

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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MAY 13 10 08 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Soil Conservation Agency TITLE NUMBER: 63

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 01

TITLE OF RULE BEING AMENDED: State Soil Conservation Committee
Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

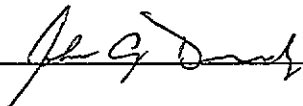
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 329

SECTION 64-9-27, PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: 7/1/98





Cecil H. Underwood
Governor

West Virginia
Soil Conservation Agency
1900 Kanawha Boulevard, East
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Gus R. Douglass
Chairman

Lance Tabor
Executive Director

MEMORANDUM

TO: Judy Cooper, Director – Administrative Law
Secretary of State

FROM: John G. Dowdy, Assistant Director
West Virginia Soil Conservation Agency 

DATE: May 8, 1998

RE: Promulgation History – SB 329
Title 63, Series 01, State Soil Conservation Committee

NOTICE	June 30, 1997
HEARING	July 3, 1997
SECRETARY OF STATE	August 1, 1997
RECOMMEND WITHDRAWN	September 15, 1997
MODIFIED & APPROVED	November 11, 1997
FILED	December 2, 1997
SIGNED by GOVERNOR	April 2, 1998

TITLE 63
LEGISLATIVE RULES
STATE SOIL CONSERVATION COMMITTEE

FILED

SERIES 1
STATE SOIL CONSERVATION COMMITTEE REGULATIONS

MAY 13 10 08 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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.

7517
63-1

H. B. 4196

1 BILL-Soil

(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

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[Introduced January 30, 1998; referred to the
Committee on the Judiciary.]

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10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section twenty, relating to
14 authorizing the soil conservation committee to
15 promulgate a legislative rule relating to the
16 committee.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article nine, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section twenty, to read as follows:

22 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
23 BOARDS TO PROMULGATE LEGISLATIVE RULES.

4196

1 §64-9-20. Soil conservation committee.

2 The legislative rule filed in the state register on
3 the first day of August, one thousand nine hundred
4 ninety-seven, under the authority of section four, article
5 twenty-one-a, chapter nineteen, of this code, modified by
6 the soil conservation committee to meet the objections of
7 the legislative rule-making review committee and refiled in
8 the state register on the second day of December, one
9 thousand nine hundred ninety-seven, relating to the soil
10 conservation committee (state soil conservation committee,
11 63 CSR 1), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Soil Conservation Committee to promulgate a legislative
15 rule relating to the Committee.

16

17 This section is new; therefore, strike-throughs and
18 underscoring have been omitted.

63-1

Senate Bill No. 337

1 (By Senator(s) Ross, Anderson, Bowman,
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the
4 Committee on Natural Resources; and then to the
5 Committee on the Judiciary.]
6
7
8
9

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11 code of West Virginia, one thousand nine hundred
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8 the state register on the second day of December, one
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10 conservation committee (state soil conservation committee,
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15 rule relating to the Committee.

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17 This section is new; therefore, strike-throughs and
18 underscoring have been omitted.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: West Virginia Soil Conservation Agency
Subject: State Soil Conservation Committee Regulations
CSR Cite: 63CSR1
Counsel: JAA

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 13 9 32 AM '97

FILED

PERTINENT DATES

Filed for public comment: June 30, 1997
Public comment period ended: August 1, 1997
Filed following public comment period: August 1, 1997
Filed LRMRC: August 1, 1997
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Section 2.1.3.8 is amended to allow for persons seeking to be elected by write-in to a soil conservation district office to file a notarized certificate of announcement with the West Virginia Soil Conservation Agency at least five days prior to the announced election date. A "Write-in Candidate's Certificate of Announcement" form is attached to the end of the rule.

AUTHORITY

Statutory authority: W.Va. Code, §19-21A-4, which provides:

The [state soil conservation] committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

The statute establishing the guidelines for election of soil conservation district supervisors reads as follows:

§19-21A-6. Election of supervisors for each district.

Within thirty days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such district.

5. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more owners of lands lying within the boundaries of such district and within the boundaries of the county in which the candidate resides. Landowners may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of one supervisor from each county or portion thereof within the boundaries of the district. The names of all nominees in each county on behalf of whom such nominating petitions have been filed within the time designated, shall appear arranged in alphabetical order of the surnames upon a ballot, with a square before each name and a direction to insert an X mark in the square before any one name to indicate the voter's preference. All owners of lands lying within the district shall be eligible to vote in such election for one candidate from the county in which they reside. Only such landowners shall be eligible to vote. The candidate in each county who shall receive the largest number of votes cast in such election by landowners residing in his county shall be one of the elected supervisors for such district. The committee shall pay all expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall make public the results thereof.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Unclear. The West Virginia Soil Conservation Agency filed the rule with the Secretary of States Office. The rule-making authority under §19-21A-4 lies with the Soil Conservation Committee. No documentation was submitted showing that the Committee has officially authorized amending this rule.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. §19-21A-6 provides the process for election of supervisors for soil conservation districts. There is no authority in this section of the code to allow for "write-in" campaigns or votes for persons not properly nominated and placed on the ballot.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No.

VIII. OTHER.

Counsel recommends that the provision in the rule allowing for write-in campaigns be deleted, and also suggests a few technical modifications to the current rule.