

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4483

BY DELEGATES ANDERSON, J. KELLY, GRAVES, FERRELL,

HOLSTEIN, WAMSLEY, MANDT, CLARK, ZATEZALO AND

HOWELL

[Originating in the Committee on Energy and

Manufacturing, February 8, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §11-12-4b and §36-4-20; all relating to real property and registration
3 requirements associated with carbon offset agreements and term limits therefor; defining
4 terms; requiring certain parties to current and new carbon offset agreements to register
5 with the State Tax Department; specifying required registration information and
6 authorizing the State Tax Department to create registration forms through rule-making;
7 requiring periodic updates to registration; requiring reports by Division of Forestry and
8 specifying the minimum content thereof; authorizing disclosure of information by the Tax
9 Commissioner to Division of Forestry; providing legislative findings and declarations;
10 providing that any covenant, restriction, condition, easement, contract, lease, deed,
11 agreement, option, or other governing document, which is executed or recorded after the
12 effective date, which effectively prohibits or restricts the development of land and the
13 harvesting of timber from forests for the purposes of forest carbon capture, carbon offset,
14 and carbon sequestration is void and unenforceable, unless said covenant, restriction,
15 condition, easement, contract, lease, deed, agreement, option, or other governing
16 document is for a maximum term of 40 years or less; and providing that options to renew
17 or continue such arrangements beyond the maximum term of 40 years shall be valid only
18 if the consideration is required to be renegotiated to exercise the option.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4B. PARTIES TO CARBON OFFSET AGREEMENTS REQUIRED TO REGISTER.

1 (a) Definitions.

2 (1) "Carbon offset agreement" means any agreement, whether designated as a carbon
3 capture agreement, carbon sequestration agreement, or otherwise, entered into between an
4 owner of an interest in real estate in West Virginia or an owner of an interest in growing timber in
5 West Virginia, and any other person, entity or company, with the intent of providing payment,
6 compensation or remuneration for the absorption, suppression or containment of carbon dioxide
7 or other greenhouse gases. A carbon offset agreement may be in the form of a lease, easement,
8 protective covenant, option, or otherwise, with the form of the agreement not being determinative
9 of its status as a carbon offset agreement.

10 (2) "Greenhouse gases" means any of various gaseous or vaporous compounds such as
11 carbon dioxide or methane that absorb infrared radiation and may trap heat in Earth's
12 atmosphere.

13 (b) Registration. Any party or parties that enter into a carbon offset agreement, as that
14 term is defined in this section, with a West Virginia landowner, and their assignees of rights, shall
15 apply to the Tax Commissioner for an initial business registration certificate within 60 days of
16 entering into such agreement or within 60 days of the effective date of this section, whichever is
17 later, on forms created through rule-making authority by the State Tax Department. This
18 requirement applies to carbon offset agreements entered on or before the effective date of this
19 section and currently in effect and new carbon offset agreements entered after the effective date
20 of this section. The application for the business registration certificate for carbon offset
21 agreements shall provide the following information:

22 (1) Legal names, addresses and other contact information of all parties to the carbon offset
23 agreement,

24 (2) Location of the real estate in West Virginia covered by the carbon offset agreement,
25 including:

26 (A) Postal address of the property, if available,

27 (B) Tax parcel or other tax map identifier of the property, and

28 (C) Any other location information required by the Tax Commissioner;

29 (3) Term of the agreement in years;

30 (4) Identification of the carbon offset program with which the agreement is intended to
31 comply;

32 (5) Identification of any and all restrictions placed on the West Virginia real estate or other
33 property by the carbon offset agreement;

34 (6) Any other information required by the Tax Commissioner.

35 (c) The party or parties that enter into a carbon offset agreement with a West Virginia
36 landowner and their assignees of rights shall inform the Tax Commissioner of any changes to the
37 agreement or assignments of rights under the agreement within 60 days of the change or
38 assignment taking effect.

39 (d) Registration. Notwithstanding any other provision of this code, the party or parties that
40 enter into a carbon offset agreement with a West Virginia landowner and their assignees of rights
41 to a carbon offset agreement shall apply to the Tax Commissioner for a new registration certificate
42 within five years of the effective date of the agreement, and at five-year intervals thereafter, unless
43 the agreement is terminated before that time.

44 (e) Reporting. Beginning on July 1, 2023, and on or before July 1 of every year thereafter,
45 the Division of Forestry shall submit a report to the Governor and the Joint Committee on
46 Government and Finance setting forth at a minimum the following information:

47 (1) The number of carbon offset agreements in effect burdening real estate in West
48 Virginia during the preceding calendar year,

49 (2) The number of acres of real estate in West Virginia burdened by carbon offset
50 agreements during the preceding calendar year,

51 (3) The amount of money paid to West Virginia landowners under carbon offset
52 agreements during the preceding calendar year.

53 (f) Information disclosure. Notwithstanding the provisions of §11-10-5d of this code and
54 notwithstanding any other provision of this code, the Tax Commissioner is authorized to disclose
55 to the Division of Forestry such registration information and other information in the possession
56 of the Tax Division as may be necessary for the Division of Forestry to compile the report required
57 under this section.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 4. COVENANTS.

§36-4-20. Certain forest carbon capture and sequestration covenants and restrictions void and unenforceable; penalty.

1 (a) The Legislature finds and declares that it is the policy of the state to promote and
2 encourage land development, forest management and timber harvesting for the economic benefit
3 of the citizens of this state. The Legislature finds and declares that private landowners must be
4 allowed to preserve the character and use of land as forest land but also allow future landowners
5 to make decisions which allow for land development and timber harvesting.

6 (b) Any covenant, restriction, condition, easement, contract, lease, deed, agreement,
7 option, or other governing document, which is executed or recorded after the effective date of this
8 section, which effectively prohibits or restricts the development of land or the harvesting of timber
9 from forests with the intent and purposes of forest carbon capture, carbon offsets, or carbon
10 sequestration is void and unenforceable, unless said covenant, restriction, condition, easement,
11 contract, lease, deed, agreement, option, or other governing document is for a maximum term of
12 40 years or less: *Provided*, That options to renew or continue such arrangements beyond the
13 maximum term of 40 years, shall be valid only if the consideration is required to be renegotiated
14 to exercise the option.

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