

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 701**

By Senators Blair (Mr. President), Woelfel, and

Maynard

[Introduced February 20, 2023; referred  
to the Committee on Economic Development]

1 A BILL to amend and reenact §7-1-3l of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §11-1C-5, §11-1C-11, and §11-1C-11a of said code; and to amend and  
3 reenact §11-3-34 of said code, all relating to the administration of the Managed Timberland  
4 Program; authorizing county assessors to require property owners produce carbon  
5 capture or carbon offset agreements related to the property; creating obligations of the Tax  
6 Commissioner related to the administration of the Managed Timberland Program;  
7 providing the Division of Forestry with rule-making authority; requiring the Division of  
8 Forestry to develop internal policies and procedures for their role in the Managed  
9 Timberland Program; providing that the Division of Forestry and the State Tax Department  
10 shall work together to update the current Legislative Rule to minimize weaknesses in the  
11 processes and procedures of the Division of Forestry and the Tax Division regarding the  
12 operations of the Managed Timberland Program; and requiring county assessors to report  
13 the carbon capture and carbon offset agreements in their respective counties to the Tax  
14 Department annually.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3l. Authority to establish county appraisal-assessment board; functions and duties of board; duties of assessor.**

1 (a) In addition to all other powers and duties now conferred by law upon county courts,  
2 such courts are hereby authorized and empowered to establish a county appraisal-assessment  
3 advisory board. The purpose for which this board is created is to enable the county court, acting as  
4 the board of review and equalization, to better perform its duties in reviewing property  
5 assessments and to better inform the public with regard to assessments generally. The board is  
6 hereby authorized to review all appraisals made by the State Tax Commissioner under the

7 provisions of §18-9A-4 of this code and all assessments made by the assessor and to submit to  
 8 the county court all pertinent data and information gathered by the appraisal-assessment advisory  
 9 board. The county assessor is hereby designated the secretary of the board. The assessor shall  
 10 attend all meetings of the board. He The assessor shall keep record of all proceedings and shall  
 11 transmit a copy of all such proceedings to the county court. The assessor shall also perform such  
 12 other reasonable duties as may be required of him by the board.

13 (b) The county assessor is authorized to require the county's real property owners to  
 14 produce any carbon capture or carbon offset agreements, as defined in §11-1C-11 of this code,  
 15 that apply to a tract of land in that county.

**CHAPTER 11. TAXATION.**

**ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

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

1 (a) In addition to the powers and duties of the Tax Commissioner in other provisions of this  
 2 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 the  
 4 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 §11-5-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of

14 this code to the contrary, the several county assessors shall appraise motor vehicles as follows:  
15 The State Tax Commissioner shall annually compile a schedule of automobile values based upon  
16 the 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 sixty percent of said lowest values.

19 (B) As to managed timberland as defined in §11-2-1 *et seq.* of this code, the Tax  
20 Commissioner shall provide a method to appraise such property in the state so that all such  
21 property is valued in the same manner no matter where it is situated in the state, which shall be a  
22 valuation based on its use and productive potential as managed timberland, which may be  
23 accorded special valuation as forestlands as authorized by section fifty-three, article six of the  
24 Constitution of West Virginia: *Provided*, That timberland that does not qualify for identification as  
25 managed timberland shall be valued at market value: *Provided, however*, That the Tax  
26 Commissioner may not implement any rules or regulations in title 110, 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: *And provided further*, That managed  
30 timberland recertification shall occur on a biannual basis: *And provided further*, That the Tax  
31 Commissioner shall not certify or recertify as managed timberland any property that is also subject  
32 to a carbon capture or carbon offset agreement entered into by the property owner which restricts  
33 the use of the property: *And provided further*, That the Tax Commissioner shall require participants  
34 in the managed timberland program to attest that the property is not subject to a carbon capture or  
35 carbon offset agreement: *And provided further*, That the Tax Commissioner may retroactively  
36 collect any underpayment of taxes as the result of a real property owner having claimed eligibility  
37 for the managed timberland program and who was also party to a carbon capture or carbon offset  
38 agreement during the same period.

39 (C) As to farmland used, occupied and cultivated by an owner or bona fide tenant, the Tax

40 Commissioner shall provide a method to appraise such property in the state so that all such  
41 property is valued in the same manner no matter where it is situated in the state, which valuation  
42 shall be arrived at according to the fair and reasonable value of the property for the purpose for  
43 which it is actually used regardless of what the value of the property would be if used for some  
44 other purpose, in accordance with §11-3-1 of this code and as authorized by subsection B, section  
45 one-b, article X of the Constitution of West Virginia.

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

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

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

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

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

76 (b) The Tax Commissioner may adopt any regulation adopted prior to January 1, 1990,  
 77 pursuant to §11-1A-1 of this code, which adoption shall not constitute an implementation of the  
 78 statewide mass reappraisal of property. Such adoption, including context modifications made  
 79 necessary by the enactment of this article, shall occur on or before July 1, 1991, through inclusion  
 80 in the plan required by §11-10-1 *et seq.* of this code section ten of this article or inclusion in the  
 81 minute record of the valuation commission. Upon the adoption of any such regulations, any  
 82 modification or repeal of such regulation shall be in accordance with the provisions of §29A-3-1 *et*  
 83 *seq.* of this code.

**§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent;  
 implementation; inspection and determination of qualification; rulemaking;  
requirement of cooperation between State Tax Department and the Division of  
Forestry for purposes of program.**

1 (a) The Legislature finds and declares that the public welfare is enhanced by encouraging  
 2 and sustaining the abundance of high quality forest land within the state; that economic pressures  
 3 may force industrial, residential or other land development inconsistent with sustaining the forests;  
 4 and that tax policy should provide an incentive for private owners of forest land to preserve the

5 character and use of land as forest land and to make management decisions which enhance the  
6 quality of the future forest.

7 (b) In exercising the authority granted by the provisions of section fifty-three, article VI of  
8 the Constitution of West Virginia, the Legislature makes the following declarations of its intent:

9 (1) Notwithstanding the provisions of §11-3-24 of this code, timberland certified by the  
10 Division of Forestry as managed timberland shall be valued as managed timberland as provided in  
11 this article when it is managed under a cooperative contract with the Division of Forestry and the  
12 certification has not been surrendered by the owner of the property or revoked by the director of  
13 the Division of Forestry.

14 The Division of Forestry shall, at the time of contracting, notify the owner that the owner  
15 shall incur a penalty as set forth in §11-3-5a of this code if the owner fails to provide written notice  
16 to the county assessor of a change in use of the managed timberland.

17 (2) Property certified as managed timberland which prior to certification is properly taxed in  
18 Class II, as defined in §11-8-5 of this code and section one, article X of the Constitution of West  
19 Virginia, may not be reclassified to Class III or Class IV, as defined in §11-8-5 of this code, merely  
20 because the property is certified as managed timberland unless there is some other event or  
21 change in the use of the property that disqualifies it from being taxed in Class II.

22 (c) To aid the Legislature in assessing the impact of the managed timberland program on  
23 the State of West Virginia, the Division of Forestry and the Tax Commissioner, on or before  
24 December 31, 2001, and on December 31, each year thereafter, shall report in writing to the Joint  
25 Committee on Government and Finance of the Legislature or its designated subcommittee. The  
26 Tax Commissioner shall include in his or her report a complete and accurate assessment of the  
27 impact of the managed timberland program on the tax collections of the state, including projected  
28 increases or decreases in tax collection. The Division of Forestry shall include in its report detailed  
29 information on the number of acres designated as managed timberland and any identified impacts  
30 of the program on the state's timber industry.

31 (d) The Division of Forestry shall propose rules for legislative approval in accordance with  
32 the provisions of §29A-3-1 et seq. of this code.

33 (e) The Division of Forestry shall develop internal policies and procedures for their role in  
34 the Managed Timberland Program, including the appeals process.

35 (f) The Division of Forestry and the State Tax Department, to the best extent possible, shall  
36 work together to update the current legislative rule to minimize weaknesses in the processes and  
37 procedures of the Division of Forestry and the State Tax Department regarding the operations of  
38 the Managed Timberland Program.

39 (g) Both agencies shall reconcile the data sets for managed timberland properties, correct  
40 errors discovered, and develop a process for ensuring the data is accurate.

41 (h) Pursuant to §11-1C-5 of this code, the Division of Forestry shall include on all managed  
42 timberland certification and recertification forms a space for the property owner to attest that he or  
43 she has not entered into a carbon capture or carbon offset agreement, as defined in §11-1C-11a of  
44 this code.

**§11-1C-11a. Certification of managed timberland; eligibility for certification; carbon capture  
and carbon offset agreement defined; assessment of property; penalty for failure to  
comply.**

1 (a) Any person who owns timberland comprising 10 or more contiguous acres may qualify  
2 for identification as managed timberland for property tax purposes as set forth in §11-1C-10(d)(1).

3 (b) In order to qualify as managed timberland, the real property shall not be subject to a  
4 carbon capture, carbon offset, or similar agreement which contractually restricts the use of the  
5 land by the property owner. For purposes of this article:

6 (1) "Carbon capture" means a carbon dioxide capture project, a carbon dioxide removal  
7 project, or a sequestration project that seeks to provide for the long-term isolation of the carbon  
8 dioxide from the atmosphere through storage in a geologic formation.

9 (2) "Carbon offset" means a reduction in greenhouse gas emissions, or an increase in



10 carbon storage through methods including, but not limited to, maintenance of exiting forest land,  
11 land restoration, or the planting of trees, that is used to compensate for emissions that occur  
12 elsewhere.

13 (3) "Carbon capture or carbon offset agreement" means any carbon capture, offset,  
14 removal, utilization, and storage program otherwise established through a contract between a  
15 company and an owner of real property in this state for this purpose.

16 (b)(c) The assessor, upon receipt of an appraisal or certification of the timberland from the  
17 Tax Commissioner, shall assess the property as managed timberland beginning with the next  
18 ensuing assessment year. Except as otherwise provided in this section, the classification of  
19 timberland included in a certified managed timberland plan shall not change for property tax  
20 purposes until such time as there is: (1) A change in the use of the property which requires a  
21 change in classification; (2) a change in the classification of the property from Class III to Class IV;  
22 or (3) a change in the classification of the property from Class IV to Class III.

23 (e) (d) If the director of the Division of Forestry determines that the owner of timberland  
24 failed to implement a certified managed timberland plan within ~~twenty-four months~~ four years of  
25 certifying that the property meets the definition of managed timberland, the director shall give  
26 written notice to the owner by certified mail, return receipt requested, that such certification is  
27 removed and the owner of the timberland shall pay to the sheriff of the county in which the property  
28 is located a fine equal to the amount of property taxes saved due to the property being assessed  
29 as managed timberland plus interest calculated at the rate of nine percent per year. Additionally,  
30 the assessor shall reassess the property. The amount of this fine is equal to the sum of the  
31 following calculations:

32 (1) For each assessment year, the county assessor shall determine the market value of the  
33 property and subtract from that value the value at which the property was appraised as managed  
34 timberland. This amount shall be multiplied by sixty percent. This result shall then be multiplied by  
35 the applicable levy rate.

36           (2) Interest shall be imposed on the amount calculated under subdivision (1) of this  
 37 subsection at the rate of nine percent per annum beginning with October 1, of the tax year in which  
 38 the taxes should have been paid based upon the timberland value of the property. Interest shall  
 39 continue to accrue until the day the fine is paid.

40           ~~(d)~~(e) The sheriff shall deposit and account for the fines collected under this section in the  
 41 same manner as property taxes.

**ARTICLE                           3.                           ASSESSMENTS                           GENERALLY.**

**§11-3-34. Carbon capture and carbon offset agreements to be recorded.**

1           (a) Legislative findings. -- Carbon capture and carbon offset agreements, as defined in  
 2 §11-1C-11a of this code, have been used in West Virginia, but records of such agreements are  
 3 difficult to identify or to keep records of for taxation purposes. Requiring property owners to  
 4 provide such agreements to the county assessor will enable the county to properly classify and  
 5 assess the property, as well as assist the State Tax Department to enforce the collection of taxes  
 6 owed as a result of the income derived from such agreements. In addition, the county assessor's  
 7 possession of the agreements may provide notice to future landowners of the encumbrance of the  
 8 property.

9           (b) Annual reporting. -- All county assessors shall submit any properties subject to a  
 10 carbon capture or carbon offset agreement annually to the State Tax Department.

NOTE: The purpose of this bill relates to the administration of the managed timberland program; authorizing county assessors to require property owners produce carbon capture or carbon offset agreements related to the property; creating obligations of the Tax Commissioner related to the administration of the Managed Timberland Program; providing the Division of Forestry with rulemaking authority; requiring the Division of Forestry to develop internal policies and procedures for their role in the Managed Timberland Program; providing that the Division of Forestry and the State Tax Department shall work together to update the current Legislative Rule to minimize weaknesses in the processes and procedures of the Division of Forestry and the Tax Division regarding the operations of the Managed Timberland Program; and requiring county assessors to report the carbon capture and carbon offset agreements in their respective counties to the Tax Department annually.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.