

2026
WEST VIRGINIA
CONSERVATION DISTRICT
SUPERVISOR HANDBOOK



West Virginia Conservation Districts

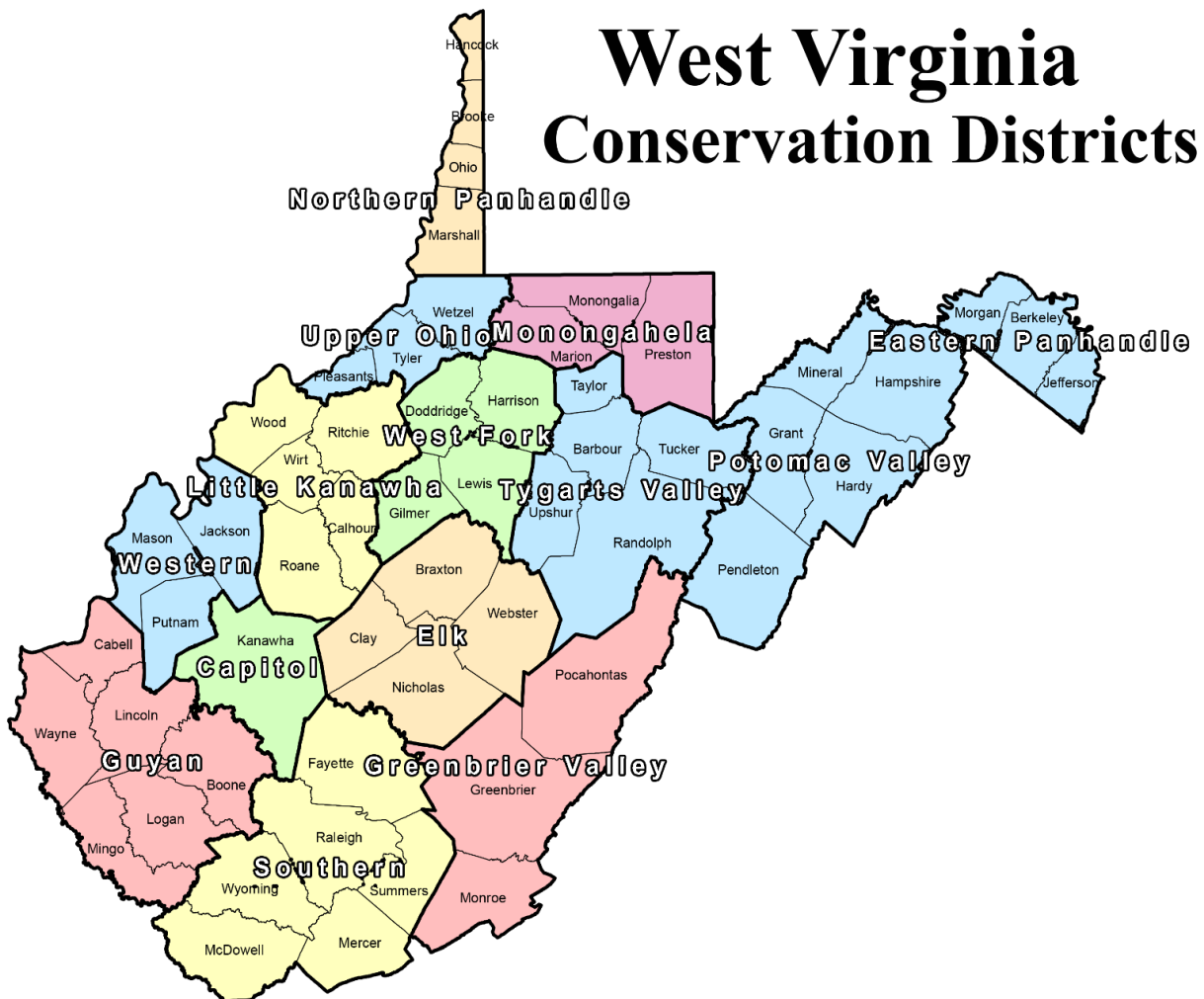
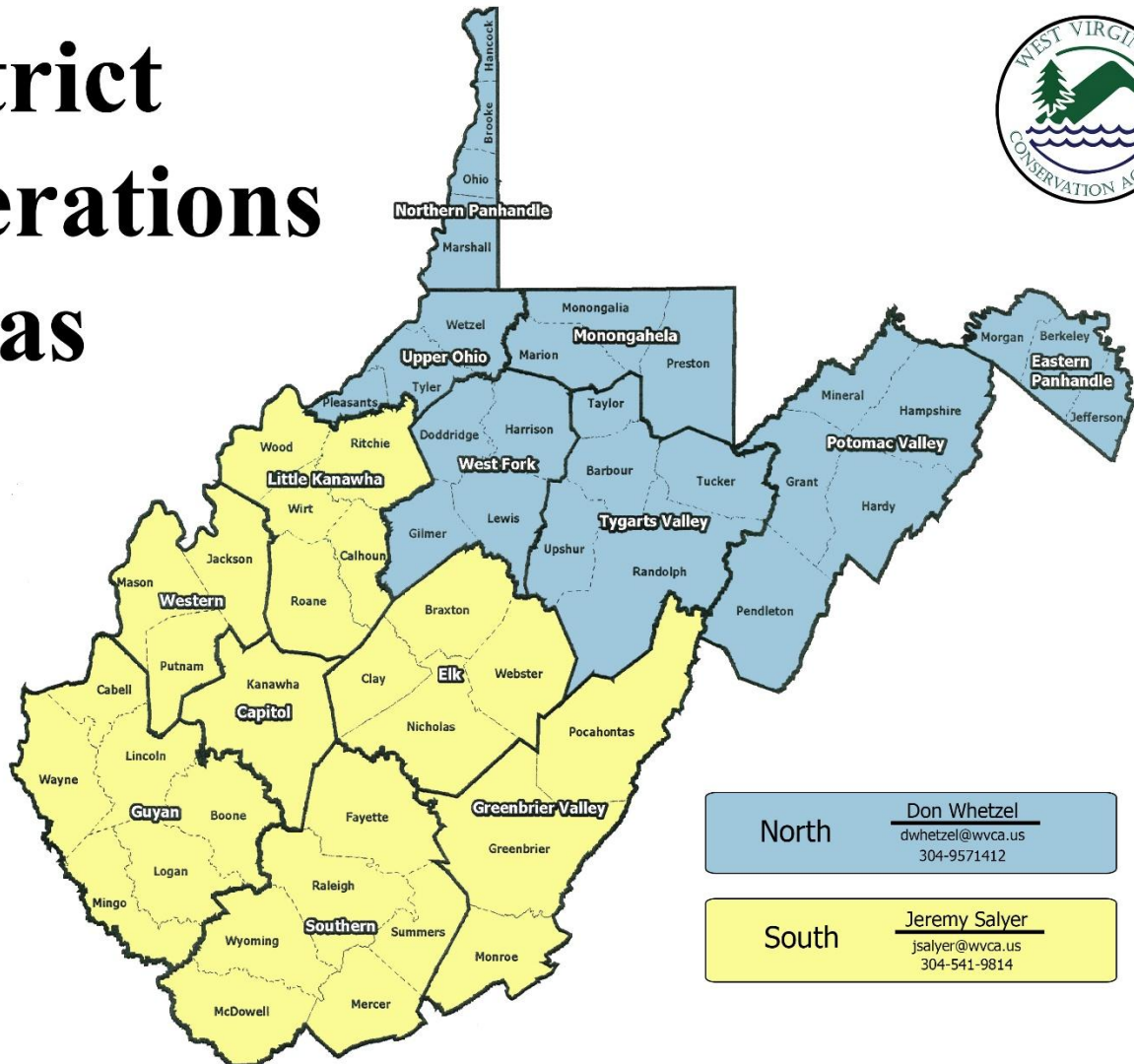


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MISSION

The mission of the Conservation Districts is to provide local self-government leadership and initiative in the development and conservation of soil, water, and related resources. A balanced planning, education and management program that protects, restores and improves those resources will be accomplished in cooperation with landowners, government agencies and private organizations.



PHILOSOPHY

Conservation Districts

That conservation, development, and wise use of our soil and water resources are essential to the national security and welfare.

That the national interest demands the conservation and orderly development of our soil, water, forest, and related resources as rapidly as possible.

That the major and final responsibility for achieving soil and water conservation rests with the people who own or operate the land.

That the people who own or operate the land have demonstrated they will accept the responsibility if they are fully informed and are provided with assistance, in kind and amount, needed to supplement their own knowledge and resources.

That soil and water conservation districts are the best device so far created whereby people who own or operate the land can exercise local initiative and leadership in achieving the conservation and orderly development of soil, water, timber, and related resources.

That people working together in neighbor, community and watershed groups with locally elected district leadership, and with the guidance of annual and long-range district plans is the best way to get the soil and water conservation job done.

That the districts should enlist the assistance of all individuals' agencies, institutions, and organizations in a position to contribute to the solution of the soil and water conservation problems.

That government should do for the people only those things which need to be done in the public interest and which people are unable to do for themselves.

W. R. Keyser

PURPOSE OF CONSERVATION DISTRICTS

As set forth in Chapter 19-21A-2 of the West Virginia Code the responsibilities of West Virginia's fourteen Conservation Districts and the West Virginia State Conservation Committee are directed to "provide for the conservation of the soil and soil resources of this State, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage, and for furthering the conservation, development, utilization, and disposal of water,

The purpose of this charge is to "preserve natural resources assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State."

The Conservation Districts Law (Chapter 19-21 A of the WV Code) established Conservation Districts which are chartered legal sub-divisions of state government. Districts operate under the guidance and with the support of the West Virginia State Conservation Committee (State Agency) and develop and implement local soil and water conservation programs based upon established resource priorities.

Created under the same state law, the West Virginia State Conservation Agency and Conservation Districts function not as two separate entities but as two portions of the same entity. Operating within this unique partnership is the USDA Natural Resources Conservation Service which assigns approximately 200 employees to West Virginia to assist in conducting the State and District's soil and water conservation program responsibilities.



HISTORY OF CONSERVATION

In response to the worst environmental disasters in the nation's history, the Dust Bowl, Congress created the soil conservation movement.

On April 27, 1935, Congress passed the Soil Conservation Act to address the "wastage of soil and moisture resources on farm grazing and forest lands." The act also created the Soil Conservation Service, the predecessor of today's Natural Resources Conservation Service.

On February 27, 1937, President Franklin D. Roosevelt sent a letter to all state governors recommending enactment of soil conservation district legislation. The proposed act suggested establishing districts as local units of government, established by the people, and governed by the people through elected supervisors. The model law dictated local initiative, local action, local responsibility, local planning and local conservation guided and assisted by the states and the federal government. Each district would be empowered to determine local needs, would have personal contact with local individual landowners within the community, and would thus be able to encourage maximum cooperation on a voluntary basis.

The West Virginia Legislature passed the state's Soil Conservation Districts Act (Chapter §19-21A, see Appendix 1) in 1939.

The law called for local referendums to create conservation districts. West Virginia's first districts were created in 1940 with the last established in 1947.

Today all 50 states, Puerto Rico, and the Virgin Islands have passed the enabling legislation necessary for the creation of approximately 3,000 local districts.

West Virginia's conservation law has been modified several times since its enactment. The modifications have included:

- Removing the word "soil" when describing the State Conservation Committee and the 14 conservation districts in recognition of conservation's evolving nature.
- Expanding the membership of the State Conservation Committee to include the state forester and the president of the West Virginia Association of Conservation Districts.
- Requiring that conservation district supervisors be elected on countywide nonpartisan primary ballots. Supervisors serve four-year terms.

STATE CONSERVATION COMMITTEE

The SCC consists of the following ten members:

1. Four citizen members;
2. The following ex officio members, or the designee:
 - a. The director of the State Cooperative Extension Service;
 - b. The director of the State Agriculture 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.
3. The SCC may invite the U.S. secretary of agriculture to appoint one person to serve with the committee as an advisory member. Currently, West Virginia's state conservationist with the USDA-NRCS serves in this capacity.
4. 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.

The SCC may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff are collectively known as the West Virginia Conservation Agency (WVCA).

The SCC is the oversight authority to administrative functions for the conservation districts with directives through the WVCA. The SCC generally meets once per quarter, in January, April, July and October.

State Conservation Committee

Ex-Officio Members

WV Department of Agriculture
Commissioner (Chairman by State Code)

WVU Extension and WVU Div. of
Land-Grant Engagement
Director

WVU Ag and Forestry Experiment Station
Davis College of Ag and Natural Resources
Director

WV Department of Environmental Protection
Cabinet Secretary

WV Association of Conservation Districts
President

Division of Forestry
Director

Appointed Members

Four citizen members appointed by the Governor with the consent of the Senate.

Advisory Members

USDA- NRCS
State Conservationist

USDA-Farm Service Agency
State Executive Director

WEST VIRGINIA CONSERVATION AGENCY

The SCC has placed upon the WVCA the following responsibilities:

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;
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 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.
7. Yearly budgets are prepared by the executive director based on project, program and operation need. Each of the 14 conservation districts receive state appropriations based on the WVCA's annual budget.
 - a. Project dollars are distributed to the conservation district(s) based on the cost of such project.
 - b. Program funds are appropriated in accordance to the program that has been approved by the SCC.
8. WVCA employees provide administration, communication and technical support to the districts.

CONSERVATION DISTRICTS

As set forth in West Virginia Code Chapter 19-21A-8(8) the state's 14 Conservation Districts and are charged with preserving natural resources assisting in maintaining the navigability of rivers and harbors, preserving wildlife, protecting the tax base, protecting public lands and protecting and promoting the health, safety and general welfare of the people of this state.

The 114 elected conservation district supervisors serve on local boards that develop and implement urban and rural conservation programs designed to protect and conserve soil, water, woodland, wildlife, and other renewable natural resources.

LEADERSHIP QUALITIES OF A CONSERVATION DISTRICT SUPERVISOR

1. Puts his/her agenda aside and does what's best for the organization.
2. Builds a sense of fellowship among those with whom he/she works.
3. Understands the overall goals and objectives of conservation.
4. Is trusted by the other members of the Board and staff.
5. Communicates well, in writing and verbally.
6. Works well on a team.
7. Is accepting of people with opinions different than his/hers.
8. Asks questions which challenge the status quo.
9. Understands the organization's finances and takes fiscal responsibility.
10. Has a strong commitment to the mission of the organization.

THE IMPORTANCE OF PARTNERSHIPS

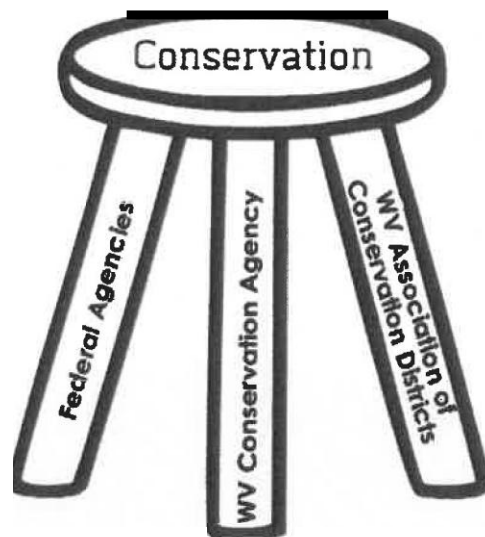
Conservation is often referred to as a "three-legged stool" because of the interplay between local, state, and federal partners.

By working together, technical assistance, guidance, and on-the-ground practices can be readily available to district cooperators.

On the federal side, the partnership is anchored by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). This began many years ago and each agency works for conservation districts to promote and carry out the conservation programs.

NRCS and FSA rely on conservation districts, other local organizations and landowners to help guide their work. On an annual basis, districts hold Local Working Group meetings with federal, state, and local sponsors to gather input, assess natural resource conditions and needs, and establish shared local conservation goals.

While NRCS and FSA are close federal partners, it also takes other federal, state, and local partners to further conservation efforts. By everyone working together, the "stool" is steady and strong.



CHARACTERISTICS OF THE “PERFECT” SUPERVISOR

1. Listens well.
2. Effectively solves problems.
3. Makes decisions based upon data.
4. Is passionate about the organization.
5. Understands the finances of the organization.
6. Focuses on the mission of the organization in all decision making.
7. Has a sense of vision and wants the organization to be more than it is today.
8. Understands the needs of the members.
9. Works as a team member but offers respectful dissent.
10. Asks probing questions, especially on matters that are unfamiliar.
11. Makes decisions based upon the organization’s strategic plan.
12. Follows through on Board and Committee assignments.
13. Support state and national conservation objectives.
14. Take an active role in developing and updating district’s long-term strategic plans.
15. Participate in developing, publishing, and distributing annual reports (including a financial report of district accounts) at the end of each fiscal year.
16. Participate in planning and conducting public meetings on proposed laws and policies concerning conservation.
17. Work with other board members to form committees of key stakeholders to deal with issues affecting soil and water conservation.
18. Work with other board members and the West Virginia Conservation Agency to provide continued training and development to all Supervisors.
19. Maintain integrity, and abstain from any action or vote which could be considered a conflict of interest.
20. Work with other Board members to establish the business procedures required for accounting and financial management of the district’s fiscal affairs in accordance with state law.
21. Periodically visit farmers and other land users to review and better understand individual as well as collective conservation needs throughout the District and, where appropriate, encourage them to become district cooperators.
22. Work with other board members to make available education programs to the youth of West Virginia on soil and water conservation in all schools within the respected district. Encourage participation in Envirothon, conservation camps, and other programs.
23. Work with other board members to promote conservation tours, field days and pasture walks.
24. Work with other board members to participate in district observances of Soil and Water Conservation Stewardship Week.

ROLES AND RESPONSIBILITIES OF DISTRICT SUPERVISOR BOARDS

1. Review, approve, and understand agreements that they may enter into with state, local or federal entities.
2. Take an active role in developing the annual plan of work. Identify local conservation needs, develop district programs and set priorities for providing technical assistance to landowners.
3. Be knowledgeable of local, state and federal legislation and policies, and regulations that may affect the District's cooperators.
4. Need to establish working relationships with local, state and federal officials.
5. Solicit and encourage new cooperator participation with the Conservation district.
6. Recruit and support Associate Supervisors in order to expand the District's reach.
7. Offer all programs and services of the District on a non-discriminatory basis without regard to race, color, national origin, religion, sex, age, marital status, or handicap.
8. Participate in the development of the annual district budget.
9. Work with other board members to secure funds for local delivery of programs, services and providing good fiscal oversight.
10. Provide for appropriate and continuing conservation of the state's resources through the development of multi-year programs.

POWERS OF CONSERVATION DISTRICTS AND SUPERVISORS

1. Conduct surveys, investigations and research, with approval from State Conservation Committee, relating to the character of soil erosion and floodwater and sediment damage and to the conservation, development, use and disposal of water and the preventive and control measures needed.
2. Conduct conservation demonstration projects on any land within the district, whether state or privately owned, upon obtaining consent from the proper authority.
3. Carry out preventative and control measures within the district including, but not limited to, engineering operations, cultivation methods, vegetative cover improvement and land use changes, with the cooperation and consent of the proper authority.
4. Cooperate or enter into agreements with any person to furnish aid to any land occupier within the district to furnish financial or other aid for the purpose of installing best management practices.
5. Obtain options upon and to acquire, by purchase, exchange, lease, gift, grant or condemnation or by other legal means, any real or personal property or rights or interests in it for the purpose of furthering the conservation programs.
6. Maintain, administer and improve any acquired properties and expend the income from the properties to further the conservation programs.
7. Sell, lease, or otherwise dispose of district property or interests in it to further conservation programs.
8. Construct, improve, operate and maintain any structures needed to carry out the district's conservation programs.
9. Develop and publish, with the approval of the State Conservation Committee, detailed, comprehensive plans for the conservation of soil and water resources within the district. Plans are to specify the acts, procedures, performances, best management practices needed, and be brought to the attention of district residents.
10. Take over by purchase, lease, or other legal methods and administer any conservation or flood prevention project located within the district and undertaken by agencies of the state or federal government.
11. Sue and be sued in the name of the district.
12. Have a judicially recognized seal.
13. Make and execute contracts and other instruments needed to carry out district operations.
14. Make, amend, and repeal rules and regulations pertaining to conservation districts in order to accomplish district goals.
15. Secure contributions in money, services, materials or otherwise as a condition to extending benefits or performing work.
16. Encourage landowners to enter into and perform agreements regarding permanent land use that will prevent soil erosion, flooding, and sedimentation.

17. Enter into contracts with persons, government entities, corporations, and others for cooperation of assistance in performing operations which will achieve district goals.
18. Formulate rules and regulations governing the use of land within the district in order to conserve soil and soil resources and to control soil erosion. Supervisors shall conduct public meetings and hearings upon tentative rules and regulations as necessary.
19. Co-sponsor watershed programs and other related project activities with Resource Conservation and Development Council (RC&D).

The powers of districts are presented here in an abbreviated form. In some instances they have been paraphrased. For exact reference, see the Conservation Districts Law, Chapter §19-21A (Sections 7,8,9).

CHARACTERISTICS OF A SUCCESSFUL DISTRICT

1. Have supervisors understand and accept their responsibilities and powers that are established by state law and district policy.
2. Have and use a good long-range plan that encompasses everything involved in the conservation and development of the land and water resources for both agriculture and non-agriculture uses.
3. Have supervisors who understand their conservation programs.
4. Help local people understand and support the long-range conservation plans.
5. Develop and carry out a good annual plan of operations, with the active input and involvement of local people.
6. Have regular board of supervisors' meetings.
7. Have funds to carry out responsibilities.
8. Use all available people and resources.
9. Develop and present educational programs.
10. Establish and maintain communications and working relations with federal and state agencies, organizations, groups, institutions, individual leaders and others who are potential contributors to the work of the district.
11. Keep the national and state legislators and governing bodies in county and city governments informed.
12. Provide an annual report of its district.
13. Prepare an annual budget and maintain adequate bookkeeping that reflects all income and expenditures with an annual financial statement and audit as required.
14. Provide a district policy manual for reference.
15. Enter into working agreements or memorandums of understanding for assistance and cooperation in carrying out the conservation programs.

MEETINGS

Board meetings shall be held at least once a month and the agenda published in accordance with the *West Virginia Open Governmental Proceedings Act*. These meetings require planning and participation by all involved in the district's programs to be productive. Monthly board meetings have two basic purposes: to decide on conservation district policy and monitor its implementation. Board meetings also serve communication, educational, inspirational and social purposes. Board meetings are open to the public with the exception of portions which deal with sensitive personnel issues.

As the agenda is prepared each month, the annual plan of work should be reviewed so that appropriate action items can be taken on each item at the proper time of year.

Note that the WV Code of Ethics precedes "Roberts Rules of Order" regarding meetings.

ASSOCIATE SUPERVISORS

Many conservation districts find the use of associate supervisors to be extremely important to their district programs. Associate supervisors are officially appointed by the conservation district board as advisors and representatives. The district board determines the roles and authorities of associate supervisors within the constraints of the district law and policy. Generally an associate supervisor can do anything a district supervisor can except make motions and vote. Associate supervisors augment your knowledge and experience, and assist with conservation district programs.

Associate supervisors are usually appointed for one year. General approval of the board is the only requirement for appointment.

Reimbursement for travel expenses is at the discretion of the board. Funds must come from the district board, since the State Conservation Committee is not authorized to reimburse expenses of associate supervisors.

VOLUNTEERS

Districts may also obtain free help through volunteers, hosted workers, and alternative sentence workers. Organizations such as FFA, Scouts, garden clubs, civic clubs and others offer a wealth of volunteer assistance for specific projects such as tree planting, critical area stabilization, Soil and Water Stewardship Week activities, dedications, field days, etc. Many of these groups provide insurance for their members. If they don't, districts may wish to purchase short-term insurance to cover them while they work on the district project.

Hosted volunteers are workers who are paid or receive benefits from another entity.

These include: Job Training Partnership Act (JTPA) participants, Retired Senior Volunteer Program (RSVP) volunteers, and volunteers from businesses or large companies.

COOPERATOR AGREEMENTS

Any person, firm, or corporation can be a cooperator no matter how many acres they own, lease, or rent. The cooperator agrees to work with the district in developing plans based on proper land use and the needs of the farm enterprise and will implement the conservation plan by making land use adjustments and establish conservation practices.

The district agrees to furnish assistance in development of a conservation plan and implementation of the conservation practices called for in the plan. This agreement is between the conservation district and the cooperator.

It is important that all members of the conservation partnership encourage the landowners and occupiers who request assistance through the district to sign a cooperator agreement. Districts should review cooperator agreements every three years to ensure they are up to date.

**SIMPLIFIED PARLIAMENTARY PROCEDURE:
Based On Robert's Rules Of Order
BY NACD**

I. ORDER OF BUSINESS

1. The meeting is "called to order" by the chairperson.
2. The minutes of the preceding meeting are read by the secretary and:
 - a. May be approved as read.
 - b. May be approved with additions of corrections.
3. Monthly statement of Treasurer is "Received as read and filed for audit." (Chair so states.)
No motion of approval is necessary.
4. Reports of standing committees are called for by the chairperson.
5. Reports of special committees are called for by the chairperson.
6. Unfinished business is next in order at the call of the chair or of the meeting.
7. New business.
8. The program (if an annual or other special meeting). A Program is part of the meeting; the chairperson "presides" throughout.
9. Adjournment.

II. DUTIES OF A CHAIRPERSON

1. To preside at all meetings.
2. Keep calm at all times.
3. Talk no more than necessary while presiding.
4. Have agenda for meeting before him and proceed in a businesslike manner.
5. Have a working knowledge of parliamentary law and a thorough understanding of the constitution and by-laws or other legal charter of the organization.
6. Keep a list of committees on the table while presiding.
7. Refrain from entering the debate of questions before the assembly. If it is essential that this be done, the vice-chairperson should be placed in the chair. A chairperson is not permitted to resume the chair until after the vote has been taken on the question under discussion.
8. Extend every courtesy to the opponents of a motion, even though the motion is one that the presiding officer favors.
9. Always appear at the rostrum a few minutes before the time the meeting is to be called to order. When the time arrives, note whether a quorum is present; if so, call the meeting to order, and declare "a quorum is present."

III. OTHER OFFICIALS

Vice-Chairperson

The vice-chairperson of an organization is the one who acts in the place of the chairperson, whenever needed in case of resignation or death of the chairperson, the vice-chairperson automatically becomes the chairperson unless the by-laws provide other methods.

In official meetings, the vice-chairperson should preside in the absence of the chairperson or whenever the chairperson temporarily vacates the chair.

If the chairperson should be absent for a long period, the vice-chairperson may exercise all duties of the chairperson except to change or modify rules made by the chairperson.

The vice-chairperson cannot fill vacancies where the by-laws state that such vacancies shall be filled by the chairperson.

In case of resignation or death of the chairperson, and the vice-chairperson does not care to assume the office of chairperson, the vice-chairperson must resign.

The office of vice-chairperson becomes vacant when the vice-chairperson assumes the office of chairperson. If there are several vice-chairpersons, they automatically move up to the higher office leaving the lower office vacant. This office should be filled as instructed by the by-laws or authorized legal authority.

In the absence of the chairperson, the vice-chairperson is not “ex-officio” a member of any committee.

Secretary

The secretary should issue all calls or notices of meetings and should write such letters as the board of directors or executive committee may designate.

The secretary should keep a neat and careful record of all business done in the meetings, with the exact wording of every motion and whether it was lost or carried. Brief extracts from speeches, if important, may be recorded but no comment of any kind, favorable or unfavorable, should be made. The minutes should show the names of persons appointed to committees, and it is the duty of the secretary to notify all persons nominated or elected on any committee.

The secretary should be on hand a few minutes before a meeting is called to order.

He should have the minutes book of the organization with him so that reference can be made to minutes of past meetings.

The secretary should always have a copy of the by-laws; standing rules; book of parliamentary procedure endorsed by the organization; list of members or clubs; and a list of unfinished business, copy of which should be given the presiding officer.

The minutes of an organization should contain a record of what is done and not what is said.

Minutes should contain:

1. Date place and time of meeting
2. Whether it is a regular or special meeting.
3. Name of person presiding.
4. Name of secretary. (in small boards, the names of those present should be recorded.)
5. All main motions, whether adopted or rejected.
6. The names of the persons making the motions; the name

- of the seconder need not be recorded.
7. Points of order and appeals, whether sustained or lost.
 8. A motion which was withdrawn should not be recorded.

Treasurer

The Treasurer of any organization is the custodian of its funds and receives and disburses them upon authority from the organization, the board, executive committee or the finance or budget committees. A treasurer should be bonded.

The organization should approve the budget or authorize the executive committee or the board of directors to do so. A committee chairman or an officer or member should get permission from the chairperson or board to make an expenditure.

No treasurer should accept bills for payment, such as for postage, traveling expenses, etc., from a committee chairperson unless receipts are enclosed.

The treasurer should make a monthly statement and a report once a year, or upon the request of board or parent body during the year. The annual report should be audited. An auditor's reports should be presented following the treasurer's report. The presiding officer states to the assembly that to adopt the report of the auditor (if carried) has the effect of accepting the treasurer's report.

Committees

Committees have no authority except that which is granted by the constitution or by vote of the organization. Unless otherwise provided, the person first named or the one receiving the largest number of votes is its chairperson. A committee has no right to incur any debt or involve the organization in any way unless given full authority to do so.

Under no circumstances should one or more members of a committee go ahead with the business without action by a quorum; usually a majority of the committee, being present. Failure to observe these rules renders such action "the action of individuals" and subject to "censure."

IV. PRINCIPAL MOTIONS

General Statement: When a motion has been made, seconded, and stated by the chair, the assembly is not at liberty to consider any other business until this motion has been disposed of. If the motion is long and involved, the chairperson asks the mover to hand it in writing to the secretary. The mover cannot withdraw his motion after it has been stated by the chair. In general, all important motions should be seconded, which may be done without rising or addressing the chair.

1. **To Amend:** This motion is "to change, add, or omit words" in the original main motion, and is debatable; majority vote.
To Amend the Amendment: This is a motion to change, add or omit words in the first amendment; debatable, majority vote.
Method: The first vote is on changing words of second amendment, the second vote (if first vote adopts change) on first amendment as changed; the third vote is on adopting main motion as changed.
2. **To Commit:** When a motion becomes involved through amendments or when it is wise to investigate a question more carefully, it may be moved to commit the motion to committee for further consideration. Debatable and amendable, but a committee must make report on such question.
3. **To Lay on the Table:** The object of this motion is to postpone the subject under discussion in such a way that it can be taken up at some time in the near future when a motion "to take from the table" would be in order. These motions are not debatable or amendable; majority vote.

4. **To Postpone:** A motion to postpone the question before the assembly to some future time is in order, except when a speaker has the floor. Debatable, majority vote.

5. **To adjourn:** This motion is always in order except:

- a. When a speaker has the floor.
- b. When a vote is being taken.
- c. After it has just been voted down.
- d. When the assembly is in the midst of some business which cannot be abruptly stopped.

When meeting the above conditions, the motion is not debatable. When the motion is made adjourn to a definite place and time, it is debatable.

6. **To Reconsider:** The motion to reconsider a motion that was carried or lost in order if made on the same day or the next calendar day, but must be made by one who voted with the prevailing side. No question can be twice reconsidered. Debatable, majority vote.

Requires Two Votes: First on whether it should be reconsidered, seconded on original motion after reconsideration.

7. **The Previous Question:** The motion is to close debate on the pending question. This motion may be made when debate becomes long drawn out. It is not debatable. The form is “Mr. (Madam) Chairperson, I move the previous question.” The chairperson then asks, “Shall debate be closed and the question now be put?” If this be adopted by a two-thirds vote, the question before the assembly is immediately voted upon.

8. **Point of Order:** This motion is always in order, but can be used only to present an objection to a ruling of the chair or some method of parliamentary procedure. The form is “Mr. (Madam) Chairperson, I rise to a point of order.” The Chairperson: “Please state your point or order.” After the member has stated his objection, the chair answers:

- a. “Your point of order is sustained”
- b. “Your point of order is denied.”

If any member is not satisfied, he may appeal from the decision of the chair. The chairperson then addresses the assembly. “Shall the decision of the chair be sustained?” This is debatable and the presiding officer may discuss it without leaving the chair. Voted on like any other motion. Majority or tie vote sustains the decision of chair. Requires a majority of “no” votes to reverse decision of the chair.

ASSOCIATE SUPERVISORS

Many conservation districts find the use of associate supervisors to be extremely important to their district programs. Associate supervisors are officially appointed by the conservation district board as advisors and representatives. The district board determines the roles and authorities of associate supervisors within the constraints of the District Law and policy. Generally, an associate supervisor can do anything a district supervisor can except make motions and vote. Associate supervisors augment your knowledge and experience, and assist with conservation district programs.

Associate supervisor's main qualifications should be an interest in natural resources Conservation and time to devote to district activities. Generally, associate supervisors assist the board with a particular program such as: conservation education, solid waste, watersheds, public relations, legislation, water quality, etc.

Associate supervisors should be appointed to satisfy a certain need of the district. Some possible reasons for associate supervisors are to:

1. Train for supervisor positions.
2. Work on specific committees or projects.
3. Provide citizen input.
4. Review plans and regulations in their area of expertise.
5. Act as district liaison to potential cooperators.
6. Allow supervisors to "step down" while still retaining an official role with the district. This option is often taken by supervisors whose health or lifestyle prevent them from being a full-time supervisor.
7. Allow supervisors who have lost an election to remain active in district programs.

Term of office:

Associate supervisors are usually appointed for one year. General approval of the board is the only requirement for appointment.

Insurance:

Under state law the State Committee may not provide tort and injury coverage for associate supervisors. Districts may include associate supervisors and other volunteers under their own insurance policies. NRCS provides tort and injury coverage to associate supervisors who are signed up as "Earth Team" Volunteers.

Number of Associates:

Districts may appoint as many associate supervisors as they desire.

Associate Supervisor Activities:

To keep active associate supervisors, districts must keep them interested and actively participating at board meetings and in district committees and functions. This can be done by:

- assigning specific duties to associate supervisors,
- requesting reports from them at board meetings,
- and consulting them on problems in their area of expertise.

WEST VIRGINIA CONSERVATION INITIATIVES RECOGNIZED BY DISTRICTS

Please note that participation in these programs is voluntary and will vary district by district.

1. Conservation Education Awards Programs
 - a. Teacher of the Year Contest
 - b. Education District of the Year
2. District Public Speaking Contest
3. Land Judging
4. National Association of Conservation Districts Awards Program
 - a. Photo Contest - district, state and national levels
 - b. NACD Auxiliary Poster Contest – district, state and national levels
5. WV Envirothon
6. WV Grassland Evaluation Contest
7. Forestry Contest
8. Conservation Camps
 - a. Jr. Conservation Camp (Cedar Lakes)
 - b. WV Conservation Camp (Camp Caesar)

ANNUAL DISTRICT AND STATE AWARDS

1. CD Supervisor Perfect Attendance
2. Carroll Greene Award (District Supervisor of the Year)
3. District/Area/WV Conservation Farm Program
4. Years of Service Recognition
5. Land Judging Contest
6. Grassland Farmer
7. WVACD Awards
 - Scholarships
 - Photo and Poster Contest
 - Century Farm Program
 - Conservation Teacher of the Year
 - District of the Year (Conservation Education Award)
 - WVACD Excellence in Conservation Communication Award
 - Rookie Supervisor of the Year Award
 - Samara Program
 - Carroll Greene Award
 - Honorary Member & Member at Large

For more information on West Virginia Conservation District sponsored awards and recognition contests visit www.wvca.us/education. Contest and rules subject to change.

WEST VIRGINIA ASSOCIATION OF CONSERVATION DISTRICTS

The West Virginia Soil Conservation District Supervisor Association was formed on December 15, 1942. On October 15, 1963, the Association was incorporated as the “West Virginia Soil and Water Conservation District Supervisors Association.”

The Association is a 501(c)3 tax exempt, nonprofit organization and is now the West Virginia Association of Conservation Districts. A copy of the tax-exempt documentation is available through the West Virginia Secretary of State’s Office.

The Association is organized exclusively for educational, scientific, and charitable purposes. Its goals are to promote soil and water conservation and proper land use, and to ensure a continuing productive agriculture essential to the national welfare. To further these objectives, the WVACD:

1. Supports improved conservation legislation;
2. Conducts an educational program regarding its goals and accomplishments in support of conservation programs at the district level;
3. Provides forums to inform, train, and educate supervisors and recognize outstanding district individuals and programs;
4. May conduct a full business meeting at the July quarterly meeting. The WV Conservation Awards Council sponsors the annual district supervisor meeting at the October quarterly meeting.
5. Holds quarterly board of director’s meetings.

The business of the WVACD is managed by a board of 28 directors (two from each conservation district in the state). Directors must be:

1. Members of the WVACD
2. Nominated by the conservation district board of supervisors, of which he or she is a member; and
3. Seated at the July quarterly meeting following the primary election.
4. Officers are elected from the WVACD board of directors according to the bylaws.

Bylaws and Constitution (See Appendix 5)

ACRONYM GLOSSARY

ACP - Agricultural Conservation Program
AgEP – Agricultural Enhancement Program
AMA - Agricultural Management Assistance Program
AML – Abandoned Mine Land Program
APO - Annual Plan of Operations
APW – Annual Plan of Work
BMP - Best Management Practice
CD – Conservation District
CED - County Executive Director
CRP - Conservation Reserve Program
CREP - Conservation Reserve Enhancement Program
CTA - Conservation Technical Assistance
DC - District Conservationist
EBA - Ecosystem Based Assistance
ECP - Emergency Conservation Program
EEO - Equal Employment Opportunity
EIS - Environmental Impact Statement
EPA - Environmental Protection Agency
EWP - Emergency Watershed Protection Program
EQIP - Environmental Quality Incentives Program
FAIRA - Federal Agriculture Improvement and Reform Act of 1996
FIP - Forestry Incentive Program
FOTG - Field Office Technical Guide
FSA - Farm Service Agency
GIS - Geographic Information System
GHG - Green House Gases
GRP - Grassland Reserve Program
GPS - Global Positioning System
GRASS - Geographic Resource Analysis and Support System

HEL - Highly Erodible Land
ICM - Integrated Crop Management

I&E - Inventory and Evaluation of Soils
IPA - Interagency Personnel Agreement
IPM - Integrated Pest Management
LESA - Land Evaluation and Site Assessment
LISA - Low Input Sustainable Agriculture
LRF - Limited Resource Farmer
LTA - Long Term Agreement
MOU - Memorandum of Understanding
NACD - National Association of Conservation Districts
NASCA – National Association of Conservation Agencies
NPS - Non-Point Source (pollution)
NRCS - Natural Resources Conservation Service
NRI - National Resources Inventory
PRMS - Performance Results Measurement System
RAMP - Rural Abandoned Mine Program
RC&D - Resource Conservation and Development
RD - Rural Development
RUSLE - Revised Universal Soil Loss Equation
SIP - Stewardship Incentive Program
SSRP – Stream Stabilization and Restoration Program
SWCS - Soil and Water Conservation Society
(T) - Soil Loss Tolerance
USDA - United States Department of Agriculture
USLE - Universal Soil Loss Equation
WHIP - Wildlife Habitat Incentive Program
WQ - Water Quality
WQIP - Water Quality Incentive Program
WRP - Wetland Reserve Program
WVDA – West Virginia Department of Agriculture
WVDEP - West Virginia Department of Environmental Protection
WVDNR - West Virginia Division of Natural Resources
WVDOF – West Virginia Division of Forestry
WVOWR - West Virginia Office of Water Resources
WVACD - West Virginia Association of Conservation Districts

WVCA - West Virginia Conservation Agency

WVSCC – West Virginia State Conservation Committee

WVUCES - West Virginia University Cooperative Extension Service

APPENDICES

Appendix 1West Virginia Conservation Law §19-21A
Appendix 2State Conservation Committee Legislative Rules 63CSR1, 63CSR3, 63CSR4
Appendix 3..... A Guide to the West Virginia Open Governmental Proceedings Act,
FOIA, and Open Meetings Act
Appendix 4..... The Ethics Act
Appendix 5.....West Virginia Association of Conservation Districts Constitution & Bylaws
Appendix 6.....WVACD Area Map
Appendix 7 Conservation District Supervisor Statement of Qualifications,
and Oath of Office

Appendix 1

WV Code Chapter 19

Article 21A

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-1. Short title.

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

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

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

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

(b) There is a continuing need for the implementation of conservation practices, whether urban, suburban, or rural, that maintain, promote, control, and prevent soil erosion, prevent floodwater and sediment damage, and further the conservation, development, use, disposal, and quality of water, thereby preserving natural resources, controlling floods, preventing impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, preserving wildlife, protecting the tax base, protecting public lands, and promoting the health, safety, and general welfare of the people of this state.

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

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

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

§19-21A-3. Definitions.

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

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

(2) "Agriculture" means the production of food, fiber, and woodland products, by means of cultivation, tillage of the soil, and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.

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

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

(5) "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.

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

(7) "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.

(8) "Land occupier" or "occupier of land" means 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.

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

(10) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication is the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

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

(12) "Soil conservation", "erosion control", or "erosion prevention projects" means 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.

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

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

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

(16) "United States" or "agencies of the United States" means 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.

(17) "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 10 members:

(1) Four citizen members;

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

(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;

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

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

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

(1) Review district programs and 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) Assist and advise conservation districts and others in implementing conservation improvements, and projects to control and abate nonpoint sources of water pollution and prevent damage from floodwater and sediment;

(3) 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;

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

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

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

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

(8) 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;

(9) 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;

(10) Administer the provisions of any law hereinafter enacted by the Legislature appropriating funds for expenditures in connection with the activities of conservation districts; distribute to conservation districts funds, equipment, supplies, and services received by the committee for such purpose from any source subject to conditions in any state or federal statute or local ordinance making such funds, property, or services; adopt rules establishing guidelines to govern the use by conservation districts of such funds, property, and services; and review all budgets, administrative procedures, and operations of such districts and advise the districts concerning their conformance with applicable laws and rules;

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

(12) 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;

(13) 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 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;

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

(15) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees, or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

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

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

§19-21A-4a. Administration of West Virginia Conservation Agency programs; legislative rules.

(a) If a conservation district supervisor applies to participate in a West Virginia Conservation Agency financial assistance program, then his or her application for that particular program shall be evaluated for approval or denial by the West Virginia Conservation Agency.

(b) A conservation district supervisor may not vote for the authorization, approval or ratification of a contract in which he or she or an immediate family member is beneficially interested.

(c) The State Conservation Committee shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code to establish:

(1) The criteria, ranking and standards required for an applicant to qualify to participate in West Virginia Conservation Agency programs;

(2) A process to disclose the recipients of the award; and

(3) The process for an unsuccessful qualified applicant to appeal an award.

(d) The State Conservation Committee may propose emergency rules as necessary to implement the provisions of this section.

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

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

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

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

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

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

(d) Any vacancy occurring in the office of supervisor shall be filled by the state committee by appointment of a person from the county in which the vacancy occurs. Within 90 days after the vacancy occurs, the district shall advertise and select a candidate from the county in which the vacancy occurs and submit the name to the state committee for appointment. If the unexpired term is for less than two years and six months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and six months, the appointed person holds the office until a successor is elected in 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; removal.

(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 specialized 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 2008, the term of office of each

elected supervisor is four years. A supervisor holds office until his or her successor has been elected or appointed. In case a new county is added to a district, the committee may appoint two supervisors to represent the county until the next regular election of supervisors for the district takes place.

(c) A supervisor is entitled to reasonable and necessary expenses and a per diem of not more than \$150 nor less than \$30 when engaged in the performance of his or her duties. The expense and per diem rate shall be established by the state committee based on availability of funds.

(d) The supervisors may, with the approval of the State Conservation Committee, employ a secretary, dam monitors, technical experts and any other officers, agents and employees, permanent and temporary, either with or without compensation, as they may require and shall determine their qualifications, duties and compensation, if any. Dam monitors, as specified in any emergency action plan or monitoring plan approved by the Department of Environmental Protection pursuant to its dam safety rules, pertaining to a flood control structure operated or maintained by a soil conservation district and any other employees, agents or officers employed pursuant to this section are "employees" of the district within the meaning of subsection (a), section three, article twelve-a, chapter twenty-nine of this code.

(e) 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.

(f) 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.

(g) Any supervisor may be removed from office pursuant to section seven, article six, chapter six of this code.

(h) 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.

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

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

(1) To hold public meetings, to conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damage, and nonpoint source water pollution, and to the conservation, development, utilization, water quality, disposal of water, and the preventive and control measures needed to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement to the public: *Provided*, That in order to avoid duplication of research activities, a district may not initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies: *Provided, however*, That any alteration, improvement, or agreement related to a dam owned or sponsored by a local conservation district is subject solely to the authority of the Department of Environmental Protection. The provisions of this subsection may not be construed to affect or alter any state or federal funding to the West Virginia Conservation Agency;

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

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land; drainage, irrigation, and other agricultural water management operations and measures for the prevention of floodwater and sediment damages, or for the control and abatement of nonpoint sources of water pollution; and the measures listed in §19-21A-2 of this code on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

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

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

(6) To 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;

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

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

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

(10) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions, and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials, or other contributions in carrying on its operations;

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

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

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

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

conservation, development, utilization, and disposal of water within the district and to construct, improve, operate, or maintain thereon or therewith works of improvement.

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

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

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

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

Agencies of this state which have jurisdiction over or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder may cooperate with the supervisors of the districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this article. When such cooperation is undertaken, the supervisors of the districts shall be given free access to enter and perform work upon the publicly owned lands.

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

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

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

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

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

(c) Any assurance hereunder may be valid and binding 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.

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

§19-21A-13a.

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

§19-21A-13b.

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

§19-21A-13c.

Repealed.

Acts, 2006 Reg. Sess., Ch. 38.

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

(a) At any time after five years following the organization of a district under the provisions of this article, any twenty-five owners of land lying within the boundaries of a district may file a petition with the state Conservation Committee praying that the district be discontinued and the county or counties of the district be added to another district or districts.

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

(c) The questions shall be submitted by ballots or electronic voting system upon which the words "For discontinuing the _____ (name of the conservation district to be here inserted) and adding _____ (county or counties) to _____ (district or districts) (If one or more counties in a district are to be combined with one or more other districts, each combination must be specified.)" and "Against discontinuing the _____ (name of the conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to mark the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district. All registered voters lying within the boundaries of the district to be discontinued and the district or districts to which all or part of the district being discontinued may be added are eligible to vote on the referendum.

(d) If a majority of the votes cast in the referendum are in favor of discontinuing the district, the supervisors shall proceed to terminate the affairs of the district. The supervisors of the district being discontinued shall file an application to discontinue the district with the Secretary of State. The application shall recite the process undertaken in discontinuing the district and the distribution of the property, assets, liabilities, contracts, duties and responsibilities and transfer of territory to one or more districts.

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

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

(g) The property, assets, liabilities, contracts, duties and responsibilities of the district shall be assigned in accordance with the division of the district.

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

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

Appendix 2

State Conservation Committee Legislative Rules

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**TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE**

**SERIES 1
OPERATION OF WEST VIRGINIA STATE CONSERVATION COMMITTEE AND
CONSERVATION DISTRICTS**

§63-1-1. General.

1.1. Scope. -- This rule establishes procedures for the election and appointment of conservation district supervisors by the State Conservation Committee and the state conservation districts; the expenditure of funds by the State Conservation Committee for works of improvement programs; and compliance with the West Virginia Open Governmental Proceedings Act, §6-9A-1 *et seq.*

1.2. Authority. -- W. Va. Code §19-21A-4.

1.3. Filing Date. -- April 3, 2023

1.4. Effective Date. -- April 3, 2023

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§63-1-2. Procedure for Appointing, Electing and Removing Conservation District Supervisors.

2.1. The governing body of a conservation district shall consist of elected and appointed supervisors (W. Va. Code §19-21A-6).

2.2. Qualifications for elected or appointed conservation district supervisors are as follows:

2.2.a. The individual must be a resident and landowner in the county in which he or she is running for office or where the vacancy has occurred.

2.2.b. The individual must have experience in agriculture, as that term is defined in W. Va. Code §19-21A-3; conservation; or natural resources.

2.3. Each county shall elect two supervisors to represent the county (W. Va. Code §9-21A-6 and §9-21A-7).

2.3.a. Any county with a population of 100,000 based on the most recent decennial census shall elect one additional supervisor and any county with a population over 100,000 based on the most recent decennial census shall elect one additional supervisor for each 50,000 residents over 100,000.

2.3.b. All registered voters are entitled to vote in his or her county for candidates for Conservation District Supervisor.

2.3.c. Elections for county district supervisors shall be non-partisan.

2.3.d. The term of office for supervisors shall be four years, and the terms of such members shall begin on July 1, next following the primary election at which they were elected.

2.3.e. The provisions of W. Va. Code §3-3-1 *et seq.* apply to the election of supervisors, unless otherwise provided for by the provisions of this rule series. The provisions of W. Va. Code §6-1-1 *et seq.* apply to the removal of conservation district supervisors.

2.4. If no candidate files for election, or if a vacancy occurs in the office of conservation district supervisor, the State Conservation Committee shall appoint a person to fill the position based on a recommendation submitted by the district in which the vacancy occurred.

2.4.a. To obtain a list of qualified candidates, the district shall post a notice on an online platform that disseminates information to the public or place an advertisement in a newspaper of general circulation within the county in which the vacancy occurred. The posting or advertisement shall be placed within 30 days of when the vacancy occurred and shall run for a period of at least one week. The posting or advertisement shall include a listing of any requirements and qualifications necessary to hold the position of supervisor, and instructions on how to apply to the district.

2.4.b. The district shall use the list of qualified candidates to make its candidate recommendation to the State Conservation Committee within 90 days of the primary election, or within 90 days of when the vacancy occurs, as the case may be.

2.4.c. Associate supervisors may be employed by districts with approval of the State Conservation Committee. Associate supervisors may not vote nor make motions during conservation district board meetings. Duties and responsibilities of associate supervisors will be determined by the board of supervisors in their by-laws or policy manual. Expenses for associate supervisors shall be at the discretion of the local conservation district board and be paid based on the availability of local district funds.

2.5 Elected and appointed supervisors shall take an oath of office before assuming the position of district supervisor. Original copies of the official oath of office shall be filed with the county clerk's office. Copies of the oath may be kept at the district office.

§63-1-3. Expenditure of Funds by the State Conservation Committee for Works of Improvement Programs.

3.1. Policy. The following requirements shall govern the expenditure of funds by the State Conservation Committee and its administrative office, the West Virginia Conservation Agency, for works of improvement programs.

3.1.a. Works of improvement program funds may only be used to aid conservation districts, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, in meeting their obligation of facilitating the planning, construction, operation, maintenance, repair, or rehabilitation of watershed protection and flood prevention improvement projects.

3.1.b. Works of improvement program funds will be made available only when other funds cannot be obtained and shall be considered supplemental to the capital resources of sponsoring conservation districts, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, in cooperative action with the federal government, local units of government, and communities involved with approved watershed program projects.

3.2. Works of improvement program funds may be spent for the following purposes subject to the procedures outlined in section 3.3 of this rule.

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3.2.a. Purchase land or easements on a negotiated value and price basis after certification by a state certified appraiser, a representative of the sponsoring conservation district, and a representative of the State Conservation Committee, that the negotiated value does not exceed a fair market value price.

3.2.b. Purchase land, easements or other right-of-way at values resulting from condemnation obstructions.

3.2.c. Negotiate with proper officials on the relocation of roads, public utility lines, or similar actions.

3.2.d. Pay court costs, attorney fees or similar expenses directly connected with any of the above.

3.2.e. Assist with expenses incurred by conservation districts or watershed improvement districts in the performance of work related to any watershed activities.

3.3. Operating policies to govern the acquisition of land rights and the general use of state funds.

3.3.a. Each conservation districts, watershed improvement districts, or other governing bodies, as defined in W. Va. Code §19-21A-3, local government anticipating a need for supplementary works of improvement program funds shall prepare and submit to the State Conservation Committee by June 1 of each year, for its action, a comprehensive plan of procedure and statement of intent relative to the acquisition of land rights covering such points as:

3.3.a.1. Estimated total fund needs for land rights;

3.3.a.2. Estimated value of local contributions to this phase of the project;

3.3.a.3. Probable recovery value from land sales; and

3.3.a.4. A description of the (1) methods used, or to be used, to determine land values and (2) a realistic evaluation of the ability of local people to help themselves in the development and completion of a watershed improvement program.

3.3.b. Title to all property acquired shall be vested in the State Conservation Committee.

3.3.c. Easement or other land rights shall be obtained either by the local conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3. An up-to-date listing of all easements (state and district) is to be kept in the district office. Easements should be recorded in the county land records as soon as procured. The list should be checked against courthouse records biannually to ascertain if property has been sold. If sold, the new owner is to be contacted and made aware of the easement.

3.3.d. The sale of the land purchased with state watershed funds must be approved in advance by the State Conservation Committee.

3.3.e. All land purchased with state funds will be sold, subject to necessary easements, as soon as practical. Retention of the area in and above a given structure may be kept for public use development on approval of the State Conservation Committee.

3.3.f. Prior to the selling of such land, an appraisal shall be made by a state certified appraiser, a representative of the local conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, and a representative of the State Conservation Committee. This

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appraisal must accompany all proposals to the State Conservation Committee to sell lands acquired with state funds.

3.3.g. Before any property purchased with money from this fund is sold, first refusal shall be given to the property owner from whom it was purchased or his or her heirs. If the previous owner, or his or her heirs, choose not to repurchase the property notice of the sale must be given. The notice shall be placed in three issues at least a week apart, in a newspaper of general circulation in the conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, affected. The notices are to call for the bids with the property to be sold to the highest bidder. The State Conservation Committee reserves the right to reject any and all bids. And, further, the provisions of this section shall not apply where acquired lands are being sold or disposed for a public use to the State of West Virginia or its political subdivisions. In lieu thereof, consideration other than the present commercial or market value of the property may be used as a basis for the sale or transfer.

3.3.h. Proceeds from the sale of land or products from such areas are to be immediately transmitted to the State Conservation Committee by the conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3.

3.3.i. Improvements other than items covered in watershed work plans are not to be made during the period of conservation district, watershed improvement district, or other governing body, as defined in W. Va. Code §19-21A-3, ownership without specific approval of the State Conservation Committee.

3.4. Representation of the State Conservation Committee. The State Conservation Committee may appoint and authorize a subcommittee, including the Executive Director of the West Virginia Conservation Agency, to act for the Committee in any matters related to this subject.

§63-1-4. Procedures for Complying with the West Virginia Open Governmental Proceedings Act.

4.1. The State Conservation Committee and Conservation Districts are required to comply with W. Va. Code §6-9A-1 *et seq.*

4.2. Filing in the state register. The time, date, and place of all regular and special meetings of the State Conservation Committee shall be submitted to the office of the Secretary of State and by news release to the media and public at large in accordance with W. Va. Code §6-9A-1 *et seq.*

4.3. Emergency meetings filed with the Secretary of State. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency in accordance with W. Va. Code §6-9A-1 *et seq.*

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**TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE**

**SERIES 3
STATE CONSERVATION COMMITTEE GRANT PROGRAM**

§63-3-1. General.

1.1. Scope. – This rule establishes requirements and procedures of the State Conservation Committee’s grant program which provides financial assistance to promote approved conservation projects; outlines applicant eligibility and application process; the review, evaluation and awarding of grants; reporting requirements; and the public notification of awards. The State Conservation Committee delegates administration of the grant program to the West Virginia Conservation Agency.

1.2. Authority. -- W.Va. Code §19-21A-3(4);19-21A-4(g)(8);19-21A-4(g)(11)

1.3. Filing Date. -- April 30, 2025

1.4. Effective Date. -- April 30, 2025

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2030.

§63-3-2. Definitions.

For the purposes of this rule, the following definitions apply:

2.1. Applicant -- An individual or organization that has applied for financial assistance through the grant program.

2.2. Approved Conservation Project – Projects or activities designated as eligible for financial assistance by the State Conservation Committee on a periodic basis.

2.3. Best Management Practices (BMPs) -- A practice or practices that contribute to the wise use and sustainability of natural resources.

2.4. Conservation District -- A subdivision of the state organized under W.Va. Code §19-21A-5.

2.5. Conservation District Board -- A board comprised of elected or appointed Conservation District supervisors who serve as a Conservation District’s governing body, W.Va. Code §19-21A-7.

2.6. Conservation District Supervisor -- One of the members of the governing body of a Conservation District, elected or appointed in accordance with the provisions of W.Va. Code §19-21A-6.

2.7. Grant Award -- A written agreement between the applicant and the West Virginia Conservation Agency awarding financial assistance and detailing requirements.

2.8. Grant – the financial assistance awarded to an applicant by the West Virginia Conservation Agency.

2.9. Grantee – the individual or organization that has been awarded the grant to complete an approved conservation project.

2.10. Grant Program -- The program(s) administered by the West Virginia Conservation Agency to provide grants to individuals and organizations to promote approved conservation projects.

2.11. In-Kind -- Goods, services and labor donated to or provided by grantee as approved by the West Virginia Conservation Agency to help complete the approved conservation project.

2.12. Program Document -- A document that outlines the administrative and program participation rules for the West Virginia Conservation Agency grant program(s).

2.13. Program Year -- The 12-month period between July 1 and June 30.

2.14. State Conservation Committee (SCC) -- The state agency charged with conserving the soil resources of this state, reducing soil erosion, preserving natural resources, controlling flooding and protecting public lands, W.Va. Code §19-21A-4.

2.15. West Virginia Conservation Agency (WVCA) -- The administrative agency of the State Conservation Committee, W.Va. Code §19-21A-4(e).

§63-3-3. Administration

3.1. Upon approval by the State Conservation Committee and based on available funding, the grant program(s) shall be administered by the West Virginia Conservation Agency.

3.2. Program document(s) shall be developed by the West Virginia Conservation Agency to serve as policy and establish procedures for grant program(s) implementation.

3.3. The West Virginia Conservation Agency shall follow State Conservation Committee policies in the administration of grant funds.

3.4. The West Virginia Conservation Agency shall follow the West Virginia State Auditor's Rules and Procedures in the processing of grant payments.

3.5. The State Conservation Committee shall consider recommendations from the Conservation Districts related to the grant program, including recipient and subrecipient monitoring.

§63-3-4. Eligibility

4.1. The State Conservation Committee shall determine and approve eligibility criteria.

4.2. Projects must be implemented on land and/or waterways within West Virginia and shall address soil and or water conservation and support the SCC/WVCA/Conservation Districts conservation mission.

§63-3-5. Applications

5.1. Applications for the grant program(s) shall be made available to the public in advance of the application period with eligibility criteria and detailed instructions of how to apply.

5.2. The State Conservation Committee shall set appropriate technical standards for implementation of best management practices.

5.3. Practices shall be maintained for the lifespan of the practice as set by the State Conservation Committee.

5.4. The State Conservation Committee reserves the right to determine standards, revise and amend standards as necessary and modify standards based on new research and/or technology.

§63-3-6. Review and Evaluation

6.1. The State Conservation Committee shall establish a committee that shall include the president of the West Virginia Association of Conservation Districts, or his/her designee, for the review and evaluation of grant program applications.

6.2. The State Conservation Committee shall establish criteria for evaluating and ranking grant applications, including establishment of a tie breaker.

6.3. WVCA staff, when available, will provide technical assistance and validation of applications from a technical standpoint.

§63-3-7. Awards

7.1. Grant awards will be based upon available funding and will be administered by the West Virginia Conservation Agency.

7.2. Grant awards shall be provided in writing to successful applicants and shall contain the amount awarded, project timeframe, reporting requirements and other associated terms and conditions.

7.3. Acceptance of the grant award is contingent upon signature by both parties and compliance with required documentation including a waiver of liability.

7.4. All projects are subject to on-site photography, use in West Virginia Conservation Agency or conservation district promotional materials, site visits and placement of signage.

7.5. The West Virginia Conservation Agency shall take reasonable actions to verify that the applicant is not barred from receiving state grants.

7.6. Grants may require cost share from grantee. In the event of cost share in-kind contributions may be allowed.

7.7. Grantees shall comply with the provisions of W.Va. Code §12-4-14, and legislative rules promulgated regarding accountability of persons receiving state funds or grants.

§63-3-8. Reporting

8.1. The State Conservation Committee shall establish all reporting standards.

8.2. The State Conservation Committee shall establish all grant monitoring standards.

8.3. The West Virginia Conservation Agency shall provide periodic progress reports, and final reports to the State Conservation Committee.

§63-3-9. Notification and Disclosure of Grant Award or Denial.

9.1. Grant awards will be public record.

9.2. Notification and Disclosure shall include:

9.2.a. Sending written notification of the decision via first-class mail to applicants;

9.2.b. And posting the award on the WVCA's public access site.

9.3. All documentation associated with the grant program is subject to FOIA as allowed by law.

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TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE

SERIES 4
CONSERVATION DISTRICT ACCOUNTING AND AUDITING STANDARDS

§63-4-1. General.

1.1. Scope. -- This legislative rule prescribes the accounting and auditing requirements and establishes the minimum system of accounting and auditing practices and procedures that are to be used by the conservation districts throughout the State of West Virginia. Conservation districts are to develop local policies and procedures that supplement the provisions specified herein. The State Conservation Committee delegates development of the accounting and auditing policies, procedures, and standards to the West Virginia Conservation Agency.

1.2. Authority. -- W.Va. Code §19-21A-4

1.3. Filing Date. -- April 3, 2023

1.4. Effective Date. -- April 3, 2023

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§63-4-2. Definitions.

For the purposes of this rule, the following definitions apply:

2.1. "Accrual basis" means the basis of accounting when revenues are recorded when earned but not yet received and expenses when incurred but not yet paid.

2.2. "Agreed-upon procedures engagement" or "APE" means the performance of a specified set of audit procedures on specified assertions of the financial statements. No attempt is made to expand testing beyond the procedures agreed to by the parties involved.

2.3. "Audit" means an agreed upon procedures engagement where a practitioner performs specific procedures on subject matter and reports the findings without providing an opinion or conclusion.

2.4. "Cash basis" means the basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

2.5. "Chart of accounts" means a numerical listing of all asset, liability, fund balance/equity, revenue and expenditure accounts used to record accounting transactions.

2.6. "Conservation district" means a subdivision of the state organized under W.Va. Code §19-21A-5.

2.7. "Conservation district board" means a board comprised of elected or appointed conservation district supervisors who serve as a Conservation District's governing body, W.Va. Code §19-21A-7.

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2.8. "Conservation district operating funds" or "CDO) funds" means funds provided by the State Conservation Committee and the West Virginia Conservation Agency to conservation districts. These are state funds provided to districts to use at their discretion for day-to-day operations.

2.9. "Conservation district supervisor" means one of the members of the governing body of a conservation district, elected or appointed in accordance with the provisions of W.Va. Code §19-21A-6.

2.10. "Co-administered funds" means funds sent by the State Conservation Committee and the West Virginia Conservation Agency to conservation districts to carry out the conservation project goals and to fund partnership projects of all parties. This includes both state and federal funds.

2.11. "Fund" means a separate group of self-balancing accounts recording cash and other financial resources together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

2.12. "General funds" means funds generated by a conservation district through sales of inventory, rental of equipment, or revenue generated from services of district employees/work crews.

2.13. "Special revenue funds" means funds received directly by a conservation district for a specific purpose such as a federal or public grant.

2.14. "State Conservation Committee" or "SCC" means the state agency charged with conserving the soil resources of this state, reducing soil erosion, preserving natural resources, controlling flooding, and protecting public lands, W.Va. Code §19-21A-4.

2.15. "West Virginia Conservation Agency" or "WVCA" means the administrative agency of the State Conservation Committee, W.Va. Code §19-21A-4(e).

§63-4-3. Administration.

3.1. The standards set forth in this rule shall be the minimum system of accounting and auditing standards that are to be used by the conservation districts. The WVCA and conservation districts shall develop program documents for accounting and auditing that include these minimum standards to be approved by the SCC.

3.2. Upon approval by the SCC, the accounting and auditing standards shall be administered by the WVCA and conservation districts.

3.3. Program document(s) shall be developed by the WVCA to serve as policy and establish procedures for co-administered funds.

3.4. The conservation districts shall follow SCC policies in the administration of co-administered funds.

3.5. Program document(s) shall be developed by the conservation districts to serve as policy and establish procedures for general funds, conservation district operation funds, and special revenue funds.

3.6. The SCC shall consider recommendations from the conservation districts related to the accounting and auditing standards.

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3.7. The conservation district supervisors are responsible for the financial management of the conservation district. The conservation district supervisors must ensure all applicable provisions of this rule and policies and procedures are complied with, all accounting records are accurately maintained, and all financial reports are reviewed and properly maintained.

3.8. WVCA accounting staff shall be responsible for accounting entry for co-administered funds.

3.9. Conservation districts shall hire an independent accounting or bookkeeping service to be responsible for accounting entry of general funds, CDO funds, and special revenue funds.

3.10. The SCC shall develop a chart of accounts for the co-administered funds. Conservation districts should use this chart of accounts for the general fund, CDO fund, and special revenue funds and may add to it as needed.

3.11. Conservation districts shall provide the SCC an annual budget by March 31st for the following fiscal year and an expenditures report by August 1st for the previous fiscal year for conservation districts operating funds.

§63-4-4. Basis of Accounting.

4.1. Basis of accounting refers to when revenues and expenditures are recognized in the accounting records and reported in the financial statements.

4.2. The conservation districts shall maintain their accounting records on the accrual basis of accounting.

§63-4-5. Signatures on Transactions.

5.1. Signatures on checks and other transactions are required to be manual handwritten signatures. If a district supervisor initiates an electronic transaction, the electronic signature/approval is acceptable so long as the signature/approval is password protected.

5.2. Signature stamps or preprinted signatures shall not be used.

5.3. Two signatures are required on all checks issued by the conservation districts. Both signatures cannot be by the same individual.

5.4. WVCA employees shall not have signature or transaction approval authority on any conservation district accounts or use of conservation district debit or credit cards.

§63-4-6. Bank Accounts.

6.1. Conservation districts shall receive and maintain funds received from the State of West Virginia, including federal funds, in an interest-bearing bank account.

6.2. Conservation districts shall maintain general funds, CDO funds, and special revenue funds in the same interest-bearing account provided the accounting software used can perform fund accounting to produce financial statements and tracking for each fund. Otherwise, each type of fund may be maintained in separate bank accounts.

6.3. The use of a money market type account with a disbursement account is also acceptable.

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6.4. Co-administered funds may be invested in Certificates of Deposit as long as the funds may be withdrawn early without penalty.

6.5. Conservation districts shall notify the WVCA when co-administered banking accounts are opened, closed, or changed.

6.6. Conservation districts shall notify their accounting/bookkeeping service provider when general fund, CDO funds, and special revenue banking accounts are opened, closed, or changed.

6.7. The conservation district treasurer and one other district supervisor shall be present at the financial institution when opening or closing a bank account or Certificate of Deposit.

6.8. Districts shall keep all signature cards up-to-date.

6.9. Funds shall be deposited at FDIC insured banking institutions.

6.10. Funds deposited in excess of FDIC insured amounts shall be collateralized to the same extent as W.Va. Code §12-1-5 with the same type of collateral as listed in W.Va. Code §12-1-4. This may require the use of Fedwire Securities Joint Custody Service.

6.11. Blank checks shall never be signed in advanced nor shall checks without a payee or amount.

6.12. Checks shall not be signed by stamp, any other signature facsimile, or by persons other than those authorized to sign.

6.13. Authorized signors shall be approved by district board motion.

6.14. Check stock shall be locked in a secure location when not in use.

6.15. All check stock shall have "Void After 180 Days" or "Void After 6 Months" printed on them.

6.16. Conservation districts shall notify and remit unclaimed property to the State Treasurer's Office in accordance with the West Virginia Uniform Unclaimed Property Act §36-8.

6.17. All credit card transactions shall be reconciled monthly by the district treasurer to individual receipts.

§63-4-7. Bank Reconciliations.

7.1. All bank accounts shall be reconciled monthly.

7.2. All Certificates of Deposit shall be reconciled when statements are provided by the bank (monthly, quarterly, or annually).

7.3. All bank statements and reconciliations shall be reviewed by the district treasurer, at a minimum. The district treasurer shall review and by signature approve the reconciliation.

7.4. All reconciliations shall have a zero unreconciled difference between the ledger balance and bank statement balance.

7.5. All outstanding items shall be research and resolved.

§63-4-8. Receipts Processing.

- 8.1. All funds (cash, check, or money order) are to be treated as cash received.
- 8.2. Each transaction shall be recorded in an official receipt book as it is received, on the day received.
- 8.3. Each official receipt book shall have pre-numbered duplicate receipts. The conservation district shall retain an official receipt book for general funds, CDO funds, and special revenue funds and a receipt book for co-administered funds. Receipts written on scrap paper and inserted into the receipt book are not permitted as official receipts.
- 8.4. The original (top) receipt shall be given to individuals paying in person. Other original receipts shall be left in the official receipt book or mailed to the payee. The second (duplicate) receipt shall remain in the official receipt book at all times whether void or authentic.
- 8.5. Each transaction being recorded shall contain the date, the name of the individual or company paying funds to the district, and the total amount written out. A description line shall contain a short statement explaining the income being recorded. Each receipt shall be signed by the person receiving the funds.
- 8.6. Direct deposits are to be recorded in the same manner to provide a receipt number for recording in the accounting software. If a check is issued to deposit the funds into another conservation district bank account, it shall be processed in this manner and included on the deposit ticket process.
- 8.7. Receipt names should then be listed on the deposit ticket in the order received.
- 8.8. Each day's deposit ticket(s) shall have the date entered at the top of each ticket. If more than one deposit ticket is used, the date should be entered on each ticket and the bottom total box should have a line drawn through the space of each ticket, with the exception of the last ticket. The total amount shall be entered on the last ticket used that day. Duplicate deposit tickets should be kept with the receipt book.
- 8.9. Copies of completed deposit tickets for each day of the month shall be with the monthly bank reconciliation.
- 8.10. All checks shall be immediately stamped with a restrictive endorsement that includes "For Deposit Only", the conservation district name, bank name, and account number.
- 8.11. All funds received shall be totaled for each day. The total of all funds listed on the deposit ticket shall equal the total funds received for the day as listed in the official receipt books.
- 8.12. Funds for all receipts written shall be deposited within 24 hours (excluding non-working days) of receipt.
- 8.13. If the banking institution being used closes before 4:00 pm and a drive-in section is not available, arrangements should be made for a locked bag to be used to make a night deposit.
- 8.14. WVCA employees shall not use petty cash funds or accept cash.
- 8.15. Accounts receivable shall be reviewed monthly by conservation district supervisors to see aging accounts still outstanding.

§63-4-9. Expenditure Processing.

9.1. Each invoice for co-administered funds shall be signed or verified by email or signature by a conservation district supervisor, conservation board designee, or WVCA employee as defined in approved policy based on the program. This shall verify the invoice is a valid charge to the conservation district and delivery of the commodity or services to be rendered are complete.

9.2. Verifications via email shall include amount, invoice number (if available), contract number (if available), and vendor name.

9.3. Each invoice for general funds, CDO funds, or special revenue funds shall be signed or verified by email by a conservation district supervisor or conservation board designee. The designee shall not be a WVCA employee but may be a district employee.

9.4. Invoices shall be paid only for goods and services received.

9.5. All invoices to be paid shall be submitted to the board for approval of payment. The approval may be made on a listing or by individual invoice. The approval requires a motion and vote of the board and shall be recorded in the official minutes.

9.6. It is recommended that the authorized signatories, through board motion, be given the authority to pay routine monthly invoices/bills (such as rent and utilities) not to exceed a given dollar amount (recommended less than \$1,000.00) to ensure they are not paid late.

9.7. Proper documentation, for the review/signature process, shall be attached to all checks presented to conservation district supervisors for signature.

9.8. All checks shall be electronically printed from the accounting system, unless emergency authorization is obtained from WVCA fiscal staff for co-administered funds or by conservation district supervisors for all other funds.

9.9. Accounts payable shall be reviewed monthly by conservation district supervisors to ensure all invoices and bills have been properly paid and payments correctly recorded.

9.10. Once a check has been approved by the conservation district board and signed, each invoice shall be stamped "PAID" and the date along with the check number shall be written on the invoice.

9.11. The second stub from the printed check shall be attached to the invoice as supporting documentation and additional proof of payment.

9.12. All authorized check signatories shall be properly bonded.

9.13. Any check that is misprinted, contains an error, or is otherwise voided shall have "VOID" written across the front of the check and shall be filed with the paid invoices in check number order.

§63-4-10. Procurement.

10.1. The following procurement processes are required for all funds held in a conservation district. The exception is co-administered funds used for projects requiring the use of a contractor. Those projects will follow the Project Contracts Policy and Procedures or Emergency Watershed Protection Handbook as approved by the SCC.

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10.2. Commodities and services that are expected to cost \$2,500 or less require no bids. However, competition is encouraged to ensure best acquisition cost.

10.3. Bid Range \$2,500.00-\$10,000.

10.3.1. Commodities and services with an expected cost of \$2,500.01 to \$10,000.00 require three verbal bids. A bid proposal shall be developed that contains the designated specifications and necessary requirements and shall be used to obtain consistent bids. The written summary documentation that is prepared shall include the following information:

10.3.1.a. Vendor

10.3.1.b. Contact name

10.3.1.c. Phone number

10.3.1.d. Service/product specifications

10.3.2. The summary documentation shall be maintained with the final paid invoice.

10.3.3. Signed faxed bids are acceptable.

10.3.4. Screen prints from internet sites in which the commodity or service is for sale and can be purchased directly can substitute as a verbal bid.

10.4. Bid Range \$10,000.01-\$25,000.00.

10.4.1. Commodities and services with an expected cost of \$10,000.01 to \$25,000.00 shall require three written bids with like specifications. A bid proposal shall be developed that contains the designated specifications and necessary requirements and shall be used to obtain consistent bids. The designated specifications shall include:

10.4.1.a. Detailed description (specification) for commodities or services being purchased. Item(s) shall be identified by details with sufficient specificity to ensure like comparisons.

10.4.1.b. Quantity of item(s)

10.4.1.c. Delivery date and cost, if applicable

10.4.1.d. Bid price per unit of item(s)

10.4.1.e. Maintenance costs, if applicable

10.4.1.f. Written bid receipt deadline

10.4.2. All bids shall have the original signature of the bidding vendor.

10.4.3. Signed paper or faxed bids are acceptable.

10.4.4. Screen prints from internet sites are not acceptable as a valid bid for this threshold.

10.5. Bid Range Greater than \$25,000.00.

10.5.1. Commodities and services with an expected cost in excess of \$25,000.00 shall be advertised for written, sealed bids and shall include:

10.5.2. Detailed description (specification) for commodities or services being purchased. Item(s) shall be identified by details with sufficient specificity to ensure like comparisons. Vendor signature required on official bid sheet.

10.5.2.a. Quantity of item(s)

10.5.2.b. Delivery date and cost, if applicable

10.5.2.c. Bid price per unit of item(s)

10.5.2.d. Maintenance costs, if applicable

10.5.2.e. Sealed bid receipt deadline

10.5.3. Bids are to be sealed with date and time received noted.

10.5.4. Bids are received, opened, and examined to ensure compliance with all specifications and to determine the lowest responsible bidder. Bid quotes shall not be altered after bids are opened. The bid packages shall be opened by the conservation district board or its designee (by board motion) following the closing date and time.

10.5.5. All bids shall have the original signature of the bidding vendor.

10.6. Bid Solicitation.

10.6.1. The district board shall make and approve a motion for all solicitations for goods/services.

10.6.2. When soliciting bids, prices shall be requested both with and without trade-in offers from the vendors to facilitate an accurate comparison and to establish a value for the new equipment for inventory purposes.

10.7. Bid Evaluation.

10.7.1. A bid review and evaluation shall be completed by a district supervisor or their designee (a district employee or WVCA support personnel).

10.7.2. Bids shall be reviewed with the award going to the lowest responsible bidder who meets the specifications. Generally defined, a responsible bidder is one who has a reputation for good performance and financial accountability and can furnish the required needs of the district as requested in the bid specifications.

10.7.3. Evaluation of the bids shall include (at the minimum) meeting all specifications, bond requirements, required documentation, and proper licenses. The evaluation shall be completed within 3 business days after the bid opening and shall not be open to the public.

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10.7.4. During the evaluation period, bid specifics shall not be discussed with vendors or the public. The district supervisors should contact vendors only to verify or obtain a better understanding of information that may be in question.

10.7.5. After a proper evaluation, if an award is made to a vendor other than the lowest responsible bidder, a thorough, written justification signed by the evaluator(s) shall be inserted into the file and retained for public record and inspection.

10.7.6. Prior to an award, a vendor shall be in compliance and in good standing in accordance with the WV Code §21A-2-6 concerning unemployment and workers compensation, otherwise their bid shall be disqualified. This may be verified by district supervisors or the administrative specialist through Workforce West Virginia and the Insurance Commission.

10.7.7. The vendor shall be verified not to be debarred by the federal government or state of West Virginia.

10.7.8. The vendor organized as a business entity must have a certificate of authority and be in good standing with the West Virginia Secretary of State's Office.

10.7.9. The final award of the contract and Notice to Proceed (if needed) shall be completed by approval of a board motion. A prior board motion to delegate this authority to a district supervisor(s) is acceptable.

10.8. Tie Bids.

10.8.1. Occasionally two or more bids of equal terms and amount are received in response to a solicitation resulting in a tie bid.

10.8.2. The preferred method for resolving tie bids is a flip of a coin, draw of card, or any other impartial method.

10.8.3. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.

10.9. Errors.

10.9.1. If an error is discovered by the conservation district, the burden of proof and timely action for request of relief (opportunity to correct errors, release from contract, etc.) is the vendor's responsibility. The request for relief shall be made in writing by the vendor to the conservation district within five (5) working days from the bid opening date. The conservation district shall contact the vendor if an error is discovered. Omissions of required information or documentation are not considered an error and shall be rejected.

10.9.2. Erroneous bids may be rejected after the bid opening if all the following reasons are met:

10.9.2.a. An error was made;

10.9.2.b. The error materially affected the bid price;

10.9.2.c. Rejection of the bid would not cause a hardship on the conservation district other than losing an opportunity to receive commodities and services at a reduced cost; and

10.9.2.d. Enforcement of the part of the bid in error would be unconscionable.

10.9.3. To reject a bid, the public file shall contain documented evidence that all the above conditions exist. The vendor shall specifically identify the error(s) and provide documentation to substantiate the claim that the error(s) materially affect the bid and enforcement of the part of the bid in error would be unconscionable.

10.9.4. The unit price prevails if there is an error in the extension.

10.9.5. Faxed bids that contain bid bonds, litigation bonds or any other bond should be submitted with the bid and the vendor should provide the original bonds within two (2) working days of the bid opening dates.

10.10. Purchase of used equipment requires prior approval by the SCC or WVCA when using co-administered funds.

10.11. WVCA employees shall not use personal finances (credit card, cash, checks, debit card, money order, etc.) to make purchases on behalf of a district.

10.12. Tax exempt status shall be used on all purchases.

§63-4-11. Project Contracts.

11.1. Conservation district contracts for projects using co-administered funds shall be performed by a conservation district work crew or be based on competitive public bid.

11.2. The SCC shall develop and implement the contracting process, with conservation district approvals, to ensure a uniform manner across the conservation districts.

11.3. This process applies to project contracts that use a private contracting business to complete the project.

11.4. If the conservation district board or delegated district supervisor(s) selects to use a conservation district work crew, the district will coordinate with WVCA field staff management or appointed technical staff and the conservation district work crew to complete the project.

11.5. If the conservation district board or delegated conservation district supervisor(s) selects to use a private contracting business, the district will inform the WVCA field staff management and/or appointed technical staff to start the process of external contracting.

11.6. A conservation district work crew may not compete against private contracting businesses for services. This includes a conservation district work crew providing a quote for services to the district prior to or post job showing.

11.7. Only after the contract bid (external contracting process) has been rejected by a conservation district board or delegated supervisor will the process be considered complete.

11.8. Once the contract bid is rejected and the conservation district board or delegated conservation district supervisor(s) start the bidding process over, only then may a quote from a district work crew be sought.

11.9. All contracts shall be a lump sum contract with a bid schedule sheet unless otherwise noted.

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11.10. The SCC shall establish a dollar threshold to determine which procurement process to use to obtain a private contractor.

11.10.1. Project contracts financed through co-administered funds are divided into two (2) categories:

11.10.1.a. Co-administered funds projects under (established threshold)

11.10.1.b. Co-administered funds projects (established threshold) and above

11.11. The SCC shall develop and approve the Co-Administered Funds Projects Contracts Policy and Procedures manual to include the above processes and following topics:

11.11.1. Project Development to include:

11.11.1.a. Funding of Proposed Project and

11.11.1.b. Presentation of Project to District Board

11.11.2. District Board Selection of Contracting Process

11.11.3. Contract Development

11.11.4. WVCA Contracting Website Notification

11.11.5. WVCA Posting Job Showing to Website

11.11.6. Scheduling of Bid Openings

11.11.7. Pre-Bid Conference/Job Showing

11.11.8. Bid Opening

11.11.9. Bid Evaluation

11.11.10. Validation of Low Bid Contractor

11.11.11. Award and Signing of Contract

11.11.12. Tie Bids

11.11.13. Omissions

11.11.14. Errors

11.11.15. Bonds

11.11.16. Contract Modification/Amendment/Change Order

11.11.17. Contractor Protest

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11.11.18. Contracting Documentation

11.12. Projects using federal funds shall follow any grant requirements and Code of Federal Regulations (2 CFR 200) requirements for local governments.

11.13. Contractor Protest.

11.13.1. Protests based on bid specifications must be submitted to the conservation district no later than one (1) working day prior to the bid opening.

11.13.2. Protest contract awards must be submitted to the conservation district no later than five (5) working days after the award.

11.13.3. The vendor is responsible for knowing the bid opening and award dates.

11.13.4. Protests received after these dates may be rejected at the option of the conservation district board.

11.13.5. All protests shall be submitted in writing to the conservation district board and contain the following information:

11.13.5.a. the name and address of the protestor;

11.13.5.b. the requisition, purchase order, or contract numbers;

11.13.5.c. a statement of the grounds of protest;

11.13.5.d. supporting documentation (if necessary); and

11.13.5.e. the resolution or relief sought.

11.13.6. Failure to submit this information shall be grounds for rejection of the protest by the conservation district board.

11.13.7. The conservation district board and WVCA or their designee shall review the matter of protest and issue a written decision.

11.13.8. A meeting to hear information from the vendor and pertinent staff may be conducted at the option of the conservation district board, WVCA, and/or assigned designee.

11.13.9. The decision of the district board is final. Appeals may be brought in the circuit court of the county where the district board office is located.

§63-4-12. Fixed Assets.

12.1. Conservation districts shall maintain a list of all reportable fixed assets and depreciation schedules with their accounting/bookkeeping service.

12.2. Reportable assets include:

12.2.1. All assets with an original acquisition cost of \$1,000 or more and a useful life of one year or longer is reportable.

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12.2.2. All computers (including laptops and central processing units [CPU]) with an acquisition cost of \$500 or more.

12.3. The acquisition costs of assets shall be determined as the actual cost of that asset as evidenced by invoices or purchase orders. The conservation district can also determine acquisition cost by a reasonable method of estimation provided that no invoice or purchase order records exist. The conservation district thoroughly documents the estimation method used, and the documentation related to the estimate is maintained in the appropriate file for audit purposes.

12.4. Assets shall be inventoried on a per item basis. Individual items making one working component are to be inventoried as one asset. However, should an asset be purchased for the purpose of enhancing or upgrading the item, the cost of the upgrade can be added to the original cost as a betterment.

12.5. Donated assets acquired as a gift from an individual or organization are to be included on the list if the donation or gift is valued at \$1,000 or more and has a useful life of one year or longer. Donated assets are valued at fair market value on the date the gift is given.

12.6. Computer software is an intangible asset and considered non-reportable.

12.7. All reportable assets should have a numbered identification tag affixed to the asset. Conservation districts will be responsible for obtaining and placing the proper tags on all reportable assets under their jurisdiction. Tags are to be placed on all reportable assets in such a manner that it can be easily seen and read.

12.8. Conservation districts shall take a physical inventory once every three (3) years and shall have completed the physical inventory by June 30th of the relevant year. The physical inventory shall include viewing of all reportable assets under the conservation district's jurisdiction.

12.9. Conservation districts may dispose of reportable assets by sell on-site, trade-in, sell for scrap, or recycle/dispose as waste.

12.10. Lost or stolen assets should be documented in the file and accompanied by a copy of a policy report is stolen.

12.11. Disposed assets shall be removed from the tracking list.

12.12. Assets purchased with federal funds shall be disposed of following guidelines from the grantor and 2CFR200.

§63-4-13. Payroll.

13.1. Conservation districts shall be responsible for obtaining all required tax and other work documentation from their employees.

13.2. Timesheets shall be prepared and signed by each district employee and approved by their immediate manager or a designated conservation district supervisor for each pay period. The timesheet serves as the required documentation for payment of salary.

13.3. The district shall maintain payroll records as defined in their records retention schedule.

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13.4. The accounting of payroll shall separate payroll into expense accounts including gross pay, fringe benefits, payroll taxes, etc.

13.5. Conservation districts are responsible for filing all required federal and state tax forms and making applicable tax deposits in timeframes required.

13.6. Conservation districts shall ensure proper tax withholding occurs, as well as proper withholding and tax application of various voluntary decoctions.

13.7. The conservation districts shall develop and approve policies and procedures for conservation district supervisor expense and per-diem.

13.8. The SCC shall set conservation district supervisor expense and per diem rate based on the availability of funds.

§63-4-14. Financial Statements.

14.1. All financial statements/reports shall be reviewed by the district treasurer and should be reviewed by at least the district chairperson each month.

14.2. Any discrepancies noted shall be brought to the attention of the WVCA or the accounting/bookkeeping service provider based on whom provided the financial statements.

14.3. All financial statements/reports shall be made available for all conservation district supervisors to review upon their request.

14.4. Financial statements should not be printed until that month's bank reconciliations have been completed unless needed for informational purposes. Interest has not been posted and transactions verified until the reconciliation process has been completed. If financial statements are printed prior to the bank statement, the reports shall be presented in "Draft" format.

14.5. Required financial statements and reports include:

14.5.1. Combined Balance Sheet

14.5.2. Combined Statement of Revenues and Expenditures

14.5.3. Check Register

14.5.4. Aged Accounts Receivables

14.5.5. Aged Accounts Payables

14.5.6. Trial Balance

14.5.7. Statement of Revenues and Expenditures

14.5.8. Co-Administered Funds Report

§63-4-15. Records and Records Retention.

15.1. Receipts processing records should minimally consist of:

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- 15.1.1. Bank deposit receipt.
- 15.1.2. Copy of the bank deposit slip.
- 15.1.3. Copy of checks, money orders, and other items of deposit.
- 15.1.4. Copy of Letter of Request (if co-administered funds)
- 15.2. Expenditure processing records should minimally consist of:
 - 15.2.1. Check stub or copy of the signed check used to make the payment
 - 15.2.2. Invoice paid
 - 15.2.3. Approval documentation/verification emails (if co-administered funds)
 - 15.2.4. Any additional supporting documentation
- 15.3. All receipts processing, expenditure processing, and bank statements should be filed by bank account. These same records should further be filed by fiscal year.
- 15.4. Financial statements should be filed by fiscal year with the above records.
- 15.5. Conservation districts shall develop standards and policies for additional documents to be retained in district files and the filing structure.
- 15.6. Conservation districts shall maintain files in accordance with other SCC approved program and project guidance.
- 15.7. The SCC shall develop and approve a records retention schedule for conservation district records that shall be reviewed and approved by West Virginia Records Management.

§63-4-16. Audit.

- 16.1. Conservation districts shall be audited by an independent auditing firm on an annual basis and shall typically consist of an APE.
- 16.2. APEs will typically consist of testing of receipts, disbursements, bank reconciliations, payroll, fixed assets, and other various records.
- 16.3. Conservation district records shall be made available to the auditor.
- 16.4. A workplace shall be made available.
- 16.5. The WVCA shall provide conservation districts with a request for quotation template containing the testing requirements for the APE.
- 16.6. Conservation districts shall use the request for quotation template to obtain an independent auditor.

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16.7. The final APE report is to be submitted by the conservation district to the WVCA by the February following the fiscal year being reviewed.

16.8. All findings shall be reviewed and resolved by the conservation district.

16.9. The WVCA shall review all findings for co-administered funds and work with the conservation district on resolution.

16.10. Any findings along with the resolution of the findings shall be reported to the SCC by July following the fiscal year being reviewed.

16.11. Conservation districts shall be responsible for paying the independent auditors for services provided in relation to the APE.

16.12. The WVCA shall reimburse the conservation districts for APE expenses once required documentation is received based on the availability of funding.

§63-4-17. Fraud, Waste, and Abuse.

17.1. Conservation district supervisors suspecting fraud, waste, or abuse of assets of the district shall notify the WVCA executive director immediately.

17.2. The WVCA shall provide staff to review any suspicions of fraud, waste, or abuse.

17.3. The WVCA executive director and staff will work with conservation district supervisor(s) to determine if suspicion of fraud, waste, or abuse should be reported.

17.4. Any conservation district supervisor or WVCA employee may also report suspected fraud, waste, or abuse directly to enforcing entities.

17.5. Suspected fraud, waste, or abuse should be reported to the West Virginia State Auditor's Office or the Legislative Commission on Special Investigations.

§63-4-18. Supplemental Policies and Procedures.

18.1. The SCC shall establish supplemental policies and procedures for conservation districts including:

18.1.1. Conflict of Interest

18.1.2. Project Contracts

18.1.3. Records Retention

18.1.4. Transfer and Return of Co-Administered Funds

18.2. Conservation districts shall establish policies and procedures including:

18.2.1. Personnel and Payroll

18.2.2. Supervisor Expense and Per Diem

Appendix 3

A Guide to the WV
Open Governmental
Proceedings Act,
Freedom of
Information Act,
and Open Meetings
Act



A Guide to the West Virginia Open Governmental Proceedings Act

(W. Va. Code §§ 6-9A-1 through 12)



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The Open Meetings Act
generally requires that meetings of a public agency's governing body be open to the public and the media, and that reasonable notice of the meeting and its agenda be given in advance.

General Information on Open Meetings Act

Who is covered?

The Act covers all administrative and legislative units of state, county and municipal government including any subunit (e.g. committees) authorized by law to exercise some portion of executive or legislative power. The Act does **not** apply to courts or private organizations that receive government funding.

What is a governing body?

Two or more members of a public agency who have the authority to make decisions for, or recommendations to, the public agency on policy or administration is considered a governing body.



What is a meeting for purposes of the Open Meetings Act?

A "meeting" covered by the Act is a convening of a quorum of a governing body or subcommittee in order to make a decision or to deliberate towards a decision.

Meetings may be held by telephone conference or other electronic means, such as video conferencing. In these instances, governing bodies must ensure that all their members can hear, and be heard by, each other and any media or member of the public present at the meeting.

When a quorum of a governing body discusses issues of interest upon which the governing body expects to take some official action, then this is a meeting. If this discussion takes place outside the confines of a public meeting—whether in person, by telephone, email or other telecommunication means — it is an illegal meeting.

What gatherings are not meetings subject to the Open Meetings Act?

General discussions among members of a governing body or committee on issues of interest to the public in a social, educational, training, informal, ceremonial or similar setting, so long as there is no intent to conduct public business or for the discussion to lead to official action, are not gatherings subject to the Open Meetings Act.

Adjudicatory proceedings, on-site inspections, a political party caucus, and discussions on logistical and procedural methods to schedule and regulate a meeting are also not matters covered by the Open Meetings Act.

Notice and Agenda

How much advance notice of a meeting is necessary?

Public notice of the meeting date and agenda must be made available in advance of a meeting to the public and news media.

Every public agency must establish rules for giving advance notice of all regularly scheduled and special meetings. W.Va. Code § 6-9A-3. In addition, the Open Meetings Committee of the West Virginia Ethics Commission, through the issuance of advisory opinions, has established rules which determine how much advance notice is required.



How do I calculate days for purposes of the Open Meetings Act?

In calculating days, do not count the day of the meeting, weekend days or State or Federal Holidays. State Agencies, however have additional obligations for posting meeting notices.

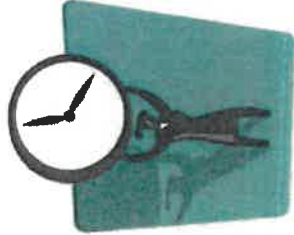


When and how do I post a Notice?

State Agencies - Each State Agency shall file a notice of any meeting with the Secretary of State for publication in the State Register in a manner to allow it to appear in the Register at least **five** calendar days before the date of the meeting.

Local Governing Bodies - Notice must be given in a reasonable manner. When a governing body meets in accordance with a fixed schedule, such as the second and fourth Monday of each month, it may comply with the meeting notice requirement in the Act by annually posting notice of the date, time and place of these regular meetings or regular committee meetings for the coming year, and keeping this notice posted throughout the year.

Regular meetings - For local governing bodies which do not have a fixed schedule, these bodies may comply with the Open Meetings Act by posting a notice **three** business days in advance of the meeting.



Special meetings - When a local governing body meets on an irregular schedule, or needs to meet before the next regularly scheduled meeting to address matters that do not involve an emergency, these are considered special meetings. Notice must be posted **two** business days in advance of the meeting.

Although State Agencies may conduct a special meeting, i.e. a meeting held between regularly scheduled meetings, due to the more restrictive language in the Open Meetings Act, the State Agency meeting notice must be published in the State Register at least **five** calendar days prior to the date of the special meeting. State Agencies may **not** call an Emergency Meeting for a subject that is not a true emergency. Failure to file a timely notice of the meeting with the Secretary of State does **not** constitute an emergency.

(See **Emergency Meetings** on page 8.)

What must a notice include?

Notice must include the date, time and place of the meeting. For special meetings or emergency meetings, the notice must state the purpose.

When do I post the Agenda?

- Regular meeting – ~~three~~ **two** business days before the meeting.
- Special meeting- ~~two~~ **one** business days before the meeting.
- Emergency meeting – As soon as practicable

Where and how do I post an agenda?

A governing body complies with the Act by posting its meeting agenda for each regularly scheduled meeting in a public place at its central office, as well as having copies of the agenda available to be picked up at the same location during regular business hours.

In addition, in its discretion, it may distribute agendas to the news media by mail, telephone facsimile or E-mail, or the agenda may be posted on the governing body's internet website, if it has one. While additional dissemination to the public and the media is encouraged, failure to provide an agenda by such additional means will not invalidate an otherwise proper public meeting.



What about governing bodies which meet weekly, different rules apply.

For governing bodies which meet weekly, different rules apply. The agenda may be issued **two** business days before the meeting.

May I amend an agenda?

Yes. The agenda may be amended up to two business days before the meeting. If you amend the agenda, you must repost the agenda following the procedure you used to post the original agenda. The only circumstances under which a governing body may amend an agenda during a meeting is if a true emergency arises.

How specific must an agenda be?

Agendas must give reasonable notice to the public of every issue that will be discussed. Specifically, any matter requiring the governing body to take official action must be listed on the agenda. For example, "filling position of office manager" would be sufficient.

Use of vague headings such as "old business" and "new business" is clearly insufficient. The public should also be given notice of significant additions or changes to the agenda, as noted above. Each governing body should have rules on how such notice will be given.



Minutes

Should minutes be prepared?

The Act requires that written minutes of all open meetings be available to the public within a reasonable time after the meeting. The minutes must include:

- The date, time and place of the meeting.
- The name of each member of the governing body present and absent.
- All motions, orders, resolutions, ordinances and measures proposed, the name of the person proposing each action and the disposition of the matter.
- The results of all votes, including roll call votes by member name, if such votes are conducted.



Emergency Meetings

What is an emergency?

Governing bodies should exercise caution when calling an **emergency meeting**. Ordinarily, an "emergency" involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health and safety.

Every unexpected or sudden event does not constitute an emergency. For example, employing an attorney to assist the governing body does not constitute an emergency. Likewise, acting on a questionable bill for legal services does not constitute an emergency.

Is immediate action required?

When in doubt as to what constitutes an emergency, ask what are the consequences if the governing body does not act

immediately. If it can wait two business days without significant adverse consequences, then you should call a special meeting instead.



Or, call the Ethics Commission to discuss the situation with staff.

In order to satisfy the terms of an emergency meeting exemption, not only must a matter involve an emergency, the governing body must be required to take immediate official action in response to the situation.

For example, if a flood were to contaminate a town's water supply, the council may be required to approve various actions to protect public health and restore the system to safe operation.

Must a notice or an agenda be posted?

For an emergency meeting, the notice must be posted as soon as practicable. The notice must set forth the reason for, and purpose of, the emergency meeting. Similarly, governing bodies that wish to add emergency matters to their meeting agenda must post an amended agenda which includes the emergency item. The amended agenda shall further explain the facts and circumstances which warrant adding the emergency item to the agenda.

In the event of an emergency requiring immediate official action, a State Agency may file an emergency meeting notice with the Secretary of State at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and facts and circumstances of the emergency.

Are written minutes required for an Emergency Meeting?

Yes. The explanation for the emergency must be repeated during the meeting and set forth in the written minutes of the meeting.

Executive Sessions

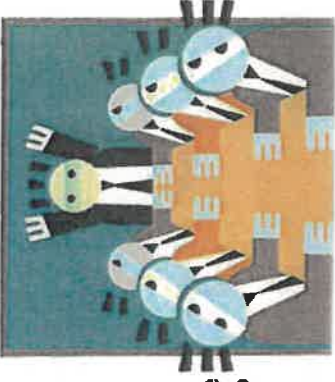
When may a governing body go into an executive session?

A governing body may go into an executive session for any of the reasons set forth in the Open Meetings Act at W.Va. Code § 6-9A-4. Some common grounds for going into an executive session are to discuss personnel matters, pending litigation, to consider matters involving the purchase, sale or lease of real property, or to plan or consider an official investigation.

How do you convene an executive session?

A member of the governing body must make a motion to go into executive session. The motion must state in plain language the grounds for convening an executive session.

For example, a member may state that he or she is moving to go into executive session based upon the personnel exception. It is not necessary to cite the specific code provision. A governing body may go into executive session to discuss only matters that appear on the meeting agenda.



Must the agenda state that the governing body will go into executive session?

No. In fact, a governing body may not decide in advance of a meeting that it will go into executive session. The agenda may indicate that it is anticipated that a matter may be discussed in executive session, but the governing body may only go into executive session by a majority vote of the members present.

The agenda item must be descriptive enough to put the public on notice of the nature of the matter being discussed regardless of whether it will be discussed in an open session or executive session.

For example, an agenda item to discuss pending litigation may read, "Discuss pending lawsuit of *Smith v. Jones* with Legal Counsel." Once again, generic agenda items such as "Discuss pending litigation" are too vague to adequately put the public on notice as to the matter to be discussed.

May a governing body vote on matters in executive session?

No. Votes may not be taken in an executive session. Instead, the governing body may only vote once it reconvenes in an open session.

One exception is that a governing body may vote to give its attorney settlement authority in an executive session. The fact that a governing body has authorized its attorney to engage in settlement negotiations and/or has set a settlement range is not required to be disclosed. If a settlement is reached, then the settlement agreement, including the amount, becomes a matter of public record.

Is a governing body required to take minutes for an executive session?

No. The decision of whether or not to take minutes for an executive session lies within the discretion of the governing body. The

governing body may want to seek the advice of legal counsel concerning whether minutes should be taken.

If a governing body decides to take minutes in an executive session, the Act does not require the disclosure of such minutes to the public.

Advice and Advisory Opinions

How do I get advice?

Call or write the Ethics Commission for informal advice from one of the attorneys, or check out the Commission's website for relevant advisory opinions.

What is an Advisory Opinion?

The West Virginia Ethics Commission's Committee on Open Governmental Meetings gives written advisory opinions to governing bodies and their members on whether a proposed action or an action of an ongoing nature violates the law.

The opinions provide an absolute defense in any civil suit or criminal prosecution to the requesting agency and any other governing body which is similarly affected, provided the opinion is relied upon in good faith.

The Committee on Open Meetings meets on the first Thursday of each month to consider written requests.

Requests for written advisory opinions should be submitted in writing at least ten calendar days before the Open Meeting Committee meeting.



Why ask for a written Advisory Opinion?

A written advisory opinion gives the persons seeking the opinion an absolute defense to civil suits and criminal charges for future actions taken in good faith reliance on the opinion.

NOTE: The Committee cannot provide advice on an action that has already occurred. However, if the action is part of an ongoing course of conduct, an advisory opinion on continuing that course or

practice may be requested.

The Commission's website, www.ethics.wv.gov, contains precedential opinions. A governing body that acts in good faith reliance on a precedential advisory opinion has an absolute defense to a civil suit or criminal prosecution as long as the underlying facts and surrounding circumstances are substantially the same as those addressed by the written opinion.

Enforcement and Penalties

How is the Act enforced?

The Ethics Commission has no role in enforcing the Act and does not investigate complaints of violations. The Act provides that any citizen may file a civil action in Circuit Court within 120 days after the action or decision complained of occurred.

Only the Court has the power to compel compliance with the Act or annul a decision made in violation of the Act. Additionally, anyone who willfully and knowingly violates the provisions of the Act is subject to criminal prosecution for a misdemeanor.

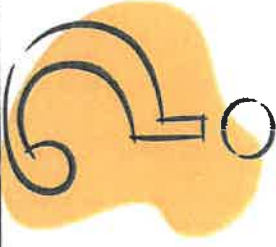
What are the penalties for violating the Act?

In civil actions, in addition to injunctive relief requiring a governing body to rescind an action taken in violation of the Act, the prevailing party may obtain attorneys' fees and costs. If a public official is criminally prosecuted and found guilty, then he or she may be fined up to \$500 for a first offense.





Frequently Asked Questions



Are committee meetings subject to the

Open Meetings Act and meeting posting requirements?

Yes. All sub-units of a governing body, regardless of size, must follow the Open Meetings Act. This includes regular, standing, and ad hoc committees.

Are work sessions subject to the Open Meetings Act?

Yes. The term work session is frequently used by governing bodies to describe a meeting where the members of the governing body or subcommittee are discussing a project or reviewing a budget, but will not be taking official action.

May citizens and the media record meetings?

Yes. Pursuant to the Open Meetings Act, anyone may record the meetings. The governing body may adopt rules governing the placement of the recording equipment, but it may not prohibit anyone from recording a meeting.

Does the Open Meetings Act require that meetings be electronically recorded by the governing body?

No. However, governing bodies should check their enabling legislation or local ordinances to determine whether recording is required pursuant to statute or rule.

May items be added to the agenda during a meeting?

No. If a citizen or member of the governing body raises a matter during the course of a meeting, the item may not be discussed or voted upon at the meeting. Instead, it must be added to a meeting agenda for a future meeting. The only exception is if the item is an emergency. In that case, the governing body should follow the procedure set forth for emergency meetings and agenda items.

Are governing bodies required to allow members of the public to speak at a meeting?

No. The purpose of the Open Meetings Act is to allow citizens to observe the governing body for purposes of promoting transparency. However, governing bodies are encouraged to have a public comment period. A governing body may adopt rules which impose restrictions upon public comment periods such as the amount of time which will be allocated to each speaker.

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For more information on the Open Meetings Act,

please contact the:

WV Ethics Commission

210 Brooks St., Suite 300

Charleston WV 25301

(304) 558-0664 toll free 1-866-558-0664 fax (304) 558-2169

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7/2010

WV Ethics Commission
210 Brooks St., Suite 300
Charleston WV 25301
304-558-0664

***THE WEST VIRGINIA
FREEDOM OF INFORMATION ACT***



**STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON, WEST VIRGINIA 25305**

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THE FREEDOM OF INFORMATION ACT

A SUMMARY OF THE LAW ON FREEDOM OF INFORMATION (PUBLIC RECORDS)

INTENT:

The State statute on public records, known as the Freedom of Information Act, was enacted for the express purpose of providing full and complete information to all persons about the workings of government and the acts of those who represent them as public officials and employees, so that the people may be informed and retain control. Its provisions must be liberally construed to carry out that purpose.

SCOPE:

The Act applies to all State, county and municipal officers, governing bodies, agencies, departments, boards and commissions, and any other bodies created or primarily funded by State or local authority, unless their enabling statute specifically exempts them from its provisions. The records covered by the Act include virtually all documents and information retained by a public body, regardless of their form.

Public records are available to every person for inspection or copying when there has been a request made to the custodian, and when they are not specifically exempted from disclosure. There is no statutory requirement that the request be in writing; however whenever possible, a written request is advisable in order to avoid misunderstandings regarding the timing and scope of the request, and to ensure that the information sought is stated "with reasonable specificity," as required by W. Va. Code § 29B-1-3(4). The custodian must respond within five (5) working days by either granting the request or giving written reasons for its denial. Citizens may be charged a reasonable fee for the costs of copying.

EXEMPTIONS:

While the scope of the Act is expansive and its coverage liberally construed, it does provide specific delineated exemptions from disclosure. These exemptions are strictly construed because the intent of the Act is disclosure and anything less than a narrow construction of exemptions would operate to defeat this intent. The exemptions are set forth in W. Va. Code § 29B-1-4(a), at pages 5 through 7 herein.

ENFORCEMENT:

Any person denied the right to inspect a public record of a public body may sue the public body in circuit court for injunctive or declaratory relief under the Freedom of Information Act. The burden is on the public body to prove to the satisfaction of the court that the records sought are exempt from disclosure. If successful, the person bringing the suit may recover his or her attorney fees and court costs from the public body that denied access to the records.

PENALTIES:

Any custodian of a public record who willfully violates the Act is guilty of a misdemeanor, and upon conviction may be fined from \$100.00 to \$500.00 or imprisoned in the county jail for up to ten (10) days, or both.

STATUTE

FREEDOM OF INFORMATION ACT

§ 29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy. (1977, c. 147.)

§ 29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) "Person" includes any natural person, corporation, partnership, firm or association.

(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

(5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. (1977, c. 147.)

§ 29B-1-3. Inspection and copying.

(1) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

(2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make such copies available on magnetic or electronic media, if so requested.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays, or legal holidays:

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (1977, c. 147; 1992, c. 85.)

§ 29B-1-4. Exemptions.

(a) The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment; and

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. § 222; and

(19) Records of the Division of Corrections, Regional Jail Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be utilized by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion;
or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity. (1977, c. 147; 2003, c. 108; 2007, c. 117; 2009, c. 105; 2011, c. 71.)

§ 29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date. (1977, c. 147.)

§ 29B-1-6. Violation of Article; Penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment. (1977, c. 147.)

§ 29B-1-7. Attorney fees and costs.

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five [§ 29B-1-5] of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records. (1992, c. 85.)

INTERPRETATIONS OF THE ACT

When posed with a Freedom of Information question, three initial inquiries must be made in order to determine if disclosure of a record is required under the Act. These questions are:

1. Is the entity a **public body** as defined by the Freedom of Information Act?
2. Is the record in question a **public record** as defined by the Freedom of Information Act?
3. Is there a specific **statutory exemption** from the provisions of the Freedom of Information Act or in the statutes relating to the public body?

The answers to these questions may be found in the Act or in the enabling statute of the agency involved. If the material is a public record of a public body, and is not specifically exempted by statute from the disclosure provisions of the WV-FOIA, then the information should ordinarily be disclosed. Of course, if a "public record of a public body" is not in question, there is no further inquiry under the Act because there is no right of public access to the information. An additional question that may arise is whether there is a state constitutional right of access to the information.

Several decisions of the West Virginia Supreme Court of Appeals and Attorney General's Opinions have defined more particularly the kinds of records that must be provided to the public under the WV-FOIA. Although an Opinion of the Attorney General does not have the force of law, it is the official opinion of the State's chief legal officer as to how the West Virginia Supreme Court would rule should the same issue be before the Court. The following summaries give an overview of pertinent decisions along with the type of analysis that has been applied in various contexts. We will also attempt to offer direction concerning the treatment of exemptions under the Act which the Court has not yet addressed.

PUBLIC BODY:

The WV-FOIA definition of a "public body" includes all officers, agencies and departments of the State's executive, legislative and judicial branches of government; counties, school districts and municipalities; and any entities created or primarily funded by State or local authority. W. Va. Code § 29B-1-2(3).

"It is clear that the definition of a 'public body' under FOIA includes the judicial branch of State government. . . . [and that] FOIA may be utilized to obtain nonexempt judicial public records." *Associated Press v. Canterbury*, 224 W.Va. 708, 715, 688 S.E.2d 317, 324 (2009).

In *Queen v. West Virginia University Hospitals, Inc.*, 179 W. Va. 95, 365 S.E.2d 375 (1987), the West Virginia Supreme Court of Appeals concluded that **West Virginia University Hospitals, Inc.**, a nonstock, nonprofit corporation formed to manage a hospital located on University property, was subject to the WV-FOIA provisions because a State statute (W. Va. Code § 18-11C-1 *et seq.*) directed the hospital's incorporation and regulated its activities. The Court noted that the enabling legislation also specified the corporation's purpose, prescribed the composition of its board of directors (primarily public officers), and imposed various audit and reporting requirements to the State. By so doing, the statute made the hospital an entity created by State authority, and therefore open and accountable to the public and the Legislature.

However, in *4-H Road Community Association v. West Virginia University Foundation, Inc.*, 182 W. Va. 434, 388 S.E.2d 308 (1989), the Supreme Court found that the **West Virginia University Foundation**, a charitable, educational, nonprofit corporation formed by private citizens under the general corporation laws of the State, was not a "public body" subject to the disclosure provisions of the WV-FOIA. The Court's ruling was supported by the facts that the Foundation was not created by legislative mandate and that it did not use public money, property or employees in its operation. The Court also concluded that leases with the University for use of a State-owned building and a close working relationship with the public body did not affect the corporation's private status.

PUBLIC RECORD:

The WV-FOIA definition of a "public record" includes "any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body." W. Va. Code § 29B-1-2(4). A "writing" for purposes of the Act includes "any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics." W. Va. Code § 29B-1-2(5).

"The definition of a 'writing' contained in W. Va. Code § 29B-1-2(5) (1977) (Repl. Vol. 2007) of the West Virginia Freedom of Information Act includes an **e-mail communication.**" Syl. pt. 2, *Associated Press v. Canterbury*, 224 W. Va. 708, 688 S.E.2d 317 (2009). However, the Supreme Court also held:

A "public record" under the West Virginia Freedom of Information Act (FOIA) is defined as "includ[ing] any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body." W. Va. Code § 29B-1-2(4) (1977) (Repl. Vol. 2007). Under the clear language of the "public record" definition, a personal e-mail communication by a public official or public employee, which does not relate to the conduct of the public's business, is not a public record subject to disclosure under FOIA.

Syl. pt. 3, *Associated Press v. Canterbury*, *supra* (emphasis added).

And using agency resources or equipment does not convert otherwise personal documents into public records. If it does not relate to the business of government, it is not a "public record" under the Act.

A trial court's determination of whether personal e-mail communication by a public official or employee is a public record, subject to disclosure under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1, *et seq.* is restricted to an analysis of the content of the e-mail and does not extend to a context-driven analysis because of public interest in the record.

Syl. pt. 4, *Associated Press v. Canterbury, supra.*

A verbatim **tape recording of a public meeting** of a governmental body is a public record subject to disclosure under the Act. *Veltri v. Charleston Urban Renewal Authority*, 178 W. Va. 669, 363 S.E.2d 746 (1988).

The document does not need to be prepared by the public body in order to be a public record subject to disclosure:

Under the West Virginia Freedom of Information Act (FOIA), W. Va. Code, 29B-1-1, *et seq.*, a "public record" includes any writing in the possession of a public body that relates to the conduct of the public's business which is not specifically exempt from disclosure by W. Va. Code, 29B-1-4, even though the writing was not prepared by, on behalf of, or at the request of, the public body.

Syl. pt. 2, *Shepherdstown Observer, Inc. v. Maghan*, 226 W. Va. 353, 700 S.E.2d 805 (2010).

"A writing in the possession of a public body is a public record required to be disclosed under the Act where the writing relates to the conduct of the public's business and is not specifically exempted from disclosure pursuant to W. Va. Code, 29B-1-4. Conversely, a writing in the possession of a public body is not a public record and need not be disclosed under the Act where the writing does not relate to the conduct of the public's business or where the writing is specifically exempt from disclosure pursuant to W. Va. Code, 29B-1-4." *Shepherdstown Observer, Inc. v. Maghan*, 226 W. Va. at 359, 700 S.E.2d at 811.

In *Daily Gazette Co., Inc. v. Withrow*, 177 W. Va. 110, 350 S.E.2d 738 (1986), a newspaper sought disclosure of documents from a sheriff's office regarding "confidential" settlements of lawsuits against the sheriff and his deputies. The sheriff declined to produce the documents because they were not in his possession, were not required by law to be maintained in his records, and were not "public records" under the WV-FOIA because they were prepared and retained by his attorneys.

The West Virginia Supreme Court of Appeals held that a **release or other litigation settlement document** in which one of the parties is a public body, involving an act or omission of the public body in its official capacity, is a "public record" within the liberal definition of the WV-FOIA, which includes any information "relating to the conduct of the public's business," whether or not the record is required by law to be maintained. The fact that the document may involve "personal" as well as "official" conduct does not change its public nature. "[T]he burden of proof is upon the public body to show that one (or more) of the express exemptions applies to certain material in the document." *Withrow*, 177 W. Va. at 116, 350 S.E.2d at 744 (citation omitted).

The *Withrow* Court further held that a public record is "retained by a public body" for purposes of the WV-FOIA if it is subject to the control of the public body. Actual possession of an existing document is irrelevant if the record may be produced at the direction of the public body. Although noting that a public body is under no obligation under the WV-FOIA to create a record where none already exists, the Court found a common-law duty to create and maintain, for public inspection and copying, a record of the terms of settlement litigation brought against a public official or his or her employees in their official capacity.

Finally, in *Withrow*, the Court held that a public record does not become private simply because the involved parties agree that a document is to remain confidential. Such an agreement is void to the extent that it conflicts with the State FOIA.

The Court had previously held in a related context that a **confidentiality agreement** between a public body and the supplier of the information may not override the disclosure requirements of the WV-FOIA. *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985). In discussing claimed exemptions under the Act, the Court in *Hechler* declined to address the basic question of whether a **list of names and addresses** of security guards furnished to the Secretary of State was a "public record" within the meaning of the WV-FOIA, because that was not an issue before the Court. Therefore, in a different context such a list might not be found to be a "public record."

In *State v. Nelson*, 189 W. Va. 778, 434 S.E.2d 697 (1993), the Supreme Court held that a **criminal history summary** is a public record, and the trial court did not err in giving an instruction to that effect to the jury. The Court said, "the nature of a 'public record' is not based upon public availability . . . but rather it is based upon whether the public body prepares, owns and retains the record." 189 W. Va. at 787, 434 S.E.2d at 706.

County property books, showing assessed valuations of real and personal property, are public documents and as such are available to the public for inspection under FOIA. *State ex rel. Rose v. Fewell*, 170 W. Va. 447, 294 S.E.2d 434 (1982).

A request for access to **municipal traffic court records** under the WV-FOIA was granted by the Court in *Richardson v. Town of Kimball*, 176 W. Va. 24, 340 S.E.2d 582 (1986), pursuant to W. Va. Code § 51-4-2, which generally requires that court records and

papers be open to public inspection and copying. "Unless a statute provides for confidentiality, court records shall be open to public inspection." Syl. pt. 2, *in part, Richardson*. See also *State ex rel. Garden State Newspapers v. Hoke*, 205 W. Va. 611, 616, 520 S.E.2d 186, 191 (1999) ("the court records of civil and criminal proceedings are presumptively open").

The Court in *Richardson* noted that "[t]he court clerk may, of course, provide for **reasonable limitations** as to the hours and methods of viewing and cost of copying, but in no circumstances may these limitations be used so as to prevent a person from access to the records." 176 W. Va. at 25 n.2, 340 S.E.2d at 583 n.2. Although not specifically addressing the WV-FOIA, this opinion may shed some light on what the Court would find to be reasonable limitations under the Act.

Where a citizen requested the names of taxpayers who owed city **delinquent business and occupation taxes and garbage and sewage bills** and the amounts they owed pursuant to the WV-FOIA, the city was required to provide this material with the names of the taxpayers deleted (redacted); the city did not assert that the process of redacting the records would be unreasonably burdensome or expensive, and a new computer system enabled the city to redact the names of taxpayers carried on its computerized list of taxpayers. *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004).

"Under the West Virginia Freedom of Information Act, *W. Va. Code*, 29B-1-1 *et seq.*, a **referendum petition filed with a public body** is a public record required to be disclosed under the Act." Syl. pt. 3, *Shepherdstown Observer, Inc. v. Maghan*, 226 W. Va. 353, 700 S.E.2d 805 (2010). The Supreme Court found that "disclosure of a referendum petition under [WV-FOIA] serves a vital function in protecting the integrity of the electoral process and in promoting transparency and accountability in the 'conduct of the public's business.' *W. Va. Code*, 29B-1-2(4) [1977]." *Id.* at 362-63, 700 S.E.2d at 814-15.

Final decisions and orders reached as a result of adjudicatory assemblages of the West Virginia Human Rights Commission are not protected by an exemption under the WV-FOIA. Accordingly, any such decision and order entered on the record of a convened open meeting and properly recorded in the minutes is a "public record" within the meaning of the WV-FOIA, and is subject to public inspection and review. Op. Att'y Gen. (July 17, 1986).

Completed **vouchers for legal fees and expenses** submitted by an attorney to Public Legal Services for reimbursement, and the agency's audit of those vouchers, are "public records" and thus accessible to the public under the WV-FOIA. 61 Op. Att'y Gen. 112 (April 11, 1986).

"The [WV-FOIA] **does not require the creation of public records[.]**" Syl. pt. 1, *Affiliated Construction Trades Foundation v. Regional Jail and Correctional Facility Authority*, 200 W. Va. 621, 490 S.E.2d 708 (1997) -- "only the disclosure of non-exempt information from existing records." *RGIS Inventory Specialists v. Palmer*, 209 W. Va. 152,

159 n.4, 544 S.E.2d 79, 86 n.4 (2001). The fact that a public body has the right to obtain a copy of a writing which was prepared and retained by a private party, but has not exercised that right, does not, standing alone, mean that the writing is a “public record” as defined by the Act. However, once such records are filed with the public body, they would be subject to disclosure under FOIA. As the Court held in *Withrow*, “[t]here is no obligation under the State FOIA to create any particular record, but only to provide access to a public record already created and which is ‘retained’ by the public body in question.” 177 W. Va. at 119 n.9, 350 S.E.2d at 746 n.9 (citation omitted).

LIMITATIONS ON REQUESTS BY INMATES:

An inmate may not use the Freedom of Information Act, W. Va. Code § 29B-1-1 et seq., to obtain court records for the purpose of filing a petition for writ of habeas corpus. Instead, an inmate is bound to follow the procedures set out in the Rules Governing Post-Conviction Habeas Corpus Proceedings in West Virginia for filing a petition for writ of habeas corpus and to obtain documentation in support thereof.

Syl. pt. 3, *State ex rel. Wyant v. Brotherton*, 214 W. Va. 434, 589 S.E.2d 812 (2003).

CONSTITUTIONAL RIGHT OF ACCESS:

The constitutional right of public access to the courts of the State (West Virginia Constitution, Article III, Section 17) was the foundation for the Supreme Court's decision in *Daily Gazette Co., Inc. v. West Virginia Board of Medicine*, 177 W. Va. 316, 352 S.E.2d 66 (1986), in which disclosure of **physician disciplinary proceedings** was at issue. A newspaper's request for information from the Board of Medicine under the WV-FOIA was denied on the basis that reports and records of disciplinary proceedings by the Board were strictly confidential and immune from discovery under the Medical Practice Act (W. Va. Code §§ 30-3-1 et seq.), and thus exempt from disclosure under the WV-FOIA. Although the issue presented to the Court was what constitutes a public record subject to disclosure, its decision was reached on constitutional grounds rather than under the WV-FOIA.

Relying on its previous decision in *Daily Gazette Co., Inc. v. Committee on Legal Ethics of the West Virginia State Bar*, 174 W. Va. 359, 326 S.E.2d 705 (1984) (hereinafter *State Bar*), which held there was a constitutional right of public access to **attorney disciplinary proceedings**, the Court repeated that the right to access extends to all judicial and quasi-judicial proceedings. Drawing a direct comparison with the *State Bar* decision, the Court held that if the Board of Medicine finds probable cause to substantiate disciplinary charges, then all records and proceedings on such charges are open to the public. If probable cause is not found, the public has a right of access to the charges, and the findings of fact and conclusions of law supporting dismissal. However, this public right of access does not extend to peer review information unless those records are brought before the Board of Medicine after probable cause is found. The actual peer review

procedure remains subject to the confidentiality provisions contained in the relevant statute. (See discussion under Exemption No. 5.)

The Court followed the reasoning of the *Board of Medicine* and *State Bar* cases in *Thompson v. W. Va. Board of Osteopathy*, 191 W. Va. 15, 442 S.E.2d 712 (1994), in ordering the Board of Osteopathy to consider and adopt formal findings of fact and conclusions of law in support of its decision to dismiss the petitioners' complaint. The Court reasoned that even though the Board failed to find probable cause to substantiate charges of disciplinary disqualification, the petitioners and the public have a right of access to the **findings of fact and conclusions of law** supporting the dismissal of a complaint.

In a case that dealt with the sealing of circuit court records, the Supreme Court reiterated that the public's right of access to the records of court proceedings is based upon the "open courts" provision in Article III, Section 17 of the West Virginia Constitution, and its interpretations by the Court. However, the Court also noted the express applicability under § 29B-1-2(3) of the FOIA to court documents, and Rule 10.04 of the Trial Court Rules, permitting access to **court files and records** that constitute "public records" under FOIA. *State ex rel. Brooks v. Zakaib*. 214 W. Va. 253, 265, 588 S.E.2d 418, 430 (2003).

CIVIL DISCOVERY:

Generally speaking, the exemptions found in the WV-FOIA do not govern civil discovery matters. *Rollins ex rel. Rollins v. Barlow*, 188 F. Supp. 2d 660 (S.D. W. Va. 2002). Matters exempt from disclosure under FOIA may still be required to be produced during the course of litigation.

In *Maclay v. Jones*, 208 W. Va. 569, 542 S.E.2d 83 (2000), the Supreme Court dealt with a civil discovery request for a State Police officer's **personnel records**. In response to a certified question, the Court found that the "personal information" exemption found in W. Va. Code § 29B-1-4(a)(2) did not prohibit the compelled production of such records during civil litigation. The Court in *Maclay* also dealt with a civil discovery request for records of a West Virginia State Police **internal affairs investigation**, otherwise exempt under W. Va. Code § 29B-1-4(a)(4). The Supreme Court held that "the provisions of this state's FOIA, which address confidentiality as to the public generally, were not intended to shield law enforcement investigatory materials from a legitimate discovery request when such information is otherwise subject to discovery in the course of civil proceedings." *Maclay*, 208 W. Va. at 575, 542 S.E.2d at 89. The Court imposed a balancing test for ordering discovery in such cases, which weighs the requesting party's need for the material against the public interest in maintaining the confidentiality of such information.

Thus, records which are exempt from disclosure to the general public under the WV-FOIA may be discoverable by a party who is in litigation against a public agency.

EXEMPTIONS UNDER THE WV-FOIA:

Even if an entity is a public body and the document in question is a public record under the WV-FOIA, all or part of the information requested may be exempt from disclosure under one of the 19 categories of exemption found in W. Va. Code § 29B-1-4(a). The West Virginia Supreme Court of Appeals has repeatedly stressed that the legislative intent of the WV-FOIA is that of disclosure and not exemption. "The disclosure provisions of [the WV-FOIA] are to be liberally construed, and the exemptions to such Act are to be strictly construed. *W. Va. Code*, 29B-1-1 [1977]." Syl. pt. 4, *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985); see also, Syl. pt. 4, *In re Charleston Gazette FOIA Request*, 222 W. Va. 771, 671 S.E.2d 776 (2008); Syl. pt. 4, *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004); Syl. pt. 3, *Town of Burnsville v. Cline*, 188 W. Va. 510, 425 S.E.2d 186 (1992); Syl. pt. 1, *Daily Gazette Co., Inc. v. Caryl*, 181 W. Va. 42, 380 S.E.2d 209 (1989).

In order to resist disclosure, a public body has the burden of showing that one or more of the exemptions of the WV-FOIA expressly applies to the material being requested. See Syl. pt. 2, *Daily Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996); Syl. pt. 7, *Queen v. West Virginia University Hospitals, Inc.*, 179 W. Va. 95, 365 S.E.2d 375 (1987); *Daily Gazette Co., Inc. v. Withrow*, 177 W. Va. 110, 116, 350 S.E.2d 738, 744 (1986).

When a public body asserts that certain documents or portions of documents in its possession are exempt from disclosure under any of the exemptions contained in W. Va. Code, 29B-1-4 (2002 Repl. Vol.) (2003 Supp.), the public body must produce a *Vaughn* index named for *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977, 94 S.Ct. 1564, 39 L.Ed.2d 873 (1974). The *Vaughn* index must provide a relatively detailed justification as to why each document is exempt, specifically identifying the reason(s) why an exemption under W. Va. Code, 29B-1-4 is relevant and correlating the claimed exemption with the particular part of the withheld document to which the claimed exemption applies. The *Vaughn* index need not be so detailed that it compromises the privilege claimed. The public body must also submit an affidavit, indicating why disclosure of the documents would be harmful and why such documents should be exempt. Syllabus point 3 of *Daily Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996), is hereby expressly modified.

Syl. pt. 6, *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004).

The Supreme Court in *Farley* also made clear that an agency is not required to provide a "search certificate" or *Vaughn* index on an initial request for documents under the WV-FOIA. The *Vaughn* index is implicated by FOIA litigation, not simply by the denial of a FOIA request at the administrative level.

One should normally presume that a request for information under the WV-FOIA is a request for all or any, not for all or none, of the information described. An entire document is not exempt from the requirements of the WV-FOIA merely because an isolated portion need not be disclosed. If the exempt portion(s) of a document can be segregated or removed (redacted), the remainder of the document must be disclosed. A public body cannot simply state in a conclusory or cursory manner that redaction would be unreasonably burdensome or costly. However, if the agency can show with reasonable specificity why material could not be segregated, it meets its burden under WV-FOIA.

In response to a proper Freedom of Information Act request, a public body has a duty to redact or segregate exempt from non-exempt information contained within the public record(s) responsive to the FOIA request and to disclose the nonexempt information unless such segregation or redaction would impose upon the public body an unreasonably high burden or expense. If the public body refuses to provide redacted or segregated copies because the process of redacting or segregating would impose an unreasonably high burden or expense, the public body must provide the requesting party a written response that is sufficiently detailed to justify refusal to honor the FOIA request on these grounds. Such written response, however, need not be so detailed that the justification would compromise the secret nature of the exempt information.

Syl. pt. 5, *Farley v. Worley*, 215 W.Va. 412, 599 S.E.2d 835 (2004).

Cases involving five of the nineteen exemption classifications have been reviewed by the West Virginia Supreme Court of Appeals in some fashion. The Court has recognized that the exemptions in the WV-FOIA are similar to those in the federal Freedom of Information Act, 5 U.S.C. § 552, and other state acts. *Daily Gazette Co., Inc. v. West Virginia Development Office*, *supra*; *Sattler v. Holliday*, 173 W. Va. 471, 318 S.E.2d 50 (1984). Accordingly, where the Court has not addressed an exemption of the WV-FOIA, reference should be made to similar provisions of the federal FOIA.

Although the State Supreme Court has relied on these other sources in arriving at decisions involving the WV-FOIA, when the same language is not found in the federal or other state FOIA, the Court's analysis will be guided by the words and purpose of the WV-FOIA statute and the factual circumstances of the case. See *Queen v. West Virginia University Hospitals, Inc.*, *supra*. Rulings by the West Virginia Supreme Court under the WV-FOIA's exemption categories are discussed below.

EXEMPTION NO. 1: TRADE SECRETS

This exemption was first raised in *Queen v. West Virginia University Hospitals, Inc.*, 179 W. Va. 95, 365 S.E.2d 375 (1987), wherein the Attorney General sought release of a **contract** which the hospital claimed was exempt from disclosure as a "trade secret" under

W. Va. Code § 29B-1-4(a)(1). However, the hospital merely asserted in conclusory fashion that its contract met the requirements of the exemption, and that it should be allowed to maintain "business confidentiality." Noting that WV-FOIA exemptions are strictly construed, and that the party claiming the exemption has the burden of showing its express applicability, the Supreme Court held that the hospital's assertions did not meet this burden.

The Court discussed the trade secrets exemption in *AT&T Communications of West Virginia, Inc. v. Public Service Commission of West Virginia*, 188 W. Va. 250, 423 S.E.2d 859 (1992). In that case, AT&T Communications sought a protective order from the Public Service Commission to prevent access by competitors to all information in its **annual reports** required by the PSC. The Court found this request too broad. Noting that the PSC is an administrative agency with the responsibility under the WV-FOIA to disclose information to the public, the Court held, in Syllabus point 2: "In order to obtain a protective order from the Public Service Commission to prevent the disclosure of annual report information, a utility must make a credible showing that the information is a 'trade secret' as described in W. Va. Code, 29B-1-4(1)."

Depending upon the circumstances of the case, some direction regarding the trade secrets exemption may be available through comparison with the privacy interest arising under Exemption No. 2 of the WV-FOIA. Additionally, under certain circumstances the person or corporation supplying trade secret information to a public body may seek to enjoin disclosure of the information under the State's Uniform Trade Secrets Act, W. Va. Code §§ 47-22-1 *et seq.* [1986].

The WV-FOIA trade secrets exemption is far more descriptive than that contained in the federal statute, 5 U.S.C. § 552(b)(4), which exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

EXEMPTION NO. 2: INFORMATION OF A PERSONAL NATURE

This exemption, found in W. Va. Code § 29B-1-4(a)(2), bars release of information that constitutes an unreasonable invasion of privacy, unless it is shown by clear and convincing evidence that the public interest under the circumstances requires disclosure. The purpose of this exemption is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information. The individual's right of privacy must be weighed against the public's right to know. *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985).

Not all personal information is private, however. In *Hechler v. Casey*, the West Virginia Supreme Court held that an individual's **name and residential address** are public in nature and therefore not normally exempt from disclosure under this provision as "personal" information. The Court refused to block the release of a list of names and addresses of security guards furnished to the Secretary of State pursuant to his licensing

and regulation of their employer. Although general concerns were expressed about the safety of the individuals involved, the Court found the risk of harm from such disclosure to be speculative. Because no one contended otherwise, the Court declined to address the question of whether or not the list was a "public record" within the meaning of the Act.

In *Child Protection Group v. Cline*, 177 W. Va. 29, 350 S.E.2d 541 (1986), a group of concerned parents sought release by the county school board of the **medical and psychiatric records** of their children's school bus driver, pursuant to the WV-FOIA. The West Virginia Supreme Court adopted a five-factor test to be used in deciding whether public disclosure of private information would constitute an unreasonable invasion of privacy. Those five factors and the Court's discussion include:

- (1) Whether disclosure would result in a substantial invasion of privacy and, if so, how serious.

There must first be a substantial invasion into private information, as distinct from non-intimate or public information which may be disclosed. The seriousness of the invasion of privacy is then determined by evaluating the extent to which the release of the information would cause embarrassment or harm to an ordinary man similarly situated in time and place to the person involved. *Id.* at 32, 350 S.E.2d at 543-44.

- (2) The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.

The value of the public interest may be monetary, or it may involve the public's legal rights or liabilities. However, curiosity alone is not enough to overcome an individual's right to privacy. In evaluating the purpose for the request, a comparison should be made between how useful disclosure of the information would be to the public versus the potential for misuse of the information. *Id.* at 33, 350 S.E.2d at 544.

- (3) Whether the information is available from other sources.

If the information is readily obtainable from public books or records, there is no reason to withhold it. However, if there is a less intrusive format or method by which the information may be obtained, then the courts should force the use of the least intrusive means to disclose the information. If there is no other way to obtain the necessary information, it should be disclosed. *Id.*; see also *Robinson v. Merritt*, 180 W. Va. 26, 375 S.E.2d 204 (1988), discussed below.

- (4) Whether the information was given with an expectation of confidentiality.

Government should protect private secrets given with a legitimate expectation of confidentiality, unless there is some "overridingly important" reason to release them.

Consideration should be given to how release of the information will interfere with an agency's ability to carry out its duties, since people may become reluctant to voluntarily supply personal information that may be subject to disclosure. *Cline*, 177 W. Va. at 33, 350 S.E.2d at 544-45.

- (5) Whether it is possible to mould relief so as to limit the invasion of individual privacy.

The Supreme Court encourages trial courts to limit the invasion of privacy when possible, such as by the deletion of personal data from documents to be released, noting that complete disclosure is not always necessary. In this case, deletion of the private material was not possible, so the Court limited disclosure to the parents' group requesting the records and not to the public at large. *Cline*, 177 W. Va. at 33, 350 S.E.2d at 545.

The plaintiff in *Robinson v. Merritt*, 180 W. Va. 26, 375 S.E.2d 204 (1988), sought copies of the entire **microfiche claim records** of the West Virginia Workers' Compensation Fund, containing not only names and addresses for millions of claimants, but also medical information including psychiatric diagnoses and treatment. As an attorney representing injured workers, he received copies of all claim information for his own clients, and was permitted to review, but not copy, the microfiche in question. The West Virginia Supreme Court of Appeals found that the least intrusive method of providing the necessary information was already in use, and denied his request: "Where an individual fails to present, by clear and convincing evidence, a legitimate reason sufficient to overcome the exemption from disclosure found in W. Va. Code § 29B-1-4(2) (1986), and where an adequate source of information is already available, the records will not be released." Syl. pt. 3, *Robinson*.

The Supreme Court in *Manns v. City of Charleston Police Dept.*, 209 W. Va. 620, 550 S.E.2d 598 (2001), addressed **personnel records** in the context of FOIA. The Court held that records of **police department internal investigations** contained "personal information" exempt from disclosure under § 29B-1-4(a)(2), unless the public interest in disclosure outweighed the privacy interests of the police officers involved. Applying the five factors set forth in *Cline* to the records at issue, the Court found that the public interest did not require disclosure of the requested information. *Manns*, 209 W. Va. at 626, 550 S.E.2d at 604.

In a case involving activity logs and payroll time sheets of city police officers who were accused of double dipping, the West Virginia Supreme Court held that **payroll records of public employees** were public records not exempt from disclosure under WV-FOIA. *In re Charleston Gazette FOIA Request*, 222 W. Va. 771, 671 S.E.2d 776 (2008). Applying the five factors set forth in *Cline* and restated in *Manns*, the Court concluded that the time sheets were public records not exempt from disclosure. 222 W. Va. at 783, 671 S.E.2d at 788. In footnote 4 of that opinion, the Court noted:

We also acknowledge that public documents relating to such matters as names of public employees, their designation, an employee number, payroll records, time sheets, salary amounts, attendance records, numerical data dealing with a public employee's vacation or sick leave records, retirement service credit, and statutorily withheld federal, state and city taxes, are clearly public records and subject to disclosure. Moreover, without delineating the precise scope of the right to privacy afforded by West Virginia's FOIA, we can state with confidence that disclosure of such records would not "constitute an unreasonable invasion of privacy." See W.Va.Code § 29B-1-4(a)(2). They simply are not the kind of private facts that the Legislature intended to exempt from mandatory disclosure.

222 W. Va. at 783 n.4, 671 S.E.2d at 788 n.4 (in part).

A former state university faculty member filed suit against the university seeking **student, peer, and chair evaluations of faculty members** under the WV-FOIA, in connection with his underlying action against the university. The Supreme Court held that the personal information exemption applied to the plaintiff's request for faculty job performance evaluations, and that he was only entitled to receive them in a redacted form. *Smith v. Bradley*, 223 W. Va. 286, 291-92, 673 S.E.2d 500, 505-06 (2007).

The West Virginia Supreme Court has also noted that under this exemption, the State and federal laws differ in one important respect: the WV-FOIA favors non-disclosure of personal information unless the public interest clearly requires it, while the federal FOIA favors disclosure unless it would constitute a clearly unwarranted invasion of personal privacy. See *Hechler v. Casey* discussed above. Federal courts also apply a "balancing test" under 5 U.S.C. § 552(b)(6), which turns on whether the privacy interest in non-disclosure of the documents outweighs the public interest in their release.

EXEMPTION NO. 3: TEST INFORMATION

Test questions, scoring keys and other examination data used to administer licensing, employment and academic examinations are within this exemption category of the WV-FOIA, found in W. Va. Code § 29B-1-4(a)(3). The West Virginia Supreme Court of Appeals has not reviewed a case invoking this exemption, and there is no comparable federal FOIA exemption provision.

EXEMPTION NO. 4: LAW-ENFORCEMENT RECORDS

The law-enforcement records which are subject to this WV-FOIA exemption are those dealing with the detection and investigation of crime, and internal records and notations maintained for internal use in matters relating to law enforcement. The primary purpose of this exemption, found in W. Va. Code § 29B-1-4(a)(4), is to prevent premature disclosure of investigatory materials which might be used in a law-enforcement action. *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985).

In *Sattler v. Holliday*, 173 W. Va. 471, 318 S.E.2d 50 (1984) the Supreme Court noted that although the WV-FOIA appeared to create a blanket exemption for law-enforcement records, "a good argument could be made that material should only be exempt if it protects an interest that weighs more greatly than the public's right to know." *Id.* at 473, 318 S.E.2d 52. The Court's subsequent decision in *Hechler* relied on this language and limited the extent to which law-enforcement records may be held exempt.

In *Hechler v. Casey*, the Supreme Court held that a **list of names and addresses** of security guards, furnished to the Secretary of State's Office as part of the licensing and regulation of their employer, was not exempt from disclosure under this provision. Internal matters relating to law enforcement are confined to confidential investigative techniques and procedures. Records generated pursuant to routine administration or oversight do not fall within this exemption, which is limited to information compiled as part of an inquiry into specific suspected violations of the law. Having concluded that the list in question was not a "law-enforcement record," the Court found it unnecessary in *Hechler* to decide whether this exemption applies to civil enforcement proceedings of administrative agencies. Although the federal FOIA exemption includes the enforcement of both civil and criminal laws, it is not clear whether this exemption to the WV-FOIA includes proceedings of regulatory agencies (like the Secretary of State's Office) who only invoke civil sanctions.

In *State v. Nelson*, 189 W. Va. 778, 434 S.E.2d 697 (1993), the Supreme Court reasoned that if a **criminal history summary** were not a "public record" within the meaning of the WV-FOIA, there would be no need for the exemption for law-enforcement records. The Court did not address whether a criminal history summary would fall within this exemption, because that was not an issue in the case.

Police incident reports are "public records" as defined by the WV-FOIA, and fall within the statutory exemption for law enforcement records. *Ogden Newspapers, Inc. v. City of Williamstown*, 192 W. Va. 648, 453 S.E.2d 631 (1994). Even so, there is a separate Constitutional right of access to some police information, and a law enforcement record may still be disclosed under FOIA if society's interest in seeing the document outweighs the government's interest in keeping it confidential. The Court held in Syllabus Point 1 of *Ogden Newspapers*: "To the extent that information in an incident report dealing with the detection and investigation of crime will not compromise an ongoing law enforcement investigation, we hold that there is a public right of access under the West Virginia Freedom of Information Act." This right of access extends to incident reports involving juveniles, but only if "any information that could reasonably lead to the discovery of their identities" is redacted from the report in order to preserve the confidentiality of juvenile records. 192 W. Va. at 655, 453 S.E.2d at 638.

The Supreme Court in *Manns v. City of Charleston Police Dept.*, 209 W. Va. 620, 550 S.E.2d 598 (2001), also noted that some of the records sought of **police department internal investigations** would be exempt from disclosure under W. Va. Code § 29B-1-4(a)(4) as law-enforcement investigatory records. However, the Court did not

address this exemption because it had already held the records to be "personal information" exempt from disclosure under § 29B-1-4(a)(2).

Discussing the **police department time sheets and payroll records** at issue in *In re Charleston Gazette FOIA Request*, 222 W. Va. 771, 671 S.E.2d 776 (2008), the Supreme Court noted:

Likewise, these ministerial and plainly public documents could not be considered, "[r]ecords of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement" as prescribed by W. Va. Code § 29B-1-4(a)(4). Furthermore, even if some of the aforementioned records were being used as a part of an internal criminal investigation, they would still be subject to disclosure under our FOIA. See Syllabus Point 11 of *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985) (holding that investigatory records portion of FOIA does not include "information generated pursuant to routine administration or oversight, but is limited to information compiled as part of an inquiry into specific suspected violations of the law").

222 W. Va. at 783 n.4, 671 S.E.2d at 788 n.4 (in part).

A **prosecuting attorney's office** is a "law-enforcement agency" within the meaning of the Act, and thus its records are exempt from disclosure. Information discovered in a Public Legal Services audit pertaining to possible violations of the law by an attorney, which is turned over to prosecuting authorities, is exempt under the WV-FOIA from access by the public and media. However, should the authorities decide not to prosecute the attorney in question, the information would then revert back to its original status with Public Legal Services and would no longer be exempt from disclosure. 61 Op. Att'y Gen. 112 (April 11, 1986).

While the federal FOIA law-enforcement record exemption is narrower than the West Virginia exemption, the *Hechler* decision discussed above relied on cases interpreting the federal FOIA to define which law-enforcement records are subject to this exemption under the West Virginia statute. Accordingly, the federal FOIA may be persuasive authority for further clarification of the WV-FOIA exemption. The federal FOIA lists six reasons why law-enforcement records may be exempted from disclosure, but requires disclosure in all other circumstances. Under 5 U.S.C. § 552(b)(7), such records may be withheld if their production could reasonably be expected to (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source or information furnished by a confidential source; (5) disclose techniques, procedures or guidelines for law-enforcement investigations or prosecutions; or (6) endanger the life or physical safety of any individual.

EXEMPTION NO. 5: INFORMATION SPECIFICALLY EXEMPTED BY STATUTE

This exemption, found in W. Va. Code § 29B-1-4(a)(5), covers records which the Legislature has declared confidential and therefore exempt from disclosure by a statute other than the WV-FOIA.

In some instances, a statute specifically exempts certain records from disclosure under the WV-FOIA, even though they otherwise might be considered public records of a public body. See, e.g., W. Va. Code § 4-5-5 [1986] (records of Commission on Special Investigations); W. Va. Code § 29-22-9(b)(14) [1994] (lottery security procedures); W. Va. Code § 36-8-25 [1997] (records of abandoned property). Other statutes may restrict disclosure or require confidentiality of certain records without reference to the WV-FOIA. See, e.g., W. Va. Code § 11-10-5d(a) [2007] (tax information); W. Va. Code § 27-3-1 [2008] (mental health records).

For example, W. Va. Code § 5A-8-21 limits the release of personal information maintained by the State relating to its officers, employees, retirees or their dependents. The statute provides that an employee's home address, social security number, credit or debit card numbers, driver's license number, and marital status or maiden name are "deemed to be confidential and exempt from disclosure to non-governmental entities in documents otherwise subject to disclosure under the [FOIA]." With respect to information maintained by executive branch agencies on citizens generally, W. Va. Code § 5A-8-22 prohibits the release of an individual's social security number, or credit or debit card number, to non-governmental entities unless otherwise authorized by law or legislative rule.

Including the privacy provisions set forth above, the Legislature has enacted 81 separate statutes exempting from FOIA disclosure everything from 911 criminal calls (W. Va. Code § 24-6-13), to criminal history checks on school personnel (W. Va. Code § 18A-3-10). Another 23 statutes expressly apply the FOIA to particular agencies or records. A list of these statutes is attached as an Appendix for your reference.

In addition to these specific exemptions, confidentiality provisions in many other statutes may prevent the release of information under the WV-FOIA even where there is no express exemption from the applicability of the statute.

The West Virginia Supreme Court has only addressed such exemptions in three contexts: (1) health care peer review organizations, (2) tax returns, and (3) unclaimed property. These statutes and their legislative intent were examined by the Court in each of the following cases to determine whether the records fell within this statutory exemption to the FOIA.

As previously discussed, the Court held in *Daily Gazette Co., Inc. v. West Virginia Board of Medicine*, 177 W. Va. 316, 352 S.E.2d 66 (1986), that records of **Health Care Peer Review Organizations**, privileged and confidential under W. Va. Code § 30-3C-3 [1980], were not disciplinary in nature and therefore not subject to disclosure under the

WV-FOIA. To further the overall purpose of improving the quality of health care, confidentiality of peer review records and proceedings of peer review bodies were deemed necessary to ensure the effectiveness of professional self-evaluation, and foster physicians' participation in candid evaluation.

Disclosure of **tax compromise or settlement records** was at issue in *Daily Gazette Co., Inc. v. Caryl*, 181 W. Va. 42, 380 S.E.2d 209 (1989). The Supreme Court held these documents were exempt from disclosure. The Court reasoned that the preservation of taxpayer confidentiality in a required report to the Legislature regarding tax compromises, in effect grants exemption from disclosure of tax compromise records. The Court found that the general confidentiality provisions regarding tax returns and return information found in W. Va. Code § 11-10-5d, coupled with the preservation of taxpayer confidentiality in W. Va. Code § 11-10-5q(e), clearly showed legislative intent to protect a taxpayer's right to privacy. The decision in *Daily Gazette Co., Inc. v. Caryl* is significant in that it shows a willingness of the Court to examine an entire statute, and not simply a particular section, in order to make a determination of legislative intent regarding confidentiality of records. In a companion case, *State ex rel. Caryl v. McQueen*, 182 W. Va. 50, 385 S.E.2d 646 (1989), the Court held that this confidentiality requirement also prohibited the Attorney General from releasing tax compromise information in his files.

In *Town of Burnsville v. Cline*, 188 W. Va. 510, 515, 425 S.E.2d 186, 191 (1992), a B & O taxpayer in litigation with the town sought to inspect the returns of other taxpayers, in order to prove that the town was selectively enforcing the tax. The Supreme Court held that under W. Va. Code § 11-10-5d(a), the Legislature made clear it intended for the contents of all tax returns, including **B & O tax returns**, to remain confidential. However, the Court held that these confidentiality requirements would not be violated by permitting the plaintiff to review the roll of B & O taxpayers, without disclosing the actual contents of the tax returns. Such a list "need only contain the names of the persons or entities being taxed: the amount of tax paid is both private and irrelevant." 188 W. Va. at 515, 425 S.E.2d at 191.

In *Keegan v. Bailey*, 191 W. Va. 145, 443 S.E.2d 826 (1994), the plaintiff sought records of **uncashed checks (stale dated warrants)** issued by the State during the past six years. The State Treasurer contended that the records of the stale dated warrants were abandoned property as defined by the Unclaimed Property Act, and therefore exempt from disclosure under the WV-FOIA. The Supreme Court recognized that abandoned property is exempt from FOIA under the Unclaimed Property Act [now W. Va. Code § 36-8-25]. However, noting that the statute at that time required that such property remain unclaimed for a period of seven years, the Court held that the warrants issued within the past six years were not yet abandoned property within the meaning of the statute, and were thus subject to disclosure under FOIA. Following this decision, the Unclaimed Property Act was amended to provide that all warrants for payment issued by the State of West Virginia are presumed abandoned if not presented for payment within six months of issuance. See W. Va. Code § 36-8-2(a)(15) [1997]. In addition, stale dated checks drawn

on the State Treasury are now expressly exempted from FOIA by W. Va. Code § 12-3-1(d) [2004].

The comparable federal FOIA exemption is 5 U.S.C. § 552(b)(3), which applies only if the statute exempting the information from disclosure either leaves no discretion on the issue, or establishes particular criteria for withholding information.

EXEMPTION NO. 6: ARCHIVES, HISTORIC DOCUMENTS AND MANUSCRIPTS

The records under this exemption, found in W. Va. Code § 29B-1-4(a)(6), have not been the subject of a case review by the State Supreme Court. These records concern the location of undeveloped historic, prehistoric archaeological, paleontological and battlefield sites, or gifts to a public body with donor restrictions. There is no comparable provision under the federal FOIA. The language of the exemption suggests that its purpose is to encourage the donation and preservation of these records.

EXEMPTION NO. 7: RECORDS PERTAINING TO FINANCIAL INSTITUTIONS

This exemption covers information about examination, operating or condition reports prepared by or for agencies which regulate or supervise financial institutions, except those reports which by law must be published in newspapers. Although this exemption has not been examined by the West Virginia Supreme Court of Appeals, the federal FOIA exemption, 5 U.S.C. § 552(b)(8), contains the same language as W. Va. Code § 29B-1-4(a)(7). The cases in which the federal exemption has been analyzed may give some direction regarding the application of the exemption under the State Act.

EXEMPTION NO. 8: INTERNAL MEMORANDA OR LETTERS

This exemption covers internal memoranda or letters received or prepared by a public body. The first case in which the State Supreme Court addressed W. Va. Code § 29B-1-4(a)(8) was *Veltri v. Charleston Urban Renewal Authority*, 178 W. Va. 669, 363 S.E.2d 746 (1988), which involved a **tape recording of a meeting** of the Charleston Urban Renewal Authority. The Court found that the internal memorandum exemption was not intended to cover verbatim recordings of open, public meetings of this type, and held that such a recording does not constitute an "internal memorandum" exempt from disclosure under the Act.

The landmark decision regarding the internal memoranda exemption is *Daily Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996) ("*Gazette I*"). In that case, the Charleston Gazette sought to obtain copies of documents regarding a proposed pulp mill in Mason County from the West Virginia Development Office. The Development Office withheld certain documents on the grounds that they were "internal memoranda or letters received or prepared by a public body," and thus exempt from disclosure under W. Va. Code § 29B-1-4(a)(8). The circuit court had granted only partial release of the requested records, and permitted redaction of portions

of others. In remanding the case with directions for further proceedings, the Supreme Court adopted the **executive “deliberative process” privilege** recognized by federal courts under 5 U.S.C. § 552(b)(5).

The federal FOIA, 5 U.S.C. § 552(b)(5), exempts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." Under this exemption, an internal agency communication is subject to disclosure if the document is a final decision or the basis of a final decision. Another distinction federal courts have made involves the contents of the communication. If the requested documents contain factual information, the courts have found them to be subject to disclosure. If the documents contain opinions, recommendations, or other pre-decisional, deliberative information, they are exempt under the federal Act.

The West Virginia Supreme Court followed this rationale in *Gazette I*, holding, in Syllabus Point 4:

W. Va. Code, 29B-1-4(8) [1977], which exempts from disclosure "internal memoranda or letters received or prepared by any public body" specifically exempts from disclosure only those written internal government communications consisting of advice, opinions and recommendations which reflect a public body's deliberative, decision-making process; written advice, opinions and recommendations from one public body to another; and written advice, opinions and recommendations to a public body from outside consultants or experts obtained during the public body's deliberative, decision-making process. *W. Va. Code*, 29B-1-4(8) [1977] does not exempt from disclosure written communications between a public body and private persons or entities where such communications do not consist of advice, opinions or recommendations to the public body from outside consultants or experts obtained during the public body's deliberative, decision-making process.

The Court also noted that under both State and federal law the agency must specifically assert the deliberative process privilege for every document it seeks to protect.

Following the *Gazette I* decision, the Development Office statute was amended to provide that "[a]ny documentary material, data or other writing made or received by [an economic development agency], for the purpose of furnishing assistance to a new or existing business shall be exempt" from the provisions of the WV-FOIA. See *W. Va. Code* § 5B-2-1 [1997]. Any agreement that obligates public funds is still subject to disclosure once it is "entered into, signed or otherwise made public." *Id.*

The Supreme Court in *Manns v. City of Charleston Police Dept.*, 209 W. Va. 620, 550 S.E.2d 598 (2001), also noted that some of the records sought of **police department internal investigations** would be exempt from disclosure under *W. Va. Code* § 29B-1-4(a)(8) as internal memoranda. However, the Court did not address this

exemption because it had already held the records to be “personal information” exempt from disclosure under § 29B-1-4(a)(2).

The recorded **predecisional discussion and deliberation** of the West Virginia Human Rights Commission in adjudicating matters, whether characterized as “minutes” or otherwise, are exempt from public disclosure under the internal memoranda exemption of the Act. Op. Att’y Gen. (July 17, 1986).

EXEMPTION NOS. 9-19: SECURITY, UTILITIES AND CORRECTIONS

The Legislature in its 2003 Session added eight new exemptions to the FOIA, all dealing with “homeland security” issues (see text of statute at pages 6-8). In 2007, two more exemptions were added for public utility plants and equipment, and proprietary information of telecommunications customers and equipment manufacturers. In 2009, the Legislature added an exemption for records of corrections and jail facilities, and amended that exemption in 2011 to include records of juvenile detention facilities. Exemptions 9 through 19 have yet to be construed by the West Virginia Supreme Court.

ATTORNEY WORK PRODUCT:

Although not specifically exempted under the WV-FOIA, documents prepared by an attorney in representing a client public agency or officer may be **privileged and confidential** as attorney work-product, and therefore exempt from disclosure. In *Daily Gazette Co., Inc. v. Withrow*, 177 W. Va. 110, 350 S.E.2d 738 (1986), the West Virginia Supreme Court noted that preparation of a writing, such as a litigation settlement document, by an attorney for a public body or its insurer is viewed as preparation by the public body for the purpose of the WV-FOIA. The Court continued:

We need not address any question of whether an attorney's work product is exempt from disclosure under the State FOIA; it is clear that such an exemption would apply, if at all, only to a writing reflecting the mental impressions, conclusions, opinions or theories of an attorney prepared in anticipation of litigation or in preparation for trial, and would not apply to a writing, such as a release or another litigation settlement document, prepared by an attorney to conclude litigation.

Withrow, 177 W. Va. at 117 n.5, 350 S.E.2d at 744 n.5 (citation omitted).

In *Gazette I*, the Supreme Court noted that both the **attorney-client privilege** and the **attorney work-product privilege** are also preserved to government agencies under the federal FOIA, 5 U.S.C. § 552(b)(5), which is the federal counterpart to W. Va. Code § 29B-1-4(a)(8). See 198 W. Va. at 571, 482 S.E.2d at 188. It therefore seems likely the Court would hold that Exemption No. 8 of the WV-FOIA also preserves to public agencies and officers both the attorney-client privilege and the attorney work-product privilege in communications with their lawyers.

The United States Supreme Court has held that **agency attorney work product** is exempt from mandatory disclosure under the internal memoranda exemption of the federal FOIA, 5 U.S.C. § 552(b)(5), without regard to the status of the litigation for which it was prepared. *Federal Trade Commission v. Grolier*, 462 U.S. 19, 103 S. Ct. 2209, 76 L. Ed. 2d 387 (1983). However, in *N.L.R.B. v. Sears, Roebuck and Co.*, 421 U.S. 132, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975), the Court also held that memoranda explaining decisions by counsel not to file a complaint are "final opinions" which must be disclosed. Moreover, otherwise exempt information may lose that status when incorporated by reference in non-exempt documents.

ENFORCEMENT:

Any person denied access to public records for examination has a specific cause of action under the WV-FOIA against the agency denying the request. *Daily Gazette Co., Inc. v. West Virginia Development Office*, 206 W.Va. 51, 521 S.E.2d 543 (1999). "A party aggrieved by a public body's failure to disclose records should institute proceedings in the circuit court of the county in which the records are stored." Syl. pt. 1, *Sattler v. Holliday*, 173 W. Va. 471, 318 S.E.2d 50 (1984); see also W. Va. Code § 29B-1-5.

In a proceeding seeking disclosure of public records under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1, et seq., a trial court may *sua sponte* order the production of the records withheld and hold an *in camera* review of the records in order to decide whether any of the records are subject to disclosure under the Act. W. Va. Code § 29B-1-5(2) (1977) (Repl. Vol. 2007).

Syl. pt. 1, *Associated Press v. Canterbury*, 224 W. Va. 708, 688 S.E.2d 317 (2009).

The Supreme Court in *Associated Press* also stated that a trial court should not resort to *in camera* review as a matter of course, but should first offer the agency the opportunity to demonstrate, through a *Vaughn* index, affidavits and oral testimony, that the withheld information is clearly exempt and contains no segregable, nonexempt portions. 224 W. Va. at 714, 688 S.E.2d at 323; see Syl. pt. 6, *Farley v. Worley*, *supra*.

In *State ex rel. Dadisman v. Caperton*, 186 W. Va. 627, 413 S.E.2d 684 (1991), the petitioners in a mandamus action sought information regarding alleged delinquent employer contributions owed to the Public Employees Retirement System. The Court said that the petitioners "should follow the normal channels, including, if necessary, filing a Freedom of Information Act request, pursuant to W. Va. Code, 29B-1-3 [1977], in order to obtain any unfurnished information about the status of the delinquent employer contributions." *Id.* at 634, 413 S.E.2d at 691.

ATTORNEY'S FEES AND COSTS:

The recovery of attorney's fees by a prevailing party under W. Va. Code § 29B-1-7 was discussed at length in *Daily Gazette Co., Inc. v. West Virginia Development Office*, 206 W. Va. 51, 521 S.E.2d 543 (1999) ("*Gazette II*"). The Supreme Court held that the statute requires an award of attorney's fees to a person who has successfully brought a suit for the disclosure of the requested records pursuant to W. Va. Code § 29B-1-5. In order to recover attorney's fees, a plaintiff need not have prevailed on every argument advanced during the litigation, or have received full and complete disclosure of every record sought. The Court held that an award of attorney fees is proper if the FOIA action "contributed to the defendant's disclosure, whether voluntary or by order of court, of the public records originally denied the plaintiff." Syl. pt. 7, in part, *Gazette II*.

In *State ex rel. Paige v. Canady*, 197 W. Va. 154, 158 n.6, 475 S.E.2d 154, 158 n.6 (1996), the Supreme Court noted that any recovery from the custodian individually, as opposed to the public body itself, would be permitted only under the narrowest grounds.

A successful litigant in a FOIA action is also entitled to receive reimbursement for reasonable, documented court costs incurred in litigating the case. *Smith v. Bradley*, 223 W. Va. 286, 293-94, 673 S.E.2d 500, 507-08 (2007). However, a *pro se* litigant who does not pay an attorney any fees to represent him in a WV-FOIA action is not entitled to an award of attorney's fees. *Id.* at 292, 673 S.E.2d at 506.

CONCLUSION

The Office of the Attorney General hopes that the foregoing information will prove useful in understanding and using the provisions of the Freedom of Information Act. When properly applied, this law can be of tremendous benefit to the citizens of this State by keeping them informed about the actions of their state and local governments. With such information comes the power to make decisions about those governments based upon a full understanding of the facts, and to restrict the actions of elected officials by making them accountable to the public.

If you would like additional information about the materials in this booklet, or if you have questions concerning the Act, please feel free to call our Office at (304) 558-2021.

APPENDIX

Matters or agencies to which the Freedom of Information Act applies, by statute:

W. Va. Code § 3-2-30(a)	--	Voter registration records
W. Va. Code § 5B-2-1	--	West Virginia Development Office; agreements which obligate public funds
W. Va. Code § 7-11B-15	--	Tax Increment Financing Act; data contained in report of development or redevelopment project plan status
W. Va. Code § 16-29H-5	--	Health Enhancement and Lifestyle Planning Advisory Council
W. Va. Code § 16-40-4	--	Record of person or government entities given access to the Statewide Birth Defects Information System
W. Va. Code § 17-28-4	--	Division of Highways; transportation project information
W. Va. Code § 17C-17A-6	--	Public Service Commission; reports by receivers of overweight coal shipments
W. Va. Code § 20-5J-7	--	Medical Waste Act; inspection reports of infectious medical waste facilities
W. Va. Code § 22-15-5	--	Solid Waste Management Act; facility permits
W. Va. Code § 22-15-20	--	Solid Waste Management Act; sewage sludge management information
W. Va. Code § 22-18-13	--	Hazardous Waste Management Act; inspection reports
W. Va. Code § 22-22-10	--	Voluntary Remediation and Redevelopment Act; inspection reports
W. Va. Code § 22B-1-3	--	Environmental Boards; general administration
W. Va. Code § 22C-4-7	--	County and Regional Solid Waste Authorities; minutes and record of meetings
W. Va. Code § 24-2-1c	--	Public Service Commission; commercial solid waste facility certificate of need applications
W. Va. Code § 24-2F-4	--	Public Service Commission; registry of alternative and renewable energy resource credit transactions
W. Va. Code § 24E-1-9	--	West Virginia Statewide Addressing and Mapping Board, fees for map and other works
W. Va. Code § 29-1H-1	--	Appalachian States Low-Level Radioactive Waste Commission; subject to Federal FOIA and applicable West Virginia law
W. Va. Code § 29-22A-7	--	Racetrack Video Lottery; applicant agreement with manufacturer of equipment
W. Va. Code § 30-1-5	--	Professions and Occupations, Boards of Examination; disposition of complaints
W. Va. Code § 33-2-22	--	Insurance Commissioner; settlements with employers for moneys due to workers' compensation funds
W. Va. Code § 33-12-25	--	Insurance Commissioner; final, adjudicated actions including for cause terminations
W. Va. Code § 48-17-101	--	West Virginia Support Enforcement Commission

Statutory exemptions from the provisions of the Freedom of Information Act:

W. Va. Code § 3-2-30(c)	--	Personal identification information of registered voters
W. Va. Code § 3-10-3a	--	Judicial Vacancy Advisory Commission documents
W. Va. Code § 4-3-5	--	Legislative computer system databases
W. Va. Code § 4-5-5	--	Commission on Special Investigations
W. Va. Code § 5-10B-12	--	Information about government employees participating in deferred compensation plans
W. Va. Code § 5A-8-21	--	Personal information regarding state officers, employees or retirees
W. Va. Code § 5A-8-22	--	Personal information maintained by state agencies
W. Va. Code § 5B-1-6	--	Confidential information provided to office of Secretary of Department of Commerce
W. Va. Code § 5B-2-1	--	West Virginia Development Office
W. Va. Code § 5B-2C-7	--	West Virginia Academy of Science and Technology; contributed material
W. Va. Code § 7-1-3II	--	Military discharge forms; restrictions on release
W. Va. Code § 9-5-15	--	Medicaid drug pricing, rebates and trade secrets
W. Va. Code § 11-1C-14	--	Information provided by owners of natural resources for property valuation, mineral mapping or geographic information system
W. Va. Code § 11-10A-10	--	West Virginia Office of Tax Appeals, hearings
W. Va. Code § 11-13B-19	--	Telecommunications tax study; financial information provided to Tax Commissioner
W. Va. Code § 11B-1-6	--	Confidential information provided to office of Secretary of Department of Revenue
W. Va. Code § 12-3-1	--	Stale-dated checks drawn on State Treasury
W. Va. Code § 12-6-12	--	West Virginia Investment Management Board; confidential information pertaining to securities
W. Va. Code § 12-7-11	--	Jobs Investment Trust Fund; trade secrets, commercial, financial or personal information
W. Va. Code § 15-12-5	--	Information concerning registered sex offenders; restrictions on release
W. Va. Code § 15-13-5	--	Child abuse and neglect registry information
W. Va. Code § 16-1A-8	--	Information collected by statewide health care practitioner credentialing verification organization
W. Va. Code § 16-2I-7	--	Women's Right to Know Act; physician and female identification
W. Va. Code § 16-2J-8	--	Health Care Authority preventive care pilot program
W. Va. Code § 16-3A-2	--	Public Health; hazardous materials list and recommended emergency medical treatment
W. Va. Code § 16-4-6	--	Public Health; reports by physicians regarding sexually transmitted diseases
W. Va. Code § 16-5L-15	--	Long-term Care Ombudsman Program; investigations
W. Va. Code § 16-29G-8	--	West Virginia Health Information Network

FOIA exemptions (cont'd):

W. Va. Code § 16-29H-8	--	Governor's Office of Health Enhancement and Lifestyle Planning; information regarding pharmaceutical advertising and promotion expenditures
W. Va. Code § 16-29H-9	--	Governor's Office of Health Enhancement and Lifestyle Planning; patient-centered medical homes pilot program provider information
W. Va. Code § 17-6B-6	--	Public Port Authority; information or data supplied by businesses pertaining to the transportation of products by rail, water, highway or air through state ports
W. Va. Code § 17-27-4	--	Division of Highways; certain information regarding public-private transportation facilities projects
W. Va. Code § 17B-3-13	--	Division of Motor Vehicles; reports by health care providers
W. Va. Code § 17C-5C-4	--	Office of Administrative Hearings; hearings in appeals from Division of Motor Vehicles decisions or orders
W. Va. Code § 17D-2A-6a	--	Division of Motor Vehicles; electronic insurance verification system information
W. Va. Code § 18-2C-3	--	Education; reported incidents of harassment, intimidation or bullying
W. Va. Code § 18-30-12	--	West Virginia Prepaid Tuition Trust Act; identity of account owner, beneficiary or donor
W. Va. Code § 18A-3-10	--	School Personnel criminal history check
W. Va. Code § 18B-12A-4	--	Centers for Economic Development and Technology Advancement
W. Va. Code § 19-1A-3a	--	Division of Forestry; information identifying the location of commercial ginseng plants
W. Va. Code § 19-9-7a	--	Department of Agriculture; farm premises and animal identification data collected under the National Animal Identification System
W. Va. Code § 20-2-29	--	Division of Natural Resources; records concerning the site-specific location of an endangered animal species or protected plant
W. Va. Code § 21A-2-6b	--	Bureau of Employment Programs; business franchise registration certificate identifying information
W. Va. Code § 22-5-10	--	Air Pollution Control; records, reports, data or information considered confidential
W. Va. Code § 22-26-4	--	Environmental Protection; water withdrawal survey and registration information may be deemed confidential
W. Va. Code § 23-1-1b	--	Workers' Compensation fraud and abuse investigations
W. Va. Code § 23-1-4	--	Workers' Compensation; claims information
W. Va. Code § 23-2-2	--	Workers' Compensation; employer accounts
W. Va. Code § 23-2C-3	--	Workers' Compensation; employers' mutual insurance company

FOIA exemptions (cont'd):

W. Va. Code § 24-2F-4	--	Public Service Commission; pricing information concerning energy resource credit transactions
W. Va. Code § 24-6-11	--	Wireless communications customer information
W. Va. Code § 24-6-13	--	911 calls relating to alleged criminal conduct
W. Va. Code § 29-12B-12	--	West Virginia Health Care Provider Professional Liability Insurance Availability Act; claim reserve information
W. Va. Code § 29-22-9	--	State Lottery Act; security and validation procedures
W. Va. Code § 30-12-4	--	Board of Architects; examination materials
W. Va. Code § 31-15-22	--	West Virginia Economic Development Authority; trade secrets, commercial, financial or personal information
W. Va. Code § 31-15C-13	--	Broadband deployment information
W. Va. Code § 31-18-27	--	West Virginia Housing Development Fund; trade secrets, commercial or financial business information
W. Va. Code § 31-18D-10	--	West Virginia Affordable Housing Trust Fund; financial or personal information
W. Va. Code § 31A-2A-2	--	Financial records of banking customers
W. Va. Code § 32-4-407	--	West Virginia Securities Commission; investigations
W. Va. Code § 32A-2-24	--	Commissioner of Banking, currency exchange, transportation or transmission services; reports of investigation and examination, documents and financial information submitted by regulated persons
W. Va. Code § 32B-2-5	--	West Virginia Commodities Act; private investigations
W. Va. Code § 33-2-4	--	Insurance Commissioner; depositions, subpoenas and interrogatories
W. Va. Code § 33-2-15b	--	Insurance Commissioner; information received from companies in determining the economic effect of third-party lawsuits on insurance premiums
W. Va. Code § 33-2-19	--	Insurance Commissioner; information obtained during investigations of suspected violations
W. Va. Code § 33-6A-4a	--	Insurance Commissioner; underwriting standards filed by automobile liability and physical damage insurers
W. Va. Code § 33-12-25	--	Insurance Commissioner; information obtained in an investigation of termination for cause
W. Va. Code § 33-13C-7	--	Insurance Commissioner; information obtained during examination or investigation of licensed viatical settlement provider or broker
W. Va. Code § 33-17A-4a	--	Insurance Commissioner; underwriting standards filed by property insurers
W. Va. Code § 33-20F-4	--	Physicians' Mutual Insurance Company
W. Va. Code § 33-34-4	--	Insurance Commissioner; information relating to supervision of insurers generally exempt, with public interest exceptions

W. Va. Code § 33-40-8 -- Insurance; Risk-Based Capital reports and plans

FOIA exemptions (cont'd):

W. Va. Code § 33-41-7	--	Insurance Commissioner; insurance fraud investigations
W. Va. Code § 33-41-8	--	Insurance Fraud Unit
W. Va. Code § 33-46-5	--	Insurance Commissioner; records provided by third-party administrators or obtained during investigations
W. Va. Code § 33-46A-6	--	Insurance Commissioner; Professional Employer Organization service agreements
W. Va. Code § 36-8-25	--	Unclaimed Property; records of abandoned property
W. Va. Code § 44-16-5	--	Children With Autism Trust Board; information regarding the identity of a beneficiary, account owner or donor of a qualified trust for a child with autism
W. Va. Code § 48-23-801	--	Voluntary Adoption Registry information
W. Va. Code § 60-9-3	--	Tax Commissioner; imported cigarette tax reporting information

**THE WEST VIRGINIA
OPEN GOVERNMENTAL PROCEEDINGS ACT**



**STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON, WEST VIRGINIA 25305**

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**A SUMMARY OF THE LAW ON
OPEN GOVERNMENTAL PROCEEDINGS
(THE OPEN MEETINGS OR "SUNSHINE" ACT)**

INTENT:

The State statute on Open Governmental Proceedings, sometimes called the Open Meetings or "Sunshine" Act, was enacted to ensure that the proceedings of all public agencies are conducted in an open and public manner, so that the people may be informed about the actions of their governments and retain control over them.

SCOPE:

The Act applies to all State, county and municipal administrative or legislative units of government, including their departments, agencies, committees, boards and commissions. It does not apply to the courts. Meetings of the governing bodies of all public agencies must be open to the public, unless a specific statutory exception applies. Each governing body may adopt reasonable rules for attendance of the public at its meetings, but no one may be required to register to speak more than fifteen minutes before a scheduled meeting.

Every public agency is required to give advance notice to the public and news media of the date, time, place and agenda of all regular meetings and the date, time, place and purpose of all special meetings, except in the case of an emergency requiring immediate action. Public agencies must keep written minutes of all meetings, and must make them available to the public within a reasonable time after the meeting. These minutes must include all measures proposed and the results of all votes taken. Voting by secret or written ballot is prohibited.

Any radio or television station is entitled to broadcast all or any part of an open meeting. The public agency may reasonably control the placement and use of cameras and other equipment so as not to unduly interfere with the meeting.

EXCEPTIONS:

While the scope of the Act is expansive, it does provide specific exceptions for which a governing body of a public agency may hold an executive session, which is a meeting that is not open to the public. The exceptions are set forth in W. Va. Code § 6-9A-4 (1999), at pages 7 and 8 herein.

A governing body of a public agency may hold an executive session (closed meeting) during a regular, special or emergency meeting, only after the presiding officer publicly identifies the specific exception under the Act for having a closed meeting, and a majority of the members present votes to hold an executive session. No decisions can be made during an executive session, but minutes may be taken.

ENFORCEMENT:

Any citizen may bring a legal action in the circuit court of the county where the public agency regularly meets to enforce the provisions of the Act. The court may order the public agency to comply with the Act, and may enjoin or set aside any action taken or decision made in violation of the Act if a petition is filed within one hundred twenty (120) days after the action was taken or the decision was made. If a governing body of a public agency is found to be in violation of the Act, the public agency may be ordered to pay the complaining person's attorney fees and expenses incurred in successfully litigating the issue.

PENALTIES:

Any member of a public or governmental body who willfully and knowingly violates the Act is guilty of a misdemeanor, and upon conviction may be fined up to \$500.00. A second or subsequent conviction for violating the Act can result in a fine of between \$100.00 and \$1,000.00.

OPINIONS:

The Open Governmental Meetings Committee of the West Virginia Ethics Commission may give advisory opinions interpreting the Open Meetings Act to any governing body or member thereof who is subject to the Act. Such opinions are binding on the parties requesting them, and provide an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion, unless the Committee was willfully and intentionally misinformed as to the facts by the requesting party. The opinions also provide an absolute defense to others who rely upon them in taking actions under substantially the same circumstances.

PUBLIC NOTICE OF MEETINGS IN THE STATE REGISTER:

West Virginia Code § 6-9A-3 (1999) requires that each governing body of the State executive branch file a notice of any meeting with the Secretary of State for publication in the West Virginia Register.

Each notice shall state the time, place and purpose of the meeting, and must be filed in a manner to allow each notice to appear in the State Register at least five (5) days prior to the date of the meeting, except in cases of an emergency. (Generally the Register is published on Friday, making the fifth day fall on Wednesday.)

When an agency has not met the requirements of the Open Governmental Proceedings Act, asterisks appear beside the meeting notice for that agency in the Register, and a footnote at the bottom of the page indicates that the notice does not comply with the Act.

Pursuant to W. Va. Code § 29A-2-4 (1982), every paper filed in the State Register is a public record provable and admissible as evidence in a court of law. The Secretary of State's Office is required by W. Va. Code § 29A-2-7 (1997) to "offer to the public convenient and efficient access to copies of the state register or parts thereof desired by the citizens."

INFORMATION:

The Attorney General is required to compile a summary of the statutory and case law interpreting the Open Meetings Act for the purpose of informing all public officials of the requirements of the Act. This material will be provided to the Secretary of State, county clerks, municipal clerks and recorders for distribution to all elected and appointed officials within their jurisdictions.

STATUTE

OPEN GOVERNMENTAL PROCEEDINGS.

§ 6-9A-1. Declaration of legislative policy.

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decision-making through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decision-making and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decision-making. (1975, c. 177; 1999, c. 208.)

§ 6-9A-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public.

(3) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency

or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term "public agency" does not include courts created by article eight of the West Virginia constitution or the system of family law masters created by article four [§§ 48A-4-1 *et seq.*], chapter forty-eight-a of this code.

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio. (1975, c. 177; 1978, c. 85; 1993, c. 29; 1999, c. 208.)

§ 6-9A-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four [§ 6-9A-4] of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: *Provided*, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

In the event of an emergency requiring immediate official action, any governing body of the executive branch of the state may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section. (1975, c. 177; 1978, c. 85; 1987, c. 98; 1999, c. 208.)

§ 6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations

or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: *Provided*, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed. *Provided*, However, that information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one [§§ 29B-1-1 *et seq.*], chapter twenty-nine-b of this code. (1975, c. 177; 1978, c. 85; 1999, c. 208.)

§ 6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four [§ 6-9A-4] of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name. (1975, c. 177; 1978, c. 85; 1999, c. 208.)

§ 6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public agency regularly meets has jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation [of] this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: *Provided*, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least ten days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of article three [§§ 59-3-1 *et seq.*], chapter fifty-nine of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this act, it is a violation of this Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body. (1975, c. 177; 1978, c. 85; 1979, c. 85; 1993, c. 29; 1999, c. 208.)

§ 6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.

(a) Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars: *Provided*, That a person who is convicted of a second or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

(b) A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust.

(c) Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses. (1978, c. 85; 1999, c. 208.)

§ 6-9A-8. Acting by reference; written ballots.

(a) Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot. (1999, c. 208.)

§ 6-9A-9. Broadcasting or recording meetings.

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: *Provided*, That if the public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it. (1999, c. 208.)

§ 6-9A-10. Open governmental meetings committee.

The West Virginia ethics commission, pursuant to subsection (j), section one [§ 6B-2-1(j)], article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia ethics commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days. (1999, c. 208.)

§ 6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia Ethics Commission or request in writing an advisory opinion from the West Virginia Ethics Commission Committee on Open Governmental Meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion is binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) A governing body or member thereof that acts in good faith reliance on a written advisory opinion sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken based upon a written opinion of the West Virginia ethics commission committee, as long as underlying facts and circumstances surrounding the action were the same or substantially the same as those being addressed by the written opinion.

(d) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided in section four [§ 6-9A-4] of this article. (1999, c. 208; 2006 c. 98.)

§ 6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.

It is the duty of the attorney general to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the secretary of state, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the attorney general to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term. (1999, c. 208.)

INTERPRETATIONS OF THE ACT

When posed with an Open Governmental Proceedings Act (Open Meetings Act) question, three initial inquiries must be made to determine if a governmental proceeding is required to be open under the Act. These questions are:

1. Is the entity a governing body of a **public agency** as defined by the Open Meetings Act?
2. Is the governing body's gathering a **meeting** as defined by the Open Meetings Act?
3. Is there a specific **statutory exception** to the Open Meetings Act?

The answers to these questions may be found in the Act or in the statute of the public agency involved. If a meeting of the governing body of a public agency is involved, and it is not covered by a specific statutory exception to the provisions of the Open Meetings Act, then the meeting must be open to the public.

The following West Virginia Supreme Court of Appeals decisions and Attorney General's Opinions have defined more specifically the governmental proceedings which must be open to the public under the Open Meetings Act. Although an Opinion of the Attorney General does not have the force of law, it is the official opinion of the State's chief legal officer as to how the West Virginia Supreme Court would rule should the same issue be before the Court.

PUBLIC AGENCY:

The definition of a "public agency" [formerly "public *body*"] in the Open Meetings Act includes any administrative or legislative unit of the State or of any county, board of education or municipality. It does not include the judiciary. W. Va. Code § 6-9A-2(6) (1999). "Governing body" means two or more members of any public agency having authority to make decisions or recommendations on policy or administration. W. Va. Code § 6-9A-2(3) (1999).

The members of a **board of education** constitute a "governing body" subject to the Sunshine Law's requirements. *McComas v. Board of Education of Fayette County*, 197 W. Va. 188, 194, 475 S.E.2d 280, 286 (1996).

In *Appalachian Power Company v. Public Service Commission*, 162 W. Va. 839, 253 S.E.2d 377 (1979), the parties stipulated that the West Virginia **Public Service Commission** is a "public body" [now "public agency"] as defined by the Act, and that any two of the three commissioners constituted its "governing body." The Supreme Court of Appeals did not disagree.

The Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 *et seq.*, applies only to governmental entities and to persons holding public positions. It does not apply to meetings of **political party executive committees**. 58 Op. Att'y Gen. 28 (October 10, 1978).

A **county commission**, when acting as a **board of canvassers** for elections pursuant to W. Va. Code § 3-6-9, is both a "governing body" and a "public body" [now "public agency"] within the meaning of the Open Meetings Act. 59 Op. Att'y Gen. 34 (October 20, 1980).

The **West Virginia Human Rights Commission** is a "public body" [now "public agency"] within the meaning of the Open Meetings Act, and the nine members thereof constitute its "governing body" under the Act. Any five members of the Commission constitute a quorum for the transaction of business, and minutes of its meetings shall be kept by its secretary pursuant to W. Va. Code § 5-11-6. Op. Att'y Gen. (July 17, 1986).

Some statutes specifically apply the provisions of the Open Meetings Act to proceedings which otherwise might not be considered to fall within its coverage. For example, W. Va. Code § 18B-12-3(3) (1989) provides that meetings of the directors of nonstock, nonprofit higher education research corporations are subject to the provisions of W. Va. Code § 6-9A-3. In addition, W. Va. Code § 16-5G-3 (1999) requires that meetings of the governing bodies of all hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units be open to the public, in much the same manner as required of public agencies under the Open Meetings Act. A list of these statutes is attached as an Appendix for your reference.

MEETING:

A "meeting" is defined by the Act as "the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in official action." It does not include adjudicatory decision-making in quasi-judicial, administrative or court of claims proceedings; on-site inspections of a project or program; political party caucuses; discussions among members of a governing body on issues of public interest in a social, educational, training, informal, ceremonial or similar setting where there is no intention for the discussion to lead to official action; or discussions on logistical and procedural methods to schedule and regulate a meeting. W. Va. Code § 6-9A-2(4) (1999). Unless otherwise provided, a simple majority of the constituent membership of a governing body constitutes a quorum. W. Va. Code § 6-9A-2(7) (1999).

In *Appalachian Power Company v. Public Service Commission*, 162 W. Va. 839, 253 S.E.2d 377 (1979), the Supreme Court construed the definition of the term "meeting" in W. Va. Code § 6-9A-2(4) (1978) to mean "a convening of a governing body of a public body if the convening is for the purpose of making a decision or deliberating toward a

decision, and if some statute or rule **requires a quorum** as a prerequisite to convening." 162 W. Va. at 844, 253 S.E.2d at 381. The Court reasoned that the provisions of W. Va. Code § 6-9A-2(4), coupled with the requirement in W. Va. Code § 6-9A-5 (1978) that written minutes be prepared of all actions taken, clearly contemplates that a "meeting" under the Act must have sufficient members of the governing body present to be capable of transacting business.

The Court in *Appalachian Power Company* observed that although the Public Service Commission statutes provide for several types of hearings, there is no quorum requirement for hearings, nor are members of the Commission even required to attend or conduct hearings. The Court found that the term "meeting" was clearly not applicable to Commission hearings conducted by staff alone, and that the Open Meetings Act applies to **Public Service Commission hearings** only when two or more commissioners convene and conduct the hearing. Under the same analysis, the Court held that the Act does not apply to consultations of Public Service Commissioners with staff members, deliberations by commissioners, or the process of individual commissioners making a decision.

The Supreme Court in the *Appalachian Power Company* case also found that **adjudicatory sessions** of the Public Service Commission were excepted from the operation of the Open Meetings Act by the definition of "meeting" in W. Va. Code § 6-9A-2(4), which states that the term does not include "[a]ny meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding[.]" The Court determined that proceedings of the Public Service Commission are quasi-judicial in nature because they have many of the characteristics of a judicial proceeding, including notice, presentation of evidence, the making of a record, examination of witnesses under oath and the exercise of subpoena power, and that any final decision reached as a result of such proceedings is an adjudicatory decision. Therefore, the Court held that the Open Meetings Act does not apply to assemblages of the Public Service Commissioners held for the purposes of discussing their individual decisions, concurring and rendering a final decision or judgment.

In *McComas v. Board of Educ. of Fayette County*, 197 W. Va. 188, 475 S.E.2d 280 (1996), four members of the Fayette County Board of Education met privately on a Sunday afternoon at the Board's office with the Superintendent of Fayette County Schools and two associate superintendents to ask questions regarding the proposed closure of Gauley Bridge High School and Falls View Elementary School. The next day, at a public meeting, the Board of Education voted to close both schools following little discussion. Three taxpayers and residents of Fayette County brought suit to block this decision, and the Fayette County Circuit Court voided the vote taken at the public hearing in favor of the school closings and consolidation plan, holding that the Board of Education had violated the Sunshine Law. The West Virginia Supreme Court affirmed this decision, holding, in Syllabus Point 5 of *McComas*: "**A planned meeting among a quorum** of a school board to gather, review or discuss information relevant to an issue before the board must be public, and if it is not, its conduct violates the Open Governmental Proceedings Act, W. Va. Code, 6-9A-3."

The Court in *McComas* noted that the *Appalachian Power Company* case had held that "meetings" under the Open Meetings Act will involve the transaction of business, which includes **deliberating toward a decision** on any matter. The Court held that the Legislature therefore intended the Act to apply to "those assemblies where discussions leading up to a decision take place," and "also encompasses at least some meetings between board members and staff." 197 W. Va. at 195, 475 S.E.2d at 287. Individual meetings or even social gatherings can result in a violation of the Act, depending on their content and the intentions of the parties. See 197 W. Va. at 199, 475 S.E.2d at 291.

However, not every gathering between or among members of a governing body of a public agency will constitute a "meeting" in violation of the Open Meetings Law. The Supreme Court in Syllabus Point 4 of *McComas* also held: "In drawing the line between those conversations outside the requirements of the Open Governmental Proceedings Act, W. Va. Code, 6-9A-1, *et seq.*, and those meetings that are within it, a common sense approach is required; one that focuses on the question of whether allowing a governing body to exclude the public from a particular meeting would undermine the Act's fundamental purposes." In answering this question, the criteria to be considered include:

- The content of the discussion;
- The number of members of the public body participating;
- The percentage of the public body that those in attendance represent;
- The significance of the identity of the absent members;
- The intentions of the members;
- The nature and degree of planning involved;
- The duration of the meeting and of the substantive discussion;
- The setting; and
- The possible effects on decision-making of holding the meeting in private.

The above list of criteria is not exhaustive, and courts will carefully examine the facts of each case in determining whether the public has been improperly excluded from the decision-making process. The Supreme Court in *McComas* adopted an expansive interpretation of the Act to achieve its goals, and cautioned against attempts to avoid its requirements by the use of evasive techniques and devices. See 197 W. Va. at 197-98, 475 S.E.2d at 289-90. In so doing, the Court rejected the contention that a gathering must have the formal trappings of a regular meeting (such as formal procedures and the keeping of minutes) for it to be a "meeting" within the law. 197 W. Va. at 198, 475 S.E.2d at 290.

The clear import of the *McComas* decision is that whenever a majority of the members of a public body gather to discuss any matter that they know they will be voting on later, the meeting must be open to the public.

The 1999 amendments to the Open Meetings Act provided an exception from the holding of *McComas* for **unintentional violations** which may occur in social, educational or informal settings. See W. Va. Code § 6-9A-2(4)(D) (1999) (excluding from the definition of "meeting" in the Act "[g]eneral discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business . . ."). In *Foundation for Independent Living v. Cabell-Huntington Board of Health*, 214 W. Va. 818, 591 S.E.2d 744 (2003), the Supreme Court held that an **educational meeting** between the board of health and two members of the Tobacco Prevention Program to discuss a proposed indoor smoking regulation, which did not involve deliberation toward a decision or a vote, was not a "meeting" as defined by the Act, and therefore no violation had occurred.

However, West Virginia Code § 6-9A-6 (1999) also provides that "it is a violation of this Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action." Clearly, a public agency may not intentionally use this exception to circumvent the requirements of the Act.

In *Common Cause of West Virginia v. Tomblin*, 186 W. Va. 537, 413 S.E.2d 358 (1991), a complaint before the West Virginia Supreme Court of Appeals alleged that the **Conferees Committee on the Budget** caused a "Budget Digest" to be prepared and distributed pursuant to W. Va. Code § 4-1-18 (1969), which differed significantly from the actual budget bill as passed by the Legislature. The petitioners also asserted that no formal meeting was held by members of the Committee and that if such a meeting was held, it did not meet the requirements of the Open Meetings Act, W. Va. Code §§ 6-9A-1 *et seq.* Although it did not address the applicability of the Open Meetings Act, the Supreme Court held that in order to comply with W. Va. Code § 4-1-18, the final **legislative Budget Digest** must be approved by a majority vote of a quorum of the entire Budget Conferees Committee, at a regular meeting scheduled in the normal course of business and open to the public.

When a **county commission**, sitting as a **board of canvassers** for elections pursuant to W. Va. Code § 3-6-9, convenes for the purpose of conducting a canvass or recount, the Open Meetings Act applies, and the meeting must be open. Further, W. Va. Code § 3-6-9 requires the board of canvassers to keep a complete record of its proceedings, and all orders made must be entered upon the record. As to any questions of law or fact which may be "quasi-judicial" in nature, a board of canvassers may privately consult with its legal advisers, and may privately deliberate and discuss prospective **"adjudicatory" decisions** on such questions. However, such decisions must be

announced and entered while the board is convened in open session. 59 Op. Att'y Gen. 34 (October 20, 1980).

Decisions or orders reached as a result of adjudicatory assemblages of the **West Virginia Human Rights Commission** pursuant to the West Virginia Human Rights Act, W. Va. Code §§ 5-11-1 *et seq.*, should be entered on the record of a convened open meeting and recorded as minutes in the manner set forth in W. Va. Code § 6-9A-5, thereafter subject to public review and inspection. The Human Rights Commission may privately confer with its legal advisors and Commission staff members and may privately deliberate and discuss among its members prospective **adjudicatory action** on any question of law or fact which may be quasi-judicial in nature, as these deliberations do not fall within the ambit of the Open Meetings Act. The Commission is under no duty to record said discussions; however, any such recordation characterized as minutes or otherwise, would constitute nonpublic information. The Human Rights Commission may privately convene, provided there is a quorum of five members, in **adjudicatory assemblages** for the purpose of discussing their individual decisions and rendering a final decision. These assemblages are also exempt from the Open Meetings Act, W. Va. Code §§ 6-9A-1 *et seq.* Op. Att'y Gen. (July 17, 1986).

EXCEPTIONS:

Even if a meeting of the governing body of a public agency is involved, the meeting may be closed to the public under limited circumstances pursuant to W. Va. Code § 6-9A-4 (1999). Generally speaking, the exceptions for employment matters, personal or medical information, licensing or disciplinary proceedings require an open meeting if the person being discussed requests one. The remaining exceptions deal with public safety and security, law enforcement, financial transactions, prizes or awards, and matters which are confidential by law or rule of court.

The West Virginia Supreme Court of Appeals has yet to address any of the exceptions to the Open Meetings Act for which an executive session may be held, as set forth in W. Va. Code § 6-9A-4. However, the Court did hold, in *State ex rel. Marshall County Commission v. Carter*, 225 W. Va. 68, 689 S.E.2d 796 (2010), that the audio recording of an executive session held under the exception for personnel matters was not privileged from discovery in an employment discrimination case:

The provision of the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 to 6-9A-12, that recognizes a specific and limited right of governing bodies to meet in an executive session which is closed to the public is not intended to prevent the legitimate discovery in a civil action of matters discussed in an executive session which are not otherwise privileged.

Syl. pt. 4, *State ex rel. Marshall County Commission v. Carter*, *supra*.

Other statutes may also provide a specific exception from the Act for certain proceedings of otherwise "public" bodies. A list of these statutes is attached as an Appendix for your reference. If no specific statutory exception applies, the meeting should be open to the public.

NOTICE:

A **county board of education** may adopt bylaws fixing the time and place of regular meetings of the board [consistent with the provisions of W. Va. Code § 18-5-4 (2001)]. In the absence of other authority, all regular meetings of a county board of education should be held at the office of the board provided by W. Va. Code § 18-4-7. 49 Op. Att'y Gen. 363 (April 5, 1962) (opinion rendered prior to enactment of the Open Governmental Proceedings Act).

The adoption of rules requiring the posting of the time, place and, under some circumstances, the purpose of **county commission** meetings at the courthouse door a reasonable time prior to the meeting will satisfy W. Va. Code §§ 6-9A-1 *et seq.* 57 Op. Att'y Gen. 238 (June 23, 1978).

A **State agency** would be in compliance with the Open Meetings Act, W. Va. Code § 6-9A-3, by promulgating and filing with the Secretary of State's Office a rule requiring the agency to file with the Secretary of State (1) a schedule of the times and places of regular meetings, and (2) notice of the time, place and purpose of each special meeting called by the agency. Such a procedural rule must be promulgated in compliance with the provisions of the State Administrative Procedures Act, W. Va. Code Chapter 29A, and filed in the State Register. Although no specific amount of **advance notice** is required by W. Va. Code § 6-9A-3, such notice should be given as soon as practicable in each case. No advance notice is required in the event of an emergency requiring immediate official action. An agency is free to furnish other kinds of notice in addition to that provided to the Secretary of State. 58 Op. Att'y Gen. 32 (November 20, 1978).

SPECIAL MEETINGS:

A **county board of education** may hold a special meeting at a school building or other place not in the vicinity of the board office, when special circumstances indicate the advisability of same. The time, place and purpose of such meeting should be set forth in the call to board members, and no business other than that included in the call should be transacted at such special meeting. [See W. Va. Code § 18-5-4 (2001).] If a board of education considers it to be in the public interest to hold a meeting at some place in the county other than at the board office, any action taken at such a meeting should be ratified at the next board meeting held at the established office of the board. 49 Op. Att'y Gen. 363 (April 5, 1962) (opinion rendered prior to enactment of the Open Governmental Proceedings Act).

ENFORCEMENT:

West Virginia Code § 6-9A-6 (1999) provides that any **civil action** seeking to enjoin or annul a decision made in violation of the Act must be commenced within 120 days “after the action complained of was taken or the decision complained of was made.” In *Boggess v. Housing Authority of the City of Charleston*, 273 F. Supp. 2d 729 (S. D. W. Va. 2003), the federal district court granted summary judgment for the defendants on a count alleging violations of the Open Governmental Proceedings Act, because the plaintiff did not file her complaint within 120 days after the actions complained of, and it was thus barred by the **statute of limitations**.

Proof of an intent to violate the Open Meetings Act is not required to establish that the Act was violated. There is **no blanket "good faith" defense** for failing to comply with the statute. *McComas v. Board of Education of Fayette County*, 197 W. Va. 188, 196, 475 S.E.2d 280, 288 (1996). The seriousness of the violation, the intent of the parties involved, and the possible effects are the most important considerations in fashioning an appropriate remedy, which may include setting aside any decision made in violation of the Act. However, a court may uphold a decision if later action by the public body corrects the prior violation.

Although a finding of an intentional violation was required in order to award attorney fees and expenses under W. Va. Code § 6-9A-6 (1993) to persons who sued to enforce the Act, that is no longer required under the 1999 amendments. Under the new Act, the **prevailing party may be awarded fees and expenses** "unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust." W. Va. Code § 6-9A-7(b) (1999). Similarly, a person who brings a frivolous complaint under the Act in bad faith with the intent to harass or delay, may be ordered to pay the governing body's attorney fees and expenses.

Non-compliance with the requirements of the Act may also give rise to **criminal penalties**. Among its defenses to a suit seeking to enforce an alleged settlement of a grievance case, a board of education claimed that settlement negotiations with the plaintiff, based upon an offer approved during an executive session of the board, were not binding because the proposed settlement was not included in the agenda for that meeting. Finding no true “meeting of the minds” with respect to the terms of the settlement, the Supreme Court declined to enforce the putative agreement. However, the Court cautioned the board regarding the agenda requirements found in W. Va. Code § 6-9A-3 (1999) and the criminal penalties prescribed by W. Va. Code § 6-9A-7(a) (1999) for open meetings violations. *Sprout v. Board of Education of the County of Harrison*, 215 W. Va. 341, 599 S.E.2d 764 (2004).

The Supreme Court in *Peters v. County Commission of Wood County*, 205 W. Va. 481, 519 S.E.2d 179 (1999), also observed that the Open Governmental Proceedings Act provides both civil and criminal remedies for its violation.

The adoption of a rule for the posting of notices of **county commission** meetings is mandated by the Open Meetings Act (W. Va. Code § 6-9A-3), and, as such, is not subject to attack under the provisions of W. Va. Code § 6-9A-6 (1978). 57 Op. Att'y Gen. 238 (June 23, 1978).

In *Wetzel County Solid Waste Authority v. West Virginia Division of Natural Resources*, 184 W. Va. 482, 401 S.E.2d 227 (1990), the West Virginia Supreme Court of Appeals recognized that a settlement agreement entered into by a public body during an executive session, in violation of W. Va. Code §§ 6-9A-1 *et seq.*, had been held to be void *ab initio* by a circuit court. Noting that the effect of the lower court's order was to enjoin and annul any subsequent actions pursuant to W. Va. Code § 6-9A-6 (1990), the Supreme Court held that the DNR could not rely on the settlement agreement for regulatory purposes.

ATTORNEY-CLIENT CONSULTATIONS:

Although not specifically excepted from the Open Meetings Act, the West Virginia Supreme Court of Appeals has held that privileged communications between a public agency and its attorney are exempted from the open meetings requirement of the Act. In *Peters v. County Commission of Wood County*, 205 W. Va. 481, 519 S.E.2d 179 (1999), the Court said such meetings may be closed to the public only when a majority of the members present of the governing body vote to go into executive session, and the notice and written minutes requirements of the Act are followed. However, a public agency may not close an otherwise open meeting merely because its attorney is present.

Discussions regarding pending litigation without an attorney present do not appear to be proper subjects of closed executive sessions pursuant to the Act. *State ex rel. Affiliated Construction Trades Foundation v. Vieweg*, 205 W. Va. 687, 701 n. 7, 520 S.E.2d 854, 868 n. 7 (1999). Additionally, in *McComas v. Board of Education of Fayette County*, 197 W. Va. 188, 199-200, 475 S.E.2d 280, 291-92 (1996), the Court noted cases from other jurisdictions holding that otherwise privileged conversations between board members and their attorney may violate the Open Meetings law if any decisions or deliberations take place.

FEDERAL LAW:

The federal equivalent of the State Open Meetings Act is the 1976 "Government in the Sunshine Act," codified as 5 U.S.C. § 552b, which applies to federal executive branch agencies. Subsection (b) of the federal act provides that "every portion of every meeting of an agency shall be open to public observation" unless a specific statutory exception applies. The act further prescribes public announcement of all meetings, and requires a certification by the agency's attorney that a specific exemption applies before a meeting may be closed. The West Virginia Supreme Court of Appeals has not yet compared the provisions of the federal act to those of the State Open Meetings Act.

RESOURCES

If you would like additional information about the materials in this booklet, or if you have questions concerning the Act, please feel free to call or write our Office at:

Office of the Attorney General
State Capitol, Room 26-E
1900 Kanawha Boulevard, East
Charleston, WV 25305-0220

Phone (304) 558-2021, Fax (304) 558-0140

This handbook is also online: <http://wvago.gov/pdf/OpenMeetingsHandbook2006.pdf>

Questions about notices by State executive branch agencies under the Open Meetings Act should be directed to:

Administrative Law Division
Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0771

Phone (304) 558-6000, Fax (304) 558-0900

Executive branch agency meeting notices may also be filed online:
<http://www.sos.wv.gov/administrative-law/Pages/online-meeting-notices.aspx.aspx>

Requests for advisory opinions should be made to:

West Virginia Ethics Commission
Committee on Open Governmental Meetings
210 Brooks Street
Suite 300, Lee Building
Charleston, WV 25301

Phone (304) 558-0664, Fax (304) 558-2169
Toll-free (866) 558-0664
ethics@wv.gov

For a summary of the open meetings law see:
<http://www.ethics.wv.gov/openmeetings/Pages/default.aspx>

Ethics Commission opinions on the Open Governmental Proceedings Act may be found at: <http://www.ethics.wv.gov/advisoryopinion/Pages/OpenMeetingsOpinions.aspx>

APPENDIX

Matters or agencies to which the Open Meetings Act applies, by statute:

- | | | |
|--------------------------------|----|--|
| W. Va. Code § 3-10-3a(h) | -- | Judicial Vacancy Advisory Commission |
| W. Va. Code § 4-13-4(b) | -- | West Virginia Sesquicentennial of the American Civil War Commission |
| W. Va. Code § 5B-2C-2(g) | -- | West Virginia Academy of Science and Technology Council |
| W. Va. Code § 5-22A-4(c) | -- | Design-Build Board |
| W. Va. Code § 5A-11-2(f) | -- | Public Land Corporation |
| W. Va. Code § 8-23-3a(2) | -- | Joint and cooperative undertakings by certain hospitals involving public funds |
| W. Va. Code § 16-5Q-2(a) | -- | Catastrophic Illness Commission |
| W. Va. Code § 16-13A-4(e) | -- | Public Service Districts for Water, Sewerage and Gas Services |
| W. Va. Code § 16-29H-5(d) | -- | Health Enhancement and Lifestyle Planning Advisory Council |
| W. Va. Code § 18B-12-3(3) | -- | Higher Education Research Corporations |
| W. Va. Code § 19-2F-6(c) | -- | West Virginia Beef Industry Council |
| W. Va. Code § 20-1-17(b) | -- | Natural Resources Commission |
| W. Va. Code § 22-11-7b(b) | -- | Meetings between DEP and any interested party to make decisions regarding rules governing water quality standards or variances |
| W. Va. Code § 22C-3-22 | -- | Solid Waste Management Board |
| W. Va. Code § 22C-4-7(d) | -- | County and Regional Solid Waste Authorities |
| W. Va. Code § 28-7-1 | -- | Interstate Commission for Adult Offender Supervision (with certain exceptions) |
| W. Va. Code § 29-1-3(b)(3) | -- | Commission on the Arts |
| W. Va. Code § 29-1-5 | -- | Archives and History Commission |
| W. Va. Code § 29-1H-1 | -- | Appalachian States Low-Level Radioactive Waste Commission (with certain exceptions) |
| W. Va. Code § 29-21-15(b) | -- | Public Defender Corporations |
| W. Va. Code § 29-27-4(b) | -- | National Coal Heritage Area Authority |
| W. Va. Code § 29A-1-4(a) | -- | Administrative Proceedings Act; meetings convened to deliberate or make a decision as to the form and substance of a rule |
| W. Va. Code § 30-7-18(c) | -- | Registered Professional Nurses; Nursing Shortage Study Commission |
| W. Va. Code § 30-30-3(e)(7) | -- | Board of Social Work Examiners |
| W. Va. Code § 48-17-101 & -107 | -- | West Virginia Support Enforcement Commission |
| W. Va. Code § 49-8A-1 | -- | Interstate Commission for Juveniles (with certain exceptions) |
| W. Va. Code § 49-9-15(d) | -- | Missing Children Information Act; Clearinghouse Advisory Council |

Statutory exemptions from the provisions of the Act:

- W. Va. Code § 3-1A-5(e) -- State Election Commission meetings regarding public campaign financing for individual Supreme Court candidates
- W. Va. Code § 3-12-10(i) -- State Election Commission meetings regarding eligibility for public campaign funds
- W. Va. Code § 5-20-5 -- Governor's Commission on Willow Island; executive sessions authorized
- W. Va. Code § 18-2E-5(m)(1) -- Discussion by State Board of Education of schools to be subject to on-site reviews by Office of Education Performance Audits
- W. Va. Code § 9-5-15 -- Medicaid program; discussions of trade secrets, drug rebate amounts and manufacturer's pricing
- W. Va. Code § 11-10A-10(g) -- Office of Tax Appeals; hearings
- W. Va. Code § 12-7-11 -- Jobs Investment Trust Fund; trade secrets, commercial, financial or personal information
- W. Va. Code § 15-5-4(d) -- West Virginia Disaster Recovery Board; meetings held by telephone conference upon occurrence of a disaster requiring immediate action
- W. Va. Code § 18B-12A-4(e) -- Higher Education; Centers for Economic Development and Technology Advancement
- W. Va. Code § 23-1-1b(E) -- Workers' Compensation; fraud and abuse unit
- W. Va. Code § 23-2C-3(e) -- Employers' Mutual Insurance Company
- W. Va. Code § 24-1-7 -- Public Service Commission; deliberations
- W. Va. Code § 29-12-5 -- Board of Risk and Insurance Management; financial or personal information of an insured
- W. Va. Code § 29-12B-5(a) -- Medical Malpractice Advisory Panel; financial or personal information of an insured
- W. Va. Code § 29A-1-4(b) & (c) -- Administrative Procedures Act; discussions of proposed rules when neither a quorum nor the convening of governing members is required
- W. Va. Code § 31-15-22 -- West Virginia Economic Development Authority; trade secrets, commercial or financial information
- W. Va. Code § 31-18-27 -- West Virginia Housing Development Fund; trade secrets, commercial, financial or personal information
- W. Va. Code § 31-18D-10 -- West Virginia Affordable Housing Trust Fund; personal or financial information
- W. Va. Code § 32-4-407(b)(5) -- West Virginia Securities Commission; civil and criminal investigations
- W. Va. Code § 33-41-8(c)(10) -- Insurance Fraud Unit
- W. Va. Code § 33-20F-4(d) -- Physicians' Mutual Insurance Company

Appendix 4

The Ethics Act



The Ethics Act

A Code of Conduct for Public Servants

West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301
(304)558-0664 Fax (304)558-2169
Toll Free (866)558-0664
Email: ethics@wv.gov Website: www.ethics.wv.gov

What is the Ethics Act?

The West Virginia Governmental Ethics Act (W. Va. Code §§ 6B-1-1 through 6B-3-11) is a code of conduct to guide public officials and public employees in avoiding conflicts between their personal interests and their public responsibilities.

Who is covered by the Act?

The code of conduct established by the Act applies to all full-time and part-time public servants (public employees, elected and appointed public officials) who serve in the legislative, judicial and executive branches of state, county and municipal governments and their respective boards, commissions and agencies.

What is the Ethics Commission?

The West Virginia Ethics Commission was created to administer the Ethics Act. It is comprised of nine part-time citizen members appointed by the Governor and approved by the West Virginia Senate. The Commission is supported by a staff of five full-time and two part-time employees.

What does the Commission do?

The Ethics Commission is responsible for enforcing the Ethics Act and advising public servants regarding the Act.

Many questions from the public can be addressed by staff over the phone. Please call (304)558-0664 or contact staff by email at ethics@wv.gov.

Some questions require consideration by the full Commission at its regular monthly meeting through the issuance of a written Advisory Opinion.

The Commission's Committee on Open Governmental Meetings answers questions from governing bodies and their members, and provides Advisory Opinions on the meaning and application of the Open Meetings Act.

The Committee on Standards of Conduct for Administrative Law Judges answers questions from ALJs and provides Advisory Opinions to them which interpret the Code of Conduct for State Administrative Law Judges. It also rules on complaints filed against ALJs.

The Ethics Commission is also responsible for the registration and reporting of lobbyists and for the processing of Financial Disclosure Statements.

Minimal Ethical Standards* Established by the Act

**Agencies may impose stricter rules of conduct than those set forth in the Ethics Act.*

Private Gain

The basic principle underlying the code of conduct created by the Ethics Act is that those in public service must use their positions for the benefit of the public and not for their own private gain or for the private gain of another.

For example:

- Public servants may not use their agency's supplies or equipment for personal projects or activities.
- Public employees and full-time appointed officials may not work on personal projects or activities during work hours for which they are paid by their government employer.
- Public servants may not use subordinates to work on personal projects or activities during work hours or compel them to do so on their own time.

Nepotism

The Ethics Act prohibits "nepotism," which is favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides. "Public official" and "public employee" include all elected and appointed public officials and public employees, whether full- or part-time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

"Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner. To the extent possible, a public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides. If he or she is one of several people with the authority to make these decisions, others with authority shall make the decisions.

A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline or related matters. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

If a public official or public employee must participate in decisions affecting the employment, working conditions or supervision of the public official or public employee's relative or a person with whom the public official or public employee resides, then:

- An independent third party shall be involved in the process. A public official or public employee may not use a subordinate for the independent third party unless it is an elected public official who may not lawfully delegate the powers of his or her office, *e.g.*, county assessor or county clerk, and
- The public official or employee shall exercise his or her best objective judgment in making the decision, and be prepared to justify his or her decision.

Gifts

The Ethics Act provides that public officials and public employees may not solicit a gift unless the solicitation is for a charitable purpose, and the charitable purpose must be one from which they and their immediate family members derive no direct personal benefit. (However, see the exceptions set forth below.)

Public officials and employees may not directly solicit a subordinate for any gift even if the gift is for a charitable purpose. The Ethics Act's prohibition against solicitation of gifts does not apply to solicitation of political contributions.

The Ethics Act prohibits public officials and public employees from accepting gifts from lobbyists, or any person whom the official or employee knows or has reason to know is doing or seeking to do business of

any kind with his or her agency; is engaged in activities which are regulated or controlled by his or her agency; or has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

Notwithstanding the general prohibitions set forth in the prior two sections against public officials and employees accepting gifts, the Ethics Act provides that the following types of gifts **may** be accepted by public employees or public officials from lobbyists or others:

- (A) Meals and beverages of any dollar value may be accepted if the person purchasing the meal is present. Otherwise, public officials and employees may accept meals and beverages totaling \$25;
- (B) Ceremonial gifts or awards which have insignificant monetary value;
- (C) Unsolicited gifts of nominal value or trivial items of informational value are permissible if the value of any one item, or a combination of items from the same source, given to a public official or employee does not total more than \$25 in one calendar year;
- (D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement. A public official or employee **may not** accept expenses for amenities at the event such as free golf or spa treatments unless they are part of the room package for all guests staying at the hotel. Reasonable expenses for food, travel and lodging for one guest to attend may be accepted;
- (E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office and the tickets are given by the sponsor of the event. Free tickets to sporting events may only be accepted if the ticket is \$25 or less and the ticket is given by a sponsor of the event. If the price of entrance is greater than \$25, an official may accept the ticket only if it is incidental to the conduct of official or ceremonial duties;
- (F) Gifts that are purely private and personal in nature, or
- (G) Gifts from relatives by blood or marriage or a member of the same household.

Selling to Subordinates

Although they may choose to buy from a supervisor, a public servant may not personally solicit (in person, by phone or by personal letter) private business from subordinates who the public servant directs, supervises or controls. Solicitations directed to the public at large for sale of property which the public servant is not regularly engaged in selling are permitted.

Voting*

A public official may not vote on a matter in which she, or an immediate family member, has a financial interest or matters involving a business with which she or an immediate family member is associated.

Legislative voting is governed by a separate provision in the Act which permits voting by Legislators after a ruling from the presiding officer in their chamber regarding a potential conflict is obtained.

See **Voting Provisions of the WV Ethics Act Guideline for detailed information.*

Private Interests in Public Contracts, Purchases & Sales

A public servant may not have a financial interest in any contract, purchase or sale over which her public position gives her control. The public servant's spouse, dependent parents or dependent children also may not have such an interest unless the total value of the contracts, purchases or sales is less than \$1,000 in a calendar year. The Commission has authority to grant an agency a hardship exemption from this provision.

This provision applies only to:

- (1) those contracts which one's job gives him authority to award or control, and
- (2) those purchases and sales he is authorized to make or direct others to make.

Part-time appointed officials (except those covered by W. Va. Code § 61-10-15) are not subject to this prohibition provided they recuse themselves from considering and acting on such matters consistent with the provision regarding voting.

Use of Name or Likeness Using Public Funds

This section of the Act is commonly referred to as the "trinkets statute" and provides that public officials, their agents, or anyone on the public payroll may not place the official's name or likeness on trinkets and other places paid for with public funds in violation of the section's limitations and prohibitions. This section is set forth in W. Va. Code § 6B-2B-1 through -6.

This section of the Act provides limitations and prohibitions on the use of public officials' names or likenesses on "trinkets," advertising, vehicles, table skirts, banners, educational materials, websites and social media if these items are paid for with public funds.

The statute does not prohibit a public official's name and likeness on any official record, official report, letterhead, or document, certificate or instructional material issued in the course of his/her duties as a public official. Other official documents, such as fax cover sheets, press release headers, office signs and envelopes may include the public official's name, but not his or her likeness.

Licensing & Rate-Making

A public servant may not take official action on a license or rate-making matter affecting an entity in which she, or the members of her immediate family, own or control an interest of 10% or greater. In addition, unless he files a prior written public disclosure with his agency, a public servant may not take official action on a license or rate-making matter affecting a person to whom the entity in which he has an interest has sold goods or services totaling more than \$1,000 during the preceding year.

Changing Jobs

Full-time public servants may not: (1) seek employment with, (2) be employed by or (3) seek to purchase from, or sell or lease real or personal property to, any person or business:

(a) that has a matter before the agency on which they are taking, or a subordinate is known to be taking, regulatory action, or

(b) that had, within the preceding 12 months, a matter on which they took, or a subordinate is known to have taken, regulatory action.

The Ethics Commission has authority to grant an exemption from this prohibition.

Conflicts of Interest: Employment

Full-time public servants may not take personal regulatory action on matters affecting a person:

- (a) by whom they are secondarily employed, or
- (b) with whom they are seeking employment or have an agreement concerning future employment.

Dual Compensation

No public servant may receive compensation from two sources in state, county or municipal government for working the same hours except under certain limited circumstances. Persons who are allowed to make up time missed with a governmental employer to perform the duties of another governmental position are required to maintain specific time records. Their employers are required to submit these records to the Ethics Commission on a quarterly basis.

Private Pay Prohibited

Full-time public servants may not accept private pay for providing information or services which are within the scope of their public duties. They cannot sell, even on their own time, services which their public position requires them to provide.

Limitations During and After Governmental Service

Confidential Information: Public servants may not, during or after governmental service, knowingly and improperly disclose confidential information acquired through their public positions or use it to further the personal interests of themselves or of another person.

Prohibited Representation: The Ethics Act requires a public servant to obtain her agency's consent before she represents a client in a matter in which she is or was substantially involved on behalf of the agency. This applies both during and after the person's governmental service.

The prohibition applies only to those matters in which the public servant was personally involved in a decision-making, advisory or staff support capacity. It does not apply to legislators or legislative staff.

Limitation on Practice: Certain public servants are prohibited from representing persons before the agency which they serve during their employment or service and for one year after the termination of their employment or service. This is referred to as the "revolving door prohibition."

This prohibition applies only to elected and appointed public officials and full-time staff attorneys and accountants in agencies authorized to hear contested cases or make regulations.

This prohibition applies to representation in contested cases, regulation filings, license or permit applications, rate-making proceedings and in efforts to influence the expenditure of public funds. It does not apply to legislators or legislative staff.

The Ethics Commission has authority to grant an exemption from this prohibition.

Lobbying: The following public officers or employees may not, during or for one year after the termination of their public employment or service, be allowed to register as lobbyists:

- (1) Members of the Legislature;

(2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia (Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General);

(3) Will and pleasure professional employees of the Legislature under the direct supervision of a member of the Legislature;

(4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;

(5) Members of the Supreme Court of Appeals;

(6) Secretaries of the Departments of Administration, Education and the Arts, Environmental Protection, Health and Human Resources, Military Affairs and Public Safety, Revenue, Transportation, Commerce and Veterans' Assistance; and

(7) Heads of any state departments or agencies.

For County Public Servants Only

Certain county personnel are also subject to W. Va. Code § 61-10-15, which is a criminal statute containing a similar, but more comprehensive, prohibition regarding contracts. The Ethics Commission is responsible for advising public servants about this statute but has no role in its enforcement.

W. Va. Code § 61-10-15 applies to:

(1) elected county officials (including sheriffs, county commissioners and school board members),

(2) appointed county officials (those who serve on county boards, commissions, authorities and agencies), and

(3) public school superintendents, principals and teachers.

It does not apply to other county workers.

W.Va. Code §61-10-15 prohibits these county employees and officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them "voice, influence or control." The prohibition extends to their spouses, those whom they support, and businesses in which they have an ownership interest or by which they are employed.

The Ethics Commission has authority to grant exemptions to a county agency based upon documented hardship.

W.Va. Code §61-10-15 imposes strict limitations on nepotism in employment. County officials may not hire their spouses or dependent family members.

There are certain very specific exceptions to this statute. Contact the Ethics Commission with questions.

Complaints

The Ethics Commission and its Probable Cause Review Board investigate and resolve violations of the Ethics Act. Any citizen who is aware of a violation of the Act may file a written complaint with the Commission. In addition, the Commission itself may initiate a complaint if it receives credible evidence of a material violation of the Act.

Complaints are first reviewed by the three-member Probable Cause Review Board to determine whether the allegations in the complaint would constitute a violation of the Ethics Act. The Review Board dismisses complaints which allege trivial or inconsequential violations without an investigation.

If a complaint is investigated, at the conclusion of the investigation the Review Board may either dismiss the complaint or issue an order finding that there is probable cause to believe that the person against whom the complaint was filed violated the Ethics Act. The matter will then proceed to a public hearing or be resolved through a settlement, or "conciliation," agreement.

Persons found guilty of a material violation of the Act may be publicly reprimanded and fined up to \$5,000 per violation. The Commission also may order restitution, reimbursement to the Ethics Commission for its costs, or recommend that the person be terminated from employment or removed from office.

It is a violation of the Act to give false and misleading information to the Commission or to procure or induce another to provide false information to the Commission. If the Commission finds by clear and convincing evidence that a complaint was made in bad faith it may issue sanctions against the person who filed the complaint.

West Virginia Ethics Commission
210 Brooks Street, Suite 300
Charleston, WV 25301
(304)558-0664 Fax (304)558-2169
Toll Free (866)558-0664
Email: ethics@wv.gov Website: www.ethics.wv.gov

Revised July 7, 2017

Appendix 5

WV Association of Conservation Districts Constitution & Bylaws

West Virginia Association of Conservation Districts, Inc.

CONSTITUTION & BY-LAWS



Revised and Approved

July 17, 2025

Previous revisions approved July 12, 2010, October 20, 2020

Latest revisions approved on July 17, 2025

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West Virginia Association of Conservation Districts, Inc.
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CONSTITUTION & BY-LAWS

West Virginia Association of Conservation Districts, Inc.

ARTICLE I: NAME & INCORPORATION

SECTION 1. Name

The name of this Association shall be the West Virginia Association of Conservation Districts, Inc. The official abbreviation of the name shall be WVACD.

SECTION 2. Incorporation

This Association was incorporated under the laws of the State of West Virginia as a non-profit, nonstock association with no power to issue capital stock or pay dividends at Sutton in Braxton County on October 17, 1963. The incorporates are Burl Allen-Northern Panhandle CD, Edward Bumgarner-Western CD, Luther S. Britton-Monongahela CD, Silas Compton-Potomac Valley CD, Doyle Hale-Little Kanawha CD, Clarence W. Jackson-Monongahela CD, Clyde E. Kerens-Tygart Valley CD, Leonard Marcum-Guyan CD, E. P. Saville-Potomac Valley CD, Dewey F. Sharpe- Greenbrier Valley CD. Elk CD provided the initial office facilities.

ARTICLE II: PURPOSE

The purpose of this Association shall be to provide a forum for the common consideration of the mutual conservation interests of the various Conservation Districts, Watershed Improvement Districts, and the Conservation Partnership members.

This Association is dedicated to the advancement and understanding of the educational, scientific, charitable, and moral aspects of conservation interests.

The Association is committed to the principles of conservation planning embodied in the Conservation District strategic plans. The Association pledges to be a partner to other governmental, public and private entities engaged in the conservation and enhancement of natural resources and improvement of the general welfare and safety of the citizens of the State of West Virginia.

The Association recognizes the history and origin of the conservation movement in these United States as well as West Virginia's individual role in that history. The significance of agriculture in our daily lives and its unique responsibility to the environment is also recognized. Therefore, the Association dedicates itself to the successful continuation and accomplishment of the conservation, natural resources, and environmental goals of our historical beginnings.

ARTICLE III: MEMBERS

SECTION 1. Classes

A. Regular membership shall consist of conservation districts and defined as the following:

A conservation district as defined in West Virginia Code §19-21A-3(5). The following fall under each conservation district membership:

- a Appointed as supervisors by the State Conservation Committee.
- b Elected as supervisors in accordance with legislative rules Title 63, Series I of the State Conservation Committee.
- c Designated as associate supervisors by a local Conservation District Board of Supervisors. Associate supervisors shall not have the right to make motions, vote, or hold office within the Association.

B. The non-voting associate membership shall consist of the following:

Partners, entities, or individuals that apply for such membership and make the required financial contribution to the Association. The categories of associate membership and the required financial contribution for each category shall be determined by the Executive Committee and ratified by the Board of Directors. Associate members shall be eligible to attend meetings, receive publications, and other benefits of membership as directed by the Board of Directors.

C. Lifetime Honorary Membership:

Individuals or entities that are granted lifetime honorary membership by the Board of Directors of this Association. Honorary members will not pay dues or have any voting privileges.

SECTION 2. Eligibility/Qualifications

Any adult resident of the United States of America shall be eligible for membership provided that they are included in Article III, Section I.

Voting membership is comprised of the following:

- a. Each district after Primary Elections and before the third quarterly meeting will select two (2) supervisors as their directors to the WVACD for a two (2) year term and provide the names to the Secretary of the WVACD prior to the quarterly meeting. District directors will be seated as the first order of business at the third quarterly meeting.
- b. Elected or appointed supervisors must have executed an oath of office and filed the original copy with the county clerk of the county in which elected and will provide

copies to their district board and State Conservation Committee/Conservation Agency.

- c. The selected Directors will represent all Supervisors within their respective Conservation District.

SECTION 3. Dues

- a. The Board of Directors shall set the amount of annual dues for each membership category.
- b. Dues shall be paid to the Treasurer of the Association on an annual basis no later than September 1st of each fiscal year.
- c. Failure to pay dues shall suspend the privileges of membership while a sum is owed.

SECTION 4. Privileges of Membership

- a. The privileges of membership for each appointed or elected Conservation District Director to this Association are:
- b. Making motions, voting, election or appointment to office, officially representing the Association, reimbursement for approved Association expenses, signing petitions, and such other rights normally conveyed with membership.

The privileges of membership for all associate members are:: attending meetings, participation in discussions concerning association issues, providing recommendations or guidance to the Board of Directors, and those specifically granted by the Board of Directors excluding making motions, voting, and election or appointment to office.

ARTICLE IV: OFFICERS

The officers of the Association shall be: a President, First Vice-President, Second Vice-President, Secretary, and Treasurer.

SECTION 1. Duties

Officers shall perform those duties:

- a. Prescribed by these Bylaws
- b. Assigned by the Board of Directors
- c. Customary to the office as described in the parliamentary authority of the Association
- d. More specific the duties are as follows:

Duties of the President:

1. Preside at all meetings of the Executive Committee and the Board of Directors
2. Represent the Association at all times unless another representative is designated by the President

3. Have authority with the Secretary and the Treasurer to sign and execute all contracts, checks, notes or other obligations in the name of and on behalf of the Association except in cases where the signing and execution thereof shall be expressly otherwise delegated by the Board of Directors or Bylaws. Shall also have the authority to authorize signature abilities to sub-committees of this Organization. This authorization will be updated with each new term and also state that no commitments of WVACD can be made.
4. Be the principal executive officer of the Association
5. Represent WVACD at State Conservation Committee meetings

Duties of the First Vice President:

1. The First Vice President shall preside at any meeting at which the President is not present or when requested by the President to preside.
2. Shall perform such other duties as may be assigned by the Executive Committee and/or the Board of Directors
3. Shall prepare an agenda and make arrangements for Quarterly Meetings
4. Shall prepare meeting programs and obtain guest speakers at Quarterly Meetings
5. Sign Association checks as needed
6. Serve as Chair of District Operations Committee
7. Send notices of all Board of Directors meetings to all members

Duties of the Second Vice President:

1. The Second Vice President shall serve in the absence of the First Vice President.
2. Shall perform such other duties as may be assigned by the Executive Committee and/or the Board of Directors
3. Assist First Vice President in his or her duties as directed by the Executive Committee.
4. Serve as member of WV Envirothon Committee
5. Represent WVACD on WV Agriculture & Forestry Hall of Fame Committee
6. Serve on WVACD History Committee

Duties of the Secretary:

1. Be responsible for having the minutes at all meetings recorded
2. Have a copy of the minutes to each member of the Board of Directors before the next regularly scheduled meeting of the Board
3. Be responsible for a permanent file of all minutes, important correspondence and other records of the Association
4. Be responsible for preparing written minutes for presentation at the quarterly meetings.

5. Keep a listing of all directors, committees and members
6. Notify WVACD scholarship winners
7. Send out district dues notices

Duties of the Treasurer:

1. Be responsible for all invoices, receipts and disbursements of the Association
2. Be responsible for maintaining checking accounts of Association funds
3. Be responsible for quarterly financial statements indicating the Association receipts and disbursements
4. Perform such other duties as may be required by the Executive Committee and/or the Board of Directors.
5. Be responsible for preparing audit documents necessary for an annual internal cash flow audit, and for a 3-year external audit of WVACD. (President will designate 3 members from different conservation districts for an internal audit.) Any audit findings will be subject to an interview with the treasurer, bookkeeper, and those who performed the internal audit.

SECTION 2. Term of Office

- a. Officers shall be elected to a two - (2) year term.
- b. The terms of office shall be from August 1 through July 31.
- c. No member shall be elected to serve connective terms in the office of president and all officers shall remain in office until a successor takes office. Outgoing officers must comply with Article VII Section 4 of the By-Laws.

SECTION 3. Nomination & Election

In the year in which Primary Election is held, the president shall appoint a nominating committee of three (3) to five (5) members at the second calendar quarterly meeting. The committee shall select from the seated directors a slate of names for each office and present them at the third calendar quarterly meeting of the Board of Directors/business meeting.

- a. Officers shall be elected at the third calendar quarterly meeting.
- b. No director shall hold more than one elected office at a time.
- c. Members elected to the offices of President, First Vice-President, Second Vice-President, Secretary, and the Treasurer shall each be from separately created conservation districts.
- d. Nominations from the floor are permitted.
- e. Officers shall be selected from the Board of Directors

SECTION 4. Removal

- a. The President, First Vice-President, Second Vice-President, Secretary, or Treasurer may be removed from office or censured by a 3/4 vote of the Board of Directors for malfeasance, misfeasance, personal misconduct, or personal immorality.
- b. Directors may be removed from office or censured by action of the Board of Supervisors from the district they represent or by 2/3 vote of the Association Board of Directors for malfeasance, misfeasance, personal misconduct, or personal immorality
- c. Members, other than officers and directors, may be removed from membership or censured by 2/3 vote of the Board of Directors for personal misconduct or personal immorality adversely affecting the Association.
- d. The respective member and/or conservation district will be notified in writing by the WVACD Secretary of any removal.

SECTION 5. Vacancy

- a. The President, First Vice-President, Second Vice-President, Secretary and the Treasurer shall submit their voluntary resignation in writing to the Board of Directors. Involuntary separation from a office will be approved by a 2/3 vote of the Board of Directors.
- b. The First Vice-President shall immediately fill a vacancy in the Presidency.
- c. The Board of Directors shall have the authority to appoint a director to the vacancy in the offices of First Vice-President, Second Vice-President, Secretary, or Treasurer.
- d. The Board of Directors shall fill officer vacancies at the next quarterly meeting.

ARTICLE V: MEETINGS

SECTION 1. Board of Directors Meeting

- a. The Board of Directors shall meet at least once each calendar quarter and otherwise, as they deem necessary.
- b. Only seated Directors or designated alternates with written authorization may vote.
- c. All members of the Association and invited guests may attend.

SECTION 2. Executive Committee Meeting

- a. The Executive Committee shall meet as deemed necessary to conduct the day-to-day business of the Association.
- b. All Directors of the Association and invited guests may attend.

SECTION 3. Standing Committees

- a. Each standing committee shall meet at least once each calendar quarter and otherwise, as deemed necessary.

- b. Each committee shall present official minutes to the Secretary and provide other reports as required to the President.

SECTION 4. Quorum

- a. Board of Directors and Committee Meetings: A quorum is a majority of the members with privileges of membership unless otherwise specified in these Bylaws.

SECTION 5. Voting

A majority vote of those with privileges of membership (Article III, Section 4) shall decide all questions unless otherwise specified in these ByLaws.

SECTION 6. Special Association Meeting

- a. A special meeting may be called by (1) the President, (2) the Executive Committee, (3) at the written request of at least nine members of the Board of Directors. The directors written request shall state the purpose for the meeting and be delivered by certified mail to the Secretary of the Association.
- b. The President, or designated person, shall send a written notice stating the purpose of the meeting and specifying the location, date, and time of the special meeting by the most expedient means possible.
- c. The special meeting must be held within 30 days of notification to the Secretary.
- d. The President's notice must provide at least 15 days advance notification.

SECTION 7. Teleconferencing and other electronic meetings

Meetings of the Board of Directors and Executive committee may be held by electronic means. Voting may be conducted by electronic means as designated by the Board of Directors. Voting may be conducted by electronic means for executive committee meetings.

SECTION 8. Minutes

Official minutes shall be prepared for the following meetings:, Board of Directors, Executive Committee, standing committees and special committees, excluding any executive session of these meetings.

ARTICLE VI: BOARD of DIRECTORS

SECTION 1. Membership

- a. The Board of Directors shall consist of two supervisors designated by each District Board of Supervisors as representing that district as an incumbent director.
- b. Written designation as an incumbent director shall be delivered to the Secretary of the Association in the form of district approved minutes of the meeting when selected.
- c. Directors shall be appointed or elected supervisors.

- d. Directors are responsible for attending meetings or designating a proxy, and for performing duties commensurate with the position of director.

SECTION 2. Authority

- a. To set Association policy and have general supervision of the business of the Association.
- b. To set the location and date of the Board of Directors meetings.
- c. To conduct other business as required to carry out Article II of the Bylaws and the will of the membership.
- d. To grant Honorary memberships, without dues, by simple majority vote of directors present, to individuals who have rendered continuing distinguished service to the Association or who have notable careers in conservation matters worthy of special recognition.
- e. To employ an Administrative Assistant and other employees or contractors under the Association.

SECTION 3. Alternate Directors

- a. A District chairperson may designate alternate directors to the WVACD Board of Directors.
- b. Alternate directors may serve only during the absence of an incumbent director.

SECTION 4. Vacancies

- a. Directors shall submit their resignation in writing to the Secretary of the Association.
- b. Conservation District Boards of Supervisors are requested to fill vacancies of their Association Directors within 60 days.

SECTION 5. Board of Directors Advisory Associates

With the concurrence of the Board of Directors, the following are ex-officio, non-voting, advisors to the Board of Directors:

- a. Farm Service Agency - Executive Director
- b. NACD officer or board member
- c. Natural Resources Conservation Service - State Conservationist
- d. State Conservation Committee Members
- e. WV Conservation Agency - Executive Director
- f. WV Division of Forestry
- g. WVU Extension Service
- h. West Virginia Department of Agriculture

ARTICLE VII: COMMITTEES

SECTION 1. Executive Committee Membership

The membership of the executive committee shall consist of the following:

- a. President, First Vice-President, Second Vice-President, Secretary, and Treasurer
- b. Immediate Past President
- c. WVACD representative to NACD
- d. Chairpersons of the following committees:
 1. Conservation Education
 2. District Operations
 3. Legislative
 4. Natural Resources
 5. Water Resources
 6. Special Committee

SECTION 2. Executive Committee Authority

- a. To provide day-to-day supervision of the business of the Association between Board of Directors meetings.
- b. To set the location and date of executive committee and special committee meetings.
- c. To conduct other business of the Association as required to carry out Article III of the bylaws, policies of the Board of Directors and the will of the membership.

SECTION 3. Standing Committees

- a. Association standing committees are:
 1. Conservation Education Committee
 2. District Operations Committee
 3. Legislative Committee
 - a. Legislative Committee shall consist of one representative from each Conservation District, as well as past WVACD presidents. Immediate past president shall serve as Chairman. District representatives need not be directors.
 4. Natural Resources Committee
 5. Water Resources Committee
- b. The President shall appoint members with privileges of membership to standing committees.

SECTION 4. Transition Committee

A transition committee (team) is established to provide for the transfer of leadership from incumbent officers to the officers elect of the Association.

- a. Members are the executive committee and officers elect, excluding other directors.
- b. The term of activity is from the election date of new officers to the start of the term for the newly elected officers.

SECTION 5. Special Committees

The President may establish special committees and appoint Association members thereto.

SECTION 6. Ex-officio membership

The President, First Vice-President, Second Vice-President, Secretary and Treasurer are ex-officio, non-voting, advisory members of all Association committees except the Nominating committee, Transition committee and standing committee of which they are a member where they may vote.

SECTION 7. Committee Chairpersons, Vice-Chairpersons & Resignations

- a. Chairperson and vice chairperson are selected by the committee membership.
- b. Chairperson District Operation Committee shall be the Association First Vice-President
- c. Chairperson Legislative Committee shall be the Immediate Past President.
- d. Committee Chairpersons shall submit their resignation to the President of the Association.
- e. Committee members shall submit their resignation to their committee chairperson.

SECTION 8. Standing Committee Advisory Associates

With the approval of the President, personnel designated in writing to the WVACD by the following executives are non-voting, advisors to assigned committees.

- a. Chairperson - State Conservation Committee
- b. Executive Director - Farm Service Agency
- c. Executive Director - West Virginia Conservation Agency
- d. State Conservationist — Natural Resources Conservation Service

SECTION 9. Past Presidents

All Association past presidents who are currently appointed or elected supervisors are members of the Legislative Committee.

ARTICLE VIII: PARLIAMENTARY AUTHORITY

SECTION 1. Rules of Order

The rules contained in the current edition of Robert's Rules of Order shall govern the business of the Association where they are not inconsistent with these Bylaws and any special rules adopted by the Association.

SECTION 2. Revised Rules of Order

As other revised additions of Robert's Rules of Order are published, the Board of Directors shall review them before they are adopted at any Board of Directors meeting as the parliamentary authority of the Association.

ARTICLE IX: AMENDMENT

SECTION 1. Notice

A notice of amendment describing the proposed revision and specifying the location, date and time of the meeting shall be provided by the President 30 days in advance of the meeting to the chairperson of each conservation district and each member by the most expedient method available.

SECTION 2. Amendment Meeting

The meeting shall be held at a location where the entire membership can be accommodated with lodging, food and meeting arrangements.

SECTION 3. Vote

The Association Bylaws may be amended by a majority vote of the membership present at any quarterly business meeting or at a special meeting of the Association called for that purpose.

ARTICLE X: CORPORATE ACTIVITIES

SECTION 1. Authorized Activities

The Corporation (Association) shall carry out activities consistent with Article II except those prohibited to:

- a. A Corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
- b. A Corporation, whose contributions are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

ARTICLE XI: DISTRIBUTION OF ASSETS

SECTION 1. Earnings

No part of the net earnings of the Corporation shall be distributable to members, Directors, or Officers, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered in carrying out the purposes in Article II.

SECTION 2. Assets

- a. Upon the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall dispose of all assets of the Corporation in accordance with the intent of Article II.
- b. In this matter, consideration should be given to disposal of assets to organizations qualifying under Section 501 (c) (3) of the Internal Revenue Code.
- c. An appropriate court of the county in which the principal office of the Corporation is located shall dispose of any assets not disposed of by the Board of Directors.
- d. The court should consider organizations that are operated exclusively for purposes similar to Article II of these bylaws.

ARTICLE XII: AFFILIATED ORGANIZATIONS

An auxiliary organization known as the West Virginia Association of Conservation Districts Auxiliary is authorized to promote the interests of the Association in accordance with Article II. The official abbreviation of the name shall be WVACDA.

ARTICLE XIII: NACD REPRESENTATION

SECTION 1. Affiliation

The Association may join and participate in the offices, boards, committees and activities of the National Association of Conservation Districts (NACD) unless the Board of Directors of the Association determines that certain purposes, policies, or activities of the NACD are not compatible with the philosophy and purpose of this Association.

SECTION 2. State Association Representative

The Board of Directors of the WVACD shall select a representative to serve as the voting representative on the NACD Board of Directors.

SECTION 3. Alternate State Association Representative

The President shall serve as the alternate representative to the NACD unless otherwise provided by the Board of Directors. In the event the President cannot attend, the executive committee may appoint the First Vice-President or a replacement that is an appointed or elected Supervisor in good standing of the Association.

ARTICLE XIV: INDEMNIFICATION

SECTION 1. Coverage

The Board of Directors may provide for indemnification by the Association of any and all of its Directors, Executive Committee Members, or Officers or persons formerly holding any of these positions. Indemnification shall be against any expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they are made party or parties, by reason of such office.

SECTION 2. Exemption

Indemnification shall not include any Director, Executive Committee Member or Officer adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty and to any matters settled by agreement predicated on the existence of such liability.

ARTICLE XV: BONDING

SECTION 1. Fidelity Bonds

The Treasurer and all other Officers, agents and employees of the Association who handle funds of the Association shall execute fidelity bonds in favor of the Association in such amounts as the Board of Directors specifies. Each fidelity bond shall be executed by the Treasurer, Officer, agent or employee as principal and by a surety approved by the Executive Committee.

SECTION 2. Premium

The Association shall pay all premiums for fidelity bonds required, and the premiums shall be considered an Association expense.

ARTICLE XVI: SPECIAL APPOINTEES

The President may appoint a Chaplain, Congressional Liaison, Historian, Legislative Liaison, Parliamentarian and Sergeant at Arms.

SECTION 1. Chaplain

The President may appoint a chaplain from the membership; however, if the chaplain is not an appointed or elected supervisor, the approval of the Board of Directors is required. The chaplain serves the Association in such manner as it may require.

SECTION 2 Congressional Liaisons

The President may appoint congressional liaisons from the membership. Duties of liaisons shall be to carry out the instructions of the President to represent the WVACD to the Senate and House of Representatives of these United States.

SECTION 3. Historian (curator)

The President may appoint a historian from the membership; however, if the historian is not an appointed or elected supervisor, the approval of the Board of Directors is required. The historian/curator serves the Association in such manner as it may require.

SECTION 4. Legislative Liaison

The President may appoint legislative liaisons from the membership. Duties of liaisons shall be to carry out the instructions of the President to represent the WVACD to the Senate and House of Congress and the State of West Virginia.

SECTION 5. Parliamentarian

The President may appoint a parliamentarian; however, if the parliamentarian is not an appointed or elected supervisor, the approval of the Board of Directors is required. The duty of the parliamentarian is to function as an advisor to the President, Directors, and Committee Chairpersons in matters of parliamentary procedure. The parliamentarian shall not vote on any question in which the parliamentarian rendered a dutiful opinion unless the vote is by ballot.

SECTION 6. Sergeant at Arms

The president may appoint a Sergeant-at-Arms; however, if the Sergeant-at-Arms is not an appointed or elected supervisor, the approval of the Board of Directors is required.

- a. The Sergeant-at-Arms at the request of the President shall remove or cause to be removed any nonmember who is creating a nuisance or adversely affecting proceedings.
- b. The Sergeant-at-rms shall at the request of the President or upon majority vote of the Directors remove or cause to be removed any supervisor who is creating a nuisance or adversely affecting proceedings.
- c. In exercising such authority to remove a person from the assembly, the Sergeant-at Arms shall use only such force as necessary to escort the offender from the assembly and prevent reentry to that meeting unless re-entry is approved.
- d. The Sergeant-at-Arms is responsible for physical arrangements, security issues, ushers and may serve as doorkeeper.

Article XVII: Definitions

Adult: an individual who has reached eighteen (18) years of age

Associate Supervisor: An adult who has been appointed by their local conservation district board of supervisors. An associate supervisor has no privileges to hold office, vote, or make motions.

Conservation District: As defined in West Virginia Code §19-21A-3 (5) “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.

Fiscal Year or Year: The fiscal year of the Association shall be July 1 – June 30 unless otherwise altered by vote of the Board of Directors.

Supervisor: As defined in West Virginia Code §19-21A-3 (14) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

Attest

X

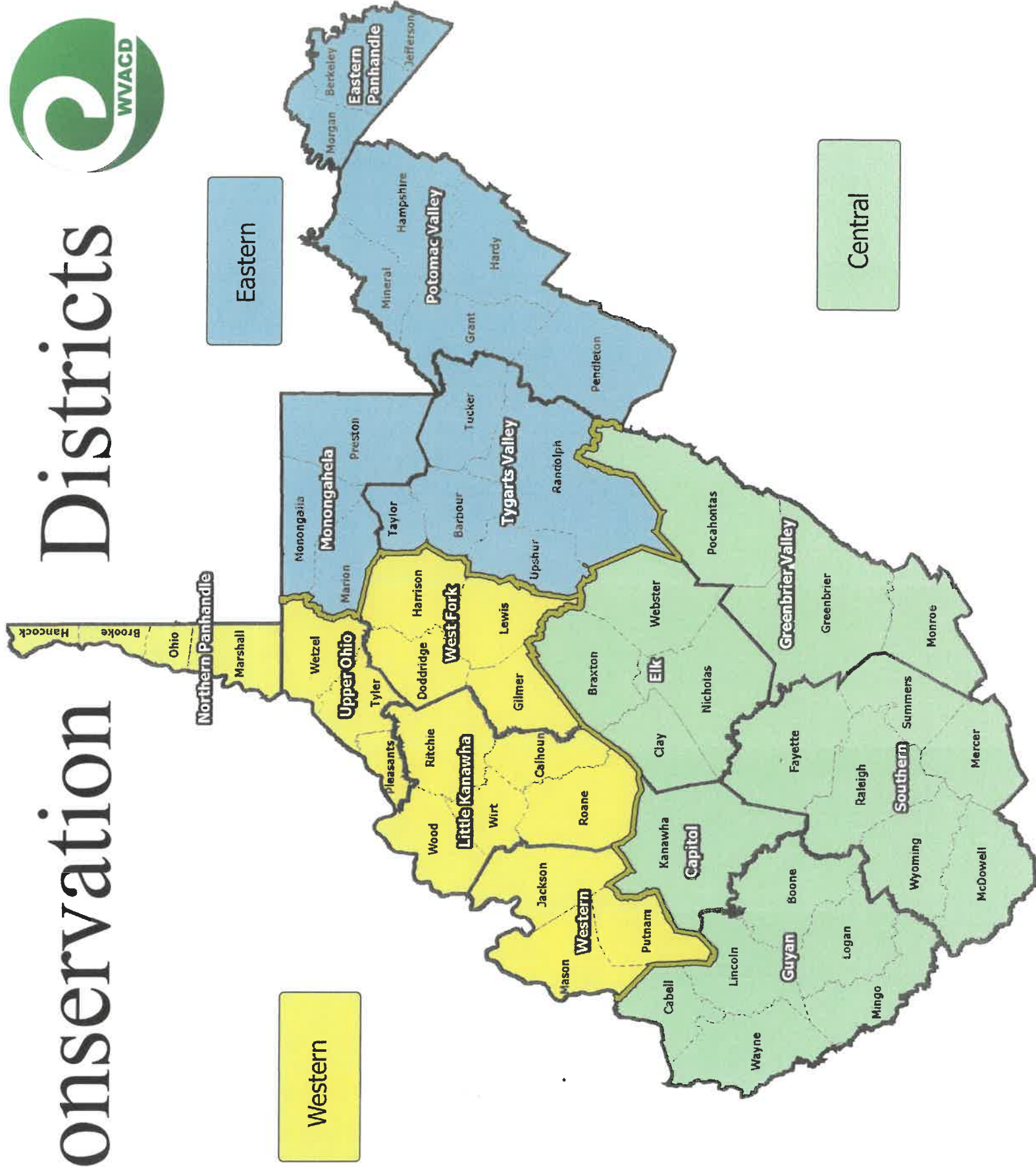
Secretary of the Association

Appendix 6

WV Association of Conservation Districts Area Map

Conservation

Districts



Eastern

Central

Western

Appendix 7

Supervisor Statement of Qualifications and Oath of Office

**West Virginia State Conservation Committee
Vacancy Appointment for Conservation Supervisor
Statement of Qualifications**

NAME: _____

MAILING ADDRESS: _____

TELEPHONE: _____ CELLPHONE: _____

EMAIL ADDRESS: _____

CONSERVATION DISTRICT: _____ COUNTY: _____

QUALIFICATIONS FOR COUNTY SUPERVISOR PURSUANT TO WEST VIRGINIA CODE §§ 19-21A-6 et seq. and 19-21A -7 et seq. and WEST VIRGINIA CODE R. § 63-1-2 et seq.:

1. Must be a landowner within the county where he or she is running for office.
2. Must reside in the county where he or she is running for office.
3. Must be an active or retired farmer with a minimum of five years farming experience.
4. "Farmer" means a person engaged in the activity of farming with the potential for producing at least one thousand dollars of products per annum from those activities.
5. "Activity of farming" means the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, agriculture, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by other than the producer thereof.
6. Must have at least (5) years of land management experience, or experience in other related fields.
7. Must have a strong working interest in the conservation of natural resources.
8. Must have knowledge of conservation best management practices either from practical experience or education experience. For example: confined feeding areas; filter strips; alternative watering systems.

By attesting below I am certifying that I possess the qualifications to fill the vacancy for _____ Conservation District Supervisor.

Name (Signature) _____ Date _____

**STATE CONSERVATION COMMITTEE OF
WEST VIRGINIA**

OATH OF OFFICE

I, _____, do solemnly swear (or affirm)
that I will support the Constitution of the United States and the Constitution of the
State of West Virginia, and I will faithfully discharge the duties of Supervisor of
the _____ Conservation District,
upon which I am now about to enter.

Conservation District Supervisor Signature

Given under my hand this _____ day of _____ 2024

My commission expires _____

Notary Public Signature



West Virginia

Conservation Agency

1900 KANAWHA BLVD EAST
CHARLESTON, WV 25305-0193
PHONE: 304.558.2204