

## **Chapter 2                    Legal Authorities and Responsibilities**

This chapter outlines various state laws and their relationship to SCD operations, addressed in TCA §43-14-201 through TCA §43-14-223 and other state statutes. Figure 2 is an organization chart displaying the relationships of the state entities involved in soil conservation.

### **The Duties and Powers of the State Soil Conservation Committee**

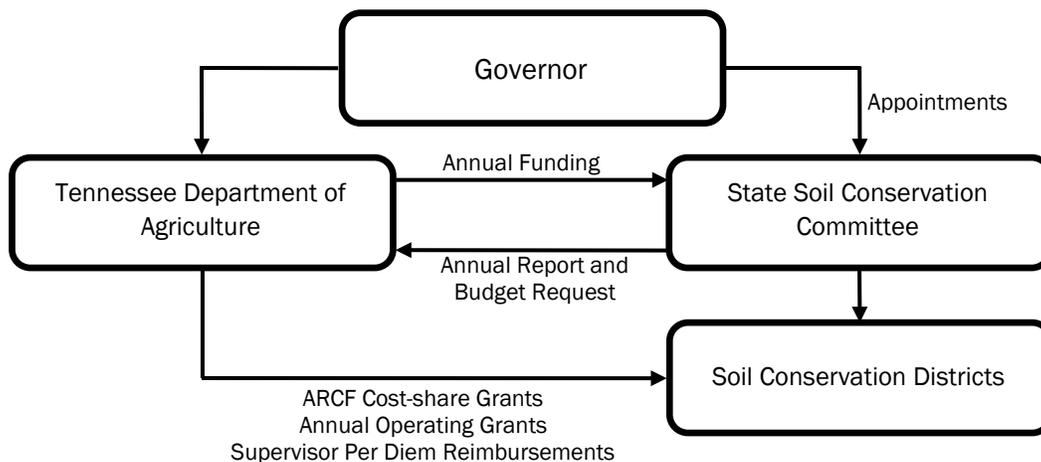
TCA §43-14-203 through 206

The statutory oversight of Tennessee's Soil Conservation Districts lies with the State Soil Conservation Committee (SSCC), which is composed of seven Governor- appointed members; one farmer and one SCD Supervisor from each grand division, one supervisor at-large, and three ex officio members; the Commissioner of the Department of Agriculture, the Commissioner of the Department of Environment and Conservation, and the Vice-President of the University of Tennessee Institute of Agriculture.

The following is from the state statute, TCA §43-14-206, and lists the duties and powers of the SSCC: “...In addition to other duties and powers conferred upon the state soil conservation committee in this part, it has the duties and powers to:

- (1) Offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided in this part, in the carrying out of any of their powers and programs;
- (2) Keep supervisors of each of the several districts organized under this part informed of the activities and experience of all other districts organized under this part, and facilitate an interchange of advice and experience among the districts and cooperation between them, and publish an annual report;
- (3) Coordinate the programs of the several soil conservation districts organized under this part so far as they 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 watershed districts and soil conservation districts;
- (5) Disseminate information throughout the state concerning the activities and programs of the soil conservation districts and watershed districts, and encourage and facilitate the formation of such districts in areas where their organization is desirable;
- (6) Constitute the committee as the state agency having the sole responsibility to administer and approve watershed districts and programs under acts of congress now in effect or hereafter enacted;
- (7) Collect and disseminate data and information concerning the causes, extent, and location of soil erosion problems in the state and study alternative solutions to these problems;
- (8) Develop and maintain a long-range comprehensive statewide plan for the conservation of Tennessee's soils, and revise this state plan from time to time as needed in consultation with appropriate sources of information; and
- (9) Prepare and submit annually to the Commissioner of Agriculture an annual report and a budget request adequate to allow for the implementation of soil conservation programs in Tennessee.”

**Figure 2: Organization of Soil Conservation in Tennessee Government**



## **The Duties and Powers of the SCD Board of Supervisors**

TCA §43-14-217 through 218

State statute TCA §43-14-217 creates a five-member board of supervisors, three elected in a special local election and two appointed by the State Soil Conservation Committee.

TCA §43-14-218 lists the powers of districts and supervisors as follows:

- (1) Conduct surveys, investigations and research relating to the character of soil erosion and the preventive and control measures needed, publish the results of the surveys, investigations or research, and disseminate information concerning the preventive and control measures; provided, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the state experiment station and the extension service of the University of Tennessee, or with the United States or any of its agencies;
- (2) Conduct demonstrational projects within the district, upon obtaining the consent of the owner and occupier of lands, or the necessary rights or interests in 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;
- (3) Carry out preventive and control measures within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land on any 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;
- (4) Cooperate, or enter into agreements, with any owner and occupier of lands within the district to carry out erosion control and prevention operations, to help improve traditional areas of farm production, and to encourage diversification and innovation of farming operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this part;
- (5) Enter into agreements with the Department of Agriculture and other agencies of the state to administer or assist in the administration of programs for the benefit of owners and occupiers of lands within the district in carrying out erosion control and prevention operations, improving traditional areas of farm production, diversifying farming operations and encouraging farming innovation and nontraditional agricultural activities within the district;
- (6)(A) 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;  
(B) Maintain, administer and improve any properties acquired, to receive income from the properties and to expend the income in carrying out the purposes and provisions of this part; and  
(C) Sell, lease or otherwise dispose of any of its property, or interests in any of its property, in furtherance of the purposes and the provisions of this part;
- (7) 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,

except that all forest tree seedlings shall be obtained, insofar as available, from the nurseries of the TDA Division of Forestry in cooperation with the United States Forest Service of the USDA, 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 resources and for the prevention and control of soil erosion;

**(8)** Construct, improve and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this part;

**(9)** Develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify, in such detail as may be possible, the acts, procedures, performances and avoidances that are necessary or desirable for the effectuation of the 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 publish the plans and information and bring them to the attention of owners and occupiers of lands within the district;

**(10)** Take over and administer any soil conservation, erosion control or erosion prevention project, located within its boundaries, undertaken by the United States or any of its agencies, as agent of the United States or any of its agencies; act as agent for the United States or any of its agencies; and accept donations, gifts and contributions in money, services, materials or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and use or expend such moneys, services, materials or other contributions in carrying on its operations;

**(11)** Sue and be sued in the name of the district; have a seal, which seal shall be judicially noticed; have perpetual succession, unless terminated as provided in § 43-14-223, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and make, and from time to time amend and repeal, rules and regulations not inconsistent with this part, to carry into effect its purposes and powers;

**(12)** As a condition to extending any benefit under this part to, or the performance of work upon, any lands, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring 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 thereon; and

**(13)** Carry out, maintain and operate works of improvement for flood prevention and agricultural phases of conservation development, utilization, and disposal of water.

## **The Election and Appointment of District Supervisors**

TCA §43-14-212 through 216

### **Qualifications of Supervisors**

TCA §43-14-216

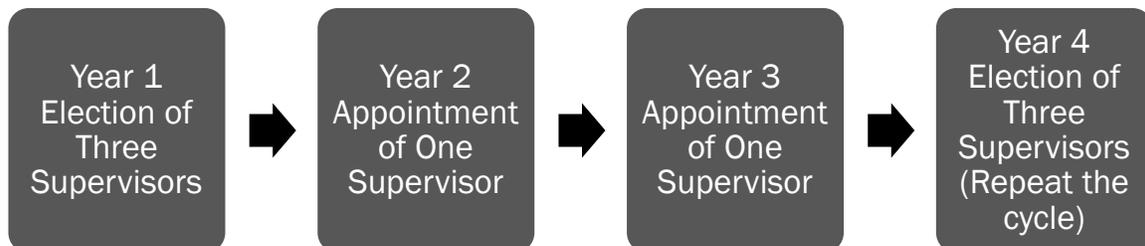
To be a candidate for election to the SCD Board, an interested person must obtain the signatures of at least 25 landowners in the District on a nominating petition.

To be appointed to the SCD Board, the nominees must be persons who are, by training and experience, qualified to perform the specialized skilled service that will be required of them in the performance of their duties as appointed District Supervisors.

### **The Election and Appointment Cycle**

Each SCD conducts an election for three supervisors once every three years. The years between elections are when the two appointed member positions to the SCD Board are filled.

**Figure 3: SCD Election and Appointment Cycle**



### **Supervisor Election Process**

TCA §43-14-216

The procedure currently followed by Districts with regard to Election and Appointment of Supervisors originated in the earliest days of the State Soil Conservation Committee. Figure 4 is an excerpt from the SSCC Meeting Minutes of June 11, 1959 and describes the election and appointment process:

## Figure 4: SCD Election and Appointment Procedure

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The Secretary discussed with the Committee the procedure to follow in receiving nominations and election for Supervisors for next year. On motion by Bell and second by Proffitt that the Committee follow the same procedure as has been used in the past. That is, the County Agent and the Work Unit Conservationist be responsible for getting a committee of farm leaders to make nominations for appointed Supervisors and also recommending names to go on the ballot for election. This committee would be composed of a member of the Board of Supervisors whose term is not expiring, a member of the County A.S.C. Committee, a member of the County Agricultural Court Committee, and a member of the Board of Directors of the Farm Bureau.

The following actions should be completed for each election:

- 1. Convene the County Nominating Committee:** The County Nominating Committee meets to set the date of election and decide on polling location(s) and the time of day polls will be open. There is no set number of polling locations, nor is there a set time (one day only, e.g.) for the vote to be taken. This committee is comprised of a member of each of these county groups: the UT Extension County Committee, County FSA Committee, Farm Bureau Committee, and a SCD Supervisor whose term is not expiring, and they work to seek out and nominate interested persons for the positions. It is important to note here that USDA personnel may not be able to participate in this activity, due to existing federal policies (see the NRCS policies on page 38 of this Handbook).
- 2. Complete the nominating petitions:** Complete the nominating petitions with names of candidates to be placed on ballot; preferably more than the three names required. Historically, Districts have sought to get at least six names on the ballot.
- 3. Wait for other nominations:** A reasonable waiting period between completing the nominating form and holding the election is suggested to allow other interested persons to complete their nominating petitions to have their name on the ballot if they so desire.
- 4. Provide legal notice of election:** A legal notice must be run in the nearest newspaper of widest circulation. Two notices should be published at least a week apart. Additional notices may be given by posting the notice of election on appropriate websites, or by posting notices at

courthouses, municipal buildings, libraries, farm stores, community event calendars, etc. The notice should state the date(s) of the election, the voting places and the deadline for submittal of the nominating petitions to the SCD office.

- 5. Select polling officers:** Select polling officers to work the polling places. Polling locations must be staffed during announced voting hours. In all cases, ballot boxes must be attended by an unbiased party, in order to ensure a fair election process.
- 6. Maintain Poll List:** Each voter must sign the poll list, and after the election, verification of landowner status is performed in order to ensure all voters meet statutory requirements.
- 7. Conduct the election and count the votes:** Votes should be tallied by two or more people.
- 8. Secure the ballots:** Ballot boxes need to be secured and the polling officers shall verify the chain of custody.
- 9. Report Results:** Immediately report results of election to the State Soil Conservation Committee. Districts should keep the ballots for at least one three-year election cycle, and should keep the original "Certification of Election Results" form indefinitely for each election.

### **Supervisor Appointment Process**

TCA §43-14-217

The local nominating committee convenes and provides a list of nominees, consistent with TCA §43-14-217: " The two (2) supervisors appointed by the committee shall be persons who are, by training and experience, qualified to perform the specialized skilled service that will be required of them in the performance of their duties under this part." Names are transmitted by the District to the State Soil Conservation Committee prior to their meeting in March each year, so the appointments can be made by the SSCC prior to the expiration of supervisor terms on March 31<sup>st</sup>.

### **Filling of Vacancies**

TCA §43-14-217(b)

According to TCA §43-14-217(b), vacancies for both elected and appointed Supervisors must be filled, with the selection of successors to fill an unexpired term made in the same manner in which the position was originally filled. It is important to note that when a vacancy is filled, the term of service for the new Supervisor will only be the remainder of the unexpired term. This will keep the election and appointment cycles correct.

### **District Supervisor Meetings**

TCA §43-14-217(b)

District Boards should meet monthly to conduct the business of the District and to provide required oversight of financial affairs of the District, along with timely project approvals, etc. The meeting must be an official meeting with a quorum present to be able to claim the per diem allowed by state statute. The state statute provides for a \$30 "per diem" reimbursement to be paid to each supervisor for expenses related to attending the monthly meeting, for an annual amount not to

exceed \$360 per supervisor. This reimbursement is only for official meetings of the Board with at least a quorum of members present.

Since SCD Boards are public bodies by law, their meetings are subject to the State Open Meetings Act, TCA §8-44-101. Public notice of all Board meetings must be given, and all decisions shall be made in public. SCD Boards may hold executive sessions only in the case of an ongoing litigation where the Board is a party. All deliberations and meetings of the Board shall be public and available to any and all interested parties. These meetings should be announced as meetings that are open to the public, and participation by the citizens and/or interested groups in the District should be welcomed. Each SCD Board should pass a resolution setting a specific date and time of each monthly meeting, and should give notice of the meeting time and place to the public. Special called meetings at a time different than what has been established in the resolution will require separate notice, and the notice must contain a detailed agenda for the special called meeting.

It is strongly recommended each SCD board meet monthly to discuss the progress being made in meeting established program goals and objectives. At a minimum, SCD Boards need to meet to review and approve the financial transactions of the District for the month, in order to provide proper oversight to the financial affairs of the District.

### **Common Rules for District Board Meetings**

It is important for Board meetings to be conducted orderly. *Robert's Rules of Order* should be the process used in all board meetings, consistent with state statute. These meetings should be conducted in a business-like fashion. A well-planned meeting should not last more than 1 ½-2 hours but long enough to cover all business that is before the District Board. Board members should be notified of each meeting in advance to insure a quorum exists. A majority of the full board of Supervisors shall constitute a quorum and the concurrence of a majority shall be necessary for a determination of the Board. It is suggested a copy of the meeting agenda should be sent to the Supervisors and agency representatives prior to the meetings. Minutes of the previous meeting and a Treasurer's Report could also be provided at that time for reading and inspection by each Supervisor in advance of the next meeting. Public officials, agency representatives and groups should be encouraged to attend. The key to a successful Board of Supervisors meeting is an active District Board, with the full participation of all the Supervisors in the business of the District. It is good to encourage others in attendance to offer their views or expertise for the benefit of the resource issues discussed.

The Chairman is encouraged to accept the leadership role by:

- Motivating other Board members in the discussion of issues and programs of the district.
- Starting meetings promptly.
- Closing meetings after all business has been completed.

It is the responsibility of the District Treasurer to ensure that the financial procedures used by the District are in compliance with Generally Accepted Accounting Practices, and that appropriate checks and balances are in place to avoid all appearance of impropriety in the financial matters of the District. As an entity of State government, the District is subject to state law governing state funds. Whether federal, state, county, District or grant funds, these laws require appropriate and proper handling of such funds.

The following are general guidelines for conducting a meeting:

- After the minutes are read, the Chairperson asks, “Are there any corrections or additions to the minutes?” If there are no corrections, the Chairperson may say, “If not, they stand approved.” However, a motion and second to accept may be called for.
- Amendments to a motion must be seconded just as a main motion to which it applies. Amendments should be voted on before action is taken on the main motion.
- A motion should not be discussed until it has been seconded and restated by the chairperson.
- Motions which introduce business when no other motions are pending are referred to “Main Motions” and must be seconded. When it is moved that the report of a nomination committee be accepted or that nominations cease or that the Secretary be instructed to cast a unanimous ballot for those nominated, this is a main motion and as such requires a second. Main motions should be opened for discussion before putting to vote. A “call of question” is a demand that the motion be put to a vote.
- The Chairperson cannot ignore a motion. He/she must “put” a motion to vote if it has been properly made and seconded.
- The Chairperson does not vote when the vote is by acclamation (except when there is a tie). He/she may always vote when the vote is taken by ballot or by roll call.
- During the meeting, it is only after a member has addressed the presiding officer as “Mr. Chairman or Madam Chairperson” and has been “recognized” that the member is privileged to speak.
- When a motion to adjourn is made and seconded, it must be put to a vote without discussion except when a supplementary motion is made to fix a time to adjourn.

### **Suggested District Board Meeting “Model Agenda”**

- **Call to Order:** Call meeting to order at the scheduled time. Establish that a quorum (minimum of three Supervisors) exists. If a quorum is not present, you may not vote on any issues, but you may discuss business. Briefly relate the general purpose of the meeting and refer to the agenda. Ask for additional agenda items from members. Appoint a person to take minutes and record members present.
- **Minutes:** Read or discuss previous meeting minutes, preferably mailed to Supervisors prior to meeting date. Correct if necessary and approve.
- **Treasurer’s Report:** Read or discuss report for approval. Review bills for approval of payment. Review bank statements, cancelled checks and checkbook register, and other functions as necessary to provide appropriate “checks and balances” in the District financial transactions. Vote to approve or amend treasurer’s report. This report should be made part of the official minutes of the Board meeting.
- **Correspondence:** Received and reviewed by Secretary.
- **Equipment Report:** Review report and discuss equipment as needed.
- **Committee Activities:** Hear from any active committees having information to report. Appoint new committees and assignments if needed.
- **Old or Unfinished Business:** Discuss unfinished business from previous meetings. Review/update current activities. Review long range and annual plan frequently.
- **New Business:** Present new business. Hear motions and resolutions. Schedule the date, time, plan and agenda for next meeting.

- Comments from Public-at-large.
- Report from District Employees.
- Report from State and Federal Partners.
- Comments from Visitors.
- Review Annual Plan of Work for Upcoming Month(s).
- Announcements and Adjourn: Adjourn meeting on time.

## Meeting Minutes

TCA §8-44-104

It is the responsibility of the District Supervisor serving as Secretary for the Board to see that a complete and accurate set of minutes are kept of the Board meetings. Your district's administrative secretary/office manager may want to take the minutes for ease of transcription. It is suggested that minutes be kept in a minute book. Minutes must be complete and accurate. All records should be made available, upon request, to the public. This availability can be by viewing or by requesting copies. The district may charge a reasonable fee for any copies made, but should adopt a policy for such charges.

Minutes should contain:

- Date, time and place of the meeting. Regular or special meetings, and if special, purpose of the meeting.
- Names of Supervisors present, presiding officer and if there was a quorum present as declared by the presiding officer.
- Names of advisory personnel and visitors present.
- Minutes must state that previous meeting minutes were read and approved. Corrections, if necessary, should be so stated.
- A brief review of each item of correspondence and a record of action taken on correspondence.
- The monthly financial report should be discussed, approved and made a part of the official minutes of each meeting.
- Each item of old and new business brought before the Board, a record of each motion made showing the exact wording of the motion and voting result.
- Authorization for expenditure of funds. Expenditures should be itemized.
- A brief account of reports by committees/personnel assisting districts.
- Comments by visitors.
- Time of adjournment.

*One of the best, and certainly the most promising, of the devices yet invented by man for dealing democratically and effectively with maladjustment in land use, as well as for carrying forward positive programs of desirable conservation, and for maintaining the work, is the soil conservation district—  
Hugh Hammond Bennett- USDA*

## **Financial Management of District Programs**

SCDs should refer to and use the Guides available from the Tennessee Comptroller of the Treasury:

<http://www.comptroller.tn.gov/la/finreptmanual.asp>

Districts should strive to be in compliance with state regulations. All Districts should inquire with the Secretary of State and ensure they properly registered as a not-for-profit corporation.

## **Supervisor Involvement; Separation of Duties**

It is imperative, and cannot be understated how essential it is for each SCD to have a Board of Supervisors who are interested in the work and devote the time to provide the proper oversight of the District finances. Proper separation of duties and other checks and balances are expected to be present. Failure to have a proper accounting and financial management system could result in a cessation of funding to the District. As a supervisor in one of Tennessee's 95 county SCDs, you must be aware also that the action of one district in these matters is a reflection on all the SCDs.

## **Surety Bonds**

TCA §43-14-217(d)

The Supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, per TCA §43-14-217(d). District staff members who are full-time employees of county governments may be covered under county bonding instruments. In this case, SCD Supervisors should meet with county leaders to confirm if these employees are in fact covered. Those Districts who have staff members that are not employees of county governments must purchase the appropriate bond coverage.

## **Information Security**

Districts need to be aware of the importance of securing sensitive information from participants in the various programs. This information needs to be kept locked to minimize any risk of the unauthorized use of the information. Records should be kept for the minimum time required and should be shredded to eliminate all concerns.

## **Equipment Rental**

Many SCDs have active equipment rental programs. TDA and other agencies have provided grant funds for much of the equipment available. These grants serve as "seed" grants to start a rental program. SCDs should have binding rental agreements, proper equipment insurance, and charge a rental rate that will allow a dedicated fund to accumulate, so that the next piece of equipment can be purchased. If an on-going equipment rental program is desired by the Board, the Supervisors should consider keeping the rental account separated in the financial books and records, so the funds generated can be used for equipment related expenses. In all cases, written receipts should be given to renters for funds received, and a copy kept in the SCD records for review by the SCD Board.

## **Fund Raising Efforts**

The SCDs have the ability to perform a wide variety of fund raising activities to increase the operating funds of the local program. Again, proper accounting of these funds is important, and these accounts should be reviewed monthly by the Supervisors. Written receipts should be generated for all sales transactions, and the Supervisors should review these records at their regular monthly meetings.

## **Conflict of Interest**

TCA §12-4-101(a)(1)

As members of a public body, SCD Supervisors are subject to the state's general conflict of interest statute, found at TCA §12-4-101(a)(1), which states that it is unlawful for a person "whose duty it is to vote for, let out, overlook, or in any manner superintend any work or any contract" in which a governmental entity may be interested, to be directly interested in such contract. Each SCD Board should seek to administer their programs to avoid any claim of conflict of interest.

## **District Employee Personnel Management**

If the SCD Board is considered the employer of personnel, the Board should seek to comply with all applicable rules of the U.S. Dept of Labor, the IRS, state government, etc. The Board should ensure that all compensation to employees is proper, justified and reported as required by law, and that employees receive the correct salary or compensation documents, (W-2, 1099) for tax filings as appropriate. Communication among all parties is essential. Supervisors should consult with county government finance or payroll personnel for advice and recommendations, and should consider the adoption of a personnel manual.

Employees of the SCD are entitled to proper supervision and oversight, and periodic evaluation as is typical in all professional workplaces. Boards should collaborate as appropriate with county or state personnel officials to develop procedures or to ensure procedures in use are proper.

## **Liability of Supervisors and District Employees**

Supervisors of the SCD are legally considered state employees for purposes of liability and have coverage as such under state tort laws. Employees of the District do not have this coverage. Those employees that are full-time county employees need to determine if they are covered under any liability insurance programs for county government employees. No liability coverage exists for supervisors in the case of willful, wanton negligence.

## **Agricultural Districts Law**

TCA §43-34-101 through 108

TCA§43-34-102 states the purpose and policy of the Agricultural District statute:

"It is the intent and purpose of the state to encourage the conservation, protection, and responsible utilization of lands that are managed for purposes of agricultural production. It is recognized that these lands are finite, fragile, and valuable resources that contribute economically and socially to the well being of the state. It is also recognized that these lands are subject to change and

conversion from agricultural production as a result of urban expansion, and similar land development measures. It is the policy of the state to provide a process for the recognition of lands dedicated to agricultural production and to assure an accurate understanding of the impacts of public policy decisions that might otherwise alter the capability of those lands to remain in agricultural production.”

Soil Conservation District Supervisors have the power, granted under TCA §43-34-105 to approve or rescind the formation of Agricultural Districts.