

Form #2

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SECRETARY OF STATE

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NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia State Conservation Committee TITLE NUMBER: 63

RULE TYPE: Legislative CITE AUTHORITY: 19-21A- 19-21B

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 63

TITLE OF RULE BEING AMENDED: State Conservation Committee Regulations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: N/A TIME: _____

LOCATION OF PUBLIC HEARING: N/A

COMMENTS LIMITED TO: ORAL , WRITTEN X, BOTH
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Legislative Specialist

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

West Virginia Conservation Agency

1900 Kanawha Blvd. E.

Charleston, WV 25305-0193

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Wm R. Wolfe

Authorized Signature
Truman R. Wolfe, Ex. Director

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 63CSR1 State Conservation Committee Regulations

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: State Conservation Committee, West Virginia Conservation Agency

Address: 1900 Kanawha Boulevard East, Charleston, WV 25305-0193

Phone Number: (304) 558-2204 Email: _____

Fiscal Note Summary

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

There is no anticipated impact on costs and revenues of state government resulting from the rule changes.

Fiscal Note Detail

Show 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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

63CSR1 State Conservation Committee Regulations

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The above estimates reflect no anticipated changes in costs to administer this rule.

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: June 23, 2005

Signature of Agency Head or Authorized Representative

X. *Tim R. Wolfe*

**West Virginia State Conservation Committee
State Conservation Agency**

SUMMARY OF PROPOSED CHANGES

Rule Title: 63CSR1 – State Conservation Committee Regulations
63CSR1 – State Conservation Committee Regulations

A. AUTHORITY: WV CODE §19-21A-3

B. SUMMARY OF RULE:

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.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE REVISIONS:

Promulgation of this rule is necessary in order for the State Conservation Committee and Conservation Agency to comply with election requirements of the U.S. Constitution and passage of SB 670. SB 670 was passed during the 2005 Regular Legislative Session. Changes in this rule re-define the procedures for appointing and electing District Conservation Supervisors. The revisions establish the qualifications of a candidate and the term of office.

TITLE 63
LEGISLATIVE RULE
STATE SOIL CONSERVATION COMMITTEE

SERIES 1
STATE SOIL CONSERVATION COMMITTEE REGULATIONS

§63-1-1. General.

1.1. Scope. ~ ~~These legislative regulations~~ This rule establishes rules and procedures for creating a conservation district and the election and appointment of conservation district supervisors for to the State Soil— Conservation Committee and the State Soil — 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. ~

1.4. Effective Date. ~

§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 (W. Va. Code §19-21A-7).

~~2.1.A. The State soil — Conservation Committee shall appoint two (2) supervisors (W. Va. Code §19-21A-5F) 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 (W. Va. Code §19-21A-7).~~

~~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.~~

~~2.2.A 2.1.B. Landowners within each county in the district shall nominate and elect a supervisor candidates for the non-partisan position of supervisor to represent the county of the districts governing body (W. Va. Code §19-21A-6). 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~~ Each county are is entitled to elect two (2) non-partisan supervisors to represent said the county (W. Va. Code ' §9-21A-7).

~~2.2.B 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. 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.~~

~~2.1.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 (W. Va. Code +19-21A-6). 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 (W. Va. Code +19-21A-6).

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. 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.~~

2.3 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 four 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 cooperater with 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 2.1.C.10. All supervisors shall remain in office until the election or appointment and swearing-in 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.

2.6 When a vacancy of an elected supervisor occurs, it shall be filled by appointment of the State Conservation Committee, upon recommendation of the appropriate conservation district. The appointment shall be limited to the unexpired term.

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 applications, 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 certify a list of eligible candidates to the Secretary of State in compliance with §3 of the State Code of West Virginia.

§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 supplemental 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 this rules.

3.2.A. Purchase land or easements on a negotiated price basis after certification by ~~three (3) shareholders a state certified appraiser, one (1) representing the landowner,~~ one (1) representative of the sponsoring soil conservation district ~~and,~~ one (1) representative of the State Soil— Conservation Committee, and a review by a state certified appraiser 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~~ a state certified appraiser, a representing representative of the local ~~soil~~ conservation district or the watershed improvement district and a representative of 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, 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 paced 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~~ the West Virginia Open Governmental Proceedings Act

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

4.2 4.1. Filing in the 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.

4.3 4.2. Special meetings filed ~~on~~ in the 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.