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UPDATE SOIL CONSERVATION DISTRICT LAW

House Bill 5792 as enrolled
Public Act 462 of 1998
Sponsor: Rep. Howard Wetters

House Bill 5793 as enrolled
Public Act 463 of 1998
Sponsor: Rep. John Llwellyn

House Committee: Agriculture
Senate Committee: Farming, Agribusiness,
And Food Systems

Second Analysis (1-19-99)

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:

The bills would amend the "general law counties" act (House Bill 5792) and the soil conservation district part of the Natural Resources and Environmental Protection Act (House Bill 5793) to allow counties to levy taxes to fund conservation districts and to make a number of changes to the composition, powers, and duties of conservation districts.

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. If a conservation district included more than one county, and if the counties in the district approved different millage rates, each of the counties in the district would levy the lowest approved millage rate.

House Bill 5793 would make a number of changes to the soil conservation district part (Part 93) of the Natural Resources and Environmental Protection Act (MCL 324.9301 et al.). Among other things, the bill would broaden the purview of soil conservation districts to include natural resources in general (a change that would be reflected by changing the districts' names to "conservation districts" instead of "soil conservation districts"), restrict the kinds of plants conservation districts could sell, and impose civil fines on districts that violated these restrictions.

More specifically, the bill would do the following:

Statutory name and policy change. 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 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, districts would be renamed "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." The bill also 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.

Restrictions on plants that districts could sell. The bill would create a "conservation species advisory panel" in the Department of Agriculture to establish by December 1 of every year a list for the following calendar year of "conservation species" that could be "propagated, planted, harvested, sold, or rescued" as part of a plant rescue operation. (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.") However, conservation species on a list for one calendar year that were propagated, planted, or rescued during that calendar year could be sold, remove, or reestablished in subsequent years even if the species were removed from the list in a subsequent year.

The panel would consist of nine members, to be selected by the director of the Department of Agriculture and approved by the Commission of Agriculture, as follows:

** 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.

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. 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.

Deleted language: the state soil conservation committee, establishment of districts. 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 in section 9305 that sets out procedures for establishing soil conservation districts. Current language describes requirements for setting a district's initial boundaries, holding hearings and referenda on the question of establishing districts, appointing district directors, filing applications with the secretary of state to form districts, and adding territory to, or changing the boundaries of, districts. The bill would retain current language allowing districts to petition the Department of Agriculture for district name changes and would rewrite the language that includes municipalities within soil conservation district boundaries. (Current language says that "boundaries of soil conservation districts that exclude cities and incorporated villages are extended to include these municipalities." The bill would say instead that "boundaries of conservation districts shall include cities, townships, and incorporated villages.")

Consolidation of districts. Currently, two or more soil conservation districts can petition the Department of Agriculture for consolidation 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 within 60 days to hold a hearing and receive comments about the proposed change.

District directors. Currently, soil conservation boards have five elected "directors," who serve three-year terms of office. The bill would increase the term of office for a conservation district director to four years, and would allow directors to be compensated on a per diem basis, for up to the same amount as paid to members of the state Commission on Agriculture.

Currently, soil conservation district directors are elected at an annual meeting of the district's "land occupiers." Under the bill, candidates for district director would have to file with the conservation district office, at least 60 days before the annual meeting, a petition signed by five residents of the district. Election of conservation district directors would be at an annual meeting by district residents,

would be nonpartisan, and would have to be certified by the Department of Agriculture. (The bill would define "resident" to mean "a person who [wa]s of legal age to vote and c[ould] demonstrate residency in the district via 1 piece of identification.")

Notice of the annual meeting would have to be published at least 45 days before the meeting, in a local newspaper ("the official newspaper of record for the area in which the district [wa]s located"). The notice would have to include the date, time, and place of the meeting, the agenda, and all of the candidates for director.

District residents who were unable to attend the annual 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.

District powers. In the section setting out the powers of soil conservation districts, references to "soil conservation" districts would be changed to "conservation" districts, and the districts' current powers with regard to 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 restricting districts' ability to sell plants or enforce laws, the bill would make the following changes to districts' 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) The bill would allow conservation districts to provide technical assistance not only to landowners but also to other conservation districts in Michigan. Districts also would be allowed to share with other districts machinery and equipment, fertilizer, seeds and seedlings, and other materials to help landowners conserve farmland and natural resources and to prevent and control soil erosion on their lands.

(c) 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 a district borrowed would be its obligation alone (that is, not that of the state or any other public entity in the state).

(d) 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.

District enforcement of laws. The bill would specifically 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.

Repeals. The bill would repeal two sections of the act regarding the nomination and election of directors by "land occupiers" (the definition of which the bill would delete from the act), and referenda on discontinuing a district.

Effective date. Section 9307, dealing with conservation district directors (their number, term of office, election, powers and duties), would take effect on June 1, 1999.

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

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency (10-29-98), House Bill 5792 would have no fiscal impact on the state but 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 would have no fiscal impact on state or local government.

ARGUMENTS:

For:

House Bill 5793 would update the statutory authorization of soil conservation districts to more accurately reflect current soil conservation district activities while at the same time imposing new restrictions on districts to prevent them from competing with the private sector in the sales of plants. In addition, the bill would delete language that refers either to inactive entities (the state soil conservation committee, which reportedly has not met for years) or to unnecessary activities (establishment of soil conservation districts, which already have been established for all 83 counties in the state).

The law creating soil conservation districts in Michigan was enacted during the Great Depression of the 1930s in the wake of the Dust Bowl. However, over the years, as knowledge of the interconnectedness of ecological systems has advanced, soil conservation districts have taken on a much broader role in the conservation of all natural resources, not just soil and water. 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 "conservation districts" and to make various changes reflecting the actual practice of districts. 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 forest land, 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 through millage elections placed before district voters by county boards of commissioners.

House Bill 5793 also 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.

Finally, while authorizing conservation districts to help builders and developers to comply with state and federal conservation laws, House Bill 5793 would specifically prohibit districts from enforcing any of these law without the explicit authorization of their county boards of commissioners.

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 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.

Also, it should be noted that while House Bill 5793 would require the Department of Agriculture to certify conservation district director elections, the bill remains silent on what would happen if the department failed to certify an election or what the certification would be based on. What would happen if someone challenged the department's certification, or if the department failed to certify an election? How long after a district's annual meeting would the department have to certify an election?

Analyst: S. Ekstrom

■ 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.