**CHAPTER 4 – BOARD MEMBERS & AGENTS**

This section will provide a brief overview of the many legal responsibilities a director assumes when serving on a local district board. These topics include the powers and authorities of district directors and conservation districts, the legal responsibilities of a public official as well as district liability issues.

**a) RESPONSIBILITES & DUTIES**

For a more comprehensive training on responsibilities and duties for board members we encourage you to visit www.vaswcd.org/leadership-course and participate in the online module training. Each short module is followed by a practice quiz. Once you have completed all modules, a final quiz is submitted to the VASWCD for grading and those with a passing score will receive a certificate of completion and will be recognized at the VASWCD annual meeting.

As a reminder, conservation districts are legally defined in the Code of Virginia, Title 10.1-Conservation, Chapter 5 – Soil & Water Conservation. As defined in Code of Virginia, duties of district directors include:

§ 10.1-529.1. Duties of district directors.

In addition to other duties and powers, district directors shall:

1. Identify soil and water issues and opportunities within the district or related to the district and establish priorities for addressing these issues;

2. Seek a comprehensive understanding of the complex issues that impact soil and water, and assist in resolving the identified issues at the watershed, local, regional, state, and national levels;

3. Engage in actions that will improve soil and water stewardship by use of locally led programs;

4. Increase understanding among community leaders, including elected officials and others, of their role in soil and water quality protection and improvement;

5. Foster discussion and advancement within the community of positions and programs by their district;

6. Actively participate in the activities of the district and ensure district resources are used effectively and managed wisely; and

7. Support and promote the advancement of districts and their capabilities.

**b) DELEGATION OF AUTHORITY**

During the course of business it might be necessary to act or make decisions for the district when the board is not in session. Section 10.1.533 of the Virginia code provides that: “The district directors may delegate to their chairman or to one or more directors, agents or employees such powers and duties as they may deem proper.” Another option is for a district to form an executive committee that would make those decisions or carry out the actions. An executive committee could consist of the following: Chairman, Vice-Chairman, Treasurer, and Chairman of the affected Committee(s). All actions taken by the Executive Committee or other appointed directors, agents or employees must be ratified by the board at the following board meeting. It is strongly encouraged to have a written policy adopted by the board that defines the delegation of authority, when it can be adopted and how actions/decisions are to be reported.

**c) RECRUITMENT/INTERVIEW TECHNIQUES**

Districts that are recruiting to fill a vacancy should gauge interest with current associate directors about becoming a director. Vacancy announcements can be posted on district websites, Facebook, newspaper and other venues of interest to announce the vacancy to the general public. Local Governments need to be notified of vacancies. All applicants should be interviewed by the district board for consideration. Applicants can be provided an application or a Director Vacancy form to complete prior to interviews. It is helpful to have questions prepared and ask the same questions of all potential candidates. The interview process also gives the candidates an opportunity to ask questions about the district and director responsibilities. For those candidates not selected it gives an opportunity to gauge their interest in becoming an associate director. Recruitment packets are included as samples at the end of this chapter.

**d) ELECTION/APPOINTMENT PROCEDURES**

Information can be found at the State Board of Elections web site http://elections.virginia.gov/index.php/candidatepac-info/

The election process of board members is outlined by the Code of VA

10.1-515 Composition of governing body

10.1-518.1 Secretary to send copies of certificates to State Board of Elections

10.1-523 Nominating petitions; posting of notice

10.1-524 Names of nominees furnished electoral board; how ballots printed, etc

10.1-525 Canvassing returns

10.1-526 Persons eligible to vote

10.1-527 Determination of candidates elected

10.1-528 Expenses and publication of results

10.1-529 District directors constitute governing body; qualifications

10.1-529.1 Duties of district directors.

10.1-530 Designation of chairman; terms of office; filling vacancies

Qualifications for district director per the Code of Virginia note: there must be 5 or more directors for each district; two directors, appointed by the board, must be qualified by training and experience to perform director duties; one of the appointed directors must be an extension agent of (one of) the county(ies)/ city(ies) covered by the district; the other directors must live within the district boundaries.

**e) BOARD MEMBER DELEVOPMENT/NEW DIRECTOR ORIENTATION**

Training opportunities are available for directors and associate directors through the VASWCD and DCR. A new director orientation is offered every four years and is open to all directors. This session is a good refresher course as items often change. Your Conservation District Coordinator (CDC) is also available to offer training on key topics. Included at the end of this section is also a new director checklist, prepared by your VASWCD Education Committee that will prove helpful when on-boarding new directors. The items and topics listed in the checklist should be covered with all new directors and even includes a list of commonly used acronyms.

The VASWCD also organized, (the first Sunday-Wednesday annually during the month of December) a VASWCD annual business meeting in partnership with the VASWCD Board of Directors meeting, Area Meetings and trainings for all district officials and staff. Trainings are focused for technical topics, education/administrative topics, and a track session highlighting director issues. The annual meeting committee plans and develops this training annually beginning its work in the spring. Information on annual meeting can be found at www.vaswcd.org/annual-meeting.

Annually a director training is held in the summer in conjunction with the VASWCD and Foundation quarterly board meetings. Training from previous years have included financial matters, IT issues, parliamentary procedures, efficient meeting management, and personnel management. These trainings are designed with directors in mind. If you have a topic you would like to recommend please contact VASWCD staff. Details on director training opportunities can be found online at www.vaswcd.org/director-trainings.

The VASWCD has also developed a new online training module for district officials and staff to learn about the basic knowledge and basic responsibilities that are components of SWCD work. Efforts have been recognized by the National Association of Conservation Districts. To access the online training visit www.vaswcd.org/leadership-course. Those completing the online modules and receiving a passing score will receive a certificate of completion and be recognized at the VASWCD annual meeting.

This section of the website also includes additional training resources, presentations, and information that may be of benefit to review. VASWCD research on collaboration, the NACD webinar on advocacy and leadership, SWCD guidance on record retention and more can be found at this link – www.vaswcd.org/additionalresources.

The VASWCD working with a committed group of SWCD staff and stakeholders has also created a Personnel Management Resource Guide to serve as a resource to a local SWCD. While this guide is by no means intended to serve as legal counsel it does provide critical personnel management materials including recruitment and hiring information, new employee on-boarding, performance management forms, separation/termination details, as well as sample policies shared by the soil and water conservation districts across the Commonwealth. This resource can also help ensure that districts have what they need, and that they are effectively matching skills and competencies to specific tasks, requirements and outcomes. We believe this resource is an important starting point to strong personnel management practices within your local SWCD. The Personnel Management Resource Guide can be found at www.vaswcd.org/personnel-management.

The VASWCD website serves as a repository of information on many topics that will help with board member development. Don’t hesitate to reach out to your VASWCD staff or leadership if you have a particular training request.

**f) BOARD MEMBER REMOVAL & RESIGNATIONS**

District director resignations are reviewed and acknowledged by vote of Virginia Soil & Water Board members. As a result, when there is a director vacancy, contact your CDC for guidance as (DCR 199-014) Nomination for Appointment, & (DCR 199-015) SWCD Director Information forms need to be completed, & forwarded to the CDC. As earlier mentioned, the Virginia Soil & Water Board approves all board appointments for at large appointees and when filling a vacancy.

Code of Virginia also provides guidance on removal of a board member.

*§ 10.1-536. Removal from office.*

Any district director may be removed by the board for neglect of duty or malfeasance in office, or may be removed in accordance with the provisions of general law. Upon receipt of a sworn complaint against a director filed by a majority of the directors of that same district, the board shall (i) notify the district director that a complaint has been filed against him and (ii) hold a hearing to determine whether the district director's conduct constitutes neglect of duty or malfeasance in office.

**g) LOCAL SWCD OFFICERS**

A conservation district is led by a board of officers and duties are carried out through committees. board officers include: Chair, Vice-Chair, Secretary and Treasurer. Many districts combine the responsibilities of Secretary and Treasurer into one position as Secretary/Treasurer. If the position of Secretary/ Treasurer is designated by the SWCD board to a staff person, this position must be approved by the VSWCB as per the Code of Virginia.

§ 10.1-532. Employment of officers, agents and employees.

The district directors may employ a secretary-treasurer, whose qualifications shall be approved by the board, technical experts, and such other officers, agents and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. In order to segregate financial duties and provide oversight and review, two designated district officials or an employee reviews and initials all invoices and supporting documentation. Annually a district determines officer appointments. It may be an important to include in your local SWCD operations manual job responsibilities for each officer, in addition to a general position description for directors. This is helpful information for a new officer and helps articulate the needs of the position.

**h) COMMITTEE STRUCTURE & GUIDANCE**

Effective committees can be one of the most important working forces at the heart of an organization. Board committees are often referred to as the ‘workhorses’ of the board, yet too many boards don’t make optimal use of the committee system. Delegating work to committees comprised of directors with appropriate skills and experience potentially allows boards to deal with a defined set of issues in a more effective and efficient way. Committees can also provide directors with an opportunity to be more fully engaged with the work of their board and maximize the company’s benefit of their skills and experience.

Committees are a great way to also further director and associate director involvement in the district. Committees can meet to discuss issues and then present requests/reports to the board. They assist the board by providing necessary background on issues. This helps stream line district board meetings, and make them more efficient. Types of committees can include: Personnel, Technical Review, Education, Finance, and Executive Committees. Information and examples on committee structure are included at the end of the chapter.

**i) LEGAL REPRESENTATION INFORMATION**

SWCDs are provided counsel at no charge through the Office of the Attorney General. Kelci Block is the assigned counsel to Soil and Water Conservation Districts and can be contacted at:

**Kelci Block**, Assistant Attorney General

Office of the Attorney General, 900 East Main Street, Richmond, VA 23229

Telephone: (804) 786-3890

E-mail: KBlock@oag.state.va.us

The Code of Virginia references Attorney General Representation and services provided on behalf of SWCDs in three places:

*b) § 2.2-507. Legal service in civil matters.*

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

*§ 10.1-501. Duty of the Attorney General*.

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts.

*c) § 10.1-501.1. Defense of claims.*

The Attorney General shall provide the legal defense against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

Basic Roles:

 Advice for civil legal matters

 Representation in litigation

Seeking Advice:

 Who may seek advice?

Soil & Water Conservation District Directors OR Soil and Water Conservation Districts

 Who may districts seek legal advice from:

(1) Local, public, or private sources

(2) Upon request, the Attorney General shall provide legal service in civil matters

 What may you seek advice about?

The business of the Soil & Water Conservation District

The District’s role in litigation is limited to these things:

• You are suing

• You are being sued

• You are required to provide information for a lawsuit

The role of the Office of the Attorney General when SWCD is involved in litigation:

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts. Va. Code § 10.1-501

Legal Service Resources:

Upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

Attorney-Client Privilege

 The attorney-client privilege protects communications between an attorney and a client from disclosure where the communication concerns rendering legal advice.

 The communication must be made with the expectation of confidentiality.

 The privilege does not apply where the communication involves the furtherance of a crime or a tort.

 Here, the privilege does not apply where the communication does not pertain to the business of a SWCD.

 Records that are protected under the attorney-client privilege are excluded from the provisions of the Freedom of Information Act in that records protected under attorney-client privilege do not have to be released to the public (§ 2.2-3705.1(2)). Also, an open meeting may be closed to the public as per FOIA in order to discuss communications protected by the attorney-client privilege (§ 2.2-3711(7)). These exclusions to FOIA remain in place until the privilege is waived.

 The privilege belongs to the client (SWCD) and can only be waived by the SWCD. Waiver occurs when the communication is disclosed to someone other than the SWCD and its attorney. Once waived, the privilege cannot be restored.