

Legislative Analysis



APPOINTMENT OF CONSERVATION DISTRICT DIRECTORS TO FILL VACANCIES

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House Bill 4132 (as reported from committee without amendment)

Sponsor: Rep. Peter Pettalia

Committee: Natural Resources

First Analysis (2-15-13)

BRIEF SUMMARY: The bill would require the Department of Agriculture and Rural Development (MDARD) to appoint new members to fill vacancies on a conservation district board if, at any time, the board did not have enough currently elected directors to constitute a quorum. Additionally, the bill would clarify the process by which election results are certified by MDARD.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

Conservation districts in the state date back to the 1930's with the enactment of Public Act 294 of 1937, the Soil Conservation District Law. Now codified as Part 93 of the Natural Resources and Environmental Protection Act (NREPA), the conservation district law has as its stated purpose " to provide for the conservation of the natural resources of the state, including soil, water, farmland, and other natural resources, and to provide 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."

Currently, there are 78 conservation districts in operation throughout the state with the power and authority to conduct research relating to conservation of farmland and natural resources, conduct demonstration projects on conservation methods, carry out erosion control and prevention measures, and develop comprehensive plans for the conservation of farmland and natural resources.

Under current law (MCL 324.9307), conservation districts are administered by a board of five directors who are elected at an annual meeting of residents of the district with the results being certified by MDARD. If a director vacates office during a term, the conservation district board is required to appoint a replacement until an election can be held at the next annual meeting.

The bill is intended to address a situation that arose in the Midland Conservation District, where the district experienced a loss of multiple directors. Under normal circumstances, the remaining board members would fill the vacancy by appointment until an election could be held, and the seat then filled, at the next annual meeting. However, the loss of

directors left the conservation district board without a quorum (at least three of the five elected directors). Consequently, since a quorum is required to conduct business, the board was unable to legally act to appoint new members. This resulted in the board being unable to conduct its business and eventually falling into receivership, where MDARD is now responsible for its assets and obligations. The bill would address the problem facing the Midland Conservation District, and any other district that finds itself in a similar situation, by requiring MDARD to appoint new members to fill vacancies, thus allowing business to be conducted.

THE CONTENT OF THE BILL:

The bill would amend Part 93 (Soil Conservation Districts) of NREPA to require the Department of Agriculture and Rural Development to appoint individuals to fill the vacancies on the board if, at any time, the conservation district board did not have enough currently elected directors to constitute a quorum. Appointees would serve until new board members are elected as provided for in the act at the next annual meeting and the results are certified by the department. New members elected to fill vacancies would then serve out the remainder of the vacated term.

[NOTE: It should be noted that as written, the bill could be interpreted in some circumstances to require MDARD to appoint members to fill **all** of the vacancies on a board instead of enough to achieve a quorum. According to testimony, the intent of the bill is to require MDARD to appoint members to fill vacancies sufficient to reach a quorum and then allow the board to appoint members until full membership is achieved. Since there is a conservation district that will need MDARD to appoint members, the department's appointment authority may need to be clarified.]

In a related matter, the bill would also require the Department of Agriculture and Rural Development to notify the conservation district of its determination on election certification within 90 days of an election being held. If the department fails to certify election results, the conservation board would have to hold a special election, which would be conducted in the same manner as elections held at the annual meeting. If the department provides notice to the board that it is unable to certify election results from a special election at least 120 days prior to the next annual meeting, board vacancies would have to be filled at the next annual meeting.

Additionally, the bill removes the cap on the per diem compensation provided to conservation district directors. Currently, it cannot exceed the amount given to the members of the Agriculture Commission.

The bill would also eliminate a provision allowing conservation district directors to request legal services from the Attorney General.

ARGUMENTS:

For:

As described earlier, the Midland Conservation District experienced a loss of directors that left its board without a quorum. As a result, the board could not appoint new members to fill the vacancies, which eventually led to the conservation district to fall into

receivership. This bill would remedy that situation by requiring MDARD to appoint members to fill vacancies if a board were to ever fall below the number of directors needed to constitute a quorum.

Additionally, the bill would also provide clarification on MDARD's role in certifying director elections, time frames for certification determinations to be issued, and what would happen if a determination is not made in the given time frame. Under current law, MDARD is required to certify conservation district election results but there is no procedure for what would happen if the results are not certified. The bill would establish a procedure and require MDARD to certify results within 90 days, and if the results are not certified in that time frame, a special election would be held by the conservation district.

For:

The bill removes a provision capping the amount of per diem compensation a conservation district director may receive for time spent undertaking his or her duties as a director, which currently cannot exceed the per diem paid to a member of the Agriculture Commission. This change is not intended to increase the per diem paid to directors, but rather to allow directors to receive a per diem, as the Agriculture Commission does not pay its members a per diem.

Against:

There was concern with striking language from Part 93 allowing directors of a conservation district to call upon the Attorney General of the state for legal services. According to testimony, this language was removed at the request of the Attorney General's office and conservation district directors would still be able to utilize those legal services. However, such a request would have to be made by a director through MDARD. It has been recommended that the bill be amended to specify the process directors would use to solicit legal opinions through MDARD, to provide clarity going forward.

POSITIONS:

The Michigan Department of Agriculture and Rural Development supports the bill. (2-12-13)

The Michigan Association of Conservation Districts supports the bill. (2-12-13)

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