

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 281

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**§11-1C-2.****Definitions.**

For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site and that is managed pursuant to a plan provided for in section ten of this article: *Provided*, That any tract or parcel of real estate, regardless of its size, which is subject to lease, option, contract, agreement, a deed restriction, deed covenant, or zoning regulation which limits the use of that real estate in a way that precludes the commercial production and harvesting of timber upon it may not be considered as managed timberland within the meaning of this article: *Provided, however*, That a landowner whose land is subject to, or may become subject to, a conservation or preservation easement may not be prevented from entering into a timberland management plan with the West Virginia Division of Forestry: *Provided further*, That any tract or parcel of real estate, regardless of its size, which is subject to a carbon offset agreement, as that term is defined in §11-12-4b, which the Tax Commissioner, in consultation with Division of Forestry, determines is incompatible with the managed timberland program due to substantial restrictions on commercial production and harvesting of timber upon it, shall not be considered managed timberland.

(c) "Tax Commissioner," "commissioner" or "tax department" means the State Tax Commissioner or a designee of the State Tax Commissioner.

(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.

(f) "Farm woodlot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

(h) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(i) "Paper" means a tax map or document that is not electronic.

The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning on or after January 1, 2001.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4b. Parties to carbon offset agreements required to register.

(a) Definitions. —

(1) "Carbon offset agreement" means any agreement, whether designated as a carbon capture agreement, carbon sequestration agreement, or otherwise, entered into between an owner of an interest in real estate in West Virginia including any type of minerals or growing timber, and any other person, entity or company, with the intent of providing payment, compensation, or

remuneration for nondevelopment of a real estate interest in West Virginia to prevent the release of carbon dioxide or other greenhouse gases into the atmosphere or to absorb, suppress, or contain carbon dioxide or other greenhouse gases. A carbon offset agreement may be in the form of a contract, lease, easement, covenant, option, or otherwise, with the form of the agreement not being determinative of its status as a carbon offset agreement: *Provided*, That such agreements or restrictions for the injection and containment of carbon dioxide or other greenhouse gases into underground pore or container spaces are not carbon offset agreements.

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

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

(1) Legal names, addresses, and other contact information of all parties to the carbon 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, 2026, 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, 2025, 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.

The party that enters into a carbon offset agreement with a West Virginia landowner shall, no later than February 1 of each year following every year in which the carbon offset agreement is in effect, file with the Tax Commissioner on a form acceptable to the Tax Commissioner, a return identifying the location, description, and acreage of the real estate subject to the agreement, stating the gross payment made to the landowner under the contract in the previous calendar year, and remitting the tax imposed by §11-12E-1: *Provided*, That the Tax Commissioner may prescribe

an alternative schedule for filing and payment under such terms as the Tax Commissioner may 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.

The provisions of this article are subject to the West Virginia Tax Procedure and Administration Act, set forth in §11-10-1 *et seq.*, and the West Virginia Tax Crimes and Penalties 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.

In order to effectuate the purposes of this article, the Tax Commissioner may promulgate procedural rules, interpretive rules and legislative rules, including emergency rules, or any 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.

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

(b) Any covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document, which is executed or recorded after the effective date of this section, which effectively prohibits or restricts the development of land and minerals or the 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 defines certain terms. 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 defines "managed timberland" to exclude timberland that is subject to a carbon offset agreement. 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.