

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Soil Conservation Agency TITLE NUMBER: 63

CITE AUTHORITY WV Code 19-21A and 19-2

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

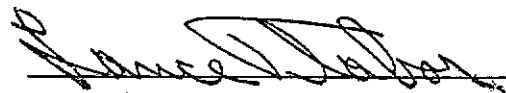
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: State Soil Conservation Committee Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

November 18, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Glenn Dowdy
Soil Conservation Agency
1900 Kanawha Boulevard, East
Charleston, WV 25305-0193

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: State Soil Conservation Committee Regulations (63CSR1)

The Legislative Rule-Making Review Committee has reconsidered your rule and recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

DATE: 12/1/97

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Soil Conservation Agency

LEGISLATIVE RULE TITLE: State Soil Conservation Committee Regulations

1. Authorizing statute(s) citation WV Code 19-21A and 19-2

2.
 - a. Date filed in State Register with Notice of Hearing
June 30, 1997

 - b. What other notice, including advertising, did you give of the hearing?
None

 - c. Date of Hearing(s) N/A

 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached N/A No comments received x

 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 1, 1997

 - f. Name and phone number(s) of agency person(s) to contact for additional information:
Glenn Dowdy 558-2204

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.

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A



Cecil H. Underwood
Governor

West Virginia
Soil Conservation Agency
1900 Kanawha Boulevard, East
Charleston, WV 25305-0193
Phone: (304) 558-2204
Fax: (304) 558-1635

Gus R. Douglass
Chairman

Lance Tabor
Executive Director

State of Circumstances for Proposed Rule Changes

It has been brought to the agency's attention that, while the Legislature rules provided for write-in votes, there was no provision to account for these votes.

After a discussion with the Secretary of State's office regarding the situation, this rule was proposed to eliminate any confusion about future write-in votes.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: State Soil Conservation Committee Regulations

Type of Rule: y Legislative Interpretive Procedural

Agency WV State Soil Conservation Agency

Address 1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0193

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

This change should not add to the cost of supervisor elections.

3. Objectives of these rules:

The objective is to clarify write-in procedures for supervisor elections.

Rule Title: State Soil Conservation Committee Regulations

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: June 30, 1997

Signature of Agency Head or Authorized Representative

**TITLE 63
LEGISLATIVE RULES
STATE SOIL CONSERVATION COMMITTEE**

**SERIES 1
STATE SOIL CONSERVATION COMMITTEE REGULATIONS**

§63-1-1. General

1.1. Scope. -- These legislative regulations establish rules and procedures for the State Soil Conservation Committee and the State Soil Conservation Districts.

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

1.3. Filing Date. -- ~~October 13, 1978.~~

1.4. Effective Date. -- ~~October 13, 1978.~~

§63-1-2. Procedure for appointing and electing district soil conservation supervisors.

2.1. The governing body of a Soil Conservation District shall consist of the appointed and elected supervisors (West Virginia Code, section seven, article twenty-one-a, chapter nineteen).

2.1.A. The State Soil Conservation Committee shall appoint two (2) supervisors (West Virginia Code, section five-f, article twenty-one-a, chapter nineteen) to represent the district. They must be persons who by training and experience are qualified to perform the specialized leadership services which will be required of them and must be legal residents and landowners of the district (West Virginia Code, section seven, article twenty-one-a, chapter nineteen).

2.1.A1. These appointments shall be made by the State Soil Conservation Committee upon approval by the remainder of the Board of Supervisors, after consultation with the Committee's Field Agent, who, along with a representative of the governing body, has personally interviewed the proposed appointee. Final authority for all appointments shall rest with the State Soil Conservation Committee.

2.1.B. Landowners within each county in the district shall nominate and elect a supervisor to represent the county of the districts governing body (West Virginia Code, section six, article twenty-one-a, chapter nineteen). However, when any county shall have in effect eight hundred (800) or more agreements or cooperation with occupiers of land located within said county, then at the next regular election of supervisors, the land occupiers within said county are entitled to elect two (2) supervisors to represent said county (West Virginia Code, section seven, article twenty-one-a, chapter nineteen).

2.1.B.1. Any person twenty-one (21) years of age or over, firm or corporation who holds title to three (3) or more acres of land lying within the boundaries of a district, or proposed district, shall be eligible to vote.

2.1.B.2. Any eligible voter residing within the boundaries of a county for which an election has been announced by the State Soil Conservation Committee may file a nominating

petition which has been subscribed by twenty-five (25) or more owners of land lying within the boundaries of the county in which the candidate resides; owners may sign more than one (1) such petition (West Virginia Code, section six, article twenty-one-a, chapter nineteen). The petitions shall be delivered to the State Soil Conservation Committee thirty (30) days prior to the announced date of the election.

2.1.C. The State Soil Conservation Committee shall pay all election expenses for electing supervisors, shall supervise the conduct thereof, shall prescribe governing the conduct of such elections and the determination of the eligibility of voters therein and shall make public the results thereof (section six, article twenty-one-a, chapter nineteen).

2.1.C.1. Ballots shall be prepared by the State Soil Conservation Committee with the names of all qualified candidates appearing in alphabetical order of surnames with a square before each name and a direction to insert an X mark in the square before the name of the candidate of the voter's choice. All owners of land lying within the district shall be eligible to vote for one (1) candidate from the county in which they reside, except when at least eight hundred (800) cooperative agreements are in effect in the county, they shall be eligible to vote for two (2).

2.1.C.2. The Field Agent of the State Committee will establish one or more polling places within the county and will designate the day and the hour that the polls will open. Such designation will be published in at least two (2) newspapers circulated within the county at least sixty (60) days before and again at least seven (7) days before the date of the proposed election.

2.1.C.3. The Committee will appoint the district clerk of each respective district as polling superintendent to assist in the conduct of the election. The polling superintendent will be responsible for receiving application for absentee ballots from eligible voters from all counties within said district, and for the conduct of all absentee voting according to the guidelines established elsewhere in these regulations.

2.1.C.4. The Field Agent will appoint one (1) polling officer for each polling place and said officer will be in charge of the voting at that polling place.

2.1.C.5. The Field Agent will deliver all supplies necessary for the conduct of the election to the polling officers at least three (3) days prior to the date of the election.

2.1.C.6. A voter residing within the county may vote at the polling place most convenient.

2.1.C.7. The eligible voter will sign a poll list, giving his name, residence location and acreage of land and will then proceed to vote.

~~2.1.C.8. Write-in votes is permissible. Any eligible person who seeks to be elected by write in votes to a Soil Conservation District office shall file a write in candidate's official certificate of announcement. The announcement shall be duly notarized and filed with the Soil Conservation Agency at least five (5) days prior to the announced election date.~~

2.1.C.8. The polling officer shall immediately upon the closing to the polls, enter the name of the last person voting on the appropriate form and offer his or her signature to the same. The polling officer will then place all election papers in safekeeping until the Field Agent arrives to assist the polling officer in the counting of the ballots. The unofficial results of the election are then posted at the polling place and the ballots and official forms of the election are delivered to the office of the State Soil Conservation Committee. The Executive Committee of the State Soil Conservation Committee then tabulates the results of all polling places within the county and certifies the winner or winners to the governing body of the district.

2.1.C.9. It shall be permissible to vote by absentee ballot if the eligible voter will not be in the county on the day of the election. A supply of ballots, applications and other appropriate forms for use in absentee balloting shall be delivered to the polling superintendent at least thirty (30) days prior to the election. Said polling superintendent will receive applications for absentee ballots in person or in writing during the thirty (30) days immediately preceding the election. The applicant shall state his name, residence, location and acreage of land owned within the county and the polling superintendent shall enter this information on Roster of Absentee Voters. The polling superintendent, when satisfied that the applicant is an eligible voter, shall deliver in person or by mail, an absentee ballot and written instructions for marking and forwarding the ballot. All absentee ballots, to be validly cast, must be received by the polling superintendent at least one (1) day prior to the date of the election. The polling superintendent will keep all absentee ballots in a safe place until the Field Agent picks them up and delivers them to the proper polling place within the county where they will be counted and included in the election results of that polling place.

2.1.C.10. All supervisors shall remain in office until the Oath of Office of the successor or an official resignation has been received in the office of the State Soil Conservation Committee.

2.1.C.11. Whenever a vacancy occurs in the ranks of elected supervisors it shall be filled by appointment, utilizing the procedures used in appointing district supervisors as described elsewhere in these regulations, except that all appointments to fill vacancies in elected supervisor positions shall be limited to the remaining portion of the unexpired term.

§63-1-3. Expenditure of funds by the State Soil Conservation Committee for watershed programs.

3.1. Guidelines. -- The following policies and guidelines shall govern the expenditures of funds by the State Soil 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 soil 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 supplementary to the capital resources of sponsoring soil 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 these rules.

3.2.A. Purchase land or easements on a negotiated price basis after certification by three (3) shareholders, one (1) representing the landowner, one (1) the sponsoring soil conservation district and one (1) the State Soil 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 soil 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 soil conservation district or watershed improvement district anticipating a need for supplementary state watershed improvement program funds shall prepare and submit to the State Soil 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 Soil Conservation Committee.

3.3.C. Easement or other land rights shall be obtained either by the local soil 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 Soil Conservation Committee.

3.3.E. All land 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 Soil Conservation Committee.

3.3.F. Prior to the selling of such land, an appraisal shall be made by three (3) freeholders representing the local soil conservation district or the watershed improvement district and the State Soil Conservation Committee. This appraisal must accompany all proposals to the State Soil Conservation Committee to sell lands acquired with state funds.

3.3.G. Before any property purchased with money from this fund is sold, notice of the sale must be given in three (3) issues at least a week apart, in a newspaper of general circulation in the soil 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 Soil 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 Soil Conservation Committee by the soil 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 soil conservation district or watershed improvement ownership without specific approval of the State Soil Conservation Committee.

3.4. Representation of the State Soil Conservation Committee. -- The State Soil 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 open governmental proceedings law.

4.1. Filing in state register. -- The time, date and place of all regularly meetings of the State Soil 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 thirty (30) days prior to the convening of the meeting.

4.2. Special meetings filed on state register. -- The time, date, place and purpose of all special meetings of the State Soil 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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

September 15, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Glenn Dowdy
Soil Conservation Agency
1900 Kanawha Boulevard, East
Charleston, WV 25305-0193

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: State Soil Conservation Committee Regulations (63CSRI)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. X

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

Reason for Request for Rule Withdrawal

Rule: *Soil Conservation Agency - State Soil Conservation Committee Regulations (63CSRI)*

The Committee requests that the agency withdraw this proposed rule because the agency exceeded its statutory authority by proposing changes to this rule.