

CHAPTER 92

SOIL AND WATER CONSERVATION

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92.01 Name. This chapter may be known and cited as the "soil and water conservation district law"

92.02 Declaration of policy. It is declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering agricultural phases of the conservation, development, utilization and control of water, and thereby to preserve natural resources, 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.

See note to 88 21, citing 63 Atty. Gen. 355.

92.03 Definitions. Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "District" or "soil and water conservation district" means a county whose board of supervisors has by resolution declared said county to be a soil and water conservation district.

(2) "Supervisor" means a member of the governing body of a district.

(4) "Land occupier" or "occupier of land" means any person over 18 years of age and any copartnership, firm or corporation that holds title to land lying within the district whether or not the lands are subject to easement, mortgage, lien, lease or restrictive covenant, except that it shall not include any person under guardianship, incompetent or insane. A person, partnership, firm or corporation shall be deemed to hold title to land if the person, partnership, firm or corporation:

- (a) Has title as sole owner
- (b) Has title as a joint owner
- (c) Has title as owner of an undivided interest
- (d) Has title as sole or joint trustee or as sole or joint assignee
- (e) Has a land contract vendee's interest therein.

(5) "Court" means the circuit court of the circuit wherein the district lies.

(6) "State" means the state of Wisconsin.

(7) "Agency of this state" includes the government of the state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

History: 1971 c 213 s 5; 1971 c 323; 1979 c 110.

92.04 Soil and water conservation districts board. (1) The board of soil and water conservation districts shall keep a record of its official actions and may perform such acts, hold such public hearings and promulgate such rules as it deems necessary for the execution of its functions under this chapter.

(2) The board may delegate to its chairman or staff or to one or more of its members such powers and duties as it deems proper. Upon request of the board for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as is possible under avail-

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able appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the board members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys or studies as the board requests.

(3) The board shall keep a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted by it.

(4) The board shall:

(a) Offer appropriate assistance to the supervisors of districts.

(b) Keep the supervisors of each of the several districts generally informed of activities and experience useful to them.

(c) Coordinate the programs of the several soil and water conservation districts or projects, apportion among the several districts any funds allotted from state or federal sources, and be responsible for the expenditures of such funds by the districts.

(d) Secure the cooperation and assistance of any governmental agency.

(e) Disseminate information concerning the activities and programs of the districts.

(f) Accept contributions of money or gifts from any source to carry out this chapter.

(g) Have responsibility over programs provided by P.L. 83-566, as amended, relating to the planning and carrying out of works of improvement for soil and water conservation and other purposes.

(h) Serve in an advisory capacity to the university of Wisconsin in carrying out its educational functions under this section.

(i) Prepare and present to the board of regents of the university of Wisconsin system a budget to finance the activities of the board and the districts, except the budget for the programs under s. 92.20 need not be submitted to the board of regents, and to administer any law appropriating funds to the districts.

(j) Assist districts in obtaining legal services from state and county offices.

(k) Require annual reports from districts and other special reports as requested by the board.

(l) Approve or disapprove the plans or programs of the districts.

(m) Be responsible for the duties specified for the board under the nonpoint source pollution abatement program under s. 144.25.

(5) In carrying out its responsibilities under sub. (4), the board and its staff shall consider its responsibility for implementation of the nonpoint source pollution abatement grant pro-

gram under s. 144.25 its highest priority responsibility.

History: 1971 c. 164; 1971 c. 323 ss. 5, 6, 27; 1977 c. 29, 226, 418; 1979 c. 34, 221.

Cross Reference: See 59.07 (60) and 60.18 (21) and (22) for authorization of county or town appropriations.

92.05 Creation of soil and water conservation districts. When the board of supervisors of any county determines that conservation of soil, water or related resources presents problems of public concern in the county, and further determines that a substantial proportion of the land occupiers of the county favors such a resolution, the said board of supervisors, by a resolution adopted at any regular or special meeting of the board, may declare the county to be a soil and water conservation district. These determinations may be made through hearings, petitions, referenda or any other means which the county board deems appropriate.

History: 1971 c. 323

Scope of district under this section discussed 68 Atty. Gen. 126.

92.06 Designation of district supervisors.

When a county has been declared a soil and water conservation district, the agricultural and extension committee, created pursuant to s. 59.87 (2), shall be the supervisors of said district. The county board may by resolution appoint not more than 2 additional persons who are not members of the county board to serve as supervisors of the district. The committee shall exercise the powers and duties imposed upon supervisors of soil and water conservation districts in connection with other powers and duties conferred upon it by law and by the county board. The compensation of the members of the committee for performing services as supervisors of the district shall be governed by s. 59.15.

History: 1971 c. 323.

92.07 Organization of supervisors. (1)

The supervisors of the district shall be the governing body thereof. They shall designate a chairman, vice chairman and secretary and may, from time to time, change such designations. The supervisors may delegate to their chairman, or to one or more supervisors or their agents, such powers and duties as they shall deem proper. The supervisors shall furnish to the board, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

(2) The supervisors may employ a secretary and such other staff as they may require. The supervisors shall provide for the execution of

surety bonds for all employes who shall be intrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted; and may provide for an annual audit of the accounts of receipts and disbursements. All actions of the board of supervisors shall be by majority vote.

(3) The supervisors may invite the legislative body of any municipality to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply or other interests of such municipality.

History: 1971 c. 323.

92.08 Powers of districts and supervisors. A soil and water conservation district shall constitute a governmental subdivision and a public body corporate and politic, exercising public powers, and such district, and the supervisors, shall have the following additional powers:

(1) To carry out preventive and control measures and works of improvement for flood prevention and for the conservation, development and utilization of navigable water and the conservation, development, utilization and control of nonnavigable water within the district including, but not limited to, engineering operations, such as terraces, terrace outlets, desilting basins, floodwater retarding structures, floodways, dikes and ponds, methods of cultivation, the growing of vegetation, changes in use of land or lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands. This amendment (1971) shall not affect the authority or the duty of the state as trustee for the people over navigable waters.

(2) To cooperate, or enter into agreements with, and within the limits of funds available to it, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations and works of improvement for flood prevention or for the conservation, development and utilization of water within the district, subject to such conditions as the board may impose and the supervisors may deem necessary to advance the purposes of this chapter.

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests therein or in water; to

acquire by eminent domain proceedings under ch. 32 any property or right or interests therein for watershed protection, flood prevention works of improvement, and fish and wildlife and recreational works of improvement which will be installed as a part of a watershed plan under P.L. 83-566, as amended, to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this chapter.

(4) To develop and amend comprehensive plans for the conservation of soil, water and related resources within the district which shall specify in such detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of the plans; and to publish the plans and information and bring them to the attention of occupiers of lands within the district.

(a) Such plans shall include an inventory of renewable natural resources in the district prepared in cooperation with other agencies, a compilation of current resource needs, projections of future resource requirements, priorities for various resource activities, projected timetables, descriptions of available alternatives, and provisions for coordination with other natural resource programs developed by other governmental agencies.

(b) The district shall also prepare an annual work plan, which shall describe the action programs, services, facilities, materials, working arrangements and estimated funds needed to carry out the parts of the long-range program that are of the highest priorities.

(c) Each district shall submit to the board of soil and water conservation districts its proposed long-range program, annual work plan and annual report for review and comment.

(d) The long-range resource conservation program, together with the supplemental annual work plans, developed by each district under the foregoing procedures shall have official status as the authorized program of the district, and it shall be published by the districts as its "Resources Conservation Program". Copies shall be furnished by the district to the appropriate counties, municipalities, regional planning commissions, local units of government and state agencies, and shall be made available in convenient places for examination by any public or private interest concerned.

(e) The district may prepare plans, provide standards and technical assistance for controlling erosion, runoff and sedimentation, to incor-

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porated cities and villages or for any parts of such lands upon their request.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or for the conservation, development and utilization of water.

(6) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations or activities authorized in this chapter.

(7) To take over, by purchase, lease or otherwise, and to administer, any soil-conservation, flood-prevention, water management, erosion-control, erosion-prevention project or combinations thereof, and participate in programs concerned with the conservation of natural resources located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, water management, erosion-control, erosion-prevention project or combinations thereof, or programs concerned with the conservation of natural resources within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, flood-prevention, water management, erosion-control, erosion-prevention project or combinations thereof, or programs concerned with the conservation of natural resources within its boundaries; to accept donations, gifts and contributions in money, services, materials or otherwise, from any source and to use or expend such moneys, services, materials or other contributions in carrying on its operations.

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to borrow money and to pledge, mortgage or assign the income of the district or its property; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into

effect its purposes and powers.

(9) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon and prevent floodwater and sediment damages thereon.

(10) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a district organized hereunder except as provided in sub. (3).

(11) To enter upon any lands within the district to examine the same and make surveys or plans for natural resource management without being liable for trespass in the reasonable performance of such duties.

(12) For the purpose of providing funds to meet the expenses of a district, the district supervisors shall annually prepare and approve a budget reflecting the cost of its operation and services. The chairman of the district supervisors shall present to the county board its budgetary needs and the county shall, upon approval of the county board, forward the taxes and revenues raised for the district.

History: 1971 c. 323; 1977 c. 226

92.09 Adoption of land-use regulations.

(1) The supervisors of any soil and water conservation district may formulate proposed regulations for the use of lands lying within the district but outside of the limits of incorporated cities and villages, or for any parts of such lands, in the interest of conserving soil and water resources and controlling erosion, runoff and sedimentation. As far as practicable, regulations under this subsection shall be consistent with the comprehensive plans described in s. 92.08 (4). When such proposed regulations have been formulated, the supervisors shall hold, within the area to be affected by such regulations, such public meetings or public hearings as they deem advisable. Following the meetings or hearings, the supervisors may draft an ordinance embodying proposed land-use regulations and designating the area to which they shall apply, and recommend to the county board that it enact such ordinance. The county board may enact such ordinance provided a simple majority of the electors as defined in s. 6.02 residing in the area to be affected and who vote in the referendum thereby approve such ordinance in a referendum held within such area. Such referendum shall be held according to

procedures set forth in s. 5.60 (7) or 5.64 (2). The supervisors shall give notice of such referendum by publication at least twice, with an interval of at least 6 days between the 2 publication dates in a newspaper or other publication of general circulation within the area to be affected by the proposed ordinance.

(2) This section and any ordinance or regulation adopted hereunder shall be liberally construed in favor of the county and shall be construed as minimum requirements for the purposes stated and not as a limitation on other power granted.

(4) Any ordinance prescribing land-use regulations may be amended or repealed only in the manner prescribed for the enactment of such ordinance.

(5) The land-use regulations which may be adopted by ordinance of the county board under the provisions of this section may include:

(a) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, soil saving dams, sediment traps, dikes, ponds, diversion, channels and other necessary structures;

(b) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, for-estation and reforestation;

(c) Specifications of cropping programs and tillage practices to be observed;

(d) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion, runoff and sedimentation.

(f) Provisions for the protection of lands exposed by grading, filling, clearing, mineral extraction and similar activities. Such regulations may limit the size of the area to be exposed, the length of time and season during which it may be exposed, require establishment of temporary waterways, storm drains, temporary debris basins, terraces and other structural and nonstructural methods to control erosion, runoff and sedimentation.

(6) The regulations shall be uniform throughout the area affected by the ordinance except that the supervisors may classify the lands within such area with reference to such factors as soil type, degree of slope, degree of erosion, runoff and sedimentation threatened or existing, present or future uses, and other rele-

vant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under this section shall be printed and made available to all interested occupiers of lands lying within the area affected.

History: 1971 c. 323.

"Area to be affected" under (1) defined. 68 Atty Gen. 126

92.10 Enforcement of land-use regulations. The supervisors shall have authority to go upon any lands within the area affected by an ordinance adopting land-use regulations to determine whether such ordinance is being observed. The county board shall by ordinance prescribe administrative procedures and provide administrative assistance and personnel to the supervisors as it deems necessary for the enforcement of land-use regulations. Such regulations may be enforced by appropriate forfeitures. Compliance with such regulations may also be enforced by injunctive order at the suit of such county or the owner or owners of real estate within the area affected by such regulations.

History: 1971 c. 323

92.11 Performance of work under the regulations by the supervisors. (1) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with s. 92.09 are not being observed on particular lands, and that such nonobservance tends to increase erosion, runoff and sedimentation on such lands or is interfering with the prevention or control of erosion, runoff and sedimentation on other lands within the district, the supervisors may present to the court a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations or avoidances as required thereby, and that such nonobservance tends to increase erosion, runoff and sedimentation on such lands or is interfering with the prevention or control of erosion, runoff and sedimentation on other lands within the district, and praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that if the defendant fails so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land.

(2) Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(3) The court may dismiss the petition; or it may require the defendant to perform the work, operations or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the conditions of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per year, from the occupier of such lands. In all cases where the person in possession of lands, who shall fail to perform such work, operations or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. The supervisors may certify to the town treasurer the amount of such judgment, which shall be a lien upon such lands, and shall be collected as are general taxes upon real estate. The procedure for collection of delinquent general taxes upon real estate shall be applicable to the collection of such judgments. When such judgment shall be paid or collected, the proceeds shall be paid over to the district within the boundaries of which the lands shall lie.

History: 1971 c. 323; 1979 c. 110 s. 60 (13).

92.12 Board of adjustment. In any county which by resolution has been declared a soil and water conservation district, and in which land-use regulations have been adopted under ss. 92.02, 92.10 and 92.11, the county board shall

create a board of adjustment as provided in s. 59.99 and as far as practicable s. 59.99 shall apply to the land-use regulations.

History: 1971 c. 323.

92.13 Co-operation between districts.

The supervisors of any two or more districts may co-operate with one another in the exercise of any or all powers conferred in this chapter.

92.14 State agencies to co-operate.

Agencies of the state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and any county or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly-owned lands, lying within the boundaries of any district, shall co-operate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly-owned lands. The provisions of land-use regulations adopted pursuant to s. 92.09 shall have the force and effect of law over all such publicly-owned lands, and shall be in all respects observed by the agencies administering such lands.

92.15 Discontinuance of district. (1)

The county board of any county which, by resolution, has declared the county to be a soil and water conservation district, may, at any time after 5 years from the passage of said ordinance, and after determining that a substantial proportion of the land occupiers of the district so desire, repeal said resolution at a regular or special meeting of said board. This determination may be made through hearings, petitions, referenda or any other means which the county board deems appropriate.

(2) Upon the repeal of the ordinance which declared the county to be a soil and water conservation district, the county board may not pass any more ordinances adopting land-use regulations or effecting changes in such an ordinance previously adopted, and the supervisors may not enter into any more contracts or agreements on behalf of the district. Ordinances prescribing land-use regulations shall continue to be effective until repealed, in the manner herein provided, and the special committee shall continue to act as supervisors for the purpose of enforcing the existing contracts of the district and ordinances prescribing land-use regulations.

(3) Upon the repeal by the county board of the resolution declaring the county to be a soil

and water conservation district, the supervisors shall at public auction dispose of all property belonging to the district as soon as said property is no longer needed by the district to fulfill any existing contracts, and shall forthwith pay over the proceeds of such sale, after paying the necessary costs of the sale, into the county treasury. The supervisors shall, at least 10 days prior to the holding of such public auction, notify the board of soil and water conservation districts of the property proposed to be sold thereat, and after such sale shall render to the county board and to the board of soil and water conservation districts a report of such sale, specifying the property sold, the amount received therefor and the disposition of the proceeds. Such report of the sale shall also be accompanied by a list of the remaining property of the district still undisposed of.

History: 1971 c. 323 ss. 25, 27.

92.16 Contesting validity of district, limitation. Any action or proceeding which seeks to contest, directly or collaterally, the validity of the creation of a soil and water conservation district under s. 92.05 shall be commenced within the time provided by s. 893.73 (1) or be barred.

History: 1979 c. 323.

92.17 Separability clause. If any provision of this chapter, or of any land-use regulation adopted pursuant thereto, or the application of any of such provisions to any persons, copartnership, firm, corporation or circumstance, is held invalid, the remainder of the chapter, or land-

use regulation, and the application of such provisions to other persons, copartnerships, firms, corporations or circumstances, shall not be affected thereby.

92.20 State aid program. A soil and water conservation district may, on or before the date established by the board, file with the board of soil and water conservation districts a plan for one or more conservation projects to be undertaken in the next year. Such plan shall set forth the purpose, estimated cost, work to be done and such other data as the board requires. The board shall tentatively allocate a sum of \$1,000 or more annually, or one-half of the cost of the project, whichever is less, to each district whose plan has been approved by the board. The funds may be used for technical and nontechnical services, and for materials necessary in the planning and application of conservation measures, field equipment and for educational materials. The district supervisors shall keep the board informed of the progress of the work on approved projects. If any district fails to submit a plan by the date established by the board, the board may allocate the sum remaining in the appropriation to one or more other districts for that year, but such additional allocation plus the original allocation shall not exceed one-half of the total approved expenditures. Thereafter the board may allocate the appropriation remaining for plans submitted by one or more districts after the date set by the board.

History: 1971 c. 323.