SENATE BILL NO. 670

(By Senator Kessler, et al.)

PASSED April 9, 2005

In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 670

(SENATORS KESSLER, EDGELL, HELMICK, BOLEY, BOWMAN, BARNES AND FACEMYER, original sponsors)

[Passed April 9, 2005; in effect from passage.]

AN ACT to amend and reenact §3-8-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-3, §19-21A-4 §19-21A-5, §19-21A-6 and §19-21A-7 of said code, all relating to electing supervisors for conservation districts; defining certain terms; authorizing emergency rulemaking; providing that registered voters in the district may vote for supervisors and in referendum; requiring candidate for supervisor file statement; requiring Conservation Committee certify qualified candidates for ballot; providing that candidate may not be on ballot or take office if qualifications not met; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That §3-8-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §19-21A-3, §19-21A-4 §19-21A-5, §19-21A-6 and §19-21A-7 of said code be amended and reenacted, all to read as follows:
CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value, and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the Committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement, according to the following provisions and times:

(1) On the last Saturday in March or within six days thereafter and annually whenever the total of all financial transactions relating to an election exceed five hundred dollars, a statement which shall include all financial transactions which have taken place by the date of that statement, subsequent to any previous statement filed within the previous five years under this section;
(2) Not less than ten nor more than seventeen days preceding each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement, if any;

(3) Not less than twenty-five nor more than thirty-one days after each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement; and

(4) On the first Saturday in September or within six days thereafter, preceding the general election day whenever the total of all financial transactions relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement.

(c) Every person who shall announce as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code shall only be required to file the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the general election.
CHAPTER 19. AGRICULTURE.

ARTICLE 21A. CONSERVATION DISTRICTS.


Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

1. "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.

2. "Committee" or "State Conservation Committee" means the agency created in section four of this article.

3. "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.

4. "Governing body" means the supervisors of any conservation district, town or city, council, city commission, county court or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city or county in this state.

5. "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.

6. "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.

7. "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 publication area for such publication shall be the county in which is
located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in such notice, adjournment may be made, from time to time, without the necessity of renewing such notice for such adjournment dates.

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

(9) “Soil conservation”, “erosion control” or “erosion prevention projects”, when used throughout the article, shall denote those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(10) “State” means the State of West Virginia.

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

(12) “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.

(13) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

§19-21A-4. State conservation committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;
(2) The following ex officio members:
(A) The Director of the State Cooperative Extension Service;
(B) The Director of the State Agricultural and Forestry Experiment Station;
(C) The Secretary of the Department of Environmental Protection;
(D) The State Commissioner of Agriculture, who is the chairperson of the committee;
(E) The Director of the Division of Forestry; and
(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) 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.

(d) The Committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The Committee shall determine their qualifications, duties and
compensation. The Committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The Committee may 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 the agency or institution of learning and make special reports, surveys or studies required by the Committee.

(f) A member of the Committee holds office so long as he or she retains the office by virtue of which he or she is serving on the Committee. A majority of the Committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the Committee may receive no compensation for their services on the Committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the Committee. The Committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) 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

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:
(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) 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 under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) 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 use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the 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) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the
property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property 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 provided in this article.

(8) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the regular session of the Legislature in the year two thousand five.


(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. The petition shall set forth:

(1) The proposed name of the 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 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 define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the Committee determine that 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 a petition has been filed with the State Conservation Committee, it shall cause 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. Notice of the date, place and time of the hearing shall be published no less than fourteen days prior to the hearing as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county or counties where the proposed district is located. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to the described territory, and all other interested parties shall have the right to attend the hearings and to be heard. If it appears upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which notice of the hearing has been given, the hearing shall be adjourned and notice of further hearing shall be given throughout the entire area considered for inclusion in the district and another hearing held. After the hearing, if the Committee determines, upon the facts presented at the hearing and 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 that
determination and in defining the boundaries, the commit-
tee shall give due weight and consideration to the topogra-
phy of the area considered and of the state, the composi-
tion of soils therein, the distribution of erosion, the
prevailing land-use practices, the desirability and neces-
sity of including within the boundaries the particular
lands under consideration and the benefits such lands may
receive from being included within the 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 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 the
boundaries need not be contiguous. If the Committee
determines after the hearing, after consideration of the
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 its determination and
deny the petition. After six months shall have expired
from the date of the denial of any 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 administrative practi-
cability and feasibility, it is the duty of the Committee 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 of the
creation of the proposed district shall be submitted to the
registered voters of the proposed district at the next
primary or general election. All of the provisions of
chapter three of this code, unless in conflict with the
provisions of this article, apply to voting and elections on
the referendum, insofar as practicable.

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 (counties) of
__________, __________, and __________. Against
creation of a conservation district of the lands below
described and lying in the (counties) 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 the
propositions as the voter may favor or oppose creation of
a district. The ballot shall set forth the boundaries of the
proposed districts as determined by the Committee.

(d) The Committee shall pay all expenses for the issuance
of notices and conducting hearings. It shall promulgate
rules in accordance with the provisions of article three,
chapter twenty-nine-a of this code governing the conduct
of hearings.

(e) The Committee shall publish the result of the referen-
dum and shall thereafter consider and determine whether
the operation of the district within the defined boundaries
is administratively practicable and feasible. If the Com-
mitee determines that the operation of the district is not
administratively practicable and feasible, it shall record
its determination and deny the petition. If the Committee
shall determine that the operation of the district is admin-
istratively practicable and feasible, it shall record the
determination and proceed with the organization of the
district in the manner hereinafter provided. In making its
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 the referendum who have voted, the
proportion of the votes cast in the 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 the district
and other economic and social factors as may be relevant
to the determination, having due regard to the legislative
determinations set forth in section two of this article.

(f) If the Committee determines that the operation of the
proposed district within the defined boundaries is admin-
istratively 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 by recitals: (1) That a petition for the
creation of the district was filed with the State Conserva-
tion Committee pursuant to the provisions of this article
and that the proceedings specified in this article were
taken pursuant to the 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 supervisors before an officer authorized by
the laws of this state to take and certify oaths, who shall
certify upon the application that he or she personally
knows the supervisors and knows them to be the officers
as affirmed in the application and that each has sub-
scribed thereto in the officer's presence. The application
shall be accompanied by a statement by the State Conser-
vation Committee, which shall certify by recitals that a
petition was filed, notice issued and hearing held as
aforesaid; that the Committee did 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 the district; that the result of
the referendum showed a majority of the votes cast in the
referendum to be in favor of the creation of the district;
and that thereafter the Committee did determine that the
operation of the proposed district is administratively
practicable and feasible. The 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 or she 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 or she shall file them
and shall record them in an appropriate book of record in
his or her office. If the Secretary of State finds 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 or she
shall certify that fact to the State Conservation Committee
which shall thereupon submit to the Secretary of State a
new name for the district, which shall not be subject to
defects. Upon receipt of the new name, free of defects, the
Secretary of State shall record the application and state-
ment, 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 supervisors a certificate, under the
seal of the state, of the organization of the district and
shall record the certificate with the application and
statement. The boundaries of the district shall include the
territory as determined by the State Conservation Com-
mittee as aforesaid, but in no event shall they include any
area included within the boundaries of another conserva-
tion district organized under the provisions of this article.

(h) After six months has expired from the date of entry
of a determination by the State Conservation Committee
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 inclusion. The Committee shall
prescribe the form for petitions, which shall be as nearly
as may be in the form prescribed in this article for peti-
tions to organize a district. Where the total number of
landowners in the area proposed for inclusion is less than
twenty-five, the petition may be filed when signed by a
majority of the landowners of the area and in such case no
referendum need be held.

(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 the certifi-
cate certified by the Secretary of State shall be admissible
in evidence in any 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
2 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 the district. A candidate for supervisor shall own land in the district and have the education, training or experience necessary to carry out the duties required by this article and rules promulgated thereunder. A candidate shall file with the Committee a sworn written statement specifying that he or she meets the requirements of office. A candidate may not be placed on the ballot or be seated as a supervisor unless he or she meets these requirements. The Committee shall provide a list of qualified candidates to the Secretary of State prior to any election for supervisor at the time and in the manner specified by the Secretary.

The Committee shall have authority to extend the time within which nominating petitions may be filed. No nominating petition shall be accepted by the Committee unless it is subscribed by twenty-five or more owners of lands lying within the boundaries of the district and within the boundaries of the county in which the candidate resides. Registered voters in the district may sign more than one nominating petition to nominate more than one candidate for supervisor. All registered voters in the district shall be eligible to vote in the election for two candidates from the county or portion thereof within the boundaries of the district in which they reside. The two candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for district. Supervisors shall be elected in the general election to be conducted in the year two thousand eight as nonpartisan candidates. The term of office for supervisor receiving the second highest number of votes in the general election of two thousand eight shall be for two years, commencing on the first day of January, two thousand nine, and ending on the thirty-first day of December, two thousand eleven. Subsequent terms of office for supervisors elected thereafter shall be for four years. Persons currently holding the position of supervisor shall, regard-
less of the expiration of the currently designated term of
office, continue to serve until the two thousand eight
election. Unless otherwise provided or in conflict with this
article, the provisions of chapter three shall apply to
election of supervisors.

§19-21A-7. Supervisors to constitute governing body of district;
qualifications and terms of supervisors; powers
and duties.

(a) The governing body of the district consists of the
supervisors, appointed or elected, as provided in this
article. The supervisors shall be persons who are by
training and experience qualified to perform the special-
ized skilled services which are required of them in the
performance of their duties under this section and shall be
legal residents and landowners in the district.

(b) The supervisors shall designate a chairperson and
may, from time to time, change the designation. On and
after the election of supervisors in two thousand eight,
term of office of each supervisor is four years. A supervi-
sor holds 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 the next regular election of
supervisors for the district takes place. If 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 the conservation
district.

(c) A supervisor is entitled to expenses and a per diem
not to exceed thirty dollars when engaged in the perfor-
mance of his or her duties.

(d) 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 chairperson, 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, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities required in the performance of State Conservation Committee's duties under this article.

(e) The supervisors shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(f) 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.

(g) 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.
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 ................. approved ........ the ....... Day of ................., 2005.

Governor
PRESENTED TO THE
GOVERNOR

APR 27 2005

Time _

[Signature]