

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2581

BY DELEGATES GRAVES, CRISS, BARRETT, ANDERSON,
ROHRBACH, J. KELLY, MAYNARD, BURKHAMMER, J. PACK,
BRIDGES AND WESTFALL

[Originating in the Committee on Finance, March 24, 2021]

1 A BILL to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §11-1C-10 of said code, to amend said code by adding thereto a
3 new section, designated §11-1C-10a; and to amend and reenact §11-3-15c, §11-3-15f,
4 §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, and §11-3-
5 32 of said code, and to amend and reenact §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-
6 10, and §11-10A-19 of said code, all generally relating to the valuation, assessment,
7 review, and appellate rights of property owners regarding valuation, classification, and
8 taxability of real estate and personal property taxation; providing for revised methodology
9 to value property producing oil, natural gas, and natural gas liquids by the Tax
10 Commissioner for property tax assessments; providing for methods, calculation
11 requirements, and definitions, all used to determine fair market value, net proceeds,
12 weighted average prices from regional markets, actual receipts, actual annual operating
13 costs, a statewide capitalization rate, average industry production decline rates; a yield
14 capitalization model for each property, and a discounted net cash flow series income;
15 providing for reporting by the Tax Commissioner to the Joint Committee on Government
16 and Finance by the Tax Commissioner of certain data, explanations, and methodologies;
17 providing that residential property owners may not be required to furnish a formal appraisal
18 to establish the value of their primary residence; providing that an assessor's review is to
19 be an informal process and defining the standard of proof which a taxpayer must meet to
20 be no greater than a preponderance of the evidence; expanding the jurisdiction of the
21 Office of Tax Appeals to include property tax valuation, classification, and taxability;
22 providing that if an assessor rejects a petition, the petitioner may appeal to the county
23 Board of Equalization and Review or the Office of Tax Appeals; allowing for certain
24 appeals from decisions of the Tax Commissioner and Board of Equalization and Review
25 to the Office of Tax Appeals; repealing and eliminating the Board of Assessment Appeals;
26 providing for an increase in the number of administrative law judges and staff attorneys

27 within the Office of Tax Appeals; providing for effective dates; and making technical
28 changes.

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 §11-1C-2 of this code, 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)(1) 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. ~~The commissioner shall thereafter maintain~~
28 ~~accurate values for all such property~~ Provided, That, for assessments made on or after July 1,
29 2022, with regard to property producing oil, natural gas, natural gas liquids, or all three, fair market
30 value shall be determined through the process outlined in subdivision 2 of this subsection.

31 (2)(A) For assessments made on or after July 1, 2022, with regard to property producing
32 oil, natural gas, natural gas liquids, or all three, fair market value shall be determined through the
33 process of applying a yield capitalization model to the net proceeds. Natural gas liquids means
34 the hydrocarbon components: propane, ethane, butanes, and pentanes (also referred to as
35 condensate), or a combination of them that are subject to recovery from raw gas liquids by
36 processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling
37 plants.

38 (B) Net proceeds for oil and natural gas shall mean gross receipts on a sales volume basis
39 determined through a weighted average price from regional markets where West Virginia oil and
40 natural gas are normally sold, less royalties paid, less actual annual operating costs as reported
41 on the taxpayer's returns. Net proceeds for natural gas liquids shall mean actual gross receipts
42 determined from the actual price received by the taxpayers as reported on the taxpayer's returns,
43 less royalties paid, less actual annual operating costs.

44 (C) "Actual annual operating costs" shall include all operating costs, including, but not
45 limited to, lease operating expenses, lifting costs, gathering, compression, processing,
46 separation, fractionation, and transportation charges.

47 (F) The Tax Commissioner shall annually determine a statewide capitalization rate using
48 generally accepted appraisal methods for valuing gas wells, oil wells and natural gas liquids. The
49 rate shall for each be based upon the assumption of a declining-terminal, non-inflating income
50 series. The capitalization rate shall be developed through consideration of: (i) a discount rate
51 determined by the summation technique, which include a safe rate, a risk rate, a nonliquidity rate,
52 a management rate, and an inflation rate; and (ii) a property tax component.

53 (G) The Tax Commissioner shall derive and report the average industry production decline
54 rates every 5 years by reviewing well production records of various state agencies and data
55 provided by companies and individuals.

56 (H) A yield capitalization model shall be developed for each producing property. The model
57 shall use as a beginning point, and include for each producing well, the net proceeds (both
58 working interest and royalty interest). These amounts will be the weighted average (sum of the
59 years digits) beginning with the July 1 assessment date to June 30 next succeeding the
60 assessment date from the most recent consecutive three (3) full production calendar years
61 preceding the July 1 assessment date. Data, such as production, price, and well age, from the
62 calendar year preceding the July 1 assessment date will be considered the basis for the assessed
63 valuation. Net proceeds shall be reduced by application of the appropriate production decline rate
64 to yield a declining discounted cash flow series typical of the producing area and strata.

65 (I) The discounted net cash flow series income shall be apportioned to the working interest
66 and to the royalty interest based upon percentage. Where the ownership of oil or natural gas in
67 place is divided through a lease or other arrangement, the compensation to the owner of the oil
68 or natural gas in place is derived by designating a percentage (historically one-eighth) of the
69 production income to be the royalty payment to the owner. The remainder (historically seven-
70 eighths) is the working interest. The Tax Commissioner shall annually determine working and
71 royalty percentage interests on a per well or lease basis, through a review of producer and
72 operator annual property tax returns.

73 ~~(4)~~ (3) In order to qualify for identification as managed timberland for property tax purposes
74 the owner must annually certify, in writing to the Division of Forestry, that the property meets the
75 definition of managed timberland as set forth in this article and contracts to manage property
76 according to a plan that will maintain the property as managed timberland. In addition, each
77 owner's certification must state that forest management practices will be conducted in accordance
78 with approved practices from the publication "Best Management Practices for Forestry". Property
79 certified as managed timberland shall be valued according to its use and productive potential.
80 The Tax Commissioner shall promulgate rules for certification as managed timberland.

81 ~~(2)~~ (4) In the case of all other natural resources property, the commissioner shall develop
82 an inventory on a county by county basis of all such property and may use any resources,
83 including, but not limited to, geological survey information; exploratory, drilling, mining and other
84 information supplied by natural resources property owners; and maps and other information on
85 file with the state Department of Environmental Protection and Office of Miners' Health, Safety,
86 and Training. Any information supplied by natural resources owners or any proprietary or
87 otherwise privileged information supplied by the state Department of Environmental Protection
88 and Office of Miners' Health, Safety, and Training shall be kept confidential unless needed to
89 defend an appraisal challenged by a natural resources owner. Formulas for natural resources
90 valuation may contain differing variables based upon known geological or other common factors.
91 The Tax Commissioner shall forward each natural resources property appraisal to the county
92 assessor of the county in which that property is located and the assessor shall multiply each such
93 appraisal by 60 percent and include the resulting assessed value in the land book or the personal
94 property book, as appropriate, for each tax year. The commissioner shall supply support data that
95 the assessor might need to explain or defend the appraisal. The commissioner shall directly
96 defend any challenged appraisal when the assessed value of the property in question exceeds
97 \$2 million or an owner challenging an appraisal holds or controls property situated in the same
98 county with an assessed value exceeding \$2 million. At least every five years, the commissioner

99 shall review current technology for the recovery of natural resources property to determine if
100 valuation methodologies need to be adjusted to reflect changes in value which result from
101 development of new recovery technologies.

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

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

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

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

124 (i) For purposes of revaluing managed timberland as defined in §11-1C-2 of this code, any
125 increase or decrease in valuation by the commissioner does not become effective prior to July 1,
126 1991. The property owner may request a hearing by the director of the Division of Forestry, who
127 may thereafter rescind the disqualification or allow the property owner a reasonable period of time
128 in which to qualify the property. A property owner may appeal a disqualification to the circuit court
129 of the county in which the property is located.

§11-1C-10a. Tax Commissioner reports to the Joint Committee on Government and Finance.

1 The Tax Commissioner shall provide a report to the Joint Committee on Government and
2 Finance on or before December 31, 2022, and each year thereafter explaining in detail how he or
3 she calculated the weighted average price from regional markets where West Virginia oil and
4 natural gas are normally sold as described under §11-1C-10 of this code. The Tax
5 Commissioner's detailed explanation of his or her calculations of the weighted average regional
6 price for oil and gas shall include the specific regional indic(es) leveraged and underlying data
7 and method used to compute weighted average regional pric(es).

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

1 (a) A taxpayer who is of the opinion that his or her real property has been valued too high
2 or otherwise improperly valued or listed in the notice given as provided in section two-a of this
3 article may, but is not required to, file a petition for review with the assessor on a written form
4 prescribed by the Tax Commissioner. This section shall not apply to industrial and natural
5 resource property appraised by the Tax Commissioner.

6 (b) The petition shall state the taxpayer's opinion of the true and actual value of the
7 property and substantial information that justifies that opinion of value for the assessor to consider
8 for purposes of basing a change in classification or correction of the valuation. For purposes of
9 this subsection, the taxpayer shall provide substantial information to justify the opinion of value.

10 Owners of residential property used as the owner's primary residence may, but shall not be
11 required, to furnish a formal appraisal of the property stating its true and actual value for its current
12 use. by stating A formal appraisal furnished by a taxpayer shall state the method or methods of
13 valuation on which the opinion is based:

14 (1) Under the income approach, including the information required in section fifteen-e of
15 this article;

16 (2) Under the market approach, including the true and actual value of at least three
17 comparable properties in the same geographic area or the sale of the subject property; or

18 (3) Under the cost approach, including the replacement cost or the cost to build or rebuild
19 the property, plus the true and actual value of the land.

20 (c) The petition may include more than one parcel of property if they are part of the same
21 economic unit according to the Tax Commissioner's guidelines or if they are owned by the same
22 owner, have the same use, are appealed on the same basis and are located in the same tax
23 district or in contiguous tax districts of the county, and are in a form prescribed by the Tax
24 Commissioner.

25 (d) The petition shall be filed within eight business days after the date the taxpayer
26 receives the notice of increased assessment under section two-a of this article or the notice of
27 increased value was published as a Class II-0 legal advertisement as provided in that section.
28 For purposes of this section, 'business day' means any day other than Saturday, Sunday or any
29 legal holiday set forth in section one, article two, chapter two of this code.

**§11-3-15f. Rejection of petition; ~~for failure to include substantial information~~ amended
petition; appeal options.**

1 If the assessor rejects a petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~
2 §11-3-15c, §11-3-15d, or §11-3-15e, the petitioner may appeal to the county board of equalization
3 and review as provided in section twenty-four of this article or the Office of Tax Appeals.

§11-3-15h. Ruling on petition.

1 (a) In all cases the assessor shall consider the petition and shall rule on each petition filed
2 pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e by February
3 10 of the assessment year. Written notice shall be served by regular mail on the person who filed
4 the petition.

5 (b) In considering a petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this
6 article, the assessor shall consider the valuation fixed by the assessor on other similar property
7 that is similarly situated.

8 (c) The consideration of a petition for review with the assessor is to be an informal process.
9 Formal rules of evidence shall not be required; the assessor may consider all evidence presented
10 and may give each item the weight in his opinion it commands.

11 (d) The standard of proof which a taxpayer must meet to defend his opinion of the true
12 and actual value of the subject property during reviews by the assessor shall be no greater than
13 a simple preponderance of the evidence standard.

§11-3-15i. Petitioner's right to appeal.

1 (a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of
2 the assessor.

3 (b) If the petitioner and the assessor reach an agreement within five business days after
4 the conclusion of the meeting held as provided in section fifteen-g of this article, both parties shall
5 sign the agreement and both parties waive the right to further appeal.

6 (c) If all or part of the petitioner's request under ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-
7 3-15c, §11-3-15d, or §11-3-15e is denied, the assessor shall mail, on the date of the ruling, to the
8 petitioner at the address shown on the petition notice of the grounds of the refusal to make the
9 change or changes requested in the petition. A petitioner whose request is denied, in whole or in
10 part, or a petitioner who does not receive a response from the assessor by February 10, as
11 provided in section fifteen-h of this article, may file a protest with the county commission sitting

12 as a board of equalization and review, as provided in section twenty-four of this article or the
13 Office of Tax Appeals.

§11-3-23. Alterations in property books.

1 After the copies of the landbook or personal property book shall have been verified and
2 delivered, no alteration shall be made in them, or either of them, affecting the taxes of that year,
3 except on the final order of ~~the court on~~ a successful review or appeal from the assessment.

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

1 (a) *General.* — Anytime after real or tangible personal property is returned for taxation, the
2 taxpayer may apply to the assessor of the county in which the property was situated on the
3 assessment date for information about the classification, taxability or valuation of the property for
4 property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is
5 not satisfied with the response of the assessor and wants to further pursue the matter must follow
6 the procedures set forth in this section.

7 (b) *Classification or taxability.* — A taxpayer who wants to contest the classification or
8 taxability of property must follow the procedures set forth in section twenty-four-a of this article.

9 (c) *Valuation issues - property appraised and assessed by county assessor.* —

10 (1) A taxpayer who is dissatisfied with the response of the assessor on a question of
11 valuation and who receives a notice of increase in the assessed value of real property as provided
12 in section two-a of this article, or a notice of increase in the assessed value of business personal
13 property as provided in section fifteen-b of this article, who disagrees with the assessed value
14 stated in the notice, may utilize the informal review process specified in this article if the taxpayer
15 decides to challenge the assessed value.

16 (2) A taxpayer may apply for relief to the county commission sitting as a board of
17 equalization and review pursuant to section twenty-four of this article or to the Office of Tax
18 Appeals not later than February 20 of the tax year by filing a written protest with the clerk of the
19 county commission or the Office of Tax Appeals that identifies the amount of the assessed value

20 the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons
21 for filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear
22 the taxpayer's protest. ~~Provided, That in the written protest or in a separate notice filed with the~~
23 ~~board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify~~
24 ~~the board of the taxpayer's election to have the matter heard when the county commission~~
25 ~~convenes as a board of assessment appeals in the fall of the tax year as provided in section~~
26 ~~twenty-four b of this article. A copy of this election shall be served on the assessor, and the Tax~~
27 ~~Commissioner in the case of industrial property or natural resources property, by personal service~~
28 ~~or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that~~
29 The taxpayer will timely pay first and second half installment payments of taxes levied for the
30 current tax year on or before they become due and that any reduction in assessed value that is
31 administratively or judicially determined in a decision that becomes final will result in a credit being
32 established against taxes that become due for a tax year subsequent to the tax year in which the
33 decision becomes final, except as otherwise stated in the decision or as otherwise provided in
34 this article. In the event the board of equalization and review adjourns sine die before February
35 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described
36 in this subdivision with the ~~county clerk on or before February 20 of the tax year~~ Office of Tax
37 Appeals and the petition shall be heard when the county commission meets as a board of
38 ~~assessment appeals, as provided in section twenty-four b of this article.~~ If a taxpayer fails to
39 provide its written protest on or before February 20, and the board of equalization and review
40 unilaterally increases the assessed value subsequent to that date, the taxpayer may still file a
41 written protest and the acknowledgment described in this subdivision with the ~~county clerk~~ Office
42 of Tax Appeals. and the petition shall be heard when the county commission meets as a board of
43 ~~assessment appeals as provided in section twenty-four b of this article~~

44 (d) *Valuation issues - property appraised by Tax Commissioner and assessed by county*
45 *assessor. —*

46 (1) A taxpayer who receives a notice of tentative appraised value of natural resource
47 property or industrial property from the Tax Commissioner pursuant to article six-k of this chapter,
48 who disagrees with the value stated in the notice may utilize the informal review process specified
49 in this article and article six-k of this chapter.

50 (2) A taxpayer may apply for relief to the county commission sitting as a board of
51 equalization and review pursuant to section twenty-four of this article or to the Office of Tax
52 Appeals no later than February 20 of the tax year by filing a written protest with the clerk of the
53 county commission or to the Office of Tax Appeals that identifies the amount of the assessed
54 value the taxpayer believes to be in controversy and states generally the taxpayer's reason or
55 reasons for filing the protest. The board or the Office of Tax Appeals shall then set a date and
56 time to hear the taxpayer's protest. ~~Provided, That in the written protest or in a separate notice~~
57 ~~filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative~~
58 ~~may notify the board of the taxpayer's election to have the matter heard when the county~~
59 ~~commission convenes as a board of assessment appeals in the fall of the tax year as provided in~~
60 ~~section twenty-four b of this article. A copy of this election shall be served on the assessor, and~~
61 ~~the Tax Commissioner in the case of industrial property or natural resources property, by personal~~
62 ~~service or by certified mail. The notice of election shall include an acknowledgment by the~~
63 ~~taxpayer that The taxpayer will timely pay first and second half installment payments of taxes~~
64 ~~levied for the current tax year on or before they become due and that any reduction in assessed~~
65 ~~value that is administratively or judicially determined in a decision that becomes final will result in~~
66 ~~a credit being established against taxes that become due for a tax year subsequent to the tax~~
67 ~~year in which the decision becomes final, except as otherwise stated in the decision or as~~
68 ~~otherwise provided in this article. In the event the board of equalization and review adjourns sine~~
69 ~~die before February 20 of the tax year, a taxpayer may ~~still~~ file its written protest and the~~
70 ~~acknowledgment described in this subdivision with the county clerk on or before February 20 of~~
71 ~~the tax year, Office of Tax Appeals and the petition shall be heard when county commission meets~~

72 ~~as a board of assessment appeals, as provided in section twenty-four b of this article.~~ If a taxpayer
73 fails to provide its written protest on or before February 20, and the board of equalization and
74 review unilaterally increases the assessed value subsequent to that date, the taxpayer may still
75 file a written protest and the acknowledgment described in this subdivision with the ~~county clerk,~~
76 Office of Tax Appeals, and the ~~petition shall be heard when the county commission meets as a~~
77 ~~board of assessment appeals as provided in section twenty-four b of this article~~

78 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal
79 under this section shall be a preponderance of the evidence standard.

§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 sixty percent of its true and actual value as determined under this chapter, it shall fix it at sixty
20 percent of its true and actual value: *Provided*, That no assessment shall be increased without
21 giving the taxpayer at least five days' notice, in writing, of the intention to make the increase and
22 no assessment shall be greater than sixty 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 article three, chapter fifty-nine of
29 this code and the publication area shall be the county. The date of the publication shall be at least
30 five days, not including a Saturday, Sunday or legal holiday in this state, prior to the day the board
31 acts on the increase. When the board intends to increase the entire valuation in any one tax
32 district by a general increase, notice shall be given by publication thereof as a Class II-0 legal
33 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and
34 the publication area shall be the county. The date of the last publication shall be at least five days,
35 not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the
36 increase in valuation is acted on by the board. When an increase is made, the same valuation
37 shall not again be changed 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
40 article three, chapter fifty-nine of this code and the publication area shall be the county. The
41 expense of publication 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 section twenty-four b of this~~
49 ~~article: *Provided*, That taxpayer's election shall not stay a decision by the board to increase the~~
50 ~~assessed value of the property for the current tax year~~

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

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

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

63 (j) A taxpayer who elects to have a hearing before the board of equalization and review
64 may appeal the board's order to the Office of Tax Appeals ~~as provided in section twenty-five of~~
65 ~~this article. A taxpayer who elects to have a hearing before the board of assessment appeals may~~
66 ~~only appeal the assessed value as provided in section twenty-four b of this article.~~

67 (k) The standard of proof which a taxpayer must meet at all levels of review and appeal
68 under this section shall be a preponderance of the evidence standard.

**§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner,
appeal to Office of Tax Appeals.**

1 (a) At any time after property is returned for taxation, and up to and including the time the
2 property books are before the county commission sitting as a board of equalization and review,
3 any taxpayer may apply to the assessor for information regarding the classification and taxability
4 of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property
5 assessed to the taxpayer or believes that the property is exempt or otherwise not subject to
6 taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide
7 the question by either sustaining the protest and making proper corrections, or by stating, in
8 writing if requested, the reasons for refusal to grant the protest.

9 (b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question
10 to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable
11 to agree, in separate sworn statements, giving a full description of the property and any other
12 information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms
13 on which the aforesaid question shall be certified and the Tax Commissioner shall have the
14 authority to pursue any inquiry and procure any information necessary for the disposition of the
15 issue.

16 (c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no
17 case later than February 28 of the assessment year, instruct the assessor as to how the property
18 shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding
19 upon the assessor, but either the assessor or the taxpayer may apply to the ~~ircuit court of the~~
20 ~~county~~ Office of Tax Appeals within thirty days after receiving written notice of the Tax
21 Commissioner's ruling, for review of the question of classification or taxability. ~~in the same fashion~~
22 ~~as is provided for appeals from the county commission sitting as a board of equalization and~~
23 ~~review in section twenty five of this article~~

24 (d) The amendments to this section enacted in the year 2010 shall apply to classification
25 and taxability rulings issued for taxes levied after December 31, 2011.

26 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal
27 under this section shall be a preponderance of the evidence standard.

§11-3-24b. Board of Assessment Appeals.

1 [Repealed.]

§11-3-25. Relief in circuit court against erroneous assessment.

1 [Repealed.]

§11-3-25a. Payment of taxes that become due while appeal is pending.

1 (a) All taxes levied and assessed against the property for the year on which a protest or
2 an appeal has been filed by the taxpayer as provided in section twenty-four or twenty-four-~~ba~~ of
3 this article shall be paid before they become delinquent. If the taxes are not paid before becoming
4 delinquent, the ~~circuit court~~ governing body having jurisdiction of the appeal, as appropriate, shall
5 dismiss the appeal unless the delinquent taxes and interest due are paid in full within thirty days
6 after taxes for the second half of the tax year become delinquent.

7 (b) In the event the order of a court or other governing body becomes final and the order
8 results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the
9 amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or
10 less within thirty days after the time for appealing the decision or order expires or, if the decision
11 or order is appealed, within thirty days of the date the appeals court or other governing body turns
12 down the appeal. ~~Provided, That, if the taxpayer's protest before the county commission below~~
13 ~~was heard pursuant to the provisions of section twenty-four-b of this article, the refund shall be~~
14 ~~paid pursuant to the provisions of that section~~ If the overpayment is more than \$25,000, a credit
15 in the amount of the overpayment shall be established by the county sheriff and allowed as a
16 credit against taxes owed up to the following two tax years: *Provided, That* the county commission
17 may elect to refund the amount of overpayment rather than having a credit established as

18 provided in this section: *Provided further*, That if any portion of the overpayment remains unused
19 after the date on which taxes payable for the second half of the second tax year following the tax
20 year of the overpayment become delinquent, that portion shall be refunded to taxpayer by the
21 county sheriff no later than thirty days after that date or thirty days from the date that the circuit
22 court order becomes final, whichever date occurs later. Whenever an overpayment is refunded
23 or credited under this section, the county shall pay interest at the rate established in section
24 seventeen and seventeen-a, article ten of this chapter for overpayments of taxes collected by the
25 Tax Commissioner, which interest shall be computed from the date the overpayment was received
26 by the sheriff to the date of the refund check or the date the credit is actually taken against taxes
27 that become due after the order of the court becomes final.

§11-3-32. Effective date of amendments.

1 (a) Unless specified otherwise in this article, all amendments to this article adopted in the
2 year 2010 shall apply to the assessment years beginning on or after July 1, 2011.

3 (b) Unless specified otherwise in this article, all amendments to this article adopted in the
4 year 2021 shall apply to the assessment years beginning on or after July 1, 2022.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.

1 The Legislature finds that there is a need for an independent quasi-judicial agency
2 separate and apart from the Tax Division to resolve disputes between the Tax Commissioner,
3 county assessors, county commissions, and taxpayers in order to maintain public confidence in
4 the state tax system. The Legislature does therefore declare that the purpose of this article is to
5 create the West Virginia office of tax appeals to resolve disputes between the Tax Commissioner,
6 county assessors, county commissions, and taxpayers and to prescribe the powers and duties of
7 the office of tax appeals.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except Chief Administrative Law Judge, members of classified service; qualifications of administrative law judges.

1 (a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax
2 Appeals and he or she may employ one person to serve as executive director, ~~one~~ two staff
3 ~~attorney~~ attorneys and other clerical personnel as necessary for the proper administration of this
4 article. The Chief Administrative Law Judge may delegate administrative duties to other
5 employees, but the Chief Administrative Law Judge shall be responsible for all official delegated
6 acts.

7 (1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up
8 to ~~two~~ three administrative law judges as necessary for the proper administration of this article.

9 (2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge,
10 shall be in the classified service and shall be governed by the provisions of the statutes, rules and
11 policies of the classified service in accordance with the provisions of article six, chapter twenty-
12 nine of this code.

13 (3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall
14 be admitted to the practice of law in this state and have at least two years of full-time or equivalent
15 part-time experience as an attorney with federal or state tax law expertise.

16 (4) The Chief Administrative Law Judge and all administrative law judges shall be
17 members of the Public Employees Retirement System and do not qualify as participants in the
18 judicial retirement system during their tenure with the Office of Tax Appeals.

19 (b) The Chief Administrative Law Judge shall:

20 (1) Direct and supervise the work of the legal staff;

21 (2) Make hearing assignments;

22 (3) Maintain the records of the Office of Tax Appeals;

23 (4) Review and approve decisions of administrative law judges as to legal accuracy, clarity
24 and other requirements;

25 (5) Publish decisions in accordance with the provisions of section sixteen of this article;

26 (6) Submit to the Legislature, on or before February 15, an annual report summarizing the
27 Office of Tax Appeals' activities since the end of the last report period, including a statement of
28 the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal
29 year and the number of matters pending at the end of the year; and

30 (7) Perform the other duties necessary and proper to carry out the purposes of this article.

§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 article ten
4 of this chapter;

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 article ten of this chapter;

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 article ten of this chapter;

12 (5) Matters which the Tax Division is required by statute or legislatively approved rules to
13 hear, except employee grievances filed pursuant to article two, chapter six-c of this code; ~~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 any party aggrieved by the valuation of real property and personal property
17 tax assessments and classifications or taxability as set forth in §11-3-1 et. seq. of this code.

§11-10A-10. Hearing procedures.

1 (a) The office of tax appeals shall assign a date, time and place for a hearing on a petition
2 and shall notify the parties to the hearing by written notice at least twenty days in advance of the
3 hearing date. The hearing shall be held within forty-five days of the due date of the commissioner's
4 answer unless continued by order of the office of tax appeals for good cause.

5 (b) A hearing before the office of tax appeals shall be heard *de novo* and conducted
6 pursuant to the provisions of the contested case procedure set forth in article five, chapter twenty-
7 nine-a of this code to the extent not inconsistent with the provisions of this article. In case of
8 conflict, the provisions of this article shall govern. The provisions of section five, article five,
9 chapter twenty-nine-a of this code are not applicable to a hearing before the office of tax appeals.

10 (c) The office of tax appeals is not bound by the rules of evidence as applied in civil cases
11 in the circuit courts of this state. The office of tax appeals may admit and give probative effect to
12 evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or
13 her affairs.

14 (d) All testimony shall be given under oath.

15 (e) Except as otherwise provided by this code or legislative rules, the taxpayer or petitioner
16 has the burden of proof.

17 (f) The administrative law judge may ask for proposed findings of fact and conclusions of
18 law from the parties prior to the issuance by the office of tax appeals of the decision in the matter.

19 (g) Hearings shall be exempt from the requirements of article nine-a, chapter six and article
20 one, chapter twenty-nine-b of this code.

21 (h) For all appeals regarding property tax assessments, taxability, and classifications
22 pursuant to §11-3-1 et. seq., the standard of proof which a taxpayer must meet at all levels of
23 review and appeal shall be a preponderance of the evidence standard.

§11-10A-19. Judicial review of office of tax appeals decisions.

1 (a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the
2 county assessor or county commission, may appeal the final decision or order of the office of tax
3 appeals by taking an appeal to the circuit courts of this state within sixty days after being served
4 with notice of the final decision or order.

5 (b) The office of tax appeals may not be made a party in any judicial review of a decision
6 or order it issued.

7 (c)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha
8 County or any county:

9 (A) Wherein the activity sought to be taxed was engaged in;

10 (B) Wherein the taxpayer resides; ~~or~~

11 (C) Wherein the will of the decedent was probated or letters of administration granted; or

12 (D) Wherein the real or personal property is assessed.

13 (2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County:

14 *Provided,* That the taxpayer shall have the right to remove the appeal to the county:

15 (A) Wherein the activity sought to be taxed was engaged in;

16 (B) Wherein the taxpayer resides; ~~or~~

17 (C) Wherein the will of the decedent was probated or letters of administration granted; or

18 (D) Wherein the real or personal property is assessed.

19 (3) In the event ~~both~~ parties appeal to different circuit courts, the appeals shall be
20 consolidated. In the absence of agreement by the parties, the appeal shall be consolidated in the
21 circuit court of the county in which the taxpayer filed the petition for appeal.

22 (d) The appeal proceeding shall be instituted by filing a petition for appeal with the circuit
23 court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a) of
24 this section. A copy of the petition for appeal shall be served on all parties appearing of record,
25 other than the party appealing, by registered or certified mail. The petition for appeal shall state

26 whether the appeal is taken on questions of law or questions of fact, or both, and set forth with
27 particularity the items of the decision objected to, together with the reasons for the objections.

28 (e) If the appeal is of an assessment, except a jeopardy assessment for which security in
29 the amount thereof was previously filed with the Tax Commissioner, then within ninety days after
30 the petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with
31 the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The
32 surety must be qualified to do business in this state. These bonds shall be conditioned upon the
33 petitioner performing the orders of the court. The penalty of this bond shall be not less than the
34 total amount of tax or revenue plus additions to tax, penalties and interest for which the taxpayer
35 was found liable in the administrative decision of the office of tax appeals. Notwithstanding the
36 foregoing and in lieu of the bond, the Tax Commissioner, upon application of the petitioner, may
37 upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of
38 the taxpayer are adequate to secure performance of the orders of the court: *Provided*, That if the
39 Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are
40 adequate to secure performance of the orders of the court, then the taxpayer may apply to the
41 circuit court for the certification. No bond may be required of the Tax Commissioner.

42 (f) The circuit court shall hear the appeal as provided in section four, article five, chapter
43 twenty-nine-a of this code: *Provided*, That when the appeal is to review a decision or order on a
44 petition for refund or credit, the court may determine the legal rights of the parties, but in no event
45 shall it enter a judgment for money.

46 (g) Unless the Tax Commissioner appeals an adverse court decision, the commissioner,
47 upon receipt of the certified order of the court, shall promptly correct his or her assessment or
48 issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

49 (h) Either party may appeal to the Supreme Court of Appeals as provided in article six,
50 chapter twenty-nine-a of this code.

51 (i) For all appeals regarding property tax assessments, taxability, and classifications
52 pursuant to §11-3-1 et. seq., the standard of proof which a taxpayer must meet at all levels of
53 review and appeal shall be a preponderance of the evidence standard.

NOTE: The purpose of this bill to change the valuation, assessment, review, and appellate rights of property owners regarding valuation, classification, and taxability of real estate and personal property taxation; provide revised methodology to value oil and natural gas properties by Tax Commissioner; allow for the publication, release, or other disclosure of nonproprietary financial information by the Joint Committee on Government and Finance; define a criminal penalty for the unauthorized disclosure of financial information; provide that residential property owners may not be required to furnish a formal appraisal to establish the value of their primary residence; provide that an assessor's review is to be an informal process and define the standard of proof which a taxpayer must meet to be no greater than a preponderance of the evidence; expand the jurisdiction of the Office of Tax Appeals to include property tax valuation, classification, and taxability; provide that if an assessor rejects a petition, the petitioner may appeal to the county Board of Equalization and Review or the Office of Tax Appeals; allow for certain appeals from decisions of the Tax Commissioner and Board of Equalization and Review to the Office of Tax Appeals; repeal and eliminate the Board of Assessment Appeals; provide for an increase in the number of administrative law judges and staff attorneys within the Office of Tax Appeals; provide an effective dates; and make technical changes.

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