WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 199

(By Mr. )

PASSED March 10th, 1939

In Effect

JABRETT PRINTING COMPANY, CHARLESTON, W. VA.
ENROLLED

Senate Bill No. 199

(BY MR. LAFON, Mr. President)

[Passed March 10, 1939; in effect ninety days from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by adding thereto article twenty-one-a, relating to the establishment of soil conservation districts, to engage in conserving soil resources and preventing and controlling soil erosion; to establish the state soil conservation committee; and to define its powers and duties; to provide for the creation of soil conservation districts; to define the powers and duties of soil conservation districts, and to provide for the exercise of such powers, including the power to acquire property by purchase, gift, and otherwise; to empower such districts to
adopt programs and regulations for the discontinuance of land-use practices contributing to soil wastage and soil erosion, and the adoption and carrying out of soil-conserving land-use practices, and to provide for the enforcement of such programs and regulations; to provide for establishing boards of adjustment in connection with land-use regulations, and to define their functions and powers; to enable flood control measures; to provide for financial assistance to such soil conservation districts; and to provide for the discontinuance of such soil conservation districts.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended by adding thereto article twenty-one-a, to read as follows:

Article 21-A. Soil Conservation Districts.

Section 1. Short Title. This act may be known and cited as the soil conservation districts law of West Virginia.

Sec. 2. Legislative Determinations and Declaration of Policy. It is hereby declared, as a matter of legislative determination:
A. That the farm and grazing lands of the state of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land owner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible.
B. That the consequences of such soil erosion in the form of soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the under-ground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; and increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands, damage to roads, highways, railways, farm buildings, and other property from floods; and losses in navigation,
hydro-electric power, municipal water supply, irrigation developments, farming and grazing.

C. That to conserve soil resources and control and prevent soil erosion and to enable flood control programs, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.
D. It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

E. This act contemplates that the incidental costs of organizing soil conservation districts will be met by the state, while the expense of operating the districts so organized, will be provided primarily by the United States and/or any of its agencies, with the understanding that the owners or occupiers will contribute funds, labor, materials and equipment to aid the carrying out of erosion control measures on their lands.

Sec. 3. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:
"District" or "soil conservation district" means a subdivision of this state, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

"Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act.

"Committee" or "state soil conservation committee" means the agency created in section four of this act.

"Petition" means a petition filed under the provisions of subsection-a of section five of this act for the creation of a district.

"State" means the state of West Virginia.

"Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

"United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.
(8) "Land Owners" or "Owners of Land" includes any person or persons, firm, or corporation who shall hold title to three or more acres of any lands lying within a district organized under the provisions of this act.

(9) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, or tenant.

(10) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in two newspapers of opposite polities and of general circulation published in the county in which is located the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment
may be made from time to time without the necessity of re-
newing such notice for such adjourned dates.

(11) The terms "soil conservation," "erosion control,"
or "erosion prevention projects," when used throughout the
act, shall denote those projects that have been established by
federal agencies in cooperation with state agencies for the pur-
pose of demonstrating soil erosion control and water conserva-
tion practices.

Sec. 4. State Soil Conservation Committee. A. There is
hereby established, to serve as an agency of the state and to
perform the functions conferred upon it in this act, the state
soil conservation committee. The committee shall consist
of seven members. The following shall serve, ex officio, as
members of the committee: the director of the state agri-
cultural extension service; the director of the state agri-
cultural experiment station; the director of the state con-
servation commission; and the state commissioner of agri-
culture, who shall be chairman of the committee.

The governor shall appoint as additional members of the
committee, three representative citizens. The term of mem-
ers thus appointed shall be four years, except that of the
first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers
and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations, and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their
duties on the committee. The committee shall provide for
the execution of surety bonds for all employees and officers
who shall be entrusted with funds or property; shall provide
for the keeping of a full and accurate public record of all
proceedings and of all resolutions, regulations, and orders
issued or adopted; and shall provide for an annual audit
of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter con-
erred upon the state soil conservation committee, it shall
have the following duties and powers:

(1) To offer such assistance as may be appropriate to the
supervisors of soil conservation districts, organized as pro-
vided hereinafter, in the carrying out of any of their powers
and programs.

(2) To keep the supervisors of each of the several dis-
tricts organized under the provisions of this act informed of
the activities and experience of all other districts organized
hereunder, and to facilitate an interchange of advice and
experience between such districts and cooperation between
them.
(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

To accept and receive donations, gifts, contributions, grants and appropriations, in money, services, materials or otherwise, from the United States or any of its agencies, from the State of West Virginia, or from other sources, and to use or expend such money, services, materials, or other contributions, in carrying on its administrative duties as set forth herein or in assisting the operations of any soil conservation district.

Sec. 5. Creation of Soil Conservation Districts. A. Any twenty-five owners of land lying within the limits of the ter-
Enrolled S. B. No. 199]

3 Territory proposed to be organized into a district may file a
4 petition with the state soil conservation committee asking that
5 a soil conservation district be organized to function in the ter-
6 ritory described in the petition. Such petition shall set forth:
7 (1) The proposed name of said district;
8 (2) That there is need, in the interest of the public health,
9 safety and welfare, for a soil conservation district to function
10 in the territory described in the petition;
11 (3) A description of the territory proposed to be organized
12 as a district, which description shall not be required to be given
13 by metes and bounds or by legal subdivisions, but shall be
14 deemed sufficient if generally accurate;
15 (4) A request that the state soil conservation committee
16 duly define the boundaries for such district; that a referendum
17 be held within the territory so defined on the question of the
18 creation of a soil conservation district in such territory; and
19 that the committee determine that such a district be created.
20 Where more than one petition is filed covering neighboring
21 parts of the same region, whether or not these areas overlap,
22 the state soil conservation committee may consolidate all or
23 any such petitions.
B. Within thirty days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts
and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. Districts thus defined may be a watershed or portion thereof, and nothing in this act shall be interpreted to exclude from consideration, small areas often constituting a very small part of a large watershed. The district may be large or small, but in making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such
other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section two of this act. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the de-
termination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of ................................, ................................ and ................................" and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of ................................, ................................ and ................................" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All owners of lands lying within the boundaries of the territory, as determined
by the state soil conservation committee, shall be eligible to vote
in such referendum.

D. The committee shall pay all expenses for the issuance
of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matter relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such
determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land owners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section two of this act: Provided, however, That the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty per centum of the votes cast in the referendum upon the proposition of
creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act, with the three supervisors elected as provided hereinafter, as the governing body of the district.

G. The two appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district;
and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district; and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively
practicable and feasible. The said statement shall set forth
the boundaries of the district as they have been defined by the
committee.

The secretary of state shall examine the application and
statement and, if he finds that the name proposed for the
district is not identical with that of any other soil conserva-
tion district of this state or so nearly similar as to lead to
confusion or uncertainty, he shall file them and shall record
them in an appropriate book of record in his office. If the
secretary of state shall find that the name proposed for the
district is identical with that of any other soil conservation
district of this state, or so nearly similar as to lead to con-
fusion and uncertainty, he shall certify such fact to the state
soil conservation committee, which shall thereupon submit to
the secretary of state a new name for the said district, which
shall not be subject to such defects. Upon receipt of such
new name, free of such defects, the secretary of state shall
record the application and statement, with the name so modi-
fied, in an appropriate book of record in his office. The sec-
cretary of state shall make and issue to the said supervisors a
certificate, under the seal of the state, of the due organization
of the said district, and shall record such certificate with the
application and statement. The boundaries of such district
shall include the territory as determined by the state soil
conservation committee as aforesaid, but in no event shall
they include any area included within the boundaries of
another soil conservation district organized under the pro-
visions of this act.

II. After six months shall have expired from the date of
entry of a determination by the state soil conservation com-
mittee that operation of a proposed district is not admin-
istratively practicable and feasible, and denial of a petition
pursuant to such determination, subsequent petitions may be
filed as aforesaid, and action taken thereon in accordance
with the provisions of this act.

I. Petitions for including additional territory within an
existing district may be filed with the state soil conservation
committee, and the proceedings herein provided for in the
case of petitions to organize a district shall be observed in the
case of petitions for such inclusion. The committee shall
prescribe the form for such petitions, which shall be as nearly
as may be in the form prescribed in this act for petitions to
organize a district. Where the total number of land owners
in the area proposed for inclusion shall be less than twenty-
five, the petition may be filed when signed by a majority
of the land owners of such area, and in such case no referen-
dum need be held. In referenda upon petitions for such in-
elusion, all owners of land lying within the proposed addi-
tional area shall be eligible to vote.

J. In any suit, action, or proceeding involving the validity
or enforcement of, or relating to, any contract, proceeding,
or action of the district, the district shall be deemed to have
been established in accordance with the provisions of this
act upon proof of the issuance of the aforesaid certificate by
the secretary of state. A copy of such certificate duly certified
by the secretary of state shall be admissible in evidence in
any such suit, action, or proceeding and shall be proof of the
filing and contents thereof.

Sec. 6. Election of Three Supervisors for Each District.

Within thirty days after the date of issuance by the secretary
of state of a certificate of organization of a soil conservation
district, nominating petitions may be filed with the state
soil conservation committee to nominate candidates for super-
Enrolled S. B. No. 199] 26

6 visors of such district. The committee shall have authority
7 to extend the time within which nominating petitions may be
8 filed. No such nominating petition shall be accepted by the
9 committee unless it shall be subscribed by twenty-five or more
10 owners of lands lying within the boundaries of such district.
11 Land owners may sign more than one such nominating peti-
12 tion to nominate more than one candidate for supervisor.
13 The committee shall give due notice of an election to be held
14 for the election of three supervisors for the district. The
15 names of all nominees on behalf of whom such nominating
16 petitions have been filed within the time herein designated,
17 shall appear, arranged in the alphabetical order of the sur-
18 names, upon ballots, with a square before each name and a
19 direction to insert an X mark in the square before any three
20 names to indicate the voter’s preference. All owners of lands
21 lying within the district shall be eligible to vote in such elec-
22 tion. Only such land owners shall be eligible to vote. The
23 three candidates who shall receive the largest number, re-
24 spectively, of the votes cast in such election shall be the elected
25 supervisors for such district. The committee shall pay all
26 the expenses of such election, shall supervise the conduct
Sec. 7. *Appointment, Qualifications and Tenure of Supervisors.* The governing body of the district shall consist of five supervisors, appointed or elected as provided in preceding sections. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties hereunder, and must be legal residents and land owners of the district. The supervisor shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three years, except that the supervisors who are first appointed shall be designated to serve for terms of one and two years respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed. The selection of successors to fill a vacancy shall be made in the same manner in which the retiring supervisors were selected. A majority of the supervisors shall constitute a quorum and the concurrence
of a majority in any matter within their duties shall be re-
quired for its determination. A supervisor shall be entitled
to expenses, and a per diem not to exceed four dollars when
engaged in the performance of his duties.

The supervisors may with the approval of the state com-
mittee employ a secretary, technical experts, and such other
officers, agents, and employees, permanent and temporary,
as they may require, and shall determine their qualifications,
duties, and compensation. The supervisors may delegate
to their chairman, to one or more supervisors, or to one or
more agents, or employees, such administrative powers and
duties as they may deem proper. The supervisors shall fur-
nish to the state soil conservation committee, upon request,
copies of such ordinances, rules, regulations, orders, contracts,
forms, and other documents as they shall adopt or employ,
and such other information concerning their activities as it
may require in the performance of its duties under this act.

The supervisors shall provide for the execution of surety
bonds for all employees and officers who shall be entrusted
with bonds or property; shall provide for the keeping of a
full and accurate record of all proceedings and of all resolu-
tions, regulations, and orders issued or adopted; and shall
provide for an annual audit of the accounts of receipts and
disbursements. Any supervisor may be removed by the state
soil conservation committee upon notice and hearing, for
neglect of duty or malfeasance in office, but for no other reason.
The supervisors may invite the legislative body of any
municipality or county located near the territory comprised
within the district to designate a representative to advise
and consult with the supervisors of the district on all ques-
tions of program and policy which may affect the property,
water supply, or other interests of such municipality or
county.

Sec. 8. Powers of Districts and Supervisors. A soil conser-
vation district organized under the provisions of this act
shall have the following powers, and the supervisors thereof
shall have the following powers, in addition to others granted
in other sections of this act:

(1) To conduct surveys, investigations, and research re-
lating to the character of soil erosion and the preventive
and control measures needed, to publish the results of such
surveys, investigations, or research, and to disseminate
Provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the meas-
ures listed in subsection C of section two of this act, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to ex-
pend such income in carrying out the purposes and pro-
visions of this act; and to sell, lease, or otherwise dispose of
any of its property or interests therein in furtherance of the
purposes and the provisions of this act;
(6) To make available, on such terms as it shall prescribe,
to land occupiers within the district, agricultural and engi-
eering machinery and equipment, fertilizer, seeds, and
seedlings, and such other material or equipment, as will
assist such land occupiers to carry on operations upon their
lands for the conservation of soil resources and for the pre-
vention and control of soil erosion;
(7) To construct, improve, and maintain such structures
as may be necessary or convenient for the performance of
any of the operations authorized in this act;
(8) To develop with the approval of the state committee
comprehensive plans for the conservation of soil resources
and for the control and prevention of soil erosion within the
district, which plans shall specify in such detail as may be
possible, the acts, procedures, performances, and avoidances
which are necessary or desirable for the effectuation of such
plans, including the specification of engineering operations,
methods of cultivation, the growing of vegetation, cropping
programs, tillage practices, and changes in use of land;
and to publish such plans and information and bring them
to the attention of occupiers of lands within the district;
(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-
control, or erosion-prevention project located within
its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage,
as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-
control, or erosion-prevention project within its boundaries;
to act as agent for the United States, or any of its agencies,
or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts,
contributions and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other
source, and to use or expend such money, services, materials,
or other contributions in carrying on its operations;
(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this act, to carry into effect its purposes and powers;
(11) As a condition to this extending of any benefits under this act to, or the performance of work upon, any lands, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;
(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder in its
acquisition, operation and disposition or property unless the legislature shall specifically so state.

Sec. 9. Adoption of Land-Use Regulations. A. The super-
visors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors shall conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.
The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. ....... , prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ....... , prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein pro-
vided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least sixty percent of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by sixty percent of the votes cast in such referendum shall not be deemed to require the supervisor to enact such proposed ordinance into law. No ordinance shall become effective without the approval of the state committee. Land-use regulations adopted pursuant to the provisions of this act shall be binding on all land occupiers within such district.

B. Any owner of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations adopted by the supervisors under the provisions of this article shall be amended, supplemented, or repealed. Land-use regulations adopted pursuant to the provisions of this act shall not be amended, supplemented, or repealed except in accordance with the
procedure prescribed in this act for adoption of land-use regulations.

C. Regulations to be adopted by the supervisors under the provisions of this act may include:

(a) Provisions requiring the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(b) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sewing, planting, strip cropping, seeding and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation and reforestation;

(c) Specifications of cropping programs and tillage practices to be observed;

(d) Provisions limiting the cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due
regard to the legislative findings set forth in section two of this act.

D. The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this act shall be printed and made available to all owners and occupiers of lands lying within the district.

E. In formulating and enacting such land-use regulations, the supervisors shall give due weight and consideration to the respective total acreages for and against the establishment of the regulations, to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the regulations the particular lands under considera-
tion and the benefits such lands may receive from being
included within such regulations, the relation of the pro-
posed area to existing watersheds and agricultural regions,
and to other soil conservation districts already organized
or proposed for organization under the provisions of this act,
and such other physical, geographical, and economic factors
as are relevant, having due regard to the legislative de-
termination set forth in section two of this act.

Sec. 10. Performance of Work Under the Regulations by
the Supervisors. The supervisors shall have authority to go
upon any lands within the district to determine whether
land-use regulations adopted under the provisions of section
nine of this act are being observed.

Where the supervisors of any district shall find that any
of the provisions of land-use regulations adopted in ac-
cordance with the provisions of section nine hereof are not
being observed on particular lands, and that such non-
observance tends to increase erosion on such lands and is
interfering with the prevention or control of erosion on other
lands within the district, the supervisors may present to the
circuit court for the county in which the lands of the de-
fendant may lie, a bill in equity, duly verified, setting forth
the adoption of the land-use regulations, the failure of the
defendant land occupier to observe such regulations, and
to perform particular work, operations, or avoidances as
required thereby, and that such nonobservance tends to in-
crease erosion on such lands and is interfering with the pre-
vention or control of erosion on other lands within the
district, and praying the court to require the defendant to
perform the work, operations, or avoidances within a
reasonable time and to order that if the defendant shall fail
so to perform the supervisors may go on the land, perform
the work or other operations or otherwise bring the con-
dition of such lands into conformity with the requirements
of such regulations, and recover the costs and expenses
thereof, with interest, from the occupiers of such land.
Upon the presentation of such bill in equity, the court shall
cause process to be issued against the defendant, and shall
hear the case. If it shall appear to the court that testimony
is necessary for the proper disposition of the matter, it may
take evidence, or appoint a special commissioner to take
such evidence as it may direct and report the same to the
35 court with his findings of fact and conclusions of law, which
36 shall constitute a part of the proceedings upon which the
37 determination of the court shall be made. In ascertaining
38 whether the land-use regulations are reasonable and just,
39 the court may inquire into the extent to which the super-
40 visors have been guided by the administrative standards set
41 forth in section nine, paragraph E. The court may dis-
42 miss the bill; or it may require the defendant to perform the
43 work, operations, or avoidances, and may provide that upon
44 the failure of the defendant to initiate such performance
45 within the time specified in the decree of the court and to
46 prosecute the same to completion with reasonable diligence,
47 the supervisors may enter upon the lands involved and per-
48 form the work or operations or otherwise bring the condition
49 of such lands into conformity with the requirements of the
50 regulations and recover the costs and expenses thereof,
51 with interest at the rate of five per centum per annum, from
52 the occupier of such lands. In all cases where the person in
53 possession of lands, who shall fail to perform such work,
54 operations, or avoidances shall not be the owner, the owner
55 of such lands shall be joined as party defendant.
The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such decree of the court the supervisors may apply to the court, notice thereof being served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

Sec. 11. Board of Adjustment. A. Where the supervisors of any district organized under the provision of this act shall adopt any ordinance prescribing land-use regulations in accordance with the provisions of section nine hereof, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three members, each to be appointed for a term of three years, except that the members first appointed shall be appointed for terms of one, two, and three years, respectively. The members of each such board of adjustment shall be ap-
pointed by the state soil conservation committee, and shall
serve at the will and pleasure of the committee.

Vacancies in the board of adjustment shall be filled in the
same manner as original appointments, and shall be for the
unexpired term of the member whose term becomes vacant.

Members of the state soil conservation committee and the
supervisors of the district shall be ineligible to appointment
as members of the board of adjustment during their tenure
of such other office. The members of the board of adjustment
shall receive no compensation for their services, but they shall
be entitled to expenses, including traveling expenses, neces-
sarily incurred in the discharge of their duties. The state
committee shall pay the necessary administrative and other
expenses of operation incurred by the board, upon the certifi-
cate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its
procedures, which rules shall be in accordance with the pro-
visions of this act and with the provisions of any ordinance
adopted pursuant to this section. The board shall designate a
chairman from among its members, and may, from time to time,
change such designation. Meetings of the board shall be held at
the call of the chairman and at such other times as the board
may determine. Any two members of the board shall constitute
a quorum. The chairman, or in his absence such other mem-
ber of the board as he may designate to serve as acting chair-
man, may administer oaths and compel the attendance of wit-
nesses. All meetings of the board shall be open to the public.
The board shall keep a full and accurate record of all pro-
ceedings, of all documents filed with it, and of all orders en-
tered, which shall be filed in the office of the board and shall
be a public record.

C. Any land occupier may file a petition with the board of
adjustment alleging that there are great practical difficulties
or unnecessary hardship in the way of his carrying out upon
his lands the land-use regulations prescribed by ordinance
approved by the supervisors, and praying the board to au-
thorize a variance from the terms of the land-use regulations
in the application of such regulations to the lands occupied
by the petitioner. Copies of such petition shall be served
by the petitioner upon the chairman of the supervisors of the
district within which his lands are located and upon the
chairman of the state soil conservation committee. The board
of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The super-
visors of the district and the state soil conservation committee shall have the right to appear and be heard at such hearing.
Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and
such that the spirit of the land-use regulations shall be ob-
served, the public health, safety, and welfare secured, and
substantial justice done.

D. Any petitioner aggrieved by an order of the board
granting or denying, in whole or in part, the relief sought, the
supervisors of the district or any intervening party, may
obtain a review of such order in the Circuit Court of the
County in which the land lies, by filing in such a court a pe-
tition praying that the order of the board be modified or set
aside. A copy of such petition shall forthwith be served upon
the parties to the hearing before the board and thereupon
the party seeking review shall file in the court a transcript of
the entire record in the proceedings, certified by the board,
including the documents and testimony upon which the order
complained of was entered, and the findings, determination,
and order of the board. Upon such filing, the court shall cause
notice thereof to be served upon the parties and shall have
jurisdiction of the proceedings and of the questions deter-
mined or to be determined therein, and shall have power to
grant such temporary relief as it deems just and proper, and to
make and enter a decree enforcing or setting aside, in whole
or in part, the order of the board. No contention that has
not been urged before the board shall be considered by the
court unless the failure or neglect to urge such contention
shall be excused because of extraordinary circumstances. The
findings of the board as to the facts, if supported by evidence,
shall be conclusive. If any party shall apply to the court
for leave to produce additional evidence and shall show to the
satisfaction of the court that such evidence is material and
that there were reasonable grounds for the failure to produce
such evidence in the hearing before the board, the court may
order such additional evidence to be taken before the board
and to be made a part of the transcript. The board may
modify its findings as to the facts or make new findings, taking
into consideration the additional evidence so taken and filed,
and it shall file such modified or new findings which, if sup-
ported by evidence, shall be conclusive, and shall file with the
court its recommendations, if any, for the setting aside of its
original order. The jurisdiction of the court shall be exclusive
and its judgment and decree shall be final, except that the same
shall be subject to review in the same manner as are other
judgments or decrees of the court.
Sec. 12. *Cooperation Between Districts.* The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act.

Sec. 13. *State Agencies to Cooperate.* Agencies of this state which shall have jurisdiction over or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly-owned lands, lying within the boundaries of any district organized hereunder, may cooperate with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. When such cooperation is undertaken, the supervisors of such districts shall be given free access to enter and perform work upon such publicly-owned lands. In connection with land-use regulations adopted pursuant to section nine of this act, the state, through its proper agency, and governmental subdivisions of the state, may cooperate in the effectuation of such regulations.
Sec. 14. Discontinuance of Districts. At any time after five years following the organization of a district under the provisions of this act, any twenty-five owners of land lying within the boundaries of such district may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof. The question shall be submitted by ballots upon which the words “For terminating the existence of the ................. (name of the soil conservation district to be here inserted)” and “Against terminating the existence of the ......... (name of the soil conservation district to be here inserted)” shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discon-
tinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the owners of lands lying within
the district, the number of land owners eligible to vote in
such referendum who shall have voted, the proportion of the
votes cast in such referendum in favor of the discontinuance
of the district to the total number of votes cast, the ap-
proximate wealth and income of the land occupiers of the
district, the probable expense of carrying on erosion control
operations within such district, and such other economic and
social factors as may be relevant to such determination,
having due regard to the legislative findings set forth in
section two of this act: Provided, however, That the com-
mittee shall not have authority to determine that the con-
tinued operation of the district is administratively practicable
and feasible unless at least a majority of the votes cast in
the referendum shall have been cast in favor of the con-
tinuance of such district.

Upon receipt from the state soil conservation committee
of certification that the committee has determined
that the continued operation of the district is not
administratively practicable and feasible, pursuant
to the provisions of this section, the supervisors
shall forthwith proceed to terminate the affairs of the dis-
Enrolled S. B. No. 199

The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office. Upon issuance of a certificate of dissolution under the provisions of this section, all regulations theretofore adopted and in force within such district shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force.
and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisor of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section ten of this act, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this act, more often than once in three years.

Sec. 15. Separability Clause. If any provision of this act, or the administrative application of any provision to any
person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 16. Inconsistency With Other Acts. Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect Ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within........ approved........ this the $................

day of.............. 1939.

Governor

Filed in the office of the Secretary of State of West Virginia MAR 17 1939

Wm. S. O'BRIEN, Secretary of State