WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 97

(By Mr. Bowling)

PASSED February 20, 1947

In Effect from Passage
AN ACT to amend and reenact sections two, four, five, six and seven, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to soil conservation districts, the state soil conservation committee, its powers and duties, and the election, appointment, qualifications and tenure of supervisors.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six and seven, article twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter five, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

Section 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 wel-
fare 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 inter-
fered 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 pro-
tective 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; deteriora-
tion 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, diminish-
ing the food supply of fish; a diminishing of the under-
ground water reserve, which causes water shortages, in-
tensifies periods of drought, and causes crop failures; an
increase in the speed and volume of rainfall run-off,
causing severe and increasing floods, which bring suffer-
ing, disease, and death; impoverishment of families at-
tempting 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.

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 wide-spread 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 re-forestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil holding
crops; retardation of run-off 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 cost of organizing soil conservation districts will be borne by the state, while the expense of operating the districts so organized, will be provided by 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, with the understanding that the owners or occu-
piers will contribute funds, labor, materials and equipment to aid the carrying out of erosion control measures on their lands.

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 agricultural extension service; the director of the state agricultural experiment station; the director of the state conservation commission; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members 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 conferred 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 provided hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts 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;

(6) 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 out the policy and provisions of this act, including the right to allocate such money, services, or materials in part to the various soil conservation districts created by this act in order to assist them in carrying on their operations;

(7) 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, operate and improve
any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions 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.

Sec. 5. Creation of Soil Conservation Districts.—(a) Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required
to be given by metes and bounds or by legal subdivisions,
but shall be deemed sufficient if generally accurate;
(4) A request that the state soil conservation com-
mittee duly define the boundaries for such district; that a
referendum be held within the territory so defined on the
question of the creation of a soil conservation district in
such territory; and that the committee determine that
such a district be created.
Where more than one petition is filed covering neigh-
boring parts of the same region, whether or not these
areas overlap, the state soil conservation committee may
consolidate all or 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 inter-
est of the public health, safety, and welfare, of the crea-
tion 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 un-
der this act, and upon all questions relevant to such in-
queries. 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 considera-
tion, 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 boun-
daries, the committee shall give due weight and consid-
eration to the topography of the area considered and of
the state, the composition of soils therein, the distribu-
tion of erosion, the prevailing land-use practices, the de-
sirability 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 determina-
tions set forth in section two of this act. The territory to
be included within such boundaries need not be con-
tiguous. 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 determination 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 “Against creation of a soil conservation district of
the lands below described and lying in the county (ies)
of

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 districts 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 is-
suance 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 regu-
tations governing the conduct of such hearings and refer-
enda, 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 in-
formalities 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 giv-
en substantially as herein provided and said referendum
shall have been fairly conducted.

(e) The committee shall publish the result of such ref-
erendum 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 feas-
able, it shall record such determination and deny the
petition. If the committee shall determine that the opera-
tion 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: 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 practical and feasible, it shall appoint two supervisors to act with the 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 per-
sonally 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 conservation 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 confusion 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 modified, in an appropriate book of record in his
office. The secretary 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 dis-
trict, and shall record such certificate with the appli-
cation and statement. The boundaries of such dis-
trict shall include the territory as determined by
the state soil conservation committee as aforesaid,
but in no event shall they include any area in-
cluded within the boundaries of another soil con-
servation district organized under the provisions of this
act.

(h) After six months shall have expired from
the date of entry of a determination by the state soil
conservation committee that operation of a proposed
district is not administratively practicable and feasible,
and denial of a petition pursuant to such determina-
tion, 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 here- in 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 referendum need be held.

In referenda upon petitions for such inclusion, all owners of land lying within the proposed additional 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 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 supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more owners of lands lying within the boundaries of such district and within the boundaries of the county in which the candidate resides. Land owners may sign more than one
such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of one supervisor from each county or portion thereof within the boundaries of the district. The names of all nominees in each county on behalf of whom such nominating petitions have been filed within the time designated, shall appear arranged in alphabetical order of the surnames upon a ballot, with a square before each name and a direction to insert an X mark in the square before any one name to indicate the voter's preference. All owners of lands lying within the district shall be eligible to vote in such election for one candidate from the county in which they reside. Only such land owners shall be eligible to vote. The candidate in each county who shall receive the largest number of votes cast in such election by land owners residing in his county shall be one of the elected supervisors for such district. The committee shall pay all expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of
Sec. 7. **Appointment, Qualification, and Tenure of Supervisors.**—The governing body of the district shall consist of the 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 supervisors 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. In case a new county or portion thereof is added to a district the committee may appoint a supervisor to represent it until such time as the next regular election of supervisors for the district takes place. In case a vacancy
occurs among the elected supervisors of a district the
committee shall appoint a successor from the same county
to fill the unexpired term. Such appointment shall be
made from a name or list of names submitted by local
farm organizations and agencies. When any county or
portion thereof lying within the boundaries of a district
shall have in effect eight hundred or more signed agree-
ments of cooperation with occupiers of land located with-
in said county, then at the next regular election of super-
visors the land occupiers within said county or portion
thereof are entitled to elect two supervisors to represent
the county instead of one for the term and in the manner
previously prescribed. A majority of the supervisors
shall constitute a quorum and the concurrence of a ma-
jority in any matter within their duties shall be required
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
committee 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 super-
visors 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 furnish 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 sure-
ty bonds for all employees and officers who shall be en-
trusted with funds or property; shall provide for the
keeping of a full and accurate 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. 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 a district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 25th day of Feb., 1947.

[Signature]
Governor.