

Form #3

Condition	10-12 years	13-15 years	16-18 years	19-21 years	22-24 years
1	85	75	65	60	55
2	90	80	70	65	60
3	95	85	75	70	65
4	98	88	78	75	70
5	100	90	80	78	75

2012 AUG 27 PM 2: 04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Authorized Signature



**Governor
Earl Ray Tomblin**

West Virginia Conservation Agency



**Chairman
Gus R. Douglass**

**Executive Director
Brian Farkas**

To Whom It May Concern:

Please accept this proposed modification to legislative rule 63CSI1.

This rule is being modified to clarify the State Committee's intentions regarding filling supervisor vacancies in West Virginia's 14 conservation districts, the appointment of associate supervisors and taking the oath of office.

It also includes language for the removal of supervisors for the neglect of duty or malfeasance, and requires districts to notify the State Committee when a supervisor misses three unexcused monthly meetings.



West Virginia Conservation Agency



Governor
Earl Ray Tomblin

Chairman
Gus R. Douglass

Executive Director
Brian Farkas

Modifications to proposed legislative rule 63CSI1 following the public comment period.

A question was raised on whether the language pertaining to the notice of State Conservation Committee meetings followed the West Virginia Open Government Proceedings Act.

The section: §63-1-4: *Procedures for Complying with the West Virginia Open Governmental Proceedings Act*, has been modified to clarify that State Conservation Committee meetings will comply with the Act, specifically §6-9A-3.

FILED

TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE

2012 AUG 27 PH 2: 05

SERIES 1
OPERATION OF WEST-VIRGINIA STATE CONSERVATION COMMITTEE OF STATE
CONSERVATION DISTRICTS

§63-1-1. General.

1.1. Scope. -- This rule establishes procedures for creating a conservation district and the election, appointment and removal and ~~appointment of~~ conservation district supervisors by ~~to~~ the State Conservation Committee and the State Conservation Districts; the expenditure of funds by the State Conservation Committee for watershed programs; and compliance with the West Virginia Open Governmental Proceedings Act.

1.2. Authority. -- W.Va. Code §19-21A and 19-21B.

1.3. Filing Date. -- ~~April 20, 2010.~~

1.4. Effective Date. -- ~~April 20, 2010.~~

§63-1-2. Procedure for Appointing, ~~and~~ Electing and Removing Conservation District Conservation Supervisors.

2.1. The governing body of a conservation district shall consist of the appointed and elected supervisors (W. Va. Code §19-21A-7).

2.2. Each county is entitled to elect two (2) supervisors to represent the county (W. Va. Code §9-21A-7). Provided, that any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

~~2.2.a. Each county is entitled to elect two (2) supervisors to represent the county (W. Va. Code §9-21A-7). Provided, That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.~~

2.2.ab. All registered voters are entitled to vote in his or her county for candidates for District Supervisor. Commencing in 2010, elections for county supervisors will be non-partisan. Elections for county supervisor shall be held during the primary election. The term of office for supervisors elected in the year 2010, and in each election thereafter, shall be four years.

2.2.be. The provisions of Chapter 3 ~~three~~ of the West Virginia Code apply to the election of supervisors, unless otherwise provided for by the provisions of this rule series.

2.3. Qualifications for county supervisor:

2.3.a. Must be a landowner within the county in which where he or she is running for office.

2.3.b. Must reside in the county in which ~~where~~ he or she is running for office.

2.3.c. Must be an active or retired farmer with a minimum of five years farming experience.

2.3.c.1. "Farmer" means a person engaged in the activity of farming with the potential for producing at least one thousand dollars of products per annum from those activities.

2.3.c.2. "Activity of farming" means the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by other than the producer thereof.

2.3.d. Must have at least five (5) years of land management experience, or experience in other related fields.

2.3.e. Must have a strong working interest in the conservation of natural resources.

2.3.e.1. Must have a knowledge of conservation best management practices either from practical experience or educational experience. For example: confined feeding areas; filter strips; alternative watering systems.

2.4. All supervisors shall remain in office until the election or appointment and swearing-in of the successor or an official resignation has been received in the office of the State Conservation Committee.

2.5. Any vacancy occurring in the office of district supervisor shall be filled by the State Conservation Committee ~~committee~~ based on a list of qualified candidates submitted by the district in which the vacancy occurred. The candidate shall hail from the county in which the vacancy occurred. ~~appointed person shall hail from the county in which the vacancy occurs.~~

2.5a. To obtain a list of qualified candidates, districts shall advertise in a newspaper of general circulation within the county in which the vacancy occurred. The advertisement shall be placed within 15 days of when the vacancy occurred, and shall run for a period of two weeks. The advertisement shall include a listing of any requirements and qualifications necessary to hold the position of supervisor, and instructions on how to apply to the district. The district shall use the list of qualified candidates to make its candidate recommendation to the State Conservation Committee.

2.5b. If a district supervisor vacancy occurs for an ~~Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the u unexpired term of is for less than two years and two months, the appointed person shall hold office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person shall hold the office until a successor is elected in the next primary or general election, and qualified.~~

2.5c. Associate supervisors may ~~shall be~~ appointed by districts as deemed necessary. Associate supervisors may have the same duties as elected supervisors, but may not vote nor ~~or~~ make motions. Duties and responsibilities of associate supervisors will be determined by the board of supervisors in their by-laws or policy manual. Expenses for associate supervisors shall ~~will be determined be~~ at the discretion of the local conservation district board and be paid by the local district board based on the availability of district funds.

2.5d. Elected and appointed supervisors shall take an oath of office before assuming the position of district supervisor. Copies of the official oath of office shall be kept on file in the district office, with the

original being filed in the county clerk's office where the oath was taken.

2.6. A district supervisor may be removed from office by the State Conservation Committee upon notice and hearing for neglect of duty or malfeasance.

2.6a. Districts shall notify the State Conservation Committee if an elected/appointed supervisor misses three consecutive unexcused monthly district meetings.

§63-1-3. Expenditure of Funds by the State Conservation Committee for Watershed Programs.

3.1. Policy. The following requirements shall govern the expenditures of funds by the State Conservation Committee for watershed programs that have or may be made available to it by the state Legislature.

3.1.a. State watershed improvement program funds will only be used to aid legally constituted conservation districts or watershed improvement districts in meeting their obligation of facilitating the planning and operation phase of approved watershed protection and flood prevention programs.

3.1.b. State watershed improvement program funds will be made available only when other funds cannot be obtained and shall be considered supplemental to the capital resources of sponsoring conservation districts or watershed improvement districts in cooperative action with the federal government, local units of government and communities concerned with approved watershed programs.

3.2. Expenditures of State Watershed Improvement Program Funds. State watershed improvement program funds may be spent for the following purposes subject to the procedures outlined in section 3.3 of this rule.

3.2.a. Purchase land or easements on a negotiated value and price basis after certification by a state certified appraiser, one (1) representative of the sponsoring conservation district, one (1) representative of the State Conservation Committee, that the negotiated value does not exceed a fair market value price.

3.2.b. Purchase land, easements or other right-of-way at values resulting from condemnation obstructions.

3.2.c. Negotiate with proper officials on the relocation of roads, public utility lines, or similar actions.

3.2.d. Pay court costs, attorney fees or similar expenses directly connected with any of the above actions.

3.2.e. Assist with expenses incurred by conservation districts or watershed improvement districts in the performance of work related to any watershed activities.

3.3. Operating policies to govern the acquisition of land rights and the general use of state funds.

3.3.a. Each conservation district or watershed improvement district anticipating a need for supplementary state watershed improvement program funds shall prepare and submit to the State Conservation Committee by June 1 of each year, for its action, a comprehensive plan of procedure and statement of intent relative to the acquisition of land rights covering such points as:

3.3.a.1. Estimated total fund needs for land rights;

3.3.a.2. Estimated value of local contributions to this phase of the project;

3.3.a.3. Probable recovery value from land sales; and

3.3.a.4. A description of the (1) methods used, or to be used, to determine land values and (2) a realistic evaluation of the ability of local people to help themselves in the development and completion of a watershed improvement program.

3.3.b. Title to all property acquired shall be vested in the State Conservation Committee.

3.3.c. Easement or other land rights shall be obtained either by the local conservation district or watershed improvement district. An up-to-date listing of all easements (state and district) is to be kept in the district office. Easements should be recorded in the county land records as soon as procured. The list should be checked against courthouse records biannually to ascertain if property has been sold. If sold, the new owner is to be contacted and made aware of the easement.

3.3.d. The sale of the land purchased with state watershed funds must be approved in advance by the State Conservation Committee.

3.3.e. All land purchased with state funds will be sold, subject to necessary easements, as soon as practical. Retention of the area in and above a given structure may be kept for public use development on approval of the State Conservation Committee.

3.3.f. Prior to the selling of such land, an appraisal shall be made by a state certified appraiser, a representative of the local conservation district or the watershed improvement district and a representative of the State Conservation Committee. This appraisal must accompany all proposals to the State Conservation Committee to sell lands acquired with state funds.

3.3.g. Before any property purchased with money from this fund is sold, first refusal shall be given to the property owner from whom it was purchased or his or her heirs. If the previous owner or his or her heirs choose not to repurchase the property notice of the sale must be given. The notice shall be placed in three (3) issues at least a week apart, in a newspaper of general circulation in the conservation district or watershed improvement district affected. The notices are to call for the bids with the property to be sold to the highest bidder. The State Conservation Committee reserves the right to reject any and all bids. And, further, the provisions of this section shall not apply where acquired lands are being sold or disposed for a public use to the State of West Virginia or its political subdivisions. In lieu thereof, consideration other than the present commercial or market value of the property may be used as a basis for the sale or transfer.

3.3.h. Proceeds from the sale of land or products from such areas are to be immediately transmitted to the State Conservation Committee by the conservation district or watershed improvement district.

3.3.i. Improvements other than items covered in watershed work plans are not to be made during the period of conservation district or watershed improvement ownership without specific approval of the State Conservation Committee.

3.4. Representation of the State Conservation Committee. The State Conservation Committee may appoint and authorize a subcommittee, including its Executive Secretary, to act for the Committee in any matters related to this subject.

§63-1-4. Procedures for Complying with the West Virginia Open Governmental Proceedings Act.

4.1. The State Conservation Committee and Conservation Districts are required to comply with §6-9A-1 et seq., the West Virginia Open Governmental Proceedings Act.

4.2. Filing in the state register. The time, date and place of all regular and special meetings of the State Conservation Committee shall be submitted to the office of the Secretary of State and by news release to the media and public at large at least five days prior to the convening of the meeting in accordance with §6-9A-3.

4.3. Emergency meetings filed with the Secretary of State. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency in accordance with §6-9A-3. ~~The time, date, place and purpose of all emergency meetings of the State Conservation Committee shall be submitted to the office of the Secretary of State and by news release to the media and public at large as soon as possible, but no less than twenty-four (24) hours in advance of such meeting.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Operation of West Virginia State Conservation Committee and Conservation Districts

Rule Title: _____

Type of Rule: _____

☒ Legislative ☐ Interpretive ☐ Procedural

Agency: _____

State Conservation Committee/West Virginia Conservation Agency

Address: _____

1900 Kanawha Blvd, East
Charleston, WV 25305

Phone Number: _____

304-558-2204

Email: 304-558-1635

Fiscal Note SummarySummarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

This proposed revision to 63CSR1 is not expected to impact the finances of the State Conservation Agency, or the state of West Virginia. The proposed revision deals with procedural issues involving the appointment or removal of Conservation Supervisors and the noticing of regular, special and emergency meetings of the State Conservation Agency.

Fiscal Note DetailShow over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: _____

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: August 27, 2012

Signature of Agency Head or Authorized Representative

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 8/27/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Conservation Committee/West Virginia Conservation
Agency
1900 Kanawha Blvd., East
Charleston, WV 25305
(304) 558-2204

LEGISLATIVE RULE TITLE: Operation of West Virginia State Conservation Committee and
Conservation Districts, Title 63 _ Series 1

1. Authorizing statute(s) citation West Virginia Code 19-21A and 19-21B
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 27, 2012
- b. What other notice, including advertising, did you give of the hearing?
A briefing was given to the state's 14 Conservation Districts where requests for review and comment were made.
- c. Date of Public Hearing(s) *or* Public Comment Period ended:
Friday, Aug. 24, 2012
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached 1 set of comments No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 27, 2012

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Belinda Withrow

West Virginia Conservation Agency
1900 Kanawha Blvd., East

Charleston, WV 25305

(304) 558-2204, FAX (304) 558-1635

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____



West Virginia Conservation Agency



Governor
Earl Ray Tomblin

Chairman
Gus R. Douglass

Executive Director
Brian Farkas

August 27, 2012

Mr. Larry Layman
Area Director
West Virginia Conservation Agency
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Mr. Layman:

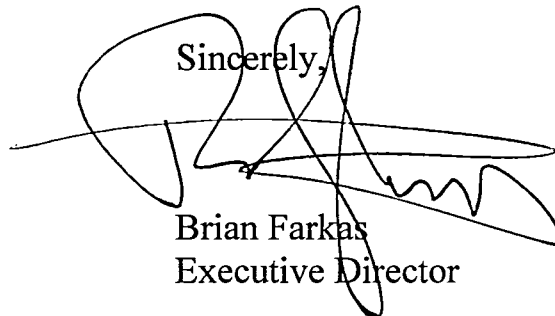
Thank you for your recent comment on the West Virginia Conservation Agency's proposed modification to Series 1, Operation of West Virginia State Conservation Committee and Conservation Districts.

Your comment concerned *§63-1-4: Procedures for Complying with the West Virginia Open Governmental Proceedings Act*.

In reviewing your comments, and the West Virginia Open Government Proceedings Act, the Agency's proposed language regarding notices of regular, special and emergency meetings has been modified to reflect that the agency will follow the requirements of the open meetings law, specifically §6-9A-3.

Thank you for your interest in and comments on the Agency's proposed legislative rule.

Sincerely,



Brian Farkas
Executive Director

Comment on Title 63

Legislative Rule

State Conservation Committee

I have one comment/question on 63-1-4.3.

As it currently is written section 63-1-4.3 says "Emergency and special meetings filed in the state register. The time, date, place and purpose of all emergency meeting of the State Conservation Committee shall be submitted to the office of the Secretary of State and by new release to the media and public at large as soon as possible, but no less than twenty-four (24) hours in advance of such meeting."

Comment/question - Is twenty-four (24) hour notice required for emergency and special meetings?

The basis for my comment is a phone call with Ms. Theresa Kirk, Executive Director of the WV Ethics Commission on August 25th. During the phone call Ms. Kirk responded to a question stating that during an emergency it is not necessary to give 24 hour notice. The question was framed around an emergency watershed program (EWP) event and the possibility of damage occurring to property or persons without taking necessary immediate action to respond to the danger. Ms. Kirk noted that caution should be exercised to avoid having emergency meeting that are not true emergency meetings to avoid compliance with the open meetings laws. Also, present during the phone call were Carolyn Hefner, Chris Casto, Kim Fisher and Jeremy Salyer.

Ms. Kirk advised that a two day notice was required for a special meeting.

Larry Layman,

Area Director

West Virginia Conservation Agency