

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 107

**FISCAL
NOTE**

By Senator Tarr

[Introduced February 12, 2025; referred
to the Committee on Natural Resources; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding two new sections,
 2 designated §11-12-4b and §36-4-20; and to amend the code by adding a new article,
 3 designated §11-12E-1, §11-12E-2, §11-12E-3, and §11-12E-4, relating to real property,
 4 tax, and registration requirements associated with carbon offset agreements; providing
 5 exceptions; requiring parties to current and new carbon offset agreements to register with
 6 the State Tax Department; requiring reports by Division of Forestry and State Tax
 7 Department; authorizing disclosure of information between the Tax Commissioner and
 8 Division of Forestry; imposing an excise tax on receipts derived from carbon offset
 9 agreements; setting forth reporting requirements; defining "managed timberland" to
 10 exclude certain timberland subject to a carbon offset agreement; specifying application of
 11 West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and
 12 Penalties Act; authorizing promulgation of rules; providing legislative findings and
 13 declarations; providing that any covenant, restriction, condition, easement, contract, lease,
 14 deed, agreement, option, or other governing document, which is executed or recorded
 15 after the effective date, which effectively prohibits or restricts the development of land and
 16 minerals or the harvesting of timber for the purposes of carbon capture, carbon offset, and
 17 carbon sequestration is void and unenforceable, unless said covenant, restriction,
 18 condition, easement, contract, lease, deed, agreement, option, or other governing
 19 document is for an initial maximum term of 20 years or less; providing that options to renew
 20 or continue such arrangements beyond the maximum term of 20 years shall be valid only if
 21 the consideration is required to be renegotiated to exercise the option and the option is for
 22 a maximum of 20 years or less; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE	12.	BUSINESS	REGISTRATION	TAX.
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§11-12-4b. Parties to carbon offset agreements required to register.

1 (a) Definitions.

2 "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 including any type of minerals or growing timber,
5 and any other person, entity or company, with the intent of providing payment, compensation, or
6 remuneration for nondevelopment of a real estate interest in West Virginia to prevent the release
7 of carbon dioxide or other greenhouse gases into the atmosphere or to absorb, suppress, or
8 contain carbon dioxide or other greenhouse gases. A carbon offset agreement may be in the form
9 of a contract, lease, easement, covenant, option, or otherwise, with the form of the agreement not
10 being determinative of its status as a carbon offset agreement: *Provided*, That such agreements or
11 restrictions for the injection and containment of carbon dioxide or other greenhouse gases into
12 underground pore or container spaces are not carbon offset agreements.

13 "Greenhouse gases" means any of various gaseous or vaporous compounds such as
14 carbon dioxide or methane that absorb infrared radiation and may trap heat in Earth's atmosphere.

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

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

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

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

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

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

(3) Term of the agreement in years;

(4) Identification of the carbon offset program or programs, if any, with which the agreement is intended to comply;

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

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

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

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

(e) Reporting. — Beginning on July 1, 2025, and on or before July 1 of every year thereafter, the Tax Commissioner and Division of Forestry shall jointly submit a report to the Governor and the Joint Committee on Government and Finance setting forth at a minimum the following information:

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

(2) The number of acres of real estate burdened by carbon offset agreements during the preceding calendar year and the counties in West Virginia in which they are found,

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

(4) The amount of tax collected under §11-12E-1 et seq. during the preceding calendar year.

(f) Information disclosure. — Notwithstanding the provisions of §11-10-5d and notwithstanding any other provision of this code, the Tax Commissioner and the Division of Forestry are authorized to disclose to each other such registration information and other information in each's possession as may be necessary to administer these provisions and compile the report required under this section.

ARTICLE 12E. EXCISE TAX ON CARBON OFFSET AGREEMENTS.

§11-12E-1. Tax levied; rate.

(a) For tax years beginning on and after January 1, 2024, and with retroactive effect to such date, there is hereby levied on every carbon offset agreement regarding, or relating to, real estate in West Virginia or other property in West Virginia, an annual excise tax in the amount of 50 percent of the gross payment under the agreement: *Provided*, That the carbon offset agreement prevents economic development or substantially restricts the severance of minerals or timber from the land. In such cases where the carbon offset agreement does not prevent economic development or does not substantially restrict the severance of minerals or timber from the land, an annual excise tax in the amount 15 percent of the gross payment is hereby levied.

(b) The tax shall be paid by the party desiring to sequester or prevent the release of carbon dioxide who enters into the agreement with the West Virginia landowner or property owner: *Provided*, That, should the payor fail to pay or remit the tax, the payor and the payee shall be jointly and severally liable for payment of the tax.

§11-12E-2. Return required; payment due.

1 The party that enters into a carbon offset agreement with a West Virginia landowner shall,
2 no later than February 1 of each year following every year in which the carbon offset agreement is
3 in effect, file with the Tax Commissioner on a form acceptable to the Tax Commissioner, a return
4 identifying the location, description, and acreage of the real estate subject to the agreement,
5 stating the gross payment made to the landowner under the contract in the previous calendar year,
6 and remitting the tax imposed by §11-12E-1: *Provided*, That the Tax Commissioner may prescribe
7 an alternative schedule for filing and payment under such terms as the Tax Commissioner may
8 prescribe, and may prescribe electronic or other filing and payment methods.

§11-12E-3. Application of the West Virginia Tax Procedure and Administration Act and West
Virginia Tax Crimes and Penalties Act.

1 The provisions of this article are subject to the West Virginia Tax Procedure and
2 Administration Act, set forth in §11-10-1 *et seq.*, and the West Virginia Tax Crimes and Penalties
3 Act, set forth in §11-9-1 *et seq.*, as if the provisions thereof were set forth *in extenso* in this article.

§11-12E-4. Rulemaking.

1 In order to effectuate the purposes of this article, the Tax Commissioner may promulgate
2 procedural rules, interpretive rules and legislative rules, including emergency rules, or any
3 combination thereof, in accordance with §29A-3-1 *et seq.*

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 and mineral development and forest management and timber harvesting for the
3 economic benefit of the citizens of this state. The Legislature finds and declares that private
4 landowners must be allowed to preserve the character, value, and use of land, but also allow

5 future landowners to make decisions which allow for land and mineral development and timber
6 harvesting.

7 (b) Any covenant, restriction, condition, easement, contract, lease, deed, agreement,
8 option, or other governing document, which is executed or recorded after the effective date of this
9 section, which effectively prohibits or restricts the development of land and minerals or the
10 harvesting of timber from forests with the intent and purposes of carbon capture, carbon offsets, or
11 carbon sequestration is void and unenforceable, unless said covenant, restriction, condition,
12 easement, contract, lease, deed, agreement, option, or other governing document is for a
13 maximum term of 20 years or less: *Provided*, That options, renewals, extensions, or continuations
14 of such arrangements beyond the maximum initial term of 20 years, shall be valid, so long as the
15 consideration is required to be renegotiated between all parties to exercise the option, renewal,
16 extension, or continuation and the option, renewal, extension, or continuation is for a maximum
17 term of 20 years or less: *Provided, however*, That such instruments for the injection and
18 containment of carbon dioxide or other greenhouse gases into underground pore or container
19 spaces are not subject to such limitations because these do no limit development of real estate.

NOTE: The purpose of this bill is to balance the interests of current landowners and future landowners to ensure surface, minerals, and forest land may be developed for future economic gain by limiting use restrictions for forest carbon capture and sequestration to a maximum term of 20 years. The bill requires parties to current and new carbon offset agreements to register with the State Tax Department. The bill requires reports by Division of Forestry and the State Tax Department. The bill authorizes the disclosure of information between the Tax Commissioner and Division of Forestry. The bill imposes excise tax on receipts derived from carbon offset agreements. The bill sets forth reporting requirements. The bill provides an effective date. The bill specifies application of West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act. The bill authorizes promulgation of rules. The bill provides legislative findings and declarations. The bill provides that any covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document, which is executed or recorded after the effective date, which effectively prohibits or restricts the development of land, minerals, and the harvesting of timber for the purposes of forest carbon capture, carbon offset, and carbon sequestration is void and unenforceable, unless said covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document is for a maximum term of 20 years. The bill provides that options to renew or continue such arrangements beyond the initial maximum term of 20 years shall be valid only if the consideration is required to be renegotiated 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.