

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 3127

BY DELEGATES WESTFALL AND SYPOLT

[Originating in the Committee on Government

Organization; March 25, 2021]

1 A BILL to amend and reenact §11-1C-5 of the Code of West Virginia, 1931, as amended, relating
2 to creating powers and duties of the State Auditor to audit public utility tax returns;
3 clarifying that the State Auditor is to audit or review the apportionment information filed in
4 the regular course of business for public utilities; providing subpoena power for the State
5 Auditor to compel attendance of witnesses or to produce books and papers; establishing
6 a civil penalty and directing penalties to the Public Utilities Tax Loss Restoration fund; and
7 defining the term review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-5. Tax Commissioner powers and duties and State Auditor powers and duties.

1 (a) In addition to the powers and duties of the Tax Commissioner in other provisions of
2 this article and this code, the Tax Commissioner shall have the power and duty to:

3 (1) Perform such duties and exercise such powers as may be necessary to accomplish
4 the purposes of this article;

5 (2) Determine the methods of valuation for both real and personal property in accordance
6 with the following:

7 (A) As to personal property, the Tax Commissioner shall provide a method to appraise
8 each major specie of personal property in the state so that all such items of personal property are
9 valued in the same manner no matter where situated in the state, shall transmit these methods to
10 each county assessor who shall use these methods to value the various species of personal
11 property. The Tax Commissioner shall periodically conduct such studies as are necessary to
12 determine that such methods are being followed. Such method shall be in accordance with the
13 provisions of article five of this chapter: *Provided*, That notwithstanding any other provision of this
14 code to the contrary, the several county assessors shall appraise motor vehicles as follows: The
15 State Tax Commissioner shall annually compile a schedule of automobile values based upon the
16 lowest values shown in a nationally accepted used car guide, which said schedule shall be

17 furnished to each assessor and shall be used by the several county assessors to determine the
18 assessed value for all motor vehicles in an amount equal to 60 percent of said lowest values.

19 (B) As to managed timberland as defined in §11-1C-2 of this code, the Tax Commissioner
20 shall provide a method to appraise such property in the state so that all such property is valued
21 in the same manner no matter where it is situated in the state, which shall be a valuation based
22 on its use and productive potential as managed timberland, which may be accorded special
23 valuation as forestlands as authorized by section fifty-three, article six of the Constitution of West
24 Virginia: *Provided*, That timberland that does not qualify for identification as managed timberland
25 shall be valued at market value: *Provided, however*, That the Tax Commissioner may not
26 implement any rules or regulations in title one hundred ten, which relate to valuation or
27 classification of timberland: *Provided further*, That on or before October 1, 1990, the Tax
28 Commissioner shall, in accordance with chapter twenty-nine-a of this code, promulgate new rules
29 relating to the valuation and classification of timberland.

30 (C) As to farmland used, occupied and cultivated by an owner or bona fide tenant, the Tax
31 Commissioner shall provide a method to appraise such property in the state so that all such
32 property is valued in the same manner no matter where it is situated in the state, which valuation
33 shall be arrived at according to the fair and reasonable value of the property for the purpose for
34 which it is actually used regardless of what the value of the property would be if used for some
35 other purpose, in accordance with §11-3-1 of this code and as authorized by subsection B, section
36 one-b, article X of the Constitution of West Virginia.

37 (D) As to public utility property, the Tax Commissioner shall prescribe appropriate methods
38 for the appraisal of the various types of property subject to taxation as public utilities and the types
39 of property which are to be included in the operating property of a public utility and thereby not
40 subject to taxation by the county assessor. Only parcels or other property, or portions thereof,
41 which are an integral part of the public utility's function as a utility shall be included as operating
42 property and assessed by the board of public works under provisions of §11-6-1 *et seq.* of this

43 code;

44 (3) Evaluate the performance of each assessor based upon the criteria established by the
45 commission and each county's approved plan and take appropriate measures to require any
46 assessor who does not meet these criteria or adequately carry out the provisions of the plan to
47 correct any deficiencies. Such evaluation shall include the periodic review of the progress of each
48 assessor in conducting the appraisals required in §11-1C-7 and §11-1C-9 of this code and in
49 following the approved valuation plan. If the Tax Commissioner determines that an assessor has
50 substantially failed to perform the duties required by said sections, the Tax Commissioner shall
51 take all necessary steps, including the appointment of one or more special assessors in
52 accordance with the provisions of §11-3-1 of this code, or utilize such other authority as the
53 commissioner has over county assessors pursuant to other provisions of this code as may be
54 necessary to complete the tasks and duties imposed by this article: *Provided*, That a writ of
55 mandamus shall be the appropriate remedy if the Tax Commissioner fails to perform his or her
56 statutory duty provided for in §11-1-5 of this code.

57 (4) Submit to the Legislature, on or before February 15 of each year, a preliminary
58 statewide aggregate tax revenue projection and other information which shall assist the
59 Legislature in its deliberations regarding county board of education levy rates pursuant to §11-8-
60 6f of this code, which information shall include any amount of reduction required by said section
61 six-f;

62 (5) Maintain the valuations each year by making or causing to be made such surveys,
63 examinations, audits and investigations of the value of the several classes of property in each
64 county which should be listed and taxed under the several classifications; and

65 (6) Establish by uniform rules a procedure for the sale of computer generated material and
66 appraisal manuals. Any funds received as a result of the sale of such reproductions shall be
67 deposited to the appropriate account from which the payment for reproduction is made.

68 (b) The Tax Commissioner may adopt any regulation adopted prior to January 1, 1990,

69 pursuant to §11-1A-1 *et seq.* of this code, which adoption shall not constitute an implementation
70 of the statewide mass reappraisal of property. Such adoption, including context modifications
71 made necessary by the enactment of this article, shall occur on or before July 1, 1991, through
72 inclusion in the plan required by section ten of this article or inclusion in the minute record of the
73 valuation commission. Upon the adoption of any such regulations, any modification or repeal of
74 such regulation shall be in accordance with the provisions of article three, chapter twenty-nine-a
75 of this code.

76 (c) The State Auditor shall have the power and duty to perform such duties and exercise
77 such powers as may be necessary to accomplish the purposes of this section, including, but not
78 limited to:

79 (1) Issue subpoenas and compulsory process, direct the service thereof by any sheriff,
80 compel the attendance of witnesses and the production of books and papers at any designated
81 time and place, selected in their respective county, and administer oaths.

82 (2) Determine the methods for auditing or reviewing the apportionment information for the
83 public utility property tax returns filed pursuant to this section and the Tax Division's rule, Valuation
84 of Public Utility Property for Ad Valorem Property Tax Purposes §110 CSR 1M, in accordance
85 with the following:

86 (A) The State Auditor shall review the public utility property tax return apportionment filed
87 by each public utility. If the reported property apportionment value decreases by 10 percent or
88 \$10 million whichever is the lesser of these amounts, for a public utility within a single county, the
89 State Auditor shall conduct an audit or review of the public utility property tax return apportionment
90 information for the current tax year and for the prior two tax years.

91 (B) The State Auditor shall prescribe appropriate methods for the audit or review of the
92 apportionment of the various types of property, as determined by the state Tax Commissioner,
93 subject to taxation as public utilities and the types of property which are to be included in the
94 operating property of a public utility and thereby not subject to taxation by the county assessor.

95 (C) The State Auditor shall inform the Tax Commissioner of all audit or apportionment
96 review findings by December 31 of the year in which the audit or apportionment review was
97 triggered under subsection (c)(2)(A) of this section.

98 (d) If any public utility company fails to comply with the requirements established by this
99 section, such public utility company shall be levied a civil penalty by the State Auditor of \$1,000
100 per day for said noncompliance. A civil penalty levied against a public utility company shall be
101 payable to the Public Utilities Tax Loss Restoration Fund created by §11-6-27 of this code.

102 (e) As used in this section, “review” means an independent analysis to determine the
103 accuracy of the apportionment information included in public utility property tax returns.

NOTE: The purpose of this bill is to create new duties and powers for the State Auditor to review and audit public utility tax returns.

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