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

AGENCY: West Virginia Conservation Agency TITLE NUMBER: 63CSR

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 63CSR1

TITLE OF RULE BEING AMENDED: State Conservation Committee

IF NO, SERIES NUMBER OF 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 319

SECTION §64-9-4, PASSED ON March 9, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: June 1, 2007

Tim R Wolfe 03/27/07
Authorized Signature

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OFFICE WEST VIRGINIA SECRETARY OF STATE

TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE

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

§63-1-1. General.

1.1. Scope. -- This rule establishes procedures for creating a conservation district and the election and appointment of conservation district supervisors 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 10, 2006.

1.4. Effective Date. -- April 10, 2006.

§63-1-2. Procedure for Appointing and Electing 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.A. Landowners within each county in the district shall nominate candidates for the non-partisan position of supervisor to represent the county within the district governing body (W. Va. Code §19-21A-6). Each county is entitled to elect two (2) supervisors to represent the county (W. Va. Code §9-21A-7). Beginning with the two thousand eight general election, each county in a district shall elect, two nonpartisan supervisors: *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.B. Any registered voter may vote in his or her county for qualified candidates. Elections for non-partisan county supervisors will be held during the general election as non-partisan candidates.

2.2.C. Supervisors shall be elected in the general election to be conducted in the year two thousand eight as nonpartisan candidates. Thereafter, supervisors shall be elected in the primary election. The term of office for the candidate for supervisor receiving the highest number of votes in the general election of two thousand eight shall be for four years; the candidate for supervisor receiving the second highest number of votes in the general election of two thousand eight shall be for two years. In counties where more than two supervisors are elected in the general election of two thousand eight the two supervisors receiving the highest number of votes shall serve for four years and the remaining supervisor or supervisors shall serve for two years. Subsequent terms of office for supervisors elected thereafter shall be for four years. Unless otherwise provided or on conflict with this rule the provisions of chapter three of the West Virginia Code shall apply to the election of supervisors.

2.3. Any candidate meeting the qualifications to hold the office of conservation district supervisor, outlined in subsection 2.4, shall file a nominating petition which has been signed by twenty-five (25) or more resident property owners within the boundaries of the county in which the nominee resides; owners may sign more than one (1) nominating petition (W.V. Code § 19-21A-6). The petitions, certified statement of land ownership and residency, and statement of qualifications shall

be delivered to the state conservation committee 270 days prior to the general election.

2.4. Qualifications for county supervisor:

2.4.A. Must own a minimum of three (3) acres within the county where he or she is running for office.

2.4.B. Must reside in the county where he or she is running for office.

2.4.C. Must be an active cooperator within the conservation district and at least five (5) years of land management experience.

2.4.D. Must have a strong working interest in the conservation of natural resources.

2.4.D.1. Must have knowledge of conservation best management practices either from practical experience or education experience. For example: confined feeding areas; filter strips; alternative watering systems.

2.4.D.2. Must possess experience with related organizations or units of government. For example: Related organizations could include watershed associations; grassland committees; livestock associations; associate members, USDA Farm Service Agency.

2.5. 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.

2.6. Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term 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 .

2.7. Associate supervisors shall be appointed by districts as deemed necessary. Associate supervisors may have the same duties as elected supervisors, but may not vote 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 will be determined at the discretion of the local conservation district board.

2.8. The State Conservation Committee may appoint and authorize a subcommittee to review candidates' petitions, qualifications, and can review and report their findings to the State Conservation Committee. The final determination shall be made by the State Conservation Committee. The committee shall provide a list of qualified candidates to the Secretary of State no less than ninety days prior to any election for supervisor in the manner specified by the Secretary in accordance with West Virginia Code §3-5-9.

§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 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 thirty (30) days prior to the convening of the meeting.

4.3. Emergency meetings filed in the state register. 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.