



**House  
Legislative  
Analysis  
Section**

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**SOIL CONSERVATION DISTRICTS**

**House Bill 4157 (Substitute H-2)  
First Analysis (5-4-93)**

**Sponsor: Rep. John Llewellyn  
Committee: Agriculture and Forestry**

***THE APPARENT PROBLEM:***

Currently, the Soil Conservation Districts Law (Public Act 297 of 1937) allows soil conservation districts to "make available" to land owners (or their designees) in the district a number of things to help landowners conserve soil resources and prevent and control soil erosion. Districts can make available agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and "other material or equipment." Reportedly, for more than forty years two soil conservation districts (Van Buren and Newaygo) have operated nurseries, producing and selling seedlings both in their districts and to other soil conservation districts, while more recently two other districts have gathered and made beach grass available to other districts. Reportedly, some private nurseries questioned the ability of soil conservation districts to operate their own nurseries and to sell seedlings to other soil conservation districts, so an attorney general's opinion was requested on the question. The attorney general held that sale of seedlings by one district to another was not authorized by statute (see BACKGROUND INFORMATION), and at the request of the soil conservation districts legislation has been introduced to address this and other issues.

***THE CONTENT OF THE BILL:***

The bill would amend the Soil Conservation Districts Law to do the following:

- \* allow soil conservation districts to make available soil conservation materials and equipment to other soil conservation districts in Michigan;
- \* allow existing soil conservation district nurseries to produce plants for soil conservation purposes;
- \* prohibit soil conservation district nurseries from producing ornamental plants;
- \* allow soil conservation districts to borrow money and take out mortgages;
- \* prohibit new soil conservation district nurseries, except for in the Upper Peninsula; and

\* impose civil fines on soil conservation districts that violated the bill's provisions.

More specifically, the bill would make soil conservation material or equipment both to landowners and to other soil conservation districts in Michigan. The bill would delete "seeds and seedlings" from the act and instead substitute "conservation type plant species."

The bill would allow soil conservation districts with existing nurseries (nurseries that were in operation on January 1, 1993) to produce (and not just make available) plant species intended to be used to control soil erosion. Soil conservation districts could make available, from other sources, plants intended for ornamental purposes or for "residential beautification," but would be prohibited from producing such plants.

Soil conservation districts with existing nurseries could continue to operate their nurseries. However, other soil conservation districts would be prohibited (until at least January 1, 2003) from owning or operating nurseries unless a district in the Upper Peninsula requested to be allowed to start a nursery.

Currently, soil conservation districts may enter into a number of legal transactions (such as lawsuits and contracts). The bill would allow districts to borrow money ("at rates of interest as the district may determine") and take out mortgages or pledge any of its property.

Finally, the bill would subject soil conservation districts which violated the bill's provisions to civil fines of between \$100 and \$1,000. Revenue from fines would be deposited in the state general fund to be used to implement the bill.

MCL 282.8

House Bill 4157 (5-4-93)

**BACKGROUND INFORMATION:**

In a letter to the chair of the Van Buren Soil Conservation District dated August 17, 1960, the executive secretary of the state soil conservation committee addressed the question as to whether the Soil Conservation Districts Act allowed the selling of trees to soil conservation districts in other states. The letter said, "Our Assistant Attorney General, in an unofficial opinion, informed us that the section [in the act] dealing with cooperation between districts applied only to districts organized under Act 297, of the Public Acts of 1937 [the Soil Conservation Districts Act], as amended, or in other words, only Michigan Soil Conservation Districts. It was his unofficial opinion that the selling of tree nursery stock to districts outside of Michigan was not in accordance with authority granted by the Districts Law."

In a letter from the program specialist in the Environmental Division of the Department of Agriculture to the Van Buren Soil Conservation District (dated January 29, 1986), in response to the question "Can the Van Buren Soil Conservation District sell trees out of state?" the department replied "no" and referred to a copy of the 1960 letter referring to the unofficial opinion given by the assistant attorney general. The letter continued, "If the Board wishes we can ask for an official opinion from the Attorney General, however, I offer this caution. First of all the Attorney General is more than likely going to come back with the same opinion, only, and this is what I think might be the kicker, he might go a step farther and say that nursery stock may only be sold to land owners or their designated representatives, within the district, since that is what the district law allows. My advice would be, at this point, to leave well enough alone."

In response to a question from a legislator concerning soil conservation districts and whether they may engage in selling trees to buyers located in other counties, states, and countries, the attorney general indicated that the language of the existing law "clearly limits the sale of trees to landowners or their designated representatives within the soil conservation district." It was the attorney general's opinion, therefore, "that a soil conservation district may not engage in selling trees to buyers located in other counties, states and countries." The attorney general further indicated that soil conservation districts "may not create a private nonprofit corporation and transfer some or all of the district's

assets to the corporation." (Letter to the Honorable James Mick Middaugh, dated September 15, 1992) The director of the Environmental Division of the Department of Agriculture subsequently sent a letter to all soil conservation district chairpersons and administrators advising them of the attorney general's opinion, stating that "[u]ntil legislation is passed allowing districts to sell to other districts, no district may sell any conservation material outside of their respective district boundary. Additionally, the Van Buren and Newaygo nurseries will not be able to sell you tree seedlings for your 1993 tree sale programs." (Dated October 12, 1992)

**FISCAL IMPLICATIONS:**

Fiscal information on Substitute H-2 is not available, although a Department of Agriculture analysis of the bill as introduced indicated that the bill had no fiscal implications for the department, state government, or local government. (4--20-93)

**ARGUMENTS:****For:**

The state has a legitimate interest in promoting reforestation, soil conservation, and wildlife habitat preservation. All of these activities support valuable private industries in the state--logging, agriculture, and tourism (including hunting and fishing).

The legislation would allow soil conservation districts with existing nurseries to grow and make available seedlings not only to landowners within the particular district, but to other soil conservation districts as well. Currently, two soil conservation districts -- Van Buren and Newaygo -- operate their own nurseries, while two other districts -- Mason-Lake and Charlevoix -- gather and sell beach grass to control dune erosion. The Van Buren district nursery reportedly operates on about 80 acres of land owned by the district, while the Newyago district nursery operates on about 9 acres owned by the district, supplemented by another 12 to 14 acres leased from a private landowner. Both existing district nurseries are self-supporting (and, in fact, support other programs of the district), and no tax dollars are used to fund nursery operations (appropriations to the soil conservation districts from the Michigan Department of Agriculture go to pay for district office staffing and clerical workers). Most soil conservation districts, including the two with nurseries, fulfill their mission of "making available" soil conservation seedlings and materials,

moreover, by buying the seedlings and materials from private commercial nurseries, and serve customers, such as farmers, who buy younger seedlings in larger quantities rather than the older, more well developed stock purchased in much smaller quantities by residential buyers.

Supporters of the bill argue that continued cooperation among the state's soil conservation districts is in the best interests of the state as a whole, by allowing for better solutions to regional resource management problems, maximizing financial resources, and better serving soil conservation district customers than would be possible if such cooperation were prohibited. Supporters also argue that they provide some plants that are commercially unprofitable but valuable for soil conservation purposes (such as beach grass), and that if district nurseries were closed there would be no place from which these conservation species could be obtained. The district nurseries, it is true, do offer some plant material that can serve a dual purpose, both preventing soil erosion and providing ornamentation or, in the case of fruit stock, fruit. Also, supporters argue that the seedlings that they provide are generally younger and in greater quantities than those provided by private nurseries, which tend to offer more mature stock for residential ornamental and fruit-producing purposes.

**Response:**

Representatives from private nurseries dispute the claim that they do not make available certain conservation species because they are unprofitable, and say they can provide any species needed. For example, one private commercial nursery reportedly has offered beach grass -- one of the species cited as unavailable through private nurseries -- for 20 years.

When soil conservation district nurseries were started some 40 years ago, there was a need for their services because there were virtually no private nurseries to provide the seedlings and other materials necessary for reforestation, wildlife habitat preservation, and soil erosion prevention. However, in the intervening years, private commercial nurseries have developed to the point that they can provide the kinds and quantities of plant materials now provided by the two existing soil conservation district nurseries. Continuing such nurseries, and allowing them to sell to other districts and out of state poses unfair competition to private industry and constitutes an inappropriate function of these

government entities. Soil conservation district nurseries do not have to pay property taxes, income taxes, or sales taxes, nor do they need to obtain state licenses to operate. Basically, by allowing soil conservation districts to own and operate nurseries -- rather than, as is provided by law, simply "making available" plant materials obtained from private nurseries -- the government is subsidizing these public nurseries to the detriment of private industry.

What is more, although soil conservation districts were set up to prevent soil erosion, they have overstepped their statutorily authorized function by also selling ornamental plants and Christmas tree and orchard stock in addition to plants intended for soil conservation. Even if the nurseries do obtain some or all of this plant material from private nurseries (for example, reportedly all of the fruit stock that the district nurseries sell are purchased from private orchards), none of these ornamental or commercial plants are part of the soil conservation districts' stated mission. In fact, sometimes the district nurseries' sales of some of these plants not only poses unfair and inappropriate competition to private industry, they also in some cases have caused other serious problems for private industry. The sale of scotch pines to would-be Christmas tree sellers (such as farmers seeking to supplement their income through such longer-term stock) has resulted in abandoned scotch pine plantations that harbor disease that threatens the stock of private Christmas tree growers, who then have to engage in expensive extra spraying of their own stock and even, in some cases, attempting to uproot trees in abandoned plantations.

At the very least, the bill should define "conservation species," prohibit district nurseries from selling Christmas tree seedlings and fruit stock, and prohibit district nurseries from selling seedlings out of state and abroad.

**Reply:**

The bill would say specifically that soil conservation districts could make available to landowners (or their designated representatives) within the district "or to other soil conservation districts within the state" materials or equipment that would help soil conservation and control soil erosion. What is more, the larger of the two existing district nurseries -- the 80-acre Van Buren district nursery -- reportedly is going to be privatized, which means that the Newaygo district nursery consists of about 9 acres owned by the district, supplemented by another 12 to 15 acres leased from a private

landowner (who, presumably, pays taxes on her land). It seems questionable, if the Van Buren district nursery is indeed privatized, that the remaining small district nursery would pose much competition to the private commercial nurseries.

***POSITIONS:***

The Department of Agriculture supports the bill. (5-3-93)

The Michigan Association of Conservation Districts supports the bill. (4-30-93)

The Mason-Lake Soil Conservation District supports the bill. (4-30-93)

The Van Buren County Soil Conservation District supports the bill. (4-30-93)

The Newaygo County Soil Conservation District supports the bill. (4-30-93)

The Michigan Bankers Association supports the bill. (5-3-93)

The Michigan Farm Bureau does not oppose the bill. (5-3-93)

The Michigan Seedling Growers Association is neutral on the bill. (3-5-93)

The Michigan Nursery and Landscape Association opposes the bill. (5-3-93)

The Michigan Christmas Tree Association opposes the bill. (5-4-93)

Needlefast Evergreen, Inc. opposes the bill. (5-3-93)

Vans Pines, Inc. opposes the bill. (5-4-93)

Wahmhoff Farms Nursery opposes the bill. (5-4-93)