



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

UPDATE SOIL CONSERVATION DISTRICT LAW

House Bill 5792 (Substitute H-4)
Sponsor: Rep. Howard Wetters

House Bill 5793 (Substitute H-3)
Sponsor: Rep. John Llwellyn

Committee: Agriculture
First Analysis (6-10-98)

THE APPARENT PROBLEM:

The original soil conservation district act was enacted in 1937, in the shadow of the great drought -- and resulting Dust Bowl -- of the 1930s. The act's stated legislative intent was to provide for the conservation of the soil and the water resources of the state and for the control and prevention of soil erosion, "and thereby to conserve the natural resources of this state, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state". There currently are 82 soil and water conservation districts that cover the entire state and whose work in soil conservation over the past 61 years has involved projects to restore and maintain water quality, especially on a watershed basis. Soil conservation districts probably are best known by the general public for their annual sale of millions of tree seedlings, which district staffs provide to state residents at a minimal cost in order to encourage people to plant trees to meet future needs for timber, wildlife, and recreation. District staffs also provide on-site advice and planning services to state residents before selling tree seedlings, planting assistance and information at the time of the sale, and follow-up service and continuing education after the sale. In addition to tree seedling sales, however, soil conservation districts also engage in a variety of programs aimed at protecting and enhancing the state's natural resources. Soil conservation districts provide help to private landowners in managing forestland, improving wildlife habitat, creating wetlands, and protecting groundwater. Some districts also work with builders and developers to minimize soil erosion on construction sites, and, in the area of farmland

protection, in helping in the application process for the state's "Purchase of Development Rights" (PDR) program. Many districts also conduct educational programs for both children and adults, and, in particular, promote "environthon" -- an environmental competition in which teams of high school students compete on regional, state, and national levels and through which they learn about wildlife, aquatics, forestry, soils, sustainable agriculture, energy conservation, and environmental issues.

Though soil conservation districts have increased the range and sophistication of their conservation and educational efforts over the past 61 years, their enabling legislation has not reflected this, and legislation has been introduced to do so.

THE CONTENT OF THE BILLS:

House Bill 5793 would amend the Natural Resources and Environmental Protection Act (MCL 324.9301 et al.) to make a number of amendments to provisions governing soil conservation districts. The bill would statutorily broaden the purview of soil conservation districts to include natural resources in general, and to reflect this by changing the districts' names to "conservation districts" instead of "soil conservation districts." The bill also would restrict the kinds of plants conservation districts could sell and would impose civil fines for violating these provisions.

More specifically, the bill would do the following:

** Currently, the soil conservation provisions of the act specify that it is the policy of the legislature to provide for "the conservation of the soil and water" of

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the state, and for the control and prevention of soil erosion. To this end, the law provides for the formation of county soil conservation districts. Under the bill, these districts would be renamed as "conservation districts", and the policy statement would be broadened to include "the conservation of the farmland and natural resources of the state, including soil, water, and other natural resources". Likewise, the bill would broaden the powers of conservation districts from actions related to the conservation of soil and prevention of soil erosion to actions related to the conservation of farmland and natural resources.

** The bill would create a "conservation species advisory panel" in the Department of Agriculture to establish annually (by December 1) a list of "conservation species" (for the following calendar year) that could be "propagated, planted, harvested, sold, or rescued" as part of a plant rescue operation. Even if a species were removed from the list in a subsequent year, species on an annual list of conservation species could continue to be sold, removed, or reestablished in subsequent years. The panel would consist of the following nine members, to be selected by the director of the Department of Agriculture and approved by the Commission of Agriculture: two representatives from the Department of Agriculture, one from the Pesticide and Plant Management Division and one from the Environmental Division; one individual representing the Department of Natural Resources; one individual representing the Natural Resource Conservation Service (the former Soil Conservation Service); two representatives from Michigan State University, one from the Department of Horticulture and one from the Department of Forestry; one individual representing conservation districts; one individual from a statewide organization representing nursery and landscaping interests in the state; and one individual from a statewide organization representing seedling growers' interests in the state.

** The bill would delete language in the act that establishes the state soil conservation committee, which is charged with serving as an advisory body to the Department of Agriculture in performing the department's duties under the act.

** The bill also would delete language for establishing soil conservation districts, including language describing the process for setting initial boundaries of a district, holding a hearing on the question, holding a referendum, the appointment of directors, filing of an application to form a district with the secretary of

state, and procedures for adding territory or changing the boundaries of a district. Two sections that provide for the nomination and election of directors by "land occupiers" (the definition of which the bill would delete from the act), and for a referendum on the discontinuance of a district, would be repealed.

** Current language requiring that boundaries of soil conservation districts that exclude cities and incorporated villages include these municipalities would be changed to say that boundaries of conservation districts would have to include cities, townships, and incorporated villages.

** Currently, two or more soil conservation districts can petition the Department of Agriculture for consolidation of the districts into a single district. The bill would instead allow one or more soil conservation districts to petition the department for a revision in the boundaries of one or more conservation districts. In addition to notifying residents in the area affected by a proposed revision of conservation district boundaries within 30 days of receiving a proper petition, the department also would be required to hold a hearing and receive comments about the proposed change within 60 days.

** Terms of office for conservation district directors would be increased from three years to four years. The bill also would allow directors to be compensated on a per diem basis, for an amount no more than that paid to members of the state Commission on Agriculture.

** Conservation district directors would be elected by district residents (rather than "land occupiers") at a nonpartisan election held at a district's annual meeting. Residents who were unable to attend the meeting could vote by absentee ballot (at the district office during regular business hours in the period of time between the publication of notice of the annual meeting and the meeting itself).

** Notice of a conservation district's annual meeting would have to be published at least 45 days before the meeting, in a local newspaper. The notice would have to include the date, time, and place of the meeting, the agenda, and all of the candidates for director.

** In the section setting out the powers of soil conservation districts, references to "soil conservation" districts would be changed to "conservation" districts, and the district's powers regarding issues of soil resources, soil erosion, and

soil erosion prevention and control generally would be replaced with references instead to "farmland and natural resources."

** In addition to districts' current powers, the bill would add the following powers or changes to districts' existing powers:

(a) A conservation district would be required to obtain either the consent of a landowner or the necessary rights or interest in lands before disseminating research information on the conservation of farmland and natural resources;

(b) In addition to landowners, conservation districts would be allowed to provide technical assistance to other conservation districts in Michigan, and to share with other districts machinery and equipment, fertilizer, seeds and seedlings, and other materials to help landowners conserve farmland and natural resources and prevent and control soil erosion on their lands;

(c) Conservation districts would be allowed to engage in plant rescue operations and to propagate, harvest, and -- subject to the annual list of species designated by the newly created "conservation species advisory panel" -- sell only "conservation species" for conservation purposes. The bill would define "plant rescue" to mean "physically move native conservation species of plants from [one] location in Michigan to another location in Michigan for the purpose of reestablishing the native conservation species." If a conservation district violated these provisions, it would be subject to a civil fine of up to \$100 a day. An action to enforce these provisions could be brought by the state or a county in the circuit court for the county in which the conservation district was located or in which the violation occurred.

(d) Conservation districts would be allowed to borrow money for facilities or equipment for conservation purposes, and to pledge the assets of the district as collateral against loans. Any money borrowed would be solely the district's obligation and not that of the state or any other public entity in the state.

(e) A conservation district could act as a "compliance assistance agent" for other federal, state, and local laws; that is, a district could provide technical assistance to individuals, organizations, agencies, and others to aid them in complying with federal, state, and local conservation laws and ordinances.

** The bill would prohibit conservation districts from enforcing state or federal laws unless authorized by the county board of commissioners in each county in which the district was located.

House Bill 5792 would amend Public Act 156 of 1851 (MCL 46.22), which enumerates the powers and duties of general law counties, to allow counties organized under the act to levy a property tax of up to one mill for up to 20 years to fund a conservation district. A county board of commissioners could, by resolution, put the question of levying such a tax before the voters at a regular or primary election in even numbered years or at a special election in odd numbered years. The conservation district would have to reimburse the county for the costs of a special election. If a soil conservation district was established in more than one county and the various counties approved different millage rates, all of the counties would levy the lowest approved millage rate for the soil conservation district.

Tie-bar. The bills are tie-barred to each other.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

So-called "soil" conservation districts, over time and as knowledge of the interconnectedness of ecological systems has advanced, have taken on a much broader role in the conservation of all natural resources, not just soil and water resources. Statutorily, however, their role remains limited, as does their ability to pay for their activities. House Bill 5793 would update the "soil conservation district" law, as incorporated in the Natural Resources and Environmental Protection Act, to rename soil conservation districts as "conservation districts" and to make various changes reflecting the actual practice of districts. So-called "soil conservation districts" currently engage in a variety of programs, including not only projects to restore and maintain water quality, but also programs to provide private landowners with on-site assistance to manage forestland, improve wildlife habitat, create wetlands, and protect groundwater. In addition, some districts staffs also provide builders and developers with "compliance" assistance, helping them to minimize soil erosion on construction sites. The bill would statutorily authorize these current activities, while

House Bill 5792 would provide conservation districts with the ability to raise funds to pay for their activities. At the same time, House Bill 5793 would protect privately-held, taxpaying entities such as nurseries, nursery wholesalers, landscape contractors and management firms, and retail garden centers from unfair competition from state-subsidized, tax-exempt conservation districts with regard to the propagation, planting, harvesting, and sale of plants by restricting district activities in this regard to a list of "conservation species" established annually by a panel consisting of state agency and plant industry representatives. Through local cooperation and adequate planning, the private nursery industry generally should be able to provide any species of plant material required by conservation districts, though under certain circumstances -- where certain species of plant material might not be readily available in all areas of the state to support the control and prevention of soil erosion, for example -- limited authority for districts to engage in the propagation, harvesting, and selling of plant material might be appropriate. The bill would, moreover, give "teeth" to the prohibition against conservation districts posing unfair competition in the sale of these plants by subjecting them to civil fines for violating this prohibition.

Against:

House Bill 5793 would establish a nine-member "conservation species advisory panel" in the Department of Agriculture. There would be two representatives on the panel from the state Departments of Agriculture and Natural Resources, two from Michigan State University's departments of horticulture and forestry, one from the conservation districts, one each from private sector businesses (nursery and landscaping, and seedling growers), and one from the Natural Resources Conservation Service. However, no representatives from statewide environmental groups interested in plant species conservation or from the general public would be included on this advisory panel. If conservation districts are to have such a broad mission as envisioned by the changes in the bill's policy statement, then perhaps the proposed panel should have representatives from both the environmental community and the general public, along with representatives from the state departments, the conservation districts, and the various private-sector plant industries.

Analyst: S. Ekstrom

POSITIONS:

The Department of Agriculture supports the bills. (6-8-98)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.