

SB 778 S

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 778

(By Senator Kessler, et al)

PASSED MARCH 11, 2004

In Effect 90 days from Passage

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2006 APR -5 P 6: 23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 778

(BY SENATORS KESSLER, DEMPSEY, FANNING, FOSTER,
HUNTER, JENKINS, MINARD, OLIVERIO, WHITE, BARNES,
CARUTH, DEEM, LANHAM, MCKENZIE AND WEEKS)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to repeal §19-21A-4a, §19-21A-13a, §19-21A-13b and §19-21A-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-5 §19-21A-6, §19-21A-7, §19-21A-8, §19-21A-9, §19-21A-10, §19-21A-11, §19-21A-12, §19-21A-13 and §19-21A-14, all relating to the State Conservation Committee and conservation districts generally; allowing ex officio members of state committee to designate representative; allowing certain persons to enter private property and waters of the state to remove flood debris; providing for continuation of conservation committee and districts; providing for election of supervisors; providing method for filling supervisor vacancies; requiring conservation districts follow county lines; providing for per diem for supervisors; clarifying status of dam monitors; providing for discontinuance of districts; providing for reformation of districts; providing for distribution of assets and liabilities upon discontinuance of districts;

removing antiquated provisions; and making technical and conforming amendments throughout.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4a, §19-21A-13a, §19-21A-13b and §19-21A-13c of the Code of West Virginia, 1931, as amended, be repealed; and that §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-5, §19-21A-6, §19-21A-7, §19-21A-8, §19-21A-9, §19-21A-10, §19-21A-11, §19-21A-12, §19-21A-13 and §19-21A-14 of said code be amended and reenacted, all to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-2. Legislative determinations and declaration of policy.

1 It is hereby declared, as a matter of legislative determi-
2 nation:

3 (a) That the farm and grazing lands of the State of West
4 Virginia are among the basic assets of the state and that
5 the preservation of these lands is necessary to protect and
6 promote the health, safety and general welfare of its
7 people; that improper land-use practices have caused and
8 have contributed to, and are now causing and contributing
9 to, a progressively more serious erosion of the farm and
10 grazing lands of this state by water; that the breaking of
11 natural grass, plant and forest cover has interfered with
12 the natural factors of soil stabilization, causing loosening
13 of soil and exhaustion of humus and developing a soil
14 condition that favors erosion; that the topsoil is being
15 washed out of fields and pastures; that there has been an
16 accelerated washing of sloping fields; that these processes
17 of erosion by water and flooding is increased with removal
18 of absorptive topsoil, causing exposure of less absorptive
19 and less protective but more erosive subsoil; that failure by
20 any landowner to conserve the soil and control erosion
21 upon his lands causes a washing of soil and water from his
22 or her lands onto other lands and makes the conservation
23 of soil and control of erosion of such other lands difficult

24 or impossible and increases the potential damages from
25 flooding.

26 (b) That the consequences of such soil erosion in the form
27 of soil washing are the silting and sedimentation of stream
28 channels, reservoirs, dams, ditches and harbors; the piling
29 up of soil on lower slopes and its deposit over alluvial
30 plains; the reduction in productivity or outright ruin of
31 rich bottom lands by overwash of poor subsoil material,
32 sand and gravel swept out of the hills; deterioration of soil
33 and its fertility, deterioration of crops grown thereon and
34 declining acre yields despite development of scientific
35 processes for increasing such yields; loss of soil and water
36 which causes destruction of food and cover for wildlife;
37 the washing of soil into streams which silts over spawning
38 beds and destroys water plants, diminishing the food
39 supply of fish; a diminishing of the underground water
40 reserve which causes water shortages, intensifies periods
41 of drought and causes crop failures; an increase in the
42 speed and volume of rainfall runoff, causing more severe
43 and more numerous floods which bring suffering, disease
44 and death; impoverishment of families attempting to farm
45 eroding and eroded lands; damage to roads, highways,
46 railways, farm buildings and other property from floods;
47 and losses in navigation, hydroelectric power, municipal
48 water supply, irrigation developments, farming, grazing
49 and reduction of suitable land available for homes and
50 businesses.

51 (c) That to conserve soil resources and control and
52 prevent soil erosion and prevent floodwater and sediment
53 damage and further the conservation, development,
54 utilization and disposal of water, it is necessary that land-
55 use practices contributing to soil wastage and soil erosion
56 be discouraged and discontinued and appropriate soil-
57 conserving land-use practices and works of improvement
58 for flood prevention or the conservation, development,
59 utilization and disposal of water be adopted and carried
60 out; that among the procedures necessary for widespread

61 adoption are engineering operations such as the construc-
62 tion of terraces, terrace outlets, dams, desilting basins,
63 floodwater retarding structures, channel improvements,
64 floodways, dikes, ponds, ditches and the like; the utiliza-
65 tion of strip cropping, lister furrowing, contour cultivating
66 and contour furrowing; land drainage; land irrigation;
67 seeding and planting of waste, sloping, abandoned or
68 eroded lands with water-conserving and ero-
69 sion-preventing plants, trees and grasses; forestation and
70 reforestation; rotation of crops; soil stabilization with
71 trees, grasses, legumes and other thick-growing, soil-
72 holding crops; retardation of runoff by increasing absorp-
73 tion of rainfall; and retirement from cultivation of steep,
74 highly erosive areas and areas now badly gullied or
75 otherwise eroded.

76 (d) It is hereby declared to be the policy of the Legisla-
77 ture to provide for the conservation of the soil and soil
78 resources of this state, for the control and prevention of
79 soil erosion, for the prevention of floodwater and sediment
80 damage and for furthering the conservation, development,
81 utilization and disposal of water, and thereby to preserve
82 natural resources, control floods, prevent impairment of
83 dams and reservoirs, assist in maintaining the navigability
84 of rivers and harbors, preserve wildlife, protect the tax
85 base, protect public lands and protect and promote the
86 health, safety and general welfare of the people of this
87 state.

88 (e) This article contemplates that the incidental cost of
89 organizing conservation districts will be borne by the
90 state, while the expense of operating the districts so
91 organized will be provided by donations, gifts, contribu-
92 tions, grants and appropriations, in money, services,
93 materials or otherwise, from the United States or any of its
94 agencies, from the State of West Virginia or from other
95 sources, with the understanding that the owners or
96 occupiers will contribute funds, labor, materials and

97 equipment to aid in carrying out erosion control measures
98 on their lands.

§19-21A-3. Definitions.

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

3 (1) "Agency of this state" means the government of this
4 state and any subdivision, agency or instrumentality,
5 corporate or otherwise, of the government of this state.

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

8 (3) "District" or "conservation district" means a subdivi-
9 sion of this state, organized in accordance with the provi-
10 sions of this article, for the purposes, with the powers and
11 subject to the restrictions hereinafter set forth.

12 (4) "Governing body" means the supervisors of any
13 conservation district, town or city, council, city commis-
14 sion, county court or body acting in lieu of a county court,
15 in this state, and the term "governmental division" means
16 any conservation district, town, city or county in this state.

17 (5) "Land occupier" or "occupier of land" means any
18 person, firm or corporation who shall hold title to, or shall
19 be in possession of, any lands lying within a district
20 organized under the provisions of this article, whether as
21 owner, lessee, renter or tenant.

22 (6) "Landowners" or "owners of land" means any person
23 or persons, firm or corporation who holds title to any lands
24 lying within a district organized under the provisions of
25 this article.

26 (7) "Notice" means notice published as a Class II legal
27 advertisement in compliance with the provisions of article
28 three, chapter fifty-nine of this code and the publication
29 area for such publication shall be the county in which is
30 located the appropriate area. At any hearing held pursu-

31 ant to such notice at the time and place designated in such
32 notice, adjournment may be made, from time to time,
33 without the necessity of renewing such notice for such
34 adjournment dates.

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

38 (9) "Soil conservation", "erosion control" or "erosion
39 prevention projects" means those projects that have been
40 established by federal agencies in cooperation with state
41 agencies for the purpose of demonstrating soil erosion
42 control and water conservation practices.

43 (10) "State" means the State of West Virginia.

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

47 (12) "United States" or "agencies of the United States"
48 means the United States of America, Natural Resources
49 Conservation Service of the United States Department of
50 Agriculture and any other agency or instrumentality,
51 corporate or otherwise, of the United States of America.

52 (13) "Works of improvement" means such structures as
53 may be necessary or convenient for flood prevention or the
54 conservation, development, utilization or disposal of
55 water.

§19-21A-4. State Conservation Committee; continuation.

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

5 (1) Four citizen members;

6 (2) The following ex officio members or his or her
7 designee:

8 (A) The Director of the State Cooperative Extension
9 Service;

10 (B) The Director of the State Agricultural and Forestry
11 Experiment Station;

12 (C) The Secretary of the Department of Environmental
13 Protection;

14 (D) The State Commissioner of Agriculture, who is the
15 chairperson of the committee;

16 (E) The Director of the Division of Forestry; and

17 (F) The President of the West Virginia Association of
18 Conservation Districts.

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

25 (c) The committee may invite the Secretary of Agricul-
26 ture of the United States of America to appoint one person
27 to serve with the committee as an advisory member.

28 (d) The committee shall keep a record of its official
29 actions, shall adopt a seal, which shall be judicially
30 noticed, and may perform those acts, hold public hearings
31 and adopt or propose for legislative approval rules neces-
32 sary for the execution of its functions under this article.

33 (e) The State Conservation Committee may employ an
34 administrative officer, technical experts and other agents
35 and employees, permanent and temporary, as it requires.
36 The administrative officer and support staff shall be
37 known as the West Virginia Conservation Agency. The
38 committee shall determine their qualifications, duties and
39 compensation. The committee may call upon the Attorney
40 General of the state for legal services it requires. It may

41 delegate to its chairperson, to one or more of its members,
42 or to one or more agents or employees powers and duties
43 it considers proper. The committee may secure necessary
44 and suitable office accommodations and the necessary
45 supplies and equipment. Upon request of the committee,
46 for the purpose of carrying out any of its functions, the
47 supervising officer of any state agency or of any state
48 institution of learning shall, insofar as may be possible,
49 under available appropriations and having due regard to
50 the needs of the agency to which the request is directed,
51 assign or detail to the committee, members of the staff or
52 personnel of the agency or institution of learning and
53 make special reports, surveys or studies required by the
54 committee.

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

65 (1) Require the execution of surety bonds for all employ-
66 ees and officers who are entrusted with funds or property;

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

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

72 (g) In addition to other duties and powers conferred
73 upon the State Conservation Committee, it may:

74 (1) Offer appropriate assistance to the supervisors of
75 conservation districts, organized as provided in this

76 article, in the carrying out of any of their powers and
77 programs;

78 (2) Keep the supervisors of each of the several districts,
79 organized under the provisions of this article, informed of
80 the activities and experience of all other districts orga-
81 nized under this article and facilitate an interchange of
82 advice and experience between the districts and coopera-
83 tion between them;

84 (3) Coordinate the programs of the several conservation
85 districts so far as this may be done by advice and consulta-
86 tion;

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

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

94 (6) Accept and receive donations, gifts, contributions,
95 grants and appropriations in money, services, materials or
96 otherwise from the United States or any of its agencies,
97 from the State of West Virginia or from other sources and
98 use or expend the money, services, materials or other
99 contributions in carrying out the policy and provisions of
100 this article, including the right to allocate the money,
101 services or materials in part to the various conservation
102 districts created by this article in order to assist them in
103 carrying on their operations; and

104 (7) Obtain options upon and acquire by purchase,
105 exchange, lease, gift, grant, bequest, devise or otherwise
106 any property, real or personal, or rights or interests in the
107 property; maintain, administer, operate and improve any
108 properties acquired; receive and retain income from the
109 property and to expend the income as required for opera-
110 tion, maintenance, administration or improvement of the

111 properties or in otherwise carrying out the purposes and
112 provisions of this article; and sell, lease or otherwise
113 dispose of any of its property or interests in the property
114 in furtherance of the purposes and the provisions of this
115 article. Money received from the sale of land acquired in
116 the small watershed program shall be deposited in the
117 special account of the State Conservation Committee and
118 expended as provided in this article.

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

123 (9) Upon a Governor's proclamation declaring a state of
124 emergency or federal disaster declaration, the state
125 committee, its employees or agents may enter any water
126 of the state for the purpose of removing debris and other
127 obstruction which impede water flow and present addi-
128 tional flood hazards. The agency shall make reasonable
129 efforts to secure the permission of the landowner before
130 entering any private property in connection with these
131 removal activities. The exercise of this limited authority
132 does not constitute taking of private property or trespass.
133 This authority shall continue for the duration of the
134 Governor's proclamation or the federal disaster declara-
135 tion.

136 (10) The State Conservation Committee is continued
137 until the first day of July, two thousand twelve, pursuant
138 to the provisions of article four, chapter ten of the Code of
139 West Virginia, unless sooner terminated, continued or
140 reestablished pursuant to the provisions of that article.

§19-21A-5. Continuation of conservation districts.

1 The conservation districts formed throughout the state
2 under the prior enactments of this section are continued
3 and shall remain in effect until reformed or reorganized as
4 provided in section fourteen of this article.

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

1 (a) Beginning with the two thousand eight general
2 election, each county in a district shall elect, two nonparti-
3 san supervisors: *Provided*, That any county with a popula-
4 tion of one hundred thousand based on the most recent
5 decennial census shall elect one additional supervisor and
6 any county with a population over one hundred thousand
7 based on the most recent decennial census shall elect one
8 additional supervisor for each fifty thousand residents
9 over one hundred thousand.

10 (b) A candidate for supervisor shall own land in the
11 district and have the education, training or experience
12 necessary to carry out the duties required by this article
13 and rules promulgated thereunder. A candidate shall file
14 with the committee a sworn written statement specifying
15 that he or she meets the requirements of office. A candi-
16 date may not be placed on the ballot or be seated as a
17 supervisor unless he or she meets the requirements.

18 (c) The committee shall provide a list of qualified
19 candidates to the Secretary of State no less than ninety
20 days prior to any election for supervisor in the manner
21 specified by the Secretary.

22 (d) No nominating petition may be accepted by the
23 committee unless it is subscribed by twenty-five or more
24 owners of lands lying within the boundaries of the district
25 and within the boundaries of the county in which the
26 candidate resides. Landowners in the district may sign
27 more than one nominating petition to nominate more than
28 one candidate for supervisor.

29 (e) All registered voters in the district are eligible to vote
30 in the election for candidates from the county within the
31 boundaries of the district in which the voter resides. The
32 candidates in each county who receive the largest number
33 of votes cast in the election shall be elected supervisors for
34 that county.

35 (f) Supervisors shall be elected in the general election to
36 be conducted in the year two thousand eight as nonparti-
37 san candidates. Thereafter, supervisors shall be elected in
38 the primary election. The term of office for the candidate
39 for supervisor receiving the highest number of votes in the
40 general election of two thousand eight shall be for four
41 years; the candidate for supervisor receiving the second
42 highest number of votes in the general election of two
43 thousand eight shall be for two years. In counties where
44 more than two supervisors are elected in the general
45 election of two thousand eight the two supervisors receiv-
46 ing the highest number of votes shall serve for four years
47 and the remaining supervisor or supervisors shall serve for
48 two years. Subsequent terms of office for supervisors
49 elected thereafter shall be for four years. The provisions
50 of chapter three of this code shall apply to election of
51 supervisors.

52 (g) Persons currently holding the position of supervisor
53 shall, regardless of the expiration of the currently desig-
54 nated term of office, continue to serve until the election
55 and qualification of his or her successor.

56 (h) Any vacancy occurring in the office of supervisor
57 shall be filled by the committee by appointment of a
58 person from the county in which the vacancy occurs.
59 Within fifteen days after the vacancy occurs, the district
60 shall submit a list of names of persons qualified to be a
61 supervisor. If the unexpired term is for less than two years
62 and two months, the appointed person shall hold office
63 until the expiration of the term. If the unexpired term is
64 for more than two years and two months, the appointed
65 person shall hold the office until a successor is elected in
66 the next primary or general election and qualified.

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

1 (a) The governing body of the district consists of the
2 supervisors, appointed or elected, as provided in this

3 article. The supervisors shall be persons who are by
4 training and experience qualified to perform the special-
5 ized skilled services which are required of them in the
6 performance of their duties under this section and shall be
7 legal residents and landowners in the district.

8 (b) The supervisors shall designate a chairperson and
9 may, from time to time, change the designation. On and
10 after the election of supervisors in two thousand eight, the
11 term of office of each elected supervisor is four years. A
12 supervisor holds office until his or her successor has been
13 elected or appointed. In case a new county is added to a
14 district, the committee may appoint two supervisors to
15 represent the county until the next regular election of
16 supervisors for the district takes place.

17 (c) A supervisor is entitled to reasonable and necessary
18 expenses and a per diem of not more than one hundred
19 fifty dollars nor less than thirty dollars when engaged in
20 the performance of his or her duties. The expense and per
21 diem rate shall be established by the state committee
22 based on availability of funds.

23 (d) The supervisors may, with the approval of the State
24 Conservation Committee, employ a secretary, dam moni-
25 tors, technical experts and any other officers, agents and
26 employees, permanent and temporary, either with or
27 without compensation, as they may require and shall
28 determine their qualifications, duties and compensation,
29 if any. Dam monitors, as specified in any emergency
30 action plan or monitoring plan approved by the Depart-
31 ment of Environmental Protection pursuant to its dam
32 safety rules, pertaining to a flood control structure oper-
33 ated or maintained by a soil conservation district and any
34 other employees, agents or officers employed pursuant to
35 this section are "employees" of the district within the
36 meaning of subsection (a), section three, article twelve-a,
37 chapter twenty-nine of this code.

38 (e) The supervisors may delegate to their chairperson, to
39 one or more supervisors or to one or more agents, or
40 employees, those administrative powers and duties they
41 consider proper. The supervisors shall furnish to the State
42 Conservation Committee, upon request, copies of the
43 ordinances, rules, orders, contracts, forms and other
44 documents they adopt or employ and any other informa-
45 tion concerning their activities required in the perfor-
46 mance of State Conservation Committee's duties under
47 this article.

48 (f) The supervisors shall:

49 (1) Require the execution of surety bonds for all employ-
50 ees and officers who are entrusted with funds or property;

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

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

56 (g) Any supervisor may be removed by the State Conser-
57 vation Committee upon notice and hearing for neglect of
58 duty or malfeasance in office, but for no other reason.

59 (h) The supervisors may invite the legislative body of any
60 municipality or county located near the territory com-
61 prised within the district to designate a representative to
62 advise and consult with the supervisors of a district on all
63 questions of program and policy which may affect the
64 property, water supply or other interests of the municipal-
65 ity or county.

§19-21A-8. Powers of districts; additional powers of supervisors.

1 A conservation district organized under the provisions of
2 this article and the supervisors thereof shall have the
3 following powers, in addition to others granted in other
4 sections of this article:

5 (1) To conduct surveys, investigations and research
6 relating to the character of soil erosion and floodwater and
7 sediment damage and to the conservation, development,
8 utilization and disposal of water and the preventive and
9 control measures needed to publish the results of such
10 surveys, investigations or research and to disseminate
11 information concerning such preventive and control
12 measures and works of improvement: *Provided*, That in
13 order to avoid duplication of research activities, no district
14 shall initiate any research program or publish the results
15 except with the approval of the state committee and in
16 cooperation with the government of this state or any of its
17 agencies, or with the United States or any of its agencies;

18 (2) To conduct demonstrational projects within the
19 district on lands owned or controlled by this state or any
20 of its agencies, with the consent and cooperation of the
21 agency administering and having jurisdiction thereof, and
22 on any other lands within the district upon obtaining the
23 consent of the owner and occupier of the lands or the
24 necessary rights or interests in the lands in order to
25 demonstrate by example the means, methods and measures
26 by which soil and soil resources may be conserved and soil
27 erosion in the form of soil washing may be prevented and
28 controlled and works of improvement may be carried out;

29 (3) To carry out preventive and control measures and
30 works of improvement within the district, including, but
31 not limited to, engineering operations, methods of cultiva-
32 tion, the growing of vegetation, changes in use of land and
33 the measures listed in subsection (c), section two of this
34 article on lands owned or controlled by this state or any of
35 its agencies with the consent and cooperation of the
36 agency administering and having jurisdiction thereof and
37 on any other lands within the district upon obtaining the
38 consent of the owner and occupier of such lands or the
39 necessary rights or interests in such lands;

40 (4) To cooperate, or enter into agreements with, and
41 within the limits of appropriations duly made available to

42 it by law, to furnish financial or other aid to any agency,
43 governmental or otherwise, or any occupier of lands within
44 the district in the carrying on of erosion-control and
45 prevention operations and works of improvement within
46 the district, subject to such conditions as the supervisors
47 may deem necessary to advance the purposes of this
48 article;

49 (5) To obtain options upon and to acquire, by purchase,
50 exchange, lease, gift, grant, bequest, devise or otherwise,
51 any property, real or personal, or rights or interests
52 therein; to institute condemnation proceedings to acquire
53 any property, real or personal, or rights or interests
54 therein, whether or not located in the district, required for
55 works of improvement; to maintain, administer and
56 improve any properties acquired, to receive income from
57 such properties and to expend such income in carrying out
58 the purposes and provisions of this article; and to sell,
59 lease or otherwise dispose of any of its property or inter-
60 ests therein in furtherance of the purposes and the provi-
61 sions of this article;

62 (6) To make available, on such terms as it shall prescribe,
63 to land occupiers within the district agricultural and
64 engineering machinery and equipment, fertilizer, seeds
65 and seedlings and such other material or equipment as will
66 assist such land occupiers to carry on operations upon
67 their lands for the conservation of soil resources and for
68 the prevention and control of soil erosion and for flood
69 prevention or the conservation, development, utilization
70 and disposal of water;

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

75 (8) To develop with the approval of the state committee
76 comprehensive plans for the conservation of soil resources
77 and for the control and prevention of soil erosion and for

78 flood prevention or the conservation, development,
79 utilization and disposal of water within the district. The
80 plans shall specify, in as much detail as may be possible,
81 the acts, procedures, performances and avoidances which
82 are necessary or desirable for the effectuation of such
83 plans, including the specification of engineering opera-
84 tions, methods of cultivation, the growing of vegetation,
85 cropping programs, tillage practices and changes in use of
86 land; and to publish such plans and information and bring
87 them to the attention of occupiers of lands within the
88 district;

89 (9) To take over, by purchase, lease or otherwise, and to
90 administer any soil-conservation, flood-prevention,
91 drainage, irrigation, water-management, erosion-control
92 or erosion-prevention project, or combinations thereof,
93 located within its boundaries, undertaken by the United
94 States or any of its agencies, or by this state or any of its
95 agencies; to manage, as agent of the United States or any
96 of its agencies, or of this state or any of its agencies, any
97 soil-conservation, flood-prevention, drainage, irrigation,
98 water-management, erosion-control or erosion-prevention
99 project, or combinations thereof, within its boundaries; to
100 act as agent for the United States or any of its agencies, or
101 for this state or any of its agencies, in connection with the
102 acquisition, construction, operation, or administration of
103 any soil-conservation, flood-prevention, drainage, irriga-
104 tion, water-management, erosion-control or erosion-
105 prevention project, or combinations thereof, within its
106 boundaries; to accept donations, gifts, contributions and
107 grants in money, services, materials or otherwise, from the
108 United States or any of its agencies, or from this state or
109 any of its agencies, or from any other source and to use or
110 expend such money, services, materials or other contribu-
111 tions in carrying on its operations;

112 (10) To sue and be sued in the name of the district; to
113 have a seal, which shall be judicially noticed; to have
114 perpetual succession unless terminated as hereinafter

115 provided; to make and execute contracts and other instru-
116 ments, necessary or convenient to the exercise of its
117 powers; to make and, from time to time, amend and repeal
118 rules and regulations not inconsistent with this article to
119 carry into effect its purposes and powers;

120 (11) As a condition to this extending of any benefits
121 under this article to, or the performance of work upon, any
122 lands, the supervisors may require contributions in money,
123 services, materials or otherwise to any operations confer-
124 ring such benefits and may require land occupiers to enter
125 into and perform such agreements or covenants as to the
126 permanent use of such lands as will tend to prevent or
127 control erosion and prevent floodwater and sediment
128 damage thereon;

129 (12) No provisions with respect to the acquisition,
130 operation or disposition of property by other public bodies
131 shall be applicable to a district organized hereunder in its
132 acquisition, operation and disposition of property unless
133 the Legislature shall specifically so state;

134 (13) To enter into contracts and other arrangements with
135 agencies of the United States, with persons, firms or
136 corporations, including public corporations, with the state
137 government of this state or other states, or any department
138 or agency thereof, with governmental divisions, with soil
139 conservation, drainage, flood control, soil erosion or other
140 improvement districts in this state or other states, for
141 cooperation or assistance in constructing, improving,
142 operating or maintaining works of improvement within
143 the district, or in preventing floods, or in conserving,
144 developing, utilizing and disposing of water in the district,
145 or for making surveys, investigations or reports thereof;
146 and to obtain options upon and acquire property, real or
147 personal, or rights or interests therein, in other districts or
148 states required for flood prevention or the conservation,
149 development, utilization and disposal of water within the
150 district and to construct, improve, operate or maintain
151 thereon or therewith works of improvement.

§19-21A-9. Cooperation between districts.

1 The supervisors of any two or more districts organized
2 under the provisions of this article may cooperate with one
3 another in the exercise of any or all powers conferred in
4 this article.

§19-21A-10. Cooperation between state agencies and districts.

1 Agencies of this state which have jurisdiction over or be
2 charged with the administration of any state-owned lands,
3 and of any county, or other governmental subdivision of
4 the state, which have jurisdiction over or be charged with
5 the administration of any county-owned or other publicly
6 owned lands lying within the boundaries of any district
7 organized hereunder may cooperate with the supervisors
8 of the districts in the effectuation of programs and opera-
9 tions undertaken by the supervisors under the provisions
10 of this article. When such cooperation is undertaken, the
11 supervisors of the districts shall be given free access to
12 enter and perform work upon the publicly owned lands.

§19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.

1 The governing body of any governmental division which
2 may reasonably be expected to receive a benefit from the
3 construction, improvement, operation or maintenance of
4 any works of improvement may expend money for such
5 construction, improvement, operation or maintenance if
6 this expectation exists as to any part of the governmental
7 division and even though such works of improvement are
8 not located within the corporate limits of the governmen-
9 tal division or are not within this state: *Provided*, That if
10 the expenditure is not made directly by the governmental
11 division for such purpose, it shall be made only through a
12 conservation district or watershed improvement district
13 organized under the laws of this state, but it shall not be
14 necessary that any part of the governmental division be
15 within the limits of the district through which the expen-

16 diture is made. The governing bodies or governmental
17 divisions may set up in their respective budgets funds to be
18 spent for such purposes and municipalities and counties
19 may levy and collect taxes for such purposes in the manner
20 provided by law: *Provided, however,* That in case suffi-
21 cient funds cannot be raised by ordinary levies, additional
22 funds may be raised by municipalities and counties as
23 provided by section sixteen, article eight, chapter eleven of
24 this code.

§19-21A-12. Assurances of cooperation by governmental division.

1 (a) By vote of the governing body, any governmental
2 division authorized to expend money on works of improve-
3 ment by section eleven of this article may alone, or in
4 combination with any other governmental division or
5 divisions authorized to expend money on works of im-
6 provement, give assurances, by contract or otherwise,
7 satisfactory to agencies of the United States, congressional
8 committees or other proper federal authority and to
9 conservation districts or watershed improvement districts
10 organized under the laws of this state that the governmen-
11 tal division or divisions will construct, improve, operate or
12 maintain works of improvement or will appropriate a sum
13 or sums of money and expend it for such purposes as
14 provided in section eleven of this article.

15 (b) The assurances, whether by contract or otherwise,
16 shall be reduced to writing and before final approval of
17 the governing bodies involved shall be submitted to the
18 Attorney General for approval. After approval by the
19 Attorney General and by the governing body or bodies
20 concerned, certified copies of the assurances shall be filed
21 in the office of the county clerk of the county or counties
22 in which the governmental division is located and in the
23 office of the State Tax Commissioner.

24 (c) Any assurance hereunder may be valid and binding
25 for a period of time not to exceed fifty years.

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

1 The county commission of each county and the govern-
2 ing body of each municipality in the state are hereby
3 authorized and empowered to enter into a contract or
4 agreement with the conservation district or districts for
5 the purpose of constructing flood control projects within
6 their respective counties or municipalities or adjacent
7 thereto and to use the projects as recreational areas or
8 public parks. For the purpose of defraying the cost of any
9 such project or projects, the county commission or the
10 governing body of any municipality is hereby authorized
11 to borrow from the federal government or from any federal
12 agency having money to loan, a sum sufficient to cover the
13 cost of such project or projects. For the purpose of retiring
14 any indebtedness incurred under the provisions of this
15 section, notwithstanding any other provisions of law, the
16 county commission or the governing body of any munici-
17 pality is hereby authorized to lay and impose a county or
18 citywide levy as the case might be.

§19-21A-14. Discontinuing and reforming districts.

1 (a) At any time after five years following the organiza-
2 tion of a district under the provisions of this article, any
3 twenty-five owners of land lying within the boundaries of
4 a district may file a petition with the State Conservation
5 Committee praying that the district be discontinued and
6 the county or counties of the district be added to another
7 district or districts.

8 (b) The committee shall conduct one or more public
9 meetings or public hearings upon the petition in the
10 affected county or counties including the district or
11 districts which may accept one or more counties from the
12 district being discontinued. After the public meetings or
13 hearings have been held by the committee, it shall notify
14 the Secretary of State that a referendum question is to be
15 added to the ballot of the next primary or general election

16 to be held in the county or counties of the affected dis-
17 tricts.

18 (c) The questions shall be submitted by ballots or
19 electronic voting system upon which the words "For
20 discontinuing the _____ (name of
21 the conservation district to be here inserted) and adding
22 _____(county or counties) to _____ (district or
23 districts) (If one or more counties in a district are to be
24 combined with one or more other districts, each combina-
25 tion must be specified.)" and "Against discontinuing the
26 _____ (name of the conservation
27 district to be here inserted)" shall appear, with a square
28 before each proposition and a direction to mark the square
29 before one or the other of the propositions as the voter may
30 favor or oppose discontinuance of the district. All regis-
31 tered voters lying within the boundaries of the district to
32 be discontinued and the district or districts to which all or
33 part of the district being discontinued may be added are
34 eligible to vote on the referendum.

35 (d) If a majority of the votes cast in the referendum are
36 in favor of discontinuing the district, the supervisors shall
37 proceed to terminate the affairs of the district. The
38 supervisors of the district being discontinued shall file an
39 application to discontinue the district with the Secretary
40 of State. The application shall recite the process under-
41 taken in discontinuing the district and the distribution of
42 the property, assets, liabilities, contracts, duties and
43 responsibilities and transfer of territory to one or more
44 districts.

45 (e) The Secretary of State shall issue to the supervisors
46 a certificate of discontinuance and shall record the certifi-
47 cate in an appropriate book of record in his or her office.

48 (f) The supervisors of the district or districts gaining all
49 or part of the discontinued district shall file an application
50 with the Secretary of State adding the additional territory
51 to such district or districts.

52 (g) The property, assets, liabilities, contracts, duties and
53 responsibilities of the district shall be assigned in accor-
54 dance with the division of the district.

55 (h) All contracts entered into by the district being
56 discontinued or its supervisors are parties shall remain in
57 force and effect for the period provided in the contract.
58 The reformed district receiving the assets, liabilities,
59 duties and responsibilities related to the contract shall be
60 substituted for the district or supervisors as party to such
61 contracts. The reformed district shall be entitled to all
62 benefits and subject to all liabilities under such contract
63 and have the same right and liability to perform, to require
64 performance, to sue and be sued thereon and to modify or
65 terminate such contracts by mutual consent or otherwise,
66 as the supervisor or district would have had.

67 (i) The State Conservation Committee shall not entertain
68 petitions for the discontinuance of any district nor conduct
69 referenda upon such petitions nor make determinations
70 pursuant to such petitions in accordance with the provi-
71 sions of this article more often than once in three years.

[Faint handwritten text and a signature are visible at the bottom of the page.]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Candy White
.....
Chairman Senate Committee

W. Ben
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Elphinstone
.....
Clerk of the Senate

Steve D. Sny
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert A.
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April*, 2006.

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:10 pm