the matter, and
12 the prosecuting attorney shall give at least five days' notice of hearing to the Tax Commissioner.

13 (b) The right of appeal from any assessment by the Board of Equalization and Review, or
14 order of the Board of Assessment Appeals or The West Virginia Office of Tax Appeals as provided
15 in this section may be taken either by the applicant or by the state, and in case the applicant, by
16 his or her attorney, or in the case of the state, by its prosecuting attorney or other attorney
17 representing the Tax Commissioner. The party desiring to take an appeal from the decision of
18 either board or The West Virginia Office of Tax Appeals shall have the evidence taken at the
19 hearing of the application before either board or The West Virginia Office of Tax Appeals, including
20 a transcript of all testimony and all papers, motions, documents, evidence, and records as were
21 before the board, certified by the county clerk or the Executive Director of the West Virginia Office
22 of Tax Appeals and transmitted to the circuit court as provided in §58-3-4 of this code, except
23 that, any other provision of this code notwithstanding, the evidence shall be certified by the county
24 clerk or executive director within 30 days after the county clerk or executive director receives
25 notice of such appeal together with a written request from the appealing party that the record be
26 certified and transmitted within 30 days after the petition for appeal is filed with the court or judge,
27 in vacation.

28 (c) If there was an appearance by or on behalf of the taxpayer before either board or The
29 West Virginia Office of Tax Appeals, or if actual notice, certified by the board, was given to the
30 taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the
31 court from the record as so certified: *Provided*, That in cases where the court determines that the

32 record made before the Board of Equalization and Review or The Board of Assessment Appeals
33 is inadequate as a result of the parties having had insufficient time to present evidence at the
34 hearing before the board to make a proper record, as a result of the parties having received
35 insufficient notice of changes in the assessed value of the property and the reason or reasons for
36 the changes to make a proper record at the hearing before the board, as a result of irregularities
37 in the procedures followed at the hearing before the board, or for any other reason not involving
38 the negligence of the party alleging that the record is inadequate, the court may remand the
39 appeal back to the county commission of the county in which the property is located, even after
40 the county commission has adjourned *sine die* as a Board of Equalization and Review or a Board
41 of Assessment Appeals for the tax year in which the appeal arose, for the purpose of developing
42 an adequate record upon which the appeal can be decided. The county commission shall
43 schedule a hearing for the purpose of taking additional evidence at any time within 90 days of the
44 remand order that is convenient for the county commission and for the parties to the appeal. If,
45 however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the
46 taxpayer before the Board of Equalization and Review, The Board of Assessment Appeals or The
47 West Virginia Office of Tax Appeals, or if a question of classification or taxability is presented, the
48 matter shall be heard *de novo* by the circuit court.

49 (d) If, upon the hearing of appeal, it is determined that any property has been assessed at
50 more than 60 percent of its true and actual value determined as provided in this chapter, the circuit
51 court shall, by an order entered of record, correct the assessment, and fix the assessed value of
52 the property at 60 percent of its true and actual value. A copy of the order or orders entered by
53 the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain
54 to real property, by the clerk within 20 days after the entering of the same, and every order or
55 judgment shall show that the prosecuting attorney or Tax Commissioner was present and
56 defended the interest of the state, county, and district. If it be ascertained that any property has
57 been valued too high, and that the taxpayer has paid the excess tax, it shall be refunded or

58 credited to the taxpayer in accordance with the provisions of §11-3-25a of this code, and if not
59 paid, he or she shall be relieved from the payment thereof. If it is ascertained that any property is
60 valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix
61 it at 60 percent of its true and actual value. A copy of any order entered by any circuit court
62 increasing the valuation of property shall be certified within 20 days, if the order pertains to real
63 property, to the Auditor, the county clerk, and the sheriff. However, if the order pertains only to
64 personal property, then the copy shall be certified within 20 days to the county clerk and to the
65 sheriff and it shall be the duty of the Auditor, the county clerk, and the sheriff to charge the
66 taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying
67 the rate of levies for every purpose in the district where the property is situated for the current
68 year. The order shall also be filed in the office of the Auditor and clerk of the county commission.
69 The circuit court shall review the record submitted from the board. If the court determines that the
70 record is adequate, it shall establish a briefing and argument schedule that will result in the appeal
71 being submitted to the court for decision within a reasonable time, but not to exceed eight months
72 after the appeal is filed. All final decisions or orders of the circuit court shall be issued within a
73 reasonable time, not to exceed 90 days, from the date the last brief is filed and the case is
74 submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of
75 valuation to the Supreme Court of Appeals if the assessed value of the property is \$50,000 or
76 more, and either party may appeal a question of classification or taxability.

77 (e) All persons applying for relief to the circuit court under this section shall be governed
78 by the same presumptions, burdens and standards of proof as established by law for taxpayers
79 applying for such relief.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-8. Jurisdiction of office of tax appeals.

1 The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine
2 all:

- 3 (1) Appeals from tax assessments issued by the Tax Commissioner pursuant to §11-10-
 4 1 *et seq.* of this code;
- 5 (2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits
 6 for all taxes administered in accordance with the provisions of §11-10-1 *et seq.* of this code;
- 7 (3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing
 8 to renew any license or imposing any civil money penalty for violating the provisions of any
 9 licensing law administered by the Tax Commissioner;
- 10 (4) Questions presented when a hearing is requested pursuant to the provisions of any
 11 article of this chapter which is administered by the provisions of §11-10-1 *et seq.* of this code;
- 12 (5) Matters which the Tax Division is required by statute or legislatively approved rules to
 13 hear, except employee grievances filed pursuant to §6C-2-1 *et seq.*; ~~and~~
- 14 (6) Other matters which may be conferred on the office of tax appeals by statute or
 15 legislatively approved rules; and
- 16 (7) Appeals by a taxpayer from proposed assessment of natural resources property for *ad*
 17 *valorem* property tax purposes, as set forth in §11-3-24 of this code.

NOTE: The purpose of this bill is to clarify, for purposes of this article, the types of operating expenses that must be used for purposes of valuing producing oil and natural gas wells, the methodology that shall be used by the Tax Commissioner in calculating operating expenses, the confidentiality of information submitted by natural resource producers to the Tax Commissioner, reports that must be submitted by the Tax Commissioner to the Joint Committee on Government and Finance, and to provide for alternate appeal of proposed valuation of natural resources property for *ad valorem* property tax purposes.

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