WEST VIRGINIA LEGISLATURE

ENROLLED

SENATE BILL NO. 417

(By Senator ANDERSON, ET AL)

PASSED March 7, 2002

In Effect From Passage
ENROLLED

Senate Bill No. 417

(BY SENATORS ANDERSON, ROSS, FACEMYER, LOVE AND MINARD)

[Passed March 7, 2002; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen-a, thirteen-b, thirteen-c and fourteen, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating to soil conservation districts; changing name of “soil conservation districts law of West Virginia” to “conservation districts law of West Virginia”; changing the name “soil conservation districts” to “conservation districts”; changing the name “state soil conservation committee” to “state conservation committee”; adding two members to the conservation committee; and continuing the state conservation committee.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen-a, thirteen-b, thirteen-c and fourteen, article
twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-1. Title of article.

This article may be known and cited as the "Conservation Districts Law of West Virginia".

§19-21A-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 landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her 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 underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, 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, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(c) That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damage and further the conservation, development, utilization and disposal of water, 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 and works of improvement for flood prevention or the conservation, development, utilization and disposal of water 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, dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing,
contour cultivating and contour furrowing; land drainage; 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, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, 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 article contemplates that the incidental cost of organizing 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 occupiers will contribute funds, labor, materials and equipment to aid the carrying out of erosion control measures on their lands.


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

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

(3) "Committee" or "state conservation committee" means the agency created in section four of this article.

(4) "Petition" means a petition filed under the provisions of subsection (a), section five of this article for the creation of a district.

(5) "State" means the state of West Virginia.

(6) "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.

(7) "United States" or "agencies of the United States" includes the United States of America, natural resources 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) "Landowners" 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 article.

(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 article, whether as owner, lessee, renter or tenant.

(10) "Due notice" means notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the
§19-21A-4. State conservation committee; continuation.

(a) The state conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of nine members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; the state commissioner of agriculture, who shall be chairman of the committee; and the director of the division of forestry.

The governor shall appoint as additional members of the committee four representative citizens. Members will be
appointed for four year terms, which are staggered in accordance with the initial appointments under prior enactment of this act. In the event of a vacancy, appoint-ment 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 as may be necessary for the execu-
tion of its functions under this article.

(b) The state 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 or she shall retain the office by virtue of which he or she 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, rules 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 conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of 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 article, 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 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 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 article, including the right to allocate such money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(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 article; 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 article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state conservation committee and expended as herein provided.

§19-21A-4a. Continuation of state conservation committee.

The state conservation committee is continued until the first day of July, two thousand six, pursuant to the provisions of article four, chapter ten of the code of West Virginia, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

(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 conservation committee asking that a 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 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 conservation committee 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 conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering neighboring parts of the same region, whether or not these areas overlap, the state conservation committee may consolidate all or any such petitions.

(b) Within thirty days after such a petition has been filed with the state 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 article 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 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 article 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 conservation districts already organized or proposed for organization under the provisions of this article 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 article. 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 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 conservation districts in this article 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 conservation district of the lands below described and lying in the county (ies) of____________, and_________.

Against creation of a 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 districts as determined by the committee. All owners of lands lying within the boundaries of the territory, as determined by the state 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 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 landowners 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 article: Provided, 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 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 conservation committee pursuant to the provisions of this article and that the proceedings specified in this article were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this article; 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 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 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; 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; and 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 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 or her office. If the secretary of state shall find that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state 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 or her 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
district and shall record such certificate with the applica-
tion and statement. The boundaries of such district shall
include the territory as determined by the state conserva-
tion committee as aforesaid, but in no event shall they
include any area included within the boundaries of
another conservation district organized under the provi-
sions of this article.

(h) After six months shall have expired from the date of
entry of a determination by the state conservation commit-
tee that operation of a proposed district is not administra-
tively practicable and feasible and denial of a petition
pursuant to such determination, subsequent petitions may
be filed as aforesaid and action taken thereon in accor-
dance with the provisions of this article.

(i) Petitions for including additional territory within an
existing district may be filed with the state 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 article
for petitions to organize a district. Where the total
number of landowners in the area proposed for inclusion
shall be less than twenty-five, the petition may be filed
when signed by a majority of the landowners 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 article 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.

§19-21A-6. Election of supervisors for each district.

1 Within thirty days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the state conservation committee to nominate candidates for supervisors of such district.

6 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. Landowners 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 landowners shall be eligible to vote. The candidate in each county who shall receive the largest number of votes cast in such election by landowners residing in his or her 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 voters therein and shall make public the results thereof.
§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

The governing body of the district shall consist of the supervisors, appointed or elected, as provided in this article. 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 under this section and must be legal residents and landowners of the district.

The supervisors shall designate a chairman and may, from time to time, change the designation. The term of office of each supervisor is three years. A supervisor shall hold office until his or her successor has been elected or appointed. In case a new county or portion of a county 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. The appointment shall be made from a name or list of names submitted by local farm organizations and agencies. When any county or portion of a county lying within the boundaries of a district has in effect eight hundred or more signed agreements of cooperation with occupiers of land located within the county, then at the next regular election of supervisors the land occupiers within the county or portion of the county are entitled to elect two supervisors to represent the county instead of one for the term and in the manner prescribed in this section. A majority of the supervisors constitutes a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor is entitled to expenses and a per diem not to exceed twenty dollars when engaged in the performance of his or her duties.
The supervisors may, with the approval of the state committee, employ a secretary, technical experts and any 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, those administrative powers and duties they consider proper. The supervisors shall furnish to the state conservation committee, upon request, copies of the ordinances, rules, regulations, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities as it may require in the performance of its duties under this article.

The supervisors 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 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 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 the municipality or county.


A conservation district organized under the provisions of this article shall have the following powers and the supervisor thereof shall have the following powers, in addition to others granted in other sections of this article:
(1) To conduct surveys, investigations and research relating to the character of soil erosion and floodwater and sediment damage and to the conservation, development, utilization and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations or research and to disseminate information concerning such preventive and control measures and works of improvement: Provided, 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 and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land and the measures listed in subsection (c), section two of this article 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 and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(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 institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; 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 article;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering 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 prevention and control of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(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 and for
flood prevention or the conservation, development, utilization and disposal of water 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, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, 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, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, 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, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, 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 instru-
ments, 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 article to
carry into effect its purposes and powers;

(11) As a condition to this extending of any benefits
under this article to, or the performance of work upon, any
lands, the supervisors may require contributions in money,
services, materials or otherwise to any operations confer-
ring 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 and prevent floodwater and sediment
damage 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 of property unless
the Legislature shall specifically so state;

(13) To enter into contracts and other arrangements with
agencies of the United States, with persons, firms or
corporations, including public corporations, with the state
government of this state or other states, or any department
or agency thereof, with governmental divisions, with soil
conservation, drainage, flood control, soil erosion or other
improvement districts in this state or other states, for
cooperation or assistance in constructing, improving,
operating or maintaining works of improvement within
the district, or in preventing floods, or in conserving,
developing, utilizing and disposing of water in the district,
or for making surveys, investigations or reports thereof;
and to obtain options upon and acquire property, real or
personal, or rights or interests therein, in other districts or
states required for flood prevention or the conservation,
development, utilization and disposal of water within the
district and to construct, improve, operate or maintain
thereon or therewith works of improvement.
§19-21A-10. Authority of supervisors in determining observance of land-use regulations; suits to enforce compliance.

1. 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 article are being observed.

2. Where the supervisors of any district shall find that any of the provisions of land-use regulations adopted in accordance with the provisions of section nine hereof are not being observed on particular lands and that such nonobservance 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 defendant 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 increase erosion on such lands and is interfering with the prevention 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 condition 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 court with his or her findings of fact
and conclusions of law which shall constitute a part of the proceedings upon which the determination of the court shall be made. In ascertaining whether the land-use regulations are reasonable and just, the court may inquire into the extent to which the supervisors have been guided by the administrative standards set forth in paragraph E, section nine of this article. The court may dismiss the bill; or it may require the defendant to perform the work, operations or avoidances and may provide that upon the failure of the defendant to initiate such performance within the time specified in the decree of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands who shall fail to perform such work, operations or avoidances shall not be the owner, the owner 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.


A. Where the supervisors of any district organized under the provision of this article 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 appointed by the state 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 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, necessarily 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 certificate 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 provisions of this article 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 or her absence such other member of the board as he or she may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be
open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it and of all orders entered 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 or her carrying out upon his or her lands the land-use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize 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 or her lands are located and upon the chairman of the state 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 supervisors of the district and the state 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 observed, 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 petition 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 determined 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. 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 supported 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 conclusive 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.

§19-21A-13a. Authority of governmental divisions to expend
money for works of improvement; levy.

1. The governing body of any governmental division which
may reasonably be expected to receive a benefit from the
construction, improvement, operation or maintenance of
any works of improvement may expend money for such
construction, improvement, operation or maintenance if
this expectation exists as to any part of the governmental
division and even though such works of improvement are
not located within the corporate limits of the governmental
division or are not within this state: Provided, That if
the expenditure is not made directly by the governmental
division for such purpose, it shall be made only through a
conservation district or watershed improvement district
organized under the laws of this state, but it shall not be
necessary that any part of the governmental division be
within the limits of the district through which the expend-
diture is made. Such governing bodies or governmental
divisions may set up in their respective budgets funds to be
spent for such purposes and municipalities and counties
may levy and collect taxes for such purposes in the manner
provided by law: Provided, however, That in case suffi-
cient funds cannot be raised by ordinary levies, additional
funds may be raised by municipalities and counties as
provided by section sixteen, article eight, chapter eleven of
this code.

§19-21A-13b. Assurances of cooperation by governmental
division.

1. By vote of the governing body, any governmental
division authorized to expend money on works of improve-
ment by section thirteen-a of this article may alone, or in
combination with any other governmental division or
divisions so authorized to expend money on works of
improvement, give assurances, by contract or otherwise,
satisfactory to agencies of the United States, congressional
committees or other proper federal authority and to
conservation districts or watershed improvement districts
organized under the laws of this state that the governmen-
tal division or divisions will construct, improve, operate or
maintain works of improvement or will appropriate a sum
or sums of money and expend it for such purposes as
provided in section thirteen-a of this article.

The assurances, whether by contract or otherwise, shall
be reduced to writing and before final approval of the
governing bodies involved shall be submitted to the
attorney general for approval. After approval by the
attorney general and by the governing body or bodies
concerned, certified copies of the assurances shall be filed
in the office of the county clerk of the county or counties
in which the governmental division is located and in the
office of the state tax commissioner.

Any assurance hereunder may be valid and binding for
a period of time not to exceed fifty years.

§19-21A-13c. Contracts with district for construction of flood
control projects; power to borrow money; levy.

The county court of each county and the governing body
of each municipality in the state is hereby authorized and
empowered to enter into a contract or agreement with the
conservation district or districts for the purpose of con-
structing flood control projects within their respective
counties or municipalities or adjacent thereto and to use
said projects as recreational areas or public parks. For the
purpose of defraying the cost of any such project or
projects, the county court or the governing body of any
municipality is hereby authorized to borrow from the
federal government or from any federal agency having
money to loan, a sum sufficient to cover the cost of such project or projects. For the purpose of retiring any such indebtedness incurred under the provisions of this section, notwithstanding any other provisions of law, said county courts or the governing body of any municipality is hereby authorized to lay and impose a county or citywide levy as the case might be.


At any time after five years following the organization of a district under the provisions of this article, any twenty-five owners of land lying within the boundaries of such district may file a petition with the state 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 questions shall be submitted by ballots upon which the words “For terminating the existence of the ........................................ (name of the conservation district to be here inserted)” and “Against terminating the existence of the ........................................ (name of the 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 discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners 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
providing 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 landowners 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 approximate 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 article: Provided, That the committee shall not have authority to determine that the continued 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 continuance of such district.

Upon receipt from the state 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 district. 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 conservation committee setting forth the determi-
nation 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 or her 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 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 article,
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 supervi-
sors as to such liens and actions.
The state 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 article more often than once in three years.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 21st Day of March, 2002.

Governor