

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Committee Substitute

for

Senate Bill 264

BY SENATORS TRUMP, HAMILTON, AND STOLLINGS

[Passed March 11, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §19-21A-1, §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-6, and
2 §19-21A-8 of the Code of West Virginia, 1931, as amended, all relating to conservation
3 districts; providing for a short title of the article to be known as the Conservation Districts
4 Law of West Virginia; restating legislative determinations and declaration of policy in clear
5 and concise language; adding definitions for “agriculture” and “urban agriculture”;
6 conferring additional powers and duties upon State Conservation Committee; providing
7 for term of office of district supervisor to begin on July 1, immediately following primary
8 election; providing procedure to fill office of district supervisor if no candidate seeks office;
9 modifying candidate qualifications for election of district supervisor; modifying process for
10 filling vacancies in office of district supervisor; and conferring additional powers and duties
11 upon conservation districts and supervisors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-1. Short title.

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

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

1 It is hereby declared, as a matter of legislative determination:

2 (a) That West Virginia has a rich history of farming and using natural resources. The farms,
3 forests, soil, and water resources are among the basic assets of the state and conservation of
4 these resources is vital to the maintenance and future of the state and its citizens. However,
5 improper land use practices have led to unnecessary soil erosion and water degradation.

6 (b) There is a continuing need for the implementation of conservation practices, whether
7 urban, suburban, or rural, that maintain, promote, control, and prevent soil erosion, prevent
8 floodwater and sediment damage, and further the conservation, development, use, disposal, and
9 quality of water, thereby preserving natural resources, controlling floods, preventing impairment
10 of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, preserving

11 wildlife, protecting the tax base, protecting public lands, and promoting the health, safety, and
12 general welfare of the people of this state.

13 (c) Adopting sound conservation policies and practices is an investment in West Virginia's
14 Natural Resources and is a foundation for profitable, productive, and healthy ecosystems that are
15 resilient and better able to withstand current and future environmental challenges.

16 (d) In recognition of the ever-increasing demands on West Virginia's soil and water
17 resources, it is declared the policy of the state that the State Conservation Committee and the
18 State's Conservation Districts, in cooperation with other state and federal agencies, political
19 subdivisions, nongovernmental organizations, private landowners, and others, work to
20 recommend and implement programs and policies that improve soil health and water quality.

21 (e) This article contemplates that the cost of operating conservation districts will be
22 provided by donations, gifts, contributions, grants, and appropriations, in money, services,
23 materials, or otherwise, from the United States or any of its agencies, from the State of West
24 Virginia or from other sources, with the understanding that the owners or occupiers of the land
25 bear the responsibility of implementing practices to alleviate soil erosion and/or improve water
26 quality on their lands and will contribute funds, labor, materials, and equipment to aid in carrying
27 out such measures.

§19-21A-3. Definitions.

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

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

5 (2) "Agriculture" means the production of food, fiber, and woodland products, by means of
6 cultivation, tillage of the soil, and by the conduct of animal, livestock, dairy, apiary, equine or
7 poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture
8 products, packing, shipping, milling, and marketing of agricultural products conducted by the

9 proprietor of the agricultural operation, or any other legal plant or animal production and all farm
10 practices.

11 (3) "Committee" or "State Conservation Committee" means the agency created in §19-
12 21A-4 of this code.

13 (4) "Conservation" means the reduction of soil erosion, enhancement of water supplies,
14 control, and abatement of nonpoint sources of water pollution, improvement of water quality,
15 increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and
16 sediment damages and other natural disasters.

17 (5) "District" or "conservation district" means a subdivision of this state, organized in
18 accordance with the provisions of this article, for the purposes, with the powers and subject to the
19 restrictions hereinafter set forth.

20 (6) "Grant" means the providing of grants for conservation purposes pursuant to legislative
21 rule.

22 (7) "Governing body" means the supervisors of any conservation district, town, or city,
23 council, city commission, county court, or body acting in lieu of a county court, in this state, and
24 the term "governmental division" means any conservation district, town, city, or county in this
25 state.

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

29 (9) "Landowners" or "owners of land" means any person or persons, firm, or corporation
30 who holds title to any lands lying within a district organized under the provisions of this article.

31 (10) "Notice" means notice published as a Class II legal advertisement in compliance with
32 the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the
33 county in which is located the appropriate area. At any hearing held pursuant to such notice at

34 the time and place designated in the notice, adjournment may be made, from time to time, without
35 the necessity of renewing the notice for the adjournment dates.

36 (11) "Petition" means a petition filed under the provisions of §19-21A-14 of this code for
37 the creation of a district.

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

41 (13) "State" means the State of West Virginia.

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

44 (15) "Urban Agriculture" means the cultivation, processing, and distribution of agricultural
45 products grown in urban and suburban settings, including vertical production, warehouse farms,
46 community gardens, rooftop farms, hydroponic, aeroponic, and aquaponic facilities, and other
47 innovations.

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

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

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

1 (a) The State Conservation Committee is continued. It serves as an agency of the state
2 and is to perform the functions conferred upon it in this article. The committee consists of the
3 following 10 members:

4 (1) Four citizen members;

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

6 (A) The Director of the state Cooperative Extension Service;

- 7 (B) The Director of the State Agricultural and Forestry Experiment Station;
- 8 (C) The Secretary of the Department of Environmental Protection;
- 9 (D) The State Commissioner of Agriculture, who is the chairperson of the committee;
- 10 (E) The Director of the Division of Forestry; and
- 11 (F) The President of the West Virginia Association of Conservation Districts.

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

16 (c) The committee may invite the Secretary of Agriculture of the United States of America
17 to appoint one person to serve with the committee as an advisory member.

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

21 (e) The State Conservation Committee may employ an administrative officer, technical
22 experts, and other agents and employees, permanent and temporary, as it requires. The
23 administrative officer and support staff shall be known as the West Virginia Conservation Agency.
24 The committee shall determine their qualifications, duties, and compensation. The committee may
25 call upon the Attorney General of the state for legal services it requires. It may delegate to its
26 chairperson, to one or more of its members, or to one or more agents or employees, powers and
27 duties it considers proper. The committee may secure necessary and suitable office
28 accommodations and the necessary supplies and equipment. Upon request of the committee, for
29 the purpose of carrying out any of its functions, the supervising officer of any state agency or of
30 any state institution of learning shall, insofar as may be possible, under available appropriations
31 and having due regard to the needs of the agency to which the request is directed, assign or detail

32 to the committee members of the staff or personnel of the agency or institution of learning and
33 make special reports, surveys, or studies required by the committee.

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

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

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

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

45 (4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that
46 office in fulfilling its duties.

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

49 (1) Review district programs and offer appropriate assistance to the supervisors of
50 conservation districts, organized as provided in this article, in the carrying out of any of their
51 powers and programs;

52 (2) Assist and advise conservation districts and others in implementing conservation
53 improvements, and projects to control and abate nonpoint sources of water pollution and prevent
54 damage from floodwater and sediment;

55 (3) Keep the supervisors of each of the several districts, organized under the provisions
56 of this article, informed of the activities and experience of all other districts organized under this

57 article, and facilitate an interchange of advice and experience between the districts and
58 cooperation between them;

59 (4) Review agreements, or forms of agreements, proposed to be entered into by districts
60 with other districts or with any state, federal, interstate, or other public or private agency,
61 organization, or individual, and advise the districts concerning such agreements or forms of
62 agreements;

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

65 (6) Contract for services directly related to natural disaster recovery and stream restoration
66 related to flooding, on an as-needed basis;

67 (7) Comply with provisions of present and future federal aid statutes and regulations,
68 including execution of contracts or agreements with, and cooperation in, programs of the United
69 States government and any of its proper departments, bureaus, or agencies relating to natural
70 disaster response, natural disaster recovery, or stream restoration related to flooding;

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

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

76 (10) Administer the provisions of any law hereinafter enacted by the Legislature
77 appropriating funds for expenditures in connection with the activities of conservation districts;
78 distribute to conservation districts funds, equipment, supplies, and services received by the
79 committee for such purpose from any source subject to conditions in any state or federal statute
80 or local ordinance making such funds, property, or services; adopt rules establishing guidelines
81 to govern the use by conservation districts of such funds, property, and services; and review all

82 budgets, administrative procedures, and operations of such districts and advise the districts
83 concerning their conformance with applicable laws and rules;

84 (11) Administer a conservation grant program that provides financial assistance to
85 conservation districts and others to promote approved conservation, water quality, and soil
86 conservation projects;

87 (12) Accept and receive donations, gifts, contributions, grants, and appropriations in
88 money, services, materials, or otherwise, from the United States or any of its agencies, from the
89 State of West Virginia, or from other sources, and use or expend the money, services, materials,
90 or other contributions in carrying out the policy and provisions of this article, including the right to
91 allocate the money, services, or materials in part to the various conservation districts created by
92 this article in order to assist them in carrying on their operations;

93 (13) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest,
94 devise, or otherwise, any property, real or personal, or rights or interests in the property; maintain,
95 administer, operate, and improve any properties acquired; receive and retain income from the
96 property and expend the income as required for operation, maintenance, administration, or
97 improvement of the properties or in otherwise carrying out the purposes and provisions of this
98 article; and sell, lease, or otherwise dispose of any of its property or interests in the property in
99 furtherance of the purposes and the provisions of this article. Money received from the sale of
100 land acquired in the small watershed program shall be deposited in the special account of the
101 State Conservation Committee and expended as provided in this article;

102 (14) Promulgate emergency and legislative rules to effectuate the provisions of this article;
103 and

104 (15) Upon a Governor's proclamation declaring a state of emergency or federal disaster
105 declaration, the state committee, its employees, or agents may enter any water of the state for
106 the purpose of removing debris and other obstruction which impede water flow and present
107 additional flood hazards. The agency shall make reasonable efforts to secure the permission of

108 the landowner before entering any private property in connection with these removal activities.
109 The exercise of this limited authority does not constitute taking of private property or trespass.
110 This authority shall continue for the duration of the Governor's proclamation or the federal disaster
111 declaration.

112 (16) Require annual reports from conservation districts, the form and content of which
113 shall be developed by the state committee; and

114 (17) Establish by rule, adequate and reasonably uniform accounting and auditing
115 procedures which shall be used by conservation districts.

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

1 (a) All registered voters in each county in a district shall elect two nonpartisan supervisors
2 who shall hold office for a term of four years and until his or her successor is elected and qualified:
3 *Provided*, That any county with a population of 100,000 based on the most recent decennial
4 census shall elect one additional supervisor and any county with a population over 100,000 based
5 on the most recent decennial census shall elect one additional supervisor for each 50,000
6 residents over 100,000.

7 (b) The provisions of §3-1-1 *et seq.* of this code apply to the election of supervisors, and
8 the terms of such members shall begin on July 1, next following the primary election at which they
9 were elected: *Provided*, That if no candidate seeks the office, then the district shall advertise and
10 select a candidate from the county in which the vacancy occurs and submit the name to the state
11 committee for appointment.

12 (c) A candidate for supervisor must have experience in agriculture, as that term is defined
13 in §19-21A-3 of this code; conservation; or natural resources.

14 (d) Any vacancy occurring in the office of supervisor shall be filled by the state committee
15 by appointment of a person from the county in which the vacancy occurs. Within 90 days after the
16 vacancy occurs, the district shall advertise and select a candidate from the county in which the
17 vacancy occurs and submit the name to the state committee for appointment. If the unexpired

18 term is for less than two years and six months, the appointed person holds office until the
19 expiration of the term. If the unexpired term is for more than two years and six months, the
20 appointed person holds the office until a successor is elected in the next primary or general
21 election and qualified.

§19-21A-8. Powers and duties of conservations districts and supervisors.

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

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

13 (2) To conduct demonstrational projects within the district on lands owned or controlled by
14 this state or any of its agencies, with the consent and cooperation of the agency administering
15 and having jurisdiction thereof, and on any other lands within the district upon obtaining the
16 consent of the owner and occupier of the lands or the necessary rights or interests in the lands in
17 order to demonstrate by example the means, methods, and measures by which soil and soil
18 resources may be conserved and soil erosion in the form of soil washing may be prevented and
19 controlled, water quality may be improved, and works of improvement may be carried out;

20 (3) To carry out preventive and control measures and works of improvement within the
21 district, including, but not limited to, engineering operations, methods of cultivation, the growing

22 of vegetation, changes in use of land; drainage, irrigation, and other agricultural water
23 management operations and measures for the prevention of floodwater and sediment damages,
24 or for the control and abatement of nonpoint sources of water pollution; and the measures listed
25 in §19-21A-2 of this code on lands owned or controlled by this state or any of its agencies with
26 the consent and cooperation of the agency administering and having jurisdiction thereof and on
27 any other lands within the district upon obtaining the consent of the owner and occupier of such
28 lands or the necessary rights or interests in such lands;

29 (4) To cooperate, or enter into agreements with, and within the limits of appropriations
30 duly made available to it by law, to furnish financial or other aid to any agency, governmental or
31 otherwise, or any occupier of lands within the district in the carrying on of erosion-control and
32 prevention operations, operations for the control and abatement of nonpoint sources of water
33 pollution, and works of improvement within the district, subject to such conditions as the
34 supervisors may deem necessary to advance the purposes of this article;

35 (5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant,
36 bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to
37 institute condemnation proceedings to acquire any property, real or personal, or rights or interests
38 therein, whether or not located in the district, required for works of improvement; to maintain,
39 administer, and improve any properties acquired, to receive income from such properties, and to
40 expend such income in carrying out the purposes and provisions of this article; and to sell, lease,
41 or otherwise dispose of any of its property or interests therein in furtherance of the purposes and
42 the provisions of this article;

43 (6) To accept and receive donations, gifts, contributions, grants, and appropriations in
44 money, services, materials, or otherwise from the United States or any of its agencies, from the
45 state of West Virginia, or from other sources and use or expend the money, services, materials,
46 or other contributions in carrying out the policy and provisions of this article;

47 (7) To make available, on such terms as it shall prescribe, to land occupiers within the
48 district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings,
49 and such other material or equipment as will assist such land occupiers to carry on operations
50 upon their lands for the conservation of soil resources, and for the prevention and control of soil
51 erosion, and for flood prevention or the conservation, development, utilization, water quality, and
52 disposal of water;

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

55 (9) To develop and submit to the state committee its proposed long range program and
56 annual work plans related to the conservation of soil resources, and for the control and prevention
57 of soil erosion, and for flood prevention and water quality improvement, or the conservation,
58 development, utilization, and disposal of water within the district. The plans shall specify, in as
59 much detail as may be possible, the acts, procedures, performances, and avoidances which are
60 necessary or desirable for the effectuation of such plans, including the specification of engineering
61 operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices,
62 and changes in use of land; and to publish such plans and information and bring them to the
63 attention of occupiers of lands within the district;

64 (10) To take over, by purchase, lease, or otherwise, and to administer any soil-
65 conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or
66 erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by
67 the United States or any of its agencies, or by this state or any of its agencies; to manage, as
68 agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-
69 conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or
70 erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the
71 United States or any of its agencies, or for this state or any of its agencies, in connection with the
72 acquisition, construction, operation, or administration of any soil-conservation, flood-prevention,

73 drainage, irrigation, water-management, erosion-control or erosion-prevention project, or
74 combinations thereof, within its boundaries; to accept donations, gifts, contributions, and grants
75 in money, services, materials, or otherwise, from the United States or any of its agencies, or from
76 this state or any of its agencies, or from any other source and to use or expend such money,
77 services, materials, or other contributions in carrying on its operations;

78 (11) To sue and be sued in the name of the district; to have a seal, which shall be judicially
79 noticed; to have perpetual succession unless terminated as hereinafter provided; to make and
80 execute contracts and other instruments, necessary or convenient to the exercise of its powers;
81 to make and, from time to time, amend and repeal rules and regulations not inconsistent with this
82 article to carry into effect its purposes and powers;

83 (12) As a condition to extending any benefits under this article to, or the performance of
84 work upon any lands, the supervisors may require contributions in money, services, materials, or
85 otherwise to any operations conferring such benefits and may require land occupiers to enter into
86 and perform such agreements or covenants as to the permanent use of such lands as will tend to
87 prevent or control erosion and prevent floodwater and sediment damage thereon;

88 (13) No provisions with respect to the acquisition, operation, or disposition of property by
89 other public bodies shall be applicable to a district organized hereunder in its acquisition,
90 operation, and disposition of property unless the Legislature shall specifically so state;

91 (14) To enter into contracts and other arrangements with agencies of the United States,
92 with persons, firms, or corporations, including public and nonprofit corporations, with the state
93 government of this state or other states, or any department or agency thereof, with governmental
94 divisions, with soil conservation, drainage, flood control, soil erosion, or other improvement
95 districts in this state or other states, for cooperation or assistance in constructing, improving,
96 operating, or maintaining works of improvement within the district, or in preventing floods, or in
97 conserving, developing, utilizing, and disposing of water in the district, or for making surveys,
98 investigations, or reports thereof; and to obtain options upon and acquire property, real or

99 personal, or rights or interests therein, in other districts or states required for flood prevention and
100 water quality improvement, or the conservation, development, utilization, and disposal of water
101 within the district and to construct, improve, operate, or maintain thereon or therewith works of
102 improvement.

103 (15) Each district shall, through public meetings, publications, or other means, keep the
104 public, agencies, and occupiers of the land within the district informed of the works and activities
105 planned and administered by the district, of the purposes these will serve, and of the results
106 achieved annually by the districts.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor