

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 395

BY SENATOR TARR

[Introduced January 12, 2024; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, relating to valuation
2 of industrial property and natural resources by Tax Commissioner; making technical
3 corrections; and removing a sunset provision.

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 §11-1C-2 of this code, 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 60 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 resource's 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 Department of Environmental Protection and Office of Miners' Health, Safety, and Training.
41 Any information supplied by natural resources owners, or any proprietary or otherwise privileged
42 information supplied by the state Department of Environmental Protection and Office of Miners'
43 Health, Safety, and Training shall be kept confidential unless needed to defend an appraisal
44 challenged by a natural resource's owner. Formulas for natural resources valuation may contain
45 differing variables based upon known geological or other common factors. The Tax Commissioner

46 shall forward each natural resources property appraisal to the county assessor of the county in
47 which that property is located, and the assessor shall multiply each such appraisal by 60 percent
48 and 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) ~~"Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to~~
63 ~~as condensate), or a combination of them that are subject to recovery from raw gas liquids by~~
64 ~~processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling~~
65 ~~plants.~~

66 (ii) ~~"Actual annual operating costs" shall include, without limitation, all lease operating~~
67 ~~expenses, lifting costs, gathering, compression, processing, separation, fractionation, and~~
68 ~~transportation costs; as further defined herein.~~

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

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

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

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

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

90 ~~(viii) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural~~
91 ~~gas liquids, condensate, or any combination thereof from multiple wells by separate and individual~~
92 ~~pipelines to a central point of accumulation, dehydration, compression, separation, heating and~~
93 ~~treating or storage.~~

94 ~~(ix) "Compression costs" are the actual costs in the process of raising the pressure of~~
95 ~~minerals.~~

96 ~~(x) "Processing, Separation and Fractionation costs" means de-ethnization fees,~~
97 ~~processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees~~
98 ~~charged by a processing or fractionation plant to the producer.~~

99 ~~(xi) "Fractionation costs" means the actual costs incurred by the producer in fractionation.~~
100 ~~Fractionation is the separating of components of a mixture through differences in physical or~~
101 ~~chemical properties. Fractionation is the process by which raw hydrocarbons are separated into~~
102 ~~products.~~

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

110 ~~(xiii) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas~~
111 ~~liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point~~
112 ~~of sale.~~

113 ~~(xiv) "Marginal well" means in the calendar year immediately preceding the July 1~~
114 ~~assessment date a well with an average daily production of 2 barrels of oil or less and an average~~
115 ~~daily production of 10 MCF or less of natural gas.~~

116 (1) "Actual annual operating costs" shall include, without limitation, all lease operating
117 expenses, lifting costs, gathering, compression, processing, separation, fractionation, and
118 transportation costs as further defined herein.

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

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

125 (4) "Compression costs" are the actual costs in the process of raising the pressure of
126 minerals.

127 (5) "Fractionation costs" means the actual costs incurred by the producer in fractionation.
128 Fractionation is the separating of components of a mixture through differences in physical or
129 chemical properties. Fractionation is the process by which raw hydrocarbons are separated into
130 products.

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

135 (7) "Lease operating expenses" means the actual costs incurred to bring the subsurface
136 minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to
137 marketable products. "Lease operating expenses" refers to the costs of operating the wells and
138 equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials,
139 rent or supplies, which are directly related to the production, processing, or transportation of oil,
140 natural gas, natural gas liquids, or any combination thereof and that can be documented by the
141 producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses,
142 ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles
143 or other tangible personal property not permanently used in the production of oil, natural gas,
144 natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

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

146 (9) "Marginal well" means, in the calendar year immediately preceding the July 1
147 assessment date, a well with an average daily production of two barrels of oil or less and an
148 average daily production of 10 MCF or less of natural gas.

149 (10) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred
150 to as condensate), or a combination of them that are subject to recovery from raw gas liquids by
151 processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling
152 plants.

153 (11) "Processing costs" means the actual costs incurred by the producer for activities
154 occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that
155 changes the physical or chemical characteristics, enhances the marketability, or enhances the
156 value of the separate components. Processing costs are limited to the costs for the following
157 activities: Fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration
158 within a processing facility, beneficiation, stabilizing, compression, and separation which occurs
159 within a processing facility.

160 (12) "Processing, separation, and fractionation costs" means de-ethnization fees,
161 processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees
162 charged by a processing or fractionation plant to the producer.

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

167 (14) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas
168 liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point
169 of sale.

170 (C) (i) For all assessments made on or after July 1, 2022, the valuation of property
171 producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using

172 a yield capitalization model. The yield capitalization model shall be composed of a working interest
173 model and a royalty interest model. The summation of the working interest model and the royalty
174 interest model shall represent the fair market value of the property.

175 (I) The working interest model shall be calculated as the sum of the working interest net
176 proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income
177 series shall be calculated as a terminating series of net proceeds discounted by applying a
178 capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series
179 of net proceeds shall be the net proceeds for that product multiplied by a six-month capitalization
180 rate multiplier and an 18-month decline rate multiplier.

181 In each subsequent term of the net proceeds income series, the calculation shall use the
182 value from the previous term and multiply that term by a capitalization rate multiplier and an
183 applicable 12-month decline rate multiplier.

184 (II) The royalty interest model shall be calculated as the sum of the royalty interest receipts
185 income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income
186 series shall be calculated as a terminating series of royalty interest receipts discounted by
187 applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the
188 terminating series of royalty interest receipts shall be the royalty interest receipts for that product
189 multiplied by a six-month capitalization rate multiplier and an 18-month decline rate multiplier.

190 In each subsequent term of the royalty interest receipts income series, the calculation shall
191 use the value from the previous term and multiply that term by a capitalization rate multiplier and
192 an applicable 12-month decline rate multiplier.

193 (ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall
194 annualize gross receipts and actual annual operating expenses before calculation of the working
195 interest model and the royalty interest model for wells that produced for less than 12 months
196 during the first calendar year of production or during the first calendar year of production after
197 being shut-in during the previous calendar year. Companies may provide additional actual gross

198 receipts and actual operating expense information that will be supplemented or used in lieu of the
199 Tax Commissioner annualization calculations.

200 (iii) For all assessments made on or after July 1, 2024, but not before, the Tax
201 Commissioner may not include a minimum valuation for any calculation related to determining the
202 value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall
203 exceed the values of 30 cents per MCF of natural gas, \$10.00 per barrel of oil, or 30 cents per
204 unit of natural gas liquids, as established in a notice to taxpayers from the State Tax Department
205 dated on or about December 22, 2021.

206 (D) *Safe harbor.* — The Tax Commissioner shall annually determine a safe harbor
207 amount for actual annual operating costs to be published in the State Register for all marginal
208 wells producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of
209 marginal wells choosing to use the safe harbor amount rather than calculate their actual annual
210 operating costs, that safe harbor amount will be considered the costs associated with the
211 production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the
212 producing geographical area and geological strata.

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

217 ~~(F) This subdivision shall be effective for all assessments made on or after July 1, 2022~~
218 ~~and shall have no further force or effect for any assessments made on or after July 1, 2025, unless~~
219 ~~reenacted by the legislature.~~

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

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

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

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

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

245 (i) For purposes of revaluing managed timberland as defined in §11-1C-2 of this code, any
246 increase or decrease in valuation by the commissioner does not become effective prior to July 1,
247 1991. The property owner may request a hearing by the director of the Division of Forestry, who
248 may thereafter rescind the disqualification or allow the property owner a reasonable period of time

249 in which to qualify the property. A property owner may appeal a disqualification to the circuit court
250 of the county in which the property is located.