

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4850**

BY DELEGATES CRISS, ANDERSON, ZATEZALO, HARDY,

HOUSEHOLDER, AND FEHRENBACHER

[Passed February 23, 2024; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended,  
2 relating to the valuation of industrial property and natural resources property by the Tax  
3 Commissioner; removing a sunset provision concerning valuation of property producing  
4 oil, natural gas, and natural gas liquids; and making technical corrections.

*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 "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 "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) 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.

28 (1) In order to qualify for identification as managed timberland for property tax purposes  
29 the owner must annually certify, in writing to the Division of Forestry, that the property meets the  
30 definition of managed timberland as set forth in this article and contracts to manage property  
31 according to a plan that will maintain the property as managed timberland. In addition, each  
32 owner's certification must state that forest management practices will be conducted in accordance  
33 with approved practices from the publication "Best Management Practices for Forestry". Property  
34 certified as managed timberland shall be valued according to its use and productive potential.  
35 The Tax Commissioner shall promulgate rules for certification as managed timberland.

36 (2) In the case of all other natural resources property, the commissioner shall develop an  
37 inventory on a county by county basis of all such property and may use any resources, including,  
38 but not limited to, geological survey information; exploratory, drilling, mining and other information  
39 supplied by natural resources property owners; and maps and other information on file with the  
40 state Division of Environmental Protection and office of miners' health, safety and training. Any  
41 information supplied by natural resources owners or any proprietary or otherwise privileged  
42 information supplied by the state Division of Environmental Protection and office of miner's health,  
43 safety and training shall be kept confidential unless needed to defend an appraisal challenged by  
44 a natural resources owner. Formulas for natural resources valuation may contain differing

45 variables based upon known geological or other common factors. The Tax Commissioner shall  
46 forward each natural resources property appraisal to the county assessor of the county in which  
47 that property is located and the assessor shall multiply each such appraisal by sixty percent and  
48 include the resulting assessed value in the land book or the personal property book, as  
49 appropriate, for each tax year. The commissioner shall supply support data that the assessor  
50 might need to explain or defend the appraisal. The commissioner shall directly defend any  
51 challenged appraisal when the assessed value of the property in question exceeds \$2 million or  
52 an owner challenging an appraisal holds or controls property situated in the same county with an  
53 assessed value exceeding \$2 million. At least every five years, the commissioner shall review  
54 current technology for the recovery of natural resources property to determine if valuation  
55 methodologies need to be adjusted to reflect changes in value which result from development of  
56 new recovery technologies.

57 (3) Property producing oil, natural gas, natural gas liquids-

58 (A) The Tax Commissioner shall value property producing oil, natural gas, natural gas  
59 liquids, or any combination thereof in the state at its fair market value determined through the  
60 process of applying a yield capitalization model to the net proceeds.

61 (B) For the purposes of this subdivision:

62 (i) "Actual annual operating costs" shall include, without limitation, all lease operating  
63 expenses, lifting costs, gathering, compression, processing, separation, fractionation, and  
64 transportation costs as further defined herein.

65 (ii) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas,  
66 and natural gas liquids producing property, which shall be determined annually by the Tax  
67 Department based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

68 (iii) "Compression costs" are the actual costs in the process of raising the pressure of  
69 minerals.

70 (iv) "Fractionation costs" means the actual costs incurred by the producer in fractionation.  
71 Fractionation is the separating of components of a mixture through differences in physical or  
72 chemical properties. Fractionation is the process by which raw hydrocarbons are separated into  
73 products.

74 (v) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural  
75 gas liquids, condensate, or any combination thereof from multiple wells by separate and individual  
76 pipelines to a central point of accumulation, dehydration, compression, separation, heating and  
77 treating or storage.

78 (vi) "Lease operating expenses" means the actual costs incurred to bring the subsurface  
79 minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to  
80 marketable products. Lease operating expenses refers to the costs of operating the wells and  
81 equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials,  
82 rent or supplies, which are directly related to the production, processing, or transportation of oil,  
83 natural gas, natural gas liquids, or any combination thereof and that can be documented by the  
84 producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses,  
85 ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles  
86 or other tangible personal property not permanently used in the production of oil, natural gas,  
87 natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

88 (vii) "Lifting costs" means the actual costs incurred to operate a well during production.

89 (viii) "Marginal well" means in the calendar year immediately preceding the July 1  
90 assessment date a well with an average daily production of 2 barrels of oil or less and an average  
91 daily production of 10 MCF or less of natural gas.

92 (ix) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to  
93 as condensate), or a combination of them that are subject to recovery from raw gas liquids by  
94 processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling  
95 plants.

96 (x) "Net proceeds" means actual gross receipts on a sales volume basis determined from  
97 the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty  
98 interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

99 (xi) "Processing costs" means the actual costs incurred by the producer for activities  
100 occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that  
101 changes the physical or chemical characteristics, enhances the marketability, or enhances the  
102 value of the separate components. Processing costs are limited to the costs for the following  
103 activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration  
104 within a processing facility, beneficiation, stabilizing, compression, and separation which occurs  
105 within a processing facility.

106 (xii) "Processing, Separation, and Fractionation costs" means de-ethnization fees,  
107 processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees  
108 charged by a processing or fractionation plant to the producer.

109 (xiii) "Royalty interest receipts" means the fractional interest in production of oil, natural  
110 gas, natural gas liquids, or any combination thereof, that may or may not be subject to  
111 development costs or operating expenses and extends undiminished over the life of the property.  
112 Typically, it is retained by the mineral owner, mineral lessor, or both.

113 (xiv) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas  
114 liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point  
115 of sale.

116 (C) (i) For all assessments made on or after July 1, 2022, the valuation of property  
117 producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using  
118 a yield capitalization model. The yield capitalization model shall be composed of a working interest  
119 model and a royalty interest model. The summation of the working interest model and the royalty  
120 interest model shall represent the fair market value of the property.

121 (I) The working interest model shall be calculated as the sum of the working interest net  
122 proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income  
123 series shall be calculated as a terminating series of net proceeds discounted by applying a  
124 capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series  
125 of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization  
126 rate multiplier and an eighteen month decline rate multiplier.

127 In each subsequent term of the net proceeds income series, the calculation shall use the  
128 value from the previous term and multiply that term by a capitalization rate multiplier and an  
129 applicable twelve-month decline rate multiplier.

130 (II) The royalty interest model shall be calculated as the sum of the royalty interest receipts  
131 income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income  
132 series shall be calculated as a terminating series of royalty interest receipts discounted by  
133 applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the  
134 terminating series of royalty interest receipts shall be the royalty interest receipts for that product  
135 multiplied by a six month capitalization rate multiplier and an eighteen month decline rate  
136 multiplier.

137 In each subsequent term of the royalty interest receipts income series, the calculation shall  
138 use the value from the previous term and multiply that term by a capitalization rate multiplier and  
139 an applicable twelve-month decline rate multiplier.

140 (ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall  
141 annualize gross receipts and actual annual operating expenses before calculation of the working  
142 interest model and the royalty interest model for wells that produced for less than 12 months  
143 during the first calendar year of production or during the first calendar year of production after  
144 being shut-in during the previous calendar year. Companies may provide additional actual gross  
145 receipts and actual operating expense information that will be supplemented or used in lieu of the  
146 Tax Commissioner annualization calculations.



147 (iii) For all assessments made on or after July 1, 2024, but not before, the Tax  
148 Commissioner may not include a minimum valuation for any calculation related to determining the  
149 value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall  
150 exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of  
151 natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated  
152 on or about December 22, 2021.

153 (D) Safe harbor. – The Tax Commissioner shall annually determine a safe harbor amount  
154 for actual annual operating costs to be published in the State Register for all marginal wells  
155 producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of  
156 marginal wells choosing to use the safe harbor amount rather than calculate their actual annual  
157 operating costs, that safe harbor amount will be considered the costs associated with the  
158 production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the  
159 producing geographical area and geological strata.

160 (E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of  
161 Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter,  
162 all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation  
163 of property producing oil, natural gas, natural gas liquids, or any combination thereof.

164

165 (F) The Tax Commissioner shall propose rules required to administer this subdivision,  
166 including emergency rules, in accordance with §29A-3-1 *et seq.* of this code, regarding valuation  
167 of property producing oil, natural gas, natural gas liquids, or any combination thereof.

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

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

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

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

190 (i) For purposes of revaluing managed timberland as defined in section two of this article,  
191 any increase or decrease in valuation by the commissioner does not become effective prior to  
192 July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry,  
193 who may thereafter rescind the disqualification or allow the property owner a reasonable period  
194 of time in which to qualify the property. A property owner may appeal a disqualification to the  
195 circuit court of the county in which the property is located.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within is ..... this the.....  
Day of ....., 2024.

.....  
*Governor*