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SECRETARY OF STATE

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September 9, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Conservation Agency

RULE: Amendment, 63CSR1, Operation of West Virginia State Conservation Committee and Conservation Districts

DATE FILED AS AN EMERGENCY RULE: August 24, 2009

DECISION NO. 20-09

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in black ink, reading "Natalie E. Tennant", written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 20-09)

AGENCY: West Virginia Conservation Agency
RULE: Amendment, 63CSR1, Operation of West Virginia State Conservation
Committee and Conservation Districts
FILED AS AN EMERGENCY RULE: August 24, 2009

- par. 1 The West Virginia Conservation Agency (Agency) has filed the above amendment to an existing rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Agency filed this emergency rule with supporting documents with the Secretary of State August 24, 2009 and with the LRMRC August 24, 2009.
- par. 7 It is the determination of the Secretary of State that the Agency has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority – W. Va. Code §19-21A-6 reads:
- (a) 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.*
- (b) A candidate for supervisor must be a landowner and an active farmer with a minimum*

of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the requirements of article three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) Supervisors shall be elected in the general election to be conducted in the year 2008 as nonpartisan candidates. After that, 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 2008 is four years; the candidate for supervisor receiving the second highest number of votes in the general election of 2008 is two years. In counties where more than two supervisors are elected in the general election of 2008, the two supervisors receiving the highest number of votes serve for four years and the remaining supervisor or supervisors serve for two years. Terms of office for supervisors elected after that are four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) 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 holds office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

par. 9 It is the determination of the Secretary of State that the Agency has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency – W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Agency are as follows:

In order to be in compliance with WV Code §19-21A, emergency rules must be established immediately. Passage of SB 445 in the 2009 Regular Legislative Session made substantial changes to the requirements & qualifications of conservation district supervisors. May 2010 Primary Election candidates will begin filing in January 2010, these emergency rules are required so that candidates may be in compliance with the recent Code changes.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 20-09 or ERD 20-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Conservation Agency, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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