WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Conservation Agency

TITLE-SERIES: 63-01

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: No

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

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

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB261

Section 64-9-6(a)

Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 3, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2028

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 the election and appointment of conservation district supervisors by the State Conservation Committee and the state conservation districts; the expenditure of funds by the State Conservation Committee for works of improvement programs; and compliance with the West Virginia Open Governmental Proceedings Act, §6-9A-1 *et seq.*

1.2. Authority. -- W. Va. Code §19-21A-4.

1.3. Filing Date. -- April 3, 2023

1.4. Effective Date. -- April 3, 2023

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 supervisors (W. Va. Code §19-21A-6).

2.2. Qualifications for elected or appointed conservation district supervisors are as follows:

2.2.a. The individual must be a resident and landowner in the county in which he or she is running for office or where the vacancy has occurred.

2.2.b. The individual must have experience in agriculture, as that term is defined in W. Va. Code §19-21A-3; conservation; or natural resources.

2.3. Each county shall elect two supervisors to represent the county (W. Va. Code §9-21A-6 and §9-21A-7).

2.3.a. Any county with a population of 100,000 based on the most recent decennial census shall elect one additional supervisor and any county with a population over 100,000 based on the most recent decennial census shall elect one additional supervisor for each 50,000 residents over 100,000.

2.3.b. All registered voters are entitled to vote in his or her county for candidates for Conservation District Supervisor.

2.3.c. Elections for county district supervisors shall be non-partisan.

2.3.d. 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.

2.3.e. The provisions of W. Va. Code §3-3-1 *et seq.* apply to the election of supervisors, unless otherwise provided for by the provisions of this rule series. The provisions of W. Va. Code §6-1-1 *et seq.* apply to the removal of conservation district supervisors.

2.4. If no candidate files for election, or if a vacancy occurs in the office of conservation district supervisor, the State Conservation Committee shall appoint a person to fill the position based on a recommendation submitted by the district in which the vacancy occurred.

2.4.a. To obtain a list of qualified candidates, the district shall post a notice on an online platform that disseminates information to the public or place an advertisement in a newspaper of general circulation within the county in which the vacancy occurred. The posting or advertisement shall be placed within 30 days of when the vacancy occurred and shall run for a period of at least one week. The posting or 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.

2.4.b. 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, or within 90 days of when the vacancy occurs, as the case may be.

2.4.c. Associate supervisors may be employed by districts with approval of the State Conservation Committee. Associate supervisors 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 based on the availability of local district funds.

2.5 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 for Works of Improvement Programs.

3.1. Policy. The following requirements shall govern the expenditure of funds by the State Conservation Committee and its administrative office, the West Virginia Conservation Agency, for works of improvement programs.

3.1.a. Works of improvement program funds may only be used to aid conservation districts, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, in meeting their obligation of facilitating the planning, construction, operation, maintenance, repair, or rehabilitation of watershed protection and flood prevention improvement projects.

3.1.b. Works of 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, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, in cooperative action with the federal government, local units of government, and communities involved with approved watershed program projects.

3.2. Works of 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, a representative of the sponsoring conservation district, and a 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 districts, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, local government anticipating a need for supplementary works of 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, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3. 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, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, 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 issues at least a week apart, in a newspaper of general circulation in the conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, 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, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3.

3.3.i. Improvements other than items covered in watershed work plans are not to be made during the period of conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, 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 the Executive Director of the West Virginia Conservation Agency, 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 W. Va. Code §6- 9A-1 *et seq.*

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 W. Va. Code §6-9A-1 *et seq.*

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 W. Va. Code §6-9A-1 *et seq.*