

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4336**

BY DELEGATES GRAVES, FOSTER, STEELE, BURKHAMMER,  
CLARK, BRIDGES, CRISS, ANDERSON, J. KELLY, BARRETT AND  
HOUSEHOLDER

[Introduced January 21, 2022; Referred to the Committee on  
Finance]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §11-1C-10a, all generally  
 3 relating to valuation and assessment regarding personal property taxation; providing for a  
 4 revised methodology to value property producing oil, natural gas, and natural gas liquids  
 5 by the Tax Commissioner for property tax assessments; providing for methods, calculation  
 6 requirements, and definitions, all of which are used to determine fair market value, net  
 7 proceeds, weighted average prices from regional markets, actual receipts, actual annual  
 8 operating costs, a statewide capitalization rate, average industry production decline rates,  
 9 a yield capitalization model for each property, and a discounted net cash flow series  
 10 income; and providing for reporting by the Tax Commissioner to the Joint Committee on  
 11 Government and Finance by the Tax Commissioner of certain data, explanations, and  
 12 methodologies.

*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 sixty 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; Provided, That, for assessments made on or after  
28 July 1, 2022, with regard to property producing oil, natural gas, natural gas liquids, or any  
29 combination of the three, fair market value shall be determined through the process outlined in  
30 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 any combination of the three, fair market value shall be  
33 determined through the process of applying a yield capitalization model to the net proceeds.  
34 Natural gas liquids means the hydrocarbon components: propane, ethane, butanes, and pentanes  
35 (also referred to as condensate), or a combination of them that are subject to recovery from raw

36 gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants,  
37 or cycling 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 (D) 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 for each shall 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 (E) The Tax Commissioner shall derive and report the average industry production decline  
54 rates every five years by reviewing well production records of various state agencies and data  
55 provided by companies and individuals.

56 (F) 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 that is 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 (G) The discounted net cash flow series income shall be apportioned to the working  
66 interest and to the royalty interest based upon percentage. Where the ownership of oil or natural  
67 gas in place is divided through a lease or other arrangement, the compensation to the owner of  
68 the oil or natural gas in place is derived by designating a percentage (historically one-eighth) of  
69 the 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 ~~(1)~~ (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 Division of Environmental Protection and office of miners' health, safety and  
86 training. Any information supplied by natural resources owners or any proprietary or otherwise  
87 privileged information supplied by the state Division of Environmental Protection and office of

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

102 ~~(3) The Tax Commissioner shall, no later than July 1, 2021, propose emergency rules in~~  
103 ~~accordance with §29A-3-15 of this code regarding valuation of property producing oil, natural gas,~~  
104 ~~natural gas liquids, or any combination thereof. For purposes of the emergency rules required by~~  
105 ~~this subdivision regarding valuation of property producing oil, natural gas, natural gas liquids, or~~  
106 ~~any combination thereof, fair market value shall be determined through the process of applying a~~  
107 ~~yield capitalization model to the net proceeds. Net proceeds shall mean actual gross receipts on~~  
108 ~~a sales volume basis determined from the actual price received by the taxpayers as reported on~~  
109 ~~the taxpayer's returns, less royalties, and less actual annual operating costs as reported on the~~  
110 ~~taxpayer's returns. For the purposes of this subdivision:~~

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

114 ~~plants.~~

115 ~~(B) "Actual annual operating costs" shall only include lease operating expenses, lifting~~  
116 ~~costs, gathering, compression, processing, separation, fractionation, and transportation charges.~~

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

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

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

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

139 (i) For purposes of revaluing managed timberland as defined in section two of this article,

140 any increase or decrease in valuation by the commissioner does not become effective prior to  
 141 July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry,  
 142 who may thereafter rescind the disqualification or allow the property owner a reasonable period  
 143 of time in which to qualify the property. A property owner may appeal a disqualification to the  
 144 circuit court 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 indices leveraged and underlying data and  
 7 method used to compute weighted average regional prices.

NOTE: The purpose of this bill is to provide valuation and assessment of classification and personal property taxation. The bill provides for a revised methodology method in order to value property that is producing oil, natural gas, and natural gas liquids by the Tax Commissioner for property tax assessments. The bill provides for methods, calculation requirements, and definitions, all of which are used to determine fair market value, net proceeds, weighted average prices from regional markets, actual receipts, actual annual operating costs, a statewide capitalization rate, average industry production decline rates, a yield capitalization model for each property, and a discounted net cash flow series income. The bill provides for a revised methodology to value property producing oil, natural gas, and natural gas liquids by the Tax Commissioner for property tax assessments. Finally, the bill provides for a report by the Tax Commissioner to the Joint Committee on Government and Finance by the Tax Commissioner of certain data, explanations, and methodologies.

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