



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Conservation Agency

TITLE-SERIES: 63-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 63-01 Operation of West Virginia State Conservation Committee and Conservation Districts

PRIMARY CONTACT

NAME: Belinda G Withrow West Virginia Conservation Agency

ADDRESS: 1900 Kanawha Blvd E
Charleston, WV 25305

EMAIL: bwithrow@wvca.us

PHONE NUMBER: 304-558-2204 6817818379

CITE STATUTORY AUTHORITY: W.Va. 19-21A

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This is an amended rule to update with changes from the passing of SB264 during the regular 2022 session.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/2/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/16/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Notice on the Secretary of State's Online Meeting Notices, a news release to newspapers across WV, and notice on the WVCA website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

No proposed changes since submitting the rule for the 30-day public comment period. This rule establishes procedures for the election and appointment of conservation district supervisors by the State Conservation Committee (SCC) and the state conservation districts; the expenditure of funds by the State Conservation Committee for watershed improvement programs; and compliance with the West Virginia Open Governmental Proceedings Act.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This is an amended rule to update with changes from the passing of SB264 during the regular 2022 session.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 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 and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There are no fees associated with this proposal.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Belinda G Withrow -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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 by the State Conservation Committee (SCC) and the state conservation districts; the expenditure of funds by the State Conservation Committee for watershed improvement programs; and compliance with the West Virginia Open Governmental Proceedings Act.

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

1.3. Filing Date. -- ~~April 20, 2010.~~

1.4. Effective Date. -- ~~July 18, 2013.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§63-1-2. Procedure for Appointing, Electing and Removing Conservation District Supervisors.

2.1. The governing body of a conservation district shall consist of elected and appointed ~~and elected~~ supervisors (W. Va. Code ~~§19-21A-7~~ §19-21A-6).

2.2. Each county in a conservation district shall elect two (2) nonpartisan supervisors to represent the county (W.Va. Code ~~§19- 21A-6-and-§19-21A-7~~). 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.a. All registered voters are entitled to vote in his or her county for candidates for Conservation District Supervisor.

2.2.b. Elections for county district supervisor shall be nonpartisan and held during the primary election.

2.2.c. The term of office for supervisors shall be four years. and the terms of such members shall begin on July 1, next following the primary election at which they were elected.

2.2.d. The provisions of Chapter 3 of the West Virginia Code apply to the election of conservation district supervisors, unless otherwise provided for by the provisions of this rule series. The provisions of Chapter 6 of the West Virginia Code apply to the removal of conservation district supervisors.

2.2.e. If no candidate seeks the office, then the district shall advertise in a newspaper of general circulation within the county in which the vacancy occurred. The advertisement shall be placed within ~~seven~~ thirty (30) days of when the vacancy occurred and shall run for a period of at least one week.

The advertisement shall include a listing of any requirements and qualifications necessary to hold the position of supervisor, and instructions on how to apply to the district.

2.2.f. The district shall use the list of qualified candidates to make its candidate recommendation to the State Conservation Committee within 90 days of the primary election.

2.3. Qualifications for county district supervisor:

2.3.a. Must reside in the county in which he or she is running for office.

2.3.b. Must have experience in agriculture, as that term is defined in §19-21A-3; conservation; or natural resources.

~~2.3.b. Must reside in the county in which he or she is running for office.~~

~~2.3.c. Must be an active or retired farmer with a minimum of five years farming experience.~~

~~2.3.c.1. "Farmer" means a person engaged in the activity of farming with the potential for producing at least one thousand dollars of products per annum from those activities.~~

~~2.3.c.2. "Activity of farming" means the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by other than the producer thereof.~~

~~2.3.d. Must have at least five (5) years of land management experience, or experience in other related fields.~~

~~2.3.e. Must have a strong working interest in the conservation of natural resources.~~

~~2.3.e.1. Must have a knowledge of conservation best management practices either from practical or educational experience. For example: confined feeding areas; filter strips; alternative watering systems.~~

~~2.4. 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.~~

~~2.5.~~ 2.4. Any vacancy occurring in the office of district supervisor shall be filled by the State Conservation Committee based on a recommendation list of qualified candidates submitted by the district in which the vacancy occurred.

2.4.a. The recommended candidate shall be a resident of the county in which the vacancy occurred.

2.5. To obtain a list of qualified candidates, districts shall advertise in a newspaper of general circulation within the county in which the vacancy occurred. The advertisement shall be placed within ~~seven~~ thirty (30) days of when the vacancy occurred and shall run for a period of at least one week. The advertisement shall include a listing of any requirements and qualifications necessary to hold the position of supervisor, and instructions on how to apply to the district.

2.5.a. The district shall use the list of qualified candidates to make its candidate recommendation to the State Conservation Committee within 90 days of the vacancy occurring.

2.5.b. If a district supervisor vacancy occurs for an unexpired term of 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.

2.5.c. If no candidate files for the unexpired term, the conservation district shall then advertise and select a candidate from the county in which the unexpired term vacancy occurs and submit the name to the State Conservation Committee for appointment.

2.5.d. Associate supervisors may be appointed by districts as deemed necessary. Associate supervisors may ~~have the same duties as elected supervisors but may~~ not vote nor make motions during conservation district board meetings. 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 shall be at the discretion of the local conservation district board and be paid ~~by the local district board~~ based on the availability of local district funds.

2.5.e. Elected and appointed supervisors shall take an oath of office before assuming the position of district supervisor. Original copies of the official oath of office shall be filed with the county clerk's office. Copies of the oath may be kept at the district office.

§63-1-3. Expenditure of Funds by the State Conservation Committee/West Virginia Conservation Agency for Watershed Improvement Programs.

3.1. Policy. The following requirements shall govern the expenditures of funds by the State Conservation Committee (SCC) and its administrative office, the West Virginia Conservation Agency (WVCA) for watershed improvement programs that have or may be made available to it by the state Legislature private, local, state, or federal governmental sources.

3.1.a. State watershed improvement program funds will only be used to aid ~~legally constituted conservation districts or other local governmental sponsors~~ ~~or watershed improvement districts~~ in meeting their obligation of facilitating the planning, construction, operation, maintenance, repair or rehabilitation ~~phase of approved watershed protection and flood prevention programs~~ improvement projects.

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 local governments watershed improvement districts~~ in cooperative action with the federal government, local units of government and communities involved ~~concerned~~ with approved watershed ~~programs~~ projects.

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.

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 local government 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 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 and special 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 in accordance with §6-9A-3., Open Governmental Proceedings.

4.3. Emergency meetings filed with the Secretary of State. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency: in accordance with §6-9A-3.