DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2010 session. The unannotated South Carolina Code, consisting only of Code text and numbering, may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at LPITS@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 9.

 SOIL AND WATER CONSERVATION DISTRICTS LAW

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 48‑9‑10.** Short title.

This chapter may be known and cited as the “Soil and Water Conservation Districts Law.”

**SECTION 48‑9‑15.** Definitions.

As used in this chapter:

(1) “Department” means the Department of Natural Resources.

(2) “Division” means Land Resources and Conservation Districts Division of the Department of Natural Resources.

(3) “Director” means the administrative head of the department appointed by the board.

**SECTION 48‑9‑20.** Legislative declaration of purpose.

It is declared, as a matter of legislative determination:

(1) All lands of the State are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; improper land‑use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of lands of this State by wind and water; the breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; the topsoil is being washed and blown from the land; there has been an accelerated washing of sloping lands; these processes of erosion by wind and water speed up with the removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erodible subsoil; failure of any landowner or occupier to conserve the soil and control erosion upon his lands causes a washing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) The consequences of such soil erosion in the form of soil‑washing and soil‑blowing are the silting and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the loss of fertile soil and material in dust storms; the piling up of soil on the lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease and death; impoverishment of families attempting to farm eroding and eroded lands and damage to roads, highways, railways, farm buildings and other property from floods and from severe dust storms; and losses in navigation, hydroelectric power, municipal water supply, drainage developments, farming and grazing; and

(3) To conserve soil and water resources and control or prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, development, utilization, and disposal of water, it is necessary that land‑use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil‑conserving and land‑use practices and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water be adopted and carried out; among the procedures necessary for widespread adoption are the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage and drainage control structures, irrigation, seeding and planting of waste, sloping, abandoned or eroded lands in water conserving and erosion preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes and other thick growing, soil‑holding crops; the addition of soil amendments, manurial materials and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil protecting crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erodible areas and areas now badly gullied or otherwise eroded.

And it is further declared to be the policy of the General Assembly to provide for the conservation of the soil and water resources of this State and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, promote recreational development, provide water storage for beneficial purposes, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State.

**SECTION 48‑9‑30.** Definitions.

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

(1) “District” or “soil and water conservation district” means a governmental subdivision of this State, a public body corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions herein set forth;

(2) “Commissioner” means one of the members of the governing body of a district elected or appointed in accordance with the provisions of this chapter;

(3) [Deleted]

(4) “Petition” means a petition filed under the provisions of Section 48‑9‑510 for the creation of a district;

(5) “Nominating petition” means a petition filed under the provisions of Section 48‑9‑1220 to nominate candidates for the office of commissioner of a soil and water conservation district;

(6) “State” means the State of South Carolina;

(7) “Agency of this State” includes the government of this State and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this State;

(8) “United States” or “agencies of the United States” includes the United States of America, the soil and water conservation service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) “Government” or “governmental” includes the government of this State, the government of the United States and any subdivision, agency or instrumentality, corporate or otherwise, or either of them;

(10) “Landowner” or “owner of land” includes any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter;

(11) “Land occupier” or “occupier of land” includes any person, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this chapter, whether as lessee, renter, tenant or otherwise;

(12) “Qualified elector” includes any person qualified to vote in elections by the people under the Constitution of this State; and

(13) “Due notice” means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, when possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

**SECTION 48‑9‑40.** Department of Natural Resources; change of name

The name of the State Land Resources Conservation Commission is hereby changed to the Department of Natural Resources.

**SECTION 48‑9‑45.** Land Resources and Conservation Districts Division accountable to director of department.

The Land Resources and Conservation Districts Division, shall be directly accountable to and subject to the director of the department.

**SECTION 48‑9‑50.** Agencies operating public lands shall cooperate and observe regulations.

Agencies of this State which shall have jurisdiction over or be charged with the administration of any State‑owned lands and agencies of any county or other governmental subdivision of the State which shall 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 under this chapter, shall cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. The commissioners of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land‑use regulations adopted pursuant to Article 13 of this chapter shall be in all respects observed by the agencies administering such publicly owned lands.

**SECTION 48‑9‑60.** Adjournment of hearings.

At any hearing pursuant to due notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

ARTICLE 3.

 STATE LAND RESOURCES CONSERVATION COMMISSION

**SECTION 48‑9‑220.** Geographic areas for selection of members of Commission.

For the purpose of selecting the five soil and water conservation district commissioners to serve as members of the State Land Resources Conservation Commission, the State is divided into five areas, to wit:

(1) Area 1, the counties of Abbeville, Anderson, Cherokee, Greenville, Laurens, Oconee, Pickens, Spartanburg and Union;

(2) Area 2, the counties of Aiken, Calhoun, Edgefield, Greenwood, Lexington, McCormick, Newberry, Richland and Saluda;

(3) Area 3, the counties of Chester, Chesterfield, Darlington, Fairfield, Kershaw, Lancaster, Lee, Marlboro and York;

(4) Area 4, the counties of Berkeley, Clarendon, Dillon, Florence, Georgetown, Horry, Marion, Sumter and Williamsburg; and

(5) Area 5, the counties of Allendale, Bamberg, Barnwell, Beaufort, Charleston, Colleton, Dorchester, Hampton, Jasper and Orangeburg.

**SECTION 48‑9‑230.** Advisors to the division.

The following shall serve ex officio in an advisory capacity to the Land Resources and Conservation Districts Division of the Department of Natural Resources: The Director of the State Agricultural Extension Service, the Director of the South Carolina Agricultural Experiment Station, the president of Clemson University, the State Forester, the State Supervisor of the State Department of Vocational Agriculture, the Secretary of Commerce, the Commissioner of Agriculture and, with the concurrence of the Secretary of the United States Department of Agriculture, the State Conservationist of the Soil and Water Conservation Service, the chairman of the Purchasing and Marketing Administration State Committee and the Director of the Farmers’ Home Administration.

**SECTION 48‑9‑260.** Employees; legal services.

The Department of Natural Resources may employ an administrative officer and such technical experts and other agents and employees, permanent and temporary, as it may require and shall determine their qualifications, duties and compensation. The department may call upon the Attorney General for such legal services as it may require or may employ its own counsel and legal staff.

**SECTION 48‑9‑270.** Seal; hearings; rules and regulations.

The Department of Natural Resources shall adopt a seal which shall be judicially noticed and may perform such acts, hold such public hearings and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

**SECTION 48‑9‑280.** Bonds; records; audit.

The Department of Natural Resources shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all its proceedings and activities and of all resolutions, regulations and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements.

**SECTION 48‑9‑290.** General duties and powers.

In addition to the duties and powers otherwise conferred upon the Department of Natural Resources, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the commissioners of soil and water conservation districts, organized as provided in this chapter, in the carrying out of any of their powers and programs;

(2) To keep the commissioners of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized under this chapter and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil and water conservation districts organized under this chapter so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies and of agencies and counties of this State, in the work of such districts;

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder and to encourage the information of such districts in areas where their organization is desirable;

(6) To receive gifts, appropriations, materials, equipment, lands and facilities and to manage, operate and disburse them for the benefit of the soil and water conservation districts;

(7) To coordinate the development of comprehensive conservation plans for environmental improvement on all lands owned or controlled by the State;

(8) To coordinate the development of a statewide landscape inventory and formulate guidelines for assisting local conservation districts, municipalities, counties, and other groups in implementing landscape and beautification programs;

(9) To coordinate the development of a comprehensive plan for implementation of the standard soil survey information and to prepare guidelines for local conservation districts, counties, municipalities and other agencies of State and local government in the use of soil survey data for land use planning, development and conservation;

(10) To coordinate the development of a statewide flood plain lands area inventory and to formulate guidelines for the conservation, protection and use of flood plain lands, excluding tidelands and marshlands;

(11) To coordinate and assist local conservation districts, counties, and municipalities in developing policies and procedures for an adequate erosion and sediment control program; and engage in an educational informational program to acquaint municipalities, conservation districts, counties, and developers with sedimentation control management measures applicable to their activities, and familiarize these people with the program of the district;

(12) To coordinate the development of a statewide irrigable land inventory and to formulate guidelines for the conservation, protection and use of such lands;

(13) To coordinate the development of a statewide inventory of the availability of rural lands for recreational uses, and to formulate guidelines for the conservation, protection and use of such lands; and

(14) To coordinate the development of conservation guidelines for incorporation into local and statewide land use plans.

**SECTION 48‑9‑300.** Delegation of powers and duties; cooperation with other agencies.

The department may delegate to one or more agents or employees such powers and duties as it may deem proper and it may furnish information as well as call upon any or all State or local agencies for cooperation in carrying out the provisions of this chapter.

**SECTION 48‑9‑310.** Estimates of financial needs.

On or before the first day of November, annually, the department shall transmit to the Governor, on official blanks to be furnished by him, an estimate, in itemized form, showing the amount of expenditure requirements for the ensuing fiscal year. The estimates submitted shall state, in addition to the requirements of existing law, the following information:

(1) The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing fiscal year;

(2) A statement of the balance of funds, if any, available to the department and to the districts; and

(3) The estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing fiscal year.

The department may require the commissioners of the respective soil and water conservation districts to submit to it such statements, estimates, budgets and other information as it may deem necessary for the purposes of this section.

**SECTION 48‑9‑320.** Allocation of State appropriations.

Unless otherwise provided by law all moneys which may from time to time be appropriated out of the State Treasury for the use of soil and water conservation districts shall be available to pay the administrative and other expenses of such districts and shall be allocated by the department among the districts already organized and to be organized during the fiscal year for which such appropriation is made. Such allocation shall be fair, reasonable and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done and the special importance of instituting erosion control and soil and water conservation operations immediately. In making allocations of such moneys, the department shall reserve an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized within the current fiscal year after the initial allocations are made. All appropriations made for the purpose of this chapter shall be disbursed by the State Treasurer on warrants approved and signed by the department.

ARTICLE 5.

 CREATION OF SOIL AND WATER CONSERVATION DISTRICTS

**SECTION 48‑9‑510.** Petition for creation of a district.

Any twenty‑five owners of land lying within the limits of territory proposed to be organized into a soil and water conservation district may file a petition with the department asking that a soil and water conservation district be organized to function in the territory described in the petition.

**SECTION 48‑9‑520.** Content of petition.

Any such petition shall set forth:

(1) The proposed name of the district;

(2) That there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which shall not be required to be given by metes and bounds or by legal subdivisions but shall be deemed sufficient if generally accurate; and

(4) Requests

(a) that the department duly define the boundaries for the district,

(b) that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory and

(c) that the department determine that such a district be created.

**SECTION 48‑9‑530.** Consolidation of overlapping petitions.

When more than one petition is filed covering parts of the same territory the department may consolidate all or any of such petitions.

**SECTION 48‑9‑540.** Hearing on petition.

Within thirty days after such a petition has been filed with the department it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter and upon all questions relevant to such inquiries. All owners and occupiers of land within the limits of the territory described in the petition and of the lands within the limits of the territory considered for addition to such described territory and all other interested parties shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further shall be given throughout the entire area considered for inclusion in the district and such further hearing held.

**SECTION 48‑9‑550.** Determination against establishment; filing of subsequent petition.

If the department shall determine after such hearing, after due consideration of the facts presented at such hearing and such other relevant facts and information as may be available, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as provided in Section 48‑9‑510 and new hearings held and determinations made thereon.

**SECTION 48‑9‑560.** Determination of need for district; boundaries.

After such hearing, if the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries the department shall give due weight and consideration to the topography of the area considered and of the State, the composition of soils therein, the distribution of erosion, the prevailing land‑use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other soil and water conservation districts already organized or proposed for organization under the provisions of this chapter and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 48‑9‑20. The territory to be included within such boundaries need not be contiguous.

**SECTION 48‑9‑570.** Boundaries to not include portions of other districts.

The boundaries of any such district shall include the territory as determined by the department as provided in Section 48‑9‑560, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this chapter.

**SECTION 48‑9‑580.** Referendum on establishment of district.

After the department has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words “For creation of a soil and water conservation district of the lands below described and lying in the county(ies) of (and )” and “Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of (and )” shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the department. All owners of lands lying within the boundaries of the territory, as determined by the department, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

**SECTION 48‑9‑590.** Conduct of hearings and referenda; expenses.

The department shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in Section 48‑9‑540 and such referendum shall have been fairly conducted.

**SECTION 48‑9‑600.** Final determination as to establishment of district.

The department shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the operation of such district is not administratively practicable and feasible it shall record such determination and deny the petition. If the department shall determine that the operation of such district is administratively practicable and feasible it shall record such determination and shall proceed with the organization of the district in the manner provided in Sections 48‑9‑610 to 48‑9‑630. In making such determination the department shall give due regard and weight to the attitudes of the owners and occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion‑control operations within such district and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in Section 48‑9‑20. The department shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

**SECTION 48‑9‑610.** Appointment of two commissioners of new district.

If the department shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible it shall appoint two commissioners to act with the three commissioners elected as provided in Article 11 of this chapter as the governing body of the district.

**SECTION 48‑9‑620.** Filing and contents of application by appointed commissioners with Secretary of State.

The two appointed commissioners shall present to the Secretary of State an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals) that:

(1) A petition for the creation of the district was filed with the department pursuant to the provisions of this chapter and that the proceedings specified in this chapter were taken pursuant to such petition;

(2) The application is being filed in order to complete the organization of the district under this chapter and the department has appointed the signers as commissioners;

(3) The name and official residence of each of the commissioners, together with a certified copy of the appointments evidencing their right to office;

(4) The term of office of each of the commissioners;

(5) The name which is proposed for the district; and

(6) The location of the principal office of the commissioners of the district.

The application shall be subscribed and sworn to by each of the commissioners before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer’s presence. The application shall be accompanied by a statement by the department which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued and hearing held as provided in Sections 48‑9‑510 and 48‑9‑540; that the department did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; and that thereafter the department did duly determine that the operation of the proposed district is administratively practicable and feasible. Such statement shall set forth the boundaries of the district as defined by the department.

**SECTION 48‑9‑630.** Action by Secretary of State on application.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the department, which shall thereupon submit to the Secretary of State a new name for the district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as provided in Section 48‑9‑620 and this section, the district shall constitute a governmental subdivision of this State and a public body corporate and politic exercising public powers. The Secretary of State shall make and issue to the commissioners a certificate, under the seal of the State, of the due organization of the district and shall record such certificate with the application and statement.

**SECTION 48‑9‑640.** Subsequent petition if previous determination was against feasibility of district.

After six months shall have expired from the date of entry of a determination by the department that the operation of a proposed district is not administratively practicable and feasible and a denial of a petition pursuant to such determination, subsequent petitions may be filed as provided in Section 48‑9‑510 and action taken thereon in accordance with the provisions of this chapter.

**SECTION 48‑9‑650.** Certificate conclusive as to establishment of district; admissibility of certificate as evidence.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State as provided in Section 48‑9‑630. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.

ARTICLE 7.

 EXTENSION OR SUBDIVISION OF DISTRICTS

**SECTION 48‑9‑810.** Petition for enlarging existing district.

Petitions for including additional territory within an existing district may be filed with the department and the proceedings provided for in Article 5 of this chapter in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in Article 5 of this chapter for petitions to organize a district. When the total number of landowners in the area proposed for inclusion shall be less than twenty‑five, the petition may be filed when signed by a majority of the landowners of such area and in such case no referendum need be held. In referenda upon petitions for such inclusion, all owners of land lying within the proposed additional area shall be eligible to vote.

**SECTION 48‑9‑820.** Petition for subdivision of district.

A portion of a soil and water conservation district, such portion being composed of one or more entire counties, may withdraw from such district and constitute itself a separate soil and water conservation district by the procedure set forth in this section and Sections 48‑9‑830 and 48‑9‑840. A petition signed by a majority of the members of the governing body of the soil and water conservation district or a petition signed by twenty‑five landowners of the county or counties wishing to withdraw and constitute themselves a separate district may be filed with the department asking that the subdivision be made and constitute a district. Such petition shall (a) set forth the name of the district, (b) describe the existing boundary lines of the district and boundary lines of the proposed district (subdivision) and (c) request that the department hold a public hearing upon the question of the proposed subdivision and that the department duly define the boundary lines as set out in the petition.

**SECTION 48‑9‑830.** Hearing on petition for subdivision of district.

Within thirty days after such a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing upon the question of the proposed subdivision. All occupiers of land lying within the proposed district and all other interested parties shall have the right to attend such hearing and to be heard.

**SECTION 48‑9‑840.** Determination as to subdivisions.

After such hearing the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, whether there is need in the interest of the public health, safety and welfare for the proposed subdivision and whether the operation of the districts within the proposed boundaries will be administratively practicable and feasible. In making such determination, the department shall give due weight and consideration to the legislative determinations set forth in Section 48‑9‑20 and to the standards provided in Sections 48‑9‑560 and 48‑9‑600 for the guidance of the department in making its determinations in connection with the organization of districts. If the department determines that the proposed subdivision is not necessary in the interest of the public health, safety and welfare, or that the operation of the districts within the proposed boundaries would not be administratively practicable or feasible, it shall record such determination and deny the petition. If the department shall determine in favor of the proposed subdivision, it shall record such determination and define the boundary lines between the districts and shall notify the chairman of the governing body of the district to be divided of its determination.

**SECTION 48‑9‑850.** Organization of subdivision as district.

The department shall then proceed in accordance with Sections 48‑9‑610 to 48‑9‑630 to organize the subdivision into a district and to inform the Secretary of State of the change in the boundaries of the remaining district and to complete the organization of the governing body of the remaining district.

ARTICLE 9.

 DISCONTINUANCE OF DISTRICTS

**SECTION 48‑9‑1010.** Petition for discontinuance of district; hearings on discontinuance.

At any time after five years after the organization of a district under the provisions of this chapter any twenty‑five owners of land lying within the boundaries of such district may file a petition with the department praying that the operations of the district be terminated and the existence of the district discontinued. The department may conduct such public meetings and public hearings upon the petition as may be necessary to assist it in the consideration thereof.

**SECTION 48‑9‑1020.** Referendum on discontinuance.

Within sixty days after such a petition has been received by the department it shall give due notice of the holding of a referendum and shall supervise such referendum and issue appropriate regulations governing the conduct thereof. The question shall be submitted by ballots upon which the words “For terminating the existence of the (name of the soil and water conservation district to be here inserted)” and “Against terminating the existence of the (name of the soil and water conservation district to be here inserted)” shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of such district. All owners of land lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in the matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in this section and the referendum shall have been fairly conducted.

**SECTION 48‑9‑1030.** Decision as to discontinuance.

The department shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the continued operation of such district is administratively practicable and feasible it shall record such determination and deny the petition. If the department shall determine that the continued operation of such district is not administratively practicable and feasible it shall record such determination and shall certify such determination to the commissioners of the district. In making such determination the department shall give due regard and weight to the attitude of the owners and occupiers of lands lying within the district, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of the district, the probable expense of carrying on erosion‑control operations within the district and such economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 48‑9‑20. But the department shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

**SECTION 48‑9‑1040.** Termination of affairs and dissolution of district.

Upon receipt from the department of a certification that the department has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this article, the commissioners shall forthwith proceed to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the State Treasury. The commissioners shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district and shall transmit with such application the certificate of the department setting forth the determination of the department that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

**SECTION 48‑9‑1050.** Effect of dissolution.

Upon issuance of a certificate of dissolution under the provisions of this article all ordinances and regulations theretofore adopted and in force within such district shall be of no further force and effect. All contracts theretofore entered into to which the district or commissioners are parties shall remain in force and effect for the period provided in such contracts. The department shall be substituted for the district or commissioners as a party to such contracts. The department shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon and to modify or terminate such contracts by mutual consent or otherwise as the commissioners of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 48‑9‑1630 nor the pendency of any action instituted under the provisions of Section 48‑9‑1610 and the department shall succeed to all the rights and obligations of the district or commissioners as to such liens and actions.

**SECTION 48‑9‑1060.** Petitions for dissolution need not be entertained more than once in five years.

The department shall not be required to 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 five years.

ARTICLE 11.

 COMMISSIONERS AND POWERS OF COMMISSIONERS AND DISTRICTS

**SECTION 48‑9‑1210.** Qualifications of appointed commissioners.

The two commissioners appointed by the board shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties under this chapter.

**SECTION 48‑9‑1220.** Nomination and election of commissioners.

Effective November, 1982, and in November of the appropriate years thereafter, three commissioners from each district must be elected. The election must be nonpartisan and must be conducted by the county election commission at the same time as other county officers are elected in the general election.

To be placed on the ballot for county offices, each candidate shall submit to the county election commission a nominating petition with the signatures of one hundred qualified registered electors or one percent of the qualified registered electors of the district, whichever is lesser.

The official number of qualified registered electors of the geographical area of any office is the number of registered electors of the area registered one hundred twenty days before the date of the election for which the nomination petition is being submitted.

The nominees in the petition must be placed on the appropriate official ballot for the election if the petition is submitted to the county election commission not later than twelve noon on August first or, if August first falls on Sunday, not later than twelve noon on the following Monday. The form of the petition must comply with the requirements in Section 7‑11‑80 pertaining to the conduct of general elections not conflicting with this section. Candidates must be qualified registered electors and residents of the district in which elected.

The three candidates who receive the largest number of votes cast in the election are elected and shall assume office the following February first.

This election must be conducted pursuant to Title 7, mutatis mutandi, except as otherwise provided for in this section.

Effective with the 1990 election, the two candidates who receive the highest number of votes shall serve for terms of four years each and the other candidate who receives the next highest number of votes shall serve for a term of two years. Thereafter, their successors must be elected in a nonpartisan election to be held at the same time as the general election for terms of four years each.

**SECTION 48‑9‑1230.** Terms of office; vacancies; removal.

Except as otherwise provided in Section 48‑9‑1220, the term of office of each commissioner is four years, except that in newly created districts the elected commissioners’ terms of office are until the next regular election is held under the provisions of Section 48‑9‑1220 and the first appointed commissioners must be designated to serve for terms of one and two years, respectively, from the date of their appointment. A commissioner shall hold office until his successor has been elected or appointed and has qualified. Vacancies must be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, must be made in the same manner in which the retiring commissioners shall, respectively, have been selected, except that in the case of a vacancy in the unexpired term of an elected commissioner a successor may be appointed by the board upon the unanimous recommendation of the remaining commissioners. Any commissioner may be removed by the board upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

**SECTION 48‑9‑1240.** Chairman; quorum; majority vote; compensation.

The commissioners shall designate a chairman and may, from time to time, change such designation. A majority of the commissioners shall constitute a quorum and the concurrence of a majority of the commissioners in any matter within their duties shall be required for its determination. A commissioner shall receive no compensation for his services, but he shall be entitled to expenses, including travel expenses, necessarily incurred in the discharge of his duties.

**SECTION 48‑9‑1250.** Use of county agricultural agents; other agents and employees; legal services.

Each county agricultural agent may be the secretary to the board of commissioners of each district within his county. The commissioners may also utilize in other respects the services of the agricultural agents and the facilities of the county agricultural agent’s officers insofar as practicable and feasible and may employ such additional employees and agents, permanent and temporary, as they may require and shall determine their qualifications, duties and compensation. The commissioners may delegate to their chairman or to one or more agents, or employees such powers and duties as they may deem proper. The commissioners may call upon the Attorney General of the State for such legal services as they may require or may employ their own counsel and legal staff.

**SECTION 48‑9‑1260.** Bonds; records; audit.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements.

**SECTION 48‑9‑1270.** General powers of districts and commissioners.

A soil and water conservation district organized under the provisions of this chapter and the commissioners thereof shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations and research relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water, and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations or research and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this State or one of its agencies or with the United States or one of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this State or one of its agencies with the 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 occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods and measures by which soil and water resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water may be carried out; provided, however, that in order to avoid duplication of demonstrational activities, no district shall initiate any demonstrational program except in cooperation with the government of this State or one of its agencies or with the United States or one of its agencies;

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, recreational development, water storage facilities, and the measures listed in item (3) of Section 48‑9‑20 on lands owned or controlled by this State or one of its agencies, with the 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 the occupiers 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 to any owner or occupier of lands within the district in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter;

(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 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 chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter;

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

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

(8) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, changes in use of land, recreational developments, and water storage facilities; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil conservation, flood‑prevention, drainage, irrigation, water management, erosion‑control or erosion‑prevention project, or combinations thereof, located within its boundaries undertaken by the United States or one of its agencies or by this State or one of its agencies; to manage, as agent of the United States or one of its agencies or of this State or one 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 one of its agencies or for this State or one 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 and contributions in money, services, materials or otherwise from the United States or one of its agencies or from this State or one of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations; and

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in Article 9 of this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, amend and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers.

**SECTION 48‑9‑1280.** Commissioners may require contributions or agreements by landowners or occupiers as to permanent use.

As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or one of its agencies the commissioners may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require landowners and 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.

**SECTION 48‑9‑1290.** Provisions as to acquisitions; operations or dispositions by other public bodies; property of districts tax free.

No provisions with respect to the acquisition, operation or disposition of property by other public bodies of this State shall be applicable to a district organized under the provisions of this chapter unless the General Assembly shall specifically so state. The property and property rights of every kind and nature acquired by any district organized under the provisions of this chapter shall be exempt from State, county and other taxation.

**SECTION 48‑9‑1300.** Commissioners of different districts cooperation.

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

**SECTION 48‑9‑1310.** Consultation with governing bodies of nearby localities.

The commissioners of any district 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 commissioners of the district on all questions of program and policy which may affect the property, water supply or other interests of such municipality or county.

**SECTION 48‑9‑1320.** Information to be furnished to State Land Resources Conservation Commission.

The commissioners shall furnish to the department, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ and such other information concerning their activities as it may require in the performance of its duties under this chapter.

ARTICLE 13.

 LAND‑USE REGULATIONS

**SECTION 48‑9‑1510.** Formulation of land‑use regulations

The commissioners of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The commissioners may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

**SECTION 48‑9‑1520.** Referendum before adoption of regulations.

The commissioners shall not have authority to enact such land‑use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the commissioners have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notice of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined.

**SECTION 48‑9‑1530.** Conduct of referendum on regulations.

The question shall be submitted by ballots upon which the words, “For approval of proposed ordinance no. \_\_\_ prescribing land‑use regulations for conservation of soil and prevention of erosion” and “Against approval of proposed ordinance no. \_\_\_ prescribing land‑use regulations for conservation of soil and prevention of erosion” shall appear, with a square before each proposition and a direction to insert an X‑mark in the square before one or the other of such propositions as the voter may favor or oppose approval of such proposed ordinance. The commissioners shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matter relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as provided in Section 48‑9‑1520 and the referendum shall have been fairly conducted.

**SECTION 48‑9‑1540.** Two‑thirds vote prerequisite to adoption of regulations.

The commissioners shall not have authority to enact such proposed ordinance into law unless at least two thirds of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by two thirds of the votes cast in such referendum shall not require the commissioners to enact such proposed ordinance into law.

**SECTION 48‑9‑1550.** Regulations shall have force and effect of law.

Land‑use regulations prescribed in ordinances enacted pursuant to the provisions of this article by the commissioners of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all owners and occupiers of land within such district, including the agencies administering publicly owned lands.

**SECTION 48‑9‑1560.** Amendment, supplementation, or repeal of regulations.

Any owner or occupier of land within such district may at any time file a petition with the commissioners asking that any or all of the land‑use regulations prescribed in any ordinance adopted by the commissioners under the provisions of this article shall be amended, supplemented or repealed. Land‑use regulations adopted pursuant to the provisions of this article shall not be amended, supplemented or repealed except in accordance with the procedure prescribed in this article for adoption of land‑use regulations. Referenda on adoption, amendment, supplementation or repeal of land‑use regulations shall not be held more often than once in six months.

**SECTION 48‑9‑1570.** Subjects which regulations may include.

The regulations to be adopted by the commissioners under the provisions of this article may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, changes in cropping systems, seeding and planting of lands with water‑conserving and erosion‑preventing plants, trees and grasses, forestation and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; and

(5) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in Section 48‑9‑20.

**SECTION 48‑9‑1580.** Uniformity of regulations; exceptions.

The regulations shall be uniform throughout the territory comprised within the district except that the commissioners may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type.

**SECTION 48‑9‑1590.** Printing of copies of regulations.

Copies of land‑use regulations adopted under the provisions of this article shall be printed and made available to all owners and occupiers of lands lying within the district.

**SECTION 48‑9‑1600.** Entry on lands to check observance.

The commissioners may go upon any lands within the district to determine whether land‑use regulations adopted under the provisions of this article are being observed.

**SECTION 48‑9‑1610.** Petition to court for enforcement.

When the commissioners of any district shall find that any of the provisions of land‑use regulations adopted in accordance with the provisions of this article are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the commissioners may present to the court of common pleas for the county or any county within which the lands of the defendant may lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land‑use regulations, the failure of the defendant landowner or occupier to observe such regulations and to perform particular work, operations or avoidances as required thereby and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district and praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the commissioners may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the owner of such land.

**SECTION 48‑9‑1620.** Hearing and order of court on petition for enforcement.

Upon the presentation of such petition the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report it to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition or it may require the defendant to perform the work, operations or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute it to completion with reasonable diligence, the commissioners may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five percent per annum, from the owner of such lands.

**SECTION 48‑9‑1630.** Judgment for commission’s expenses after completion of work; costs and attorney fees.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the commissioners may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five percent per annum until paid, together with the costs of suit, including a reasonable attorney’s fee to be fixed by the court.

ARTICLE 15.

 BOARDS OF ADJUSTMENT

**SECTION 48‑9‑1810.** Establishment and appointment of members of board of adjustment.

When the commissioners of any district organized under the provisions of this chapter shall adopt an ordinance prescribing land‑use regulations in accordance with the provisions of Article 13 of this chapter they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three members, each to be appointed for a term of three years, except that the members first appointed shall be appointed for terms of one, two and three years, respectively. The members of each such board shall be appointed by the department, with the advice and approval of the commissioners of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the department and the commissioners of the district. Vacancies in the board shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant.

**SECTION 48‑9‑1820.** Eligibility and compensation of members; expenses.

Members of the board and the commissioners of the district shall be ineligible to appointment as members of the board during their tenure of such other office. The members of the board shall receive compensation for their services at a per diem rate to be determined by the department for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The commissioners shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

**SECTION 48‑9‑1830.** Chairman; rules; quorum; meetings; records.

The board shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to Article 13 of this chapter. The board shall designate a chairman from among its members and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it and of all orders entered, which shall be filed in the office of the board and shall be a public record.

**SECTION 48‑9‑1840.** Hardship petitions.

A land occupier may file a petition with the board alleging that there are great practical difficulties or unnecessary hardships in the way of his carrying out upon his lands the strict letter of the land‑use regulations prescribed by ordinance approved by the commissioners and praying the board to authorize a variance from the terms of the land‑use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the commissioners of the district within which his lands are located and upon the director of the department.

**SECTION 48‑9‑1850.** Hearing and action on hardship petition.

The board shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The commissioners of the district and the department may appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land‑use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardships. Upon the basis of such findings and determination the board may by order authorize such variance from the terms of the land‑use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardships and will not be contrary to the public interest and such that the spirit of the land‑use regulations shall be observed, the public health, safety and welfare secured and substantial justice done.

**SECTION 48‑9‑1860.** Petition for court review.

Any petitioner, the commissioners of the district or any intervening party, aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, may obtain a review of such order in the court of common pleas for the county or any county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination and order of the board.

**SECTION 48‑9‑1870.** Hearing and order of court on petition for review.

Upon such filing the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein and may grant such temporary relief as it deems just and proper and make and enter a decree enforcing, modifying and enforcing as so modified or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive and shall file with the court its recommendation, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review in the same manner as are other judgments or decrees of the court.