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SFA



BILL ANALYSIS

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House Bill 5792 (Substitute H-4 as reported without amendment)
House Bill 5793 (Substitute H-3 as reported without amendment)
Sponsor: Representative Howard Wetters (H.B. 5792)
Representative John Llewellyn (H.B. 5793)
House Committee: Agriculture
Senate Committee: Farming, Agribusiness, and Food Systems

Date Completed: 10-29-98

RATIONALE

Enacted in the wake of the great drought and Dust Bowl of the 1930s, Public Act 297 of 1937 established soil conservation districts to provide for the conservation of the State's soil and water resources and to control and prevent soil erosion. During the past 61 years, the activities of soil conservation districts have expanded to include conducting research; carrying out prevention and control measures; furnishing fertilizer, seeds, and seedlings for conservation of the soil and prevention of soil erosion; developing soil conservation plans; and, administering soil conservation programs. While the work of these districts has grown to include various aspects of natural resource management, the provisions of Public Act 297 governing soil conservation districts, as codified in the Natural Resources and Environmental Protection Act (NREPA), do not reflect the current responsibilities and activities of the districts.

CONTENT

House Bill 5792 (H-4) would amend Public Act 156 of 1851, which establishes the powers and duties of county boards of commissioners, to allow a county to levy a tax and remit the proceeds of that tax to a conservation district. House Bill 5793 (H-3) would amend Part 93 (Soil Conservation Districts) of the Natural Resources and Environmental Protection Act to replace "soil conservation districts" with "conservation districts"; establish the membership of and additional powers for a conservation district board (including engaging in plant rescue operations); create the Conservation Species Advisory Panel, and require it to prepare an annual list of conservation species that could be propagated,

harvested, sold, or rescued; and provide procedures for boundary revisions of conservation districts. In addition, the bill would eliminate the provisions concerning the State Soil Conservation Committee and petitions to organize soil conservation districts. The bills are tie-barred to each other.

House Bill 5792 (H-4)

A county, by resolution of the county board of commissioners, could place on the ballot at a regular or primary election in even-numbered years, or at a special election in odd-numbered years, the question to levy upon all taxable property in the county a tax of up to one mill for up to 20 years and to remit the proceeds of that tax to a conservation district established in that county.

If a conservation district were established in more than one county and the counties in which it was established approved different millage rates, the lowest millage rate approved would have to be the millage rate levied in each county. If a county called a special election to approve a millage pursuant to the bill, the conservation district established in that county would have to reimburse the county for all expenses incurred as a result of the special election.

House Bill 5793 (H-3)

Conservation Districts

The bill would replace "soil conservation districts" with "conservation districts" throughout the Act and include the conservation of farmland and other natural resources along with soil and water resources. The bill would eliminate provisions

concerning the formation of soil conservation districts. In addition, a conservation district would not be able to enforce State or Federal laws unless authorized by the county board of commissioners of each county in which a conservation district was located.

Conservation District Board

The bill would apply most of the current provisions concerning the board of directors of a soil conservation district to a conservation district board. In addition, the bill would require a conservation district board to consist of five elected or appointed directors serving four-year terms of office, who would have to designate a chairperson annually. Currently, the term of office of each director must be three years except for varying years according to appointment and number of votes.

Under the bill, all directors would have to be elected at an annual meeting by residents of the district who were of legal voting age and could demonstrate residency in the district through identification. The election would have to be nonpartisan, and the directors would have to be elected by the residents of the district at large. Notice of the annual meeting, including the date, time, location, agenda, and list of candidates, would have to be published in the official newspaper of record for the area in which the district was located at least 45 days prior to the date of the meeting. A resident who was unable to attend the meeting could vote by absentee ballot prior to the annual meeting. A director could be paid a per diem for time spent undertaking his or her duties as a director in an amount not to exceed the per diem paid to a member of the Commission of Agriculture.

In addition to the directors' current powers, the bill provides that a conservation district board would have the power to do the following:

- Engage in plant rescue operations and propagate, plant, harvest, and sell only conservation species on the list established by the proposed Conservation Species Advisory Panel. (A conservation district in violation of this provision would be subject to a civil fine of up to \$100 per day of violation, and an action to enforce the provision could be brought by the State or a county.)
- Provide technical assistance to other conservation districts.
- Borrow money for facilities or equipment for conservation purposes and pledge the

assets of the district as collateral against loans. Any money borrowed would be solely the obligation of the district and not the obligation of the State or any other public entity in the State.

- Act as a compliance assistance agent for other Federal, State, and county laws.

("Plant rescue" would mean to move physically native conservation species of plants from one location in Michigan to another location for the purpose of reestablishing the native conservation species. "Conservation species" would mean those plant species beneficial for conservation practices as authorized by the Conservation Species Advisory Panel.)

Currently, a district board may conduct surveys, investigations, and research related to the character of soil and the preventive and conservation measures needed, and may disseminate that information. Under the bill, a board would have to have the consent of the landowner or the necessary rights or interest in the land, before disseminating the information.

The bill also would replace soil-conservation, erosion-control, and erosion-prevention projects with farmland and natural resource conservation projects, and replace conservation of soil with conservation of farmlands and natural resources.

Conservation Species Advisory Panel

The Conservation Species Advisory Panel would be created within the Department of Agriculture and would consist of the following members selected by the Director of the Department, and approved by the Commission of Agriculture: two representatives of the Department, including one individual 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; two representatives from Michigan State University, including one individual 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 require the Conservation Species

Advisory Panel to establish, by December 1 of each year, 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. Conservation species on the list that were propagated, planted, or rescued during that calendar year, however, could be sold, removed, or reestablished in subsequent years even if the species were removed from the list in a subsequent year.

Boundary Revisions

The current Act permits two or more soil conservation districts to petition the Agriculture Department for consolidation into a single district. The bill provides, instead, that one or more conservation districts could petition the Department for a revision in the boundaries. Within 30 days after receiving a petition, the Department would have to cause notice of hearing to be given to the residents in the area or areas affected by the proposed revision as identified by the directors of a district, and within 60 days hold a hearing to receive comments relative to the proposed change. If the Department found the petition desirable, it would be required to issue an order stating that the boundaries of the districts were to be moved, merged, consolidated, or separated at a specified date.

Repeals

The bill would repeal sections of the Act that provide for the election of three directors for each district (MCL 324.9306), and allow land occupiers to petition for the discontinuance of a district (MCL 324.9311).

Proposed MCL 46.22 (H.B. 5792)
MCL 324.9301 et al. (H.B. 5793)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Soil conservation districts have taken on a broad role in the conservation of all natural resources, not just soil and water resources. Under the law, however, their role is limited. House Bill 5793 (H-3) would update Part 93 of the NREPA to rename soil conservation districts “conservation districts” and to make various changes that reflect the current activities of these districts. For example, districts currently engage in various land management programs to provide private landowners with

assistance in managing forest land, improving wildlife habitat, and creating wetlands. The bill would statutorily authorize these activities. In addition, House Bill 5792 (H-4) would permit a county board of commissioners to place on the ballot the question of levying on all taxable property in a county a tax of up to one mill for up to 20 years with proceeds going to the county’s conservation district. Thus, the bill would enable conservation districts to raise funds to pay for their activities.

Supporting Argument

Currently, Part 93 of the NREPA provides for the establishment and operation of soil conservation districts. Specifically, any 25 “occupiers of land” lying within the territory proposed to be organized into a district may petition the Department of Agriculture asking that a district be organized. The Department is required to hold a referendum on a proposed district at which all occupiers of land lying within the territory proposed for a district are eligible to vote. In addition, all occupiers of land lying within an area proposed to be added to a district are eligible to vote in a referendum on the inclusion of the territory. The NREPA defines “occupier of land” as any person who holds title to, or is in possession of, any land of at least three acres in size that lies within a district, whether as owner, lessee, renter, or tenant. Questions have arisen concerning the constitutionality of sections of the NREPA that limit the persons who are eligible to vote on soil conservation districts. The Attorney General recently ruled (Opinion Number 6991) that the requirement that a person own or occupy land in a soil conservation district to be eligible to vote in district elections does not violate the Equal Protection Clause of the U.S. Constitution. The Attorney General also ruled, however, that the requirement that a person own or occupy at least three acres of land in a district to be eligible to vote “constitutes an unreasonable and arbitrary classification” and violates the Equal Protection Clause. House Bill 5793 (H-3) would delete the definition of “land occupier” or “occupier of land”, which includes the acreage requirement, as well as provisions concerning the formation of soil conservation districts by occupiers of land. The bill also would delete the requirement that a district’s directors be elected by land occupiers. The bill provides, instead, that persons who were residents of a district, could demonstrate residency through identification, and were of legal voting age could vote for a district’s directors at an annual meeting of the district.

Supporting Argument

House Bill 5793 (H-3) would create the Conservation Species Advisory Panel which would

have to establish yearly a list of conservation species that could be propagated, planted, harvested, sold, or rescued. The panel would have to include representatives of nursery and landscaping interests as well as grower interests in the State. Currently, some districts sell seedlings at minimal cost to private landowners to encourage the planting of trees to stabilize soil. Some people have been concerned that private, tax-paying entities such as nurseries, nursery wholesalers, landscape contractors and management firms, and retail garden centers have had to compete unfairly with tax-exempt, State-subsidized conservation districts with regard to the sale of these plants. The bill would prohibit a conservation district board from selling plant species other than those listed by the Advisory Panel. In addition, a conservation district that violated this provision would be subject to a civil fine.

Legislative Analyst: L. Arasim

FISCAL IMPACT

House Bill 5792 (H-4)

The bill would have no fiscal impact on State government. The bill could have an indeterminate fiscal impact on local government depending on the number and amount of millages levied to fund conservation districts.

House Bill 5793 (H-3)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: G. Cutler
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.