



Sub. H.B. 47*

127th General Assembly

(As Reported by H. Economic Development & Environment)

Reps. Gibbs, Fessler, Combs, Collier

BILL SUMMARY

- Revises the board of directors of a conservancy district that includes all or parts of more than 16 counties by requiring that the board be appointed by the presidents of the boards of county commissioners of the counties all or part of which are included within the territorial limits of the conservancy district instead of by the court that incorporated the district, and increases such a board from five to nine members.
- Requires the board of directors of a conservancy district that includes all or parts of more than 16 counties to perform certain functions under the Conservancy Districts Law that are performed by the conservancy court under current law.
- Establishes new procedures for the incorporation of additional land in a district that includes all or parts of more than 16 counties.
- Prohibits the board of directors of a conservancy district that has never collected an assessment or maintenance assessment from levying such a first-time assessment or maintenance assessment on land that is owned by a church within the district unless the governing authority of the church requests that the church's land be subject to the assessment or maintenance assessment, and establishes applicable procedures.
- Authorizes the owner of real property that is exempt from an assessment or a maintenance assessment to request that the assessment or maintenance assessment be imposed.

* This analysis was prepared before the report of the House Economic Development and Environment Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Provides that a mandamus action under the Conservancy Districts Law may be enforced against any person that has duties prescribed in that Law rather than just against an officer of a district as in current law.

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CONTENT AND OPERATION

Introduction

A conservancy district is a distinct political subdivision of the state that is invested with certain statutory powers and privileges. Any area or areas in one or more counties may be organized as a conservancy district for purposes of preventing floods, regulating stream channels by changing, widening, or deepening them, reclaiming or filling wet and overflowed lands, providing necessary irrigation, regulating the flow of and conserving streams, diverting or eliminating in whole or in part watercourses, providing a water supply for domestic, industrial, and public use, providing for sewage and other liquid waste collection and disposal, and arresting Lake Erie shoreline erosion in the state. (Secs. 6101.03(F) and 6101.04, not in the bill). Conservancy districts are incorporated by an order of a conservancy district court, which consists of a judge from each county comprising a conservancy district (secs. 6111.07 and 6111.08, not in the bill).

Board of directors

Current law establishes requirements for the appointment of a board of directors for each conservancy district by the court that incorporated the district. Generally, a board of directors of a conservancy district must consist of three members. However, if a district consists of all or parts of more than 16 counties, its board of directors must consist of five members, each of whom must be a resident of a different county and at least three of whom must be residents of counties all or part of which are included within the territorial limits of the district. Terms of office are for five years. (Sec. 6101.10.)

The bill instead requires that the presidents of the boards of county commissioners of the counties all or part of which are included within the territorial limits of a conservancy district consisting of all or parts of more than 16 counties, rather than the court, appoint the district's board. In addition, the bill requires the board to consist of nine members instead of five and requires that each board member be a resident of a county all or part of which is included within the territorial limits of the district. The bill requires that in appointing members to the board, the presidents of the boards of county commissioners must divide the district into three distinct geographic regions based on the three largest subwatersheds within the district. The board must include three members from each of the three geographic regions. The presidents of the boards of county commissioners must establish procedures for accepting applications for positions on the board of directors.

The bill requires that a majority vote of the presidents of the boards of county commissioners is necessary for the appointment of a member of the board of directors of the conservancy district. Current law requires board members to serve staggered five-year terms, and the bill also provides for staggered five-year terms for board members that are appointed under its provisions. The bill requires vacancies to be filled by the presidents of the boards of county commissioners of the counties all or part of which are included within the territorial limits of the district. The bill then specifies that a member of the board may be reappointed. (Sec. 6101.10(B).)

In order to effectuate the bill's new appointment procedures with respect to conservancy districts in existence on the bill's effective date that include all or parts of more than 16 counties, the bill requires that not later than 30 days after the bill's effective date, the presidents of the boards of county commissioners of the counties all or part of which are included within the territorial limits of such an existing conservancy district must appoint four additional persons as members of the board of directors of the conservancy district. The five existing members also must be appointed to the new board. The terms of office of the resulting nine-member board must be as follows: two years for one of the new additional persons, three years for one of the new additional persons and one existing member, four years for one of the new additional persons and two existing members, and five years for one of the new additional persons and two existing members. Each member of the board must be a resident of a county all or part of which is included within the territorial limits of the district. In addition, the presidents of the boards of county commissioners in appointing the new members to the board must ensure, to the extent possible, that the membership of the board includes three members from each of the three geographic regions of the district that are established under the bill (see above). The procedures and requirements established in the Conservancy Districts Law, as amended by the bill and

discussed above, are required to govern the filling of vacancies, terms of office of future appointments, reappointments, and other appointment matters. Upon the appointment of the four additional members to the existing board of directors of an existing conservancy district under the bill, the new board of directors must govern and operate the conservancy district. (Section 3.)

Current law also establishes procedures whereby a court may appoint additional directors to a conservancy district board when a conservancy district annexes land to the district, or when two districts unite, and the resulting district includes all or parts of more than 16 counties. The bill instead requires the board of directors of such an expanded or united district to be appointed by the presidents of the boards of county commissioners of the counties all or part of which are included with the territorial limits of the reconfigured conservancy district. The appointment procedures to be followed by the presidents are those that are discussed above. The bill then specifies that upon appointment of the new board of directors, the prior board of directors of the conservancy district must terminate, and the new board of directors must govern and operate the conservancy district. (Secs. 6101.10(C) and 6101.70.)

Assumption of court's duties by board of directors

Current law establishes conservancy courts to perform a variety of functions under the Conservancy Districts Law. The functions include all of the following: (1) hearing on a petition to establish a district, (2) appointment of a board of directors of the district, (3) hearing on and approval of the official plan of the district and changes to the plan, (4) appointment of a board of appraisers, (5) approval of appraisal of benefits and damages, (6) hearing on appraisals and filing of exceptions, (7) confirmation of the levy of an improvement assessment or of a maintenance assessment, (8) examination of the annual report of the board of director's proceedings and an accounting of receipts and disbursements, (9) establishment of compensation for the boards of directors and appraisers, and (10) other district-related functions established under the Conservancy Districts Law.

The bill revises the functions of the board of directors and of the conservancy court of a conservancy district that is composed of all or parts of more than 16 counties. The bill states that on and after the bill's effective date and notwithstanding any other state statute to the contrary, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties must perform all of the functions of the conservancy court that are established under the Conservancy Districts Law except certain specified functions described in Table 1 below. (Sec. 6101.101(A).) In performing the functions of the court, the board must resolve reasonably any conflicts that may occur and must avoid duplication of any requirement (sec. 6101.101(B)).

**Table 1: Brief description of functions of court not performed
by board of directors under bill**

Revised Code section	Function
6101.01	Definitions
6101.03	Short forms and abbreviation
6101.05	Submission of petition to form a conservancy district to the court
6101.06	Requirement for a bond to pay expenses connected with the proceeding in case the court refuses to organize the district
6101.061	Judge of the court to send notice of the petition to establish the conservancy district to the Directors of Environmental Protection and Natural Resources
6101.07	Organization of the conservancy court, powers, and jurisdiction
6101.08	Hearing on a petition to establish a conservancy district by the court
6101.09	Decree of incorporation of the conservancy district to be filed by the clerk of the court with the Secretary of State, the Department of Natural Resources, and the county recorder of each county in the district
6101.10	Appointment of the board of directors of a conservancy district by the conservancy court (see above)
6101.11	Each director's oath before the court
6101.13	Official plan of the district and hearing on the official plan
6101.181	Deposit of the compensation with the probate court or court of common pleas of the applicable county for the value of property appropriated by a board of directors of a district for the construction of sewers to mitigate or abate a public health nuisance
6101.26	Conservancy district payment of the amount of the judgment of a condemnation proceeding to a court when cemetery property is taken or damaged by the district
6101.29	Appraisal of benefits and inclusion of lands outside the district
6101.30	Notice of hearing regarding land excluded from or taken into a district
6101.31	Report of the board of appraisers
6101.32	Notice of a hearing on the report of the board of appraisers

Revised Code section	Function
6101.33	Hearing on the report of the board of appraisers
6101.34	Decree on the report of the board of appraisers
6101.35	Filing of an appeal with the clerk of the court from an award as to compensation or damages and procedures when a jury trial is demanded
6101.36	Deposit with the trial court of the compensation for property taken by a district according to a jury award, and the court's order admitting the district's possession of the property
6101.37	Certified copy of the conservancy court's approval of the board of appraisers report to certain political subdivisions
6101.38	Procedures after appraisals are confirmed, including a court order admitting the district into possession of all property for which payment has been deposited and hearings by a court-appointed magistrate of claims by persons to property of the district so acquired
6101.39	Procedures governing changes in the official plan of the district
6101.40	Provisions declaring that appeals are not to delay the proceedings of the district
6101.43	Provisions dealing with irregularities or defects in proceedings
6101.44	Appropriation of funds of the district
6101.45	Payment of the preliminary expenses of the district
6101.48	Assessment levied by the board of directors
6101.53	Maintenance assessment levied by the board of directors
6101.54	Conservancy court's hearing on the appraisal of benefits and order of readjustments
6101.59	Fixing by the conservancy court of reasonable attorney fees associated with the enforcement of the payment of an assessment
6101.60	Enforcement of liens on delinquent assessment bills by a conservancy district in the court of common pleas
6101.66	Annual meeting of the full conservancy court for presentation and examination of the annual report of the board's proceedings and an accounting of receipts and disbursements
6101.67	Compensation of the board of directors and board of appraisers of a district

Revised Code section	Function
6101.68	Determination by the conservancy court of whether land may be included in more than one conservancy district
6101.69	Conflict in jurisdiction of courts and procedures to resolve such conflicts
6101.70	Conservancy court duties and procedures for union of conservancy districts
6101.71	Conservancy court involvement in the formation of subdistricts
6101.72	Conservancy court approval of annexation of other improvements into the district
6101.73	Conservancy court's duties in organizing an irrigation district
6101.74	Petition by persons injured by actions of a conservancy district to the court for relief when no other remedies are available
6101.76	Removal of any conservancy district director, appraiser, or other officer for cause upon the filing of a motion in the original case where the district was organized
6101.77	Mandamus action in a court to enforce the performance of all duties prescribed in the Conservancy Districts Law
6101.78	Correction of a faulty notice by the court
6101.79	Court hearing in which a question of the validity of the organization of a conservancy district must be advanced as a matter of immediate public interest and concern

Thus, under the bill, all other functions of a conservancy court are transferred to the board of directors of a conservancy district that is composed of all or parts of more than 16 counties.

Inclusion of new lands within district

The bill establishes new procedures for the inclusion of additional land in a district that includes all or parts of more than 16 counties. Under the bill, if the board of directors of such a conservancy district determines that any lands within the watershed in which the district is located are not included within the boundaries of the district, the board may adopt a resolution, by a two-thirds vote of the board, revising the boundaries of the district to include those lands. The board must file notice of the resolution in the conservancy district court. Not later than 30 days after adopting a resolution, the board must provide written notice, by United States mail, to each property owner whose land is proposed to be

incorporated into the district. The notice must include a statement that land owned by the property owner is proposed to be included in the district and information regarding the procedure for objecting to the incorporation of the land in the district. (Sec. 6101.29(B).)

Within 90 days of the filing of notice, a property owner whose land is to be incorporated into the district may file objections to the incorporation with the conservancy district court. All objections must be heard by the court not later than 180 days after the filing of the notice of the resolution. The court must provide for a hearing on the objections in the county seat of each county in which property is located with respect to which objections have been filed. Hearings must be conducted at a time and place fixed by the court. Notice of the time and place of a hearing must be given in the manner that the court determines appropriate. The court, at a hearing, must approve or deny the incorporation of land in the district as specified in the resolution adopted by the board of directors. If the court approves the incorporation, the land that is the subject of the hearing must be incorporated into the district. If the court disapproves the incorporation, the land must not be incorporated into the district. (Sec. 6101.30(B).)

Conservancy district assessments: exemption for churches

General assessments

Under current law, the board of directors of a conservancy district must levy on all real property and on all public corporations on which benefits have been appraised in a conservancy appraisal record approved by the conservancy court an assessment of the portion of those benefits that the board finds to be necessary to pay the cost of the execution of the district's official plan, including superintendence of construction and administration, plus one-ninth of that total for contingencies. The assessment must be apportioned to and levied on each tract of land or other property and each public corporation in the conservancy district in proportion to, and not in excess of, the appraised benefits; specified interest must be added to the assessment. After the assessment is levied, the board of directors must obtain confirmation of it from the conservancy court. Following the court's issuance of a confirmation order and transmittal of the order to each affected political subdivision, the board of directors may issue anticipatory notes in an amount up to 90% of the assessment. At that juncture, the conservancy district's conservancy assessment record containing specified information must be prepared, signed, certified, and placed on file in the district's office. (Sec. 6101.48.)

The bill specifies that the board of directors of a conservancy district that has not collected an assessment prior to the bill's effective date and that subsequently proposes to collect such an assessment must not levy an assessment

on real property that is owned by a church¹ or on which a church operates a camp and that is located within the district unless the governing authority of the church has specifically requested in writing that the assessment be imposed on the church's real property or on the property on which the church operates a camp. If a board of directors receives such a written request from the governing authority of a church, the board must levy and collect the assessment in accordance with the procedures and requirements established in the Conservancy Districts Law. (Sec. 6101.48(B)(1).)

Prior to the levying of such a first-time assessment, the board of directors of a conservancy district may send a written notice to the governing authority of a church that is located within the district or that operates a camp in the district that explains the benefits of the proposed assessment and that requests the governing authority of the church to choose to voluntarily allow the proposed assessment to be imposed on the church's real property or on the property on which the church operates a camp (sec. 6101.48(B)(2)).

The governing authority of a church that has requested in writing that an assessment be imposed on the church's real property or on the property on which the church operates a camp may cease paying the assessment if the governing authority specifically requests in writing to the board of directors of the conservancy district that the assessment cease to be imposed. If the board of directors of a conservancy district receives such a written request from the governing authority of a church, the board must cease levying and collecting the assessment. (Sec. 6101.48(B)(3).) A written request from the governing authority of a church to impose an assessment on the church's real property or on the property on which the church operates a camp and a church's payment of such an assessment are not to be construed to abdicate, abridge, or limit the rights and privileges pertaining to a church that are established under any other state statute (sec. 6101.48(B)(4)).

The bill authorizes the owner of real property that is exempt from an assessment to specifically request in writing to the board of directors of the conservancy district that the assessment be imposed on the owner's real property. The procedures applicable to churches under the bill apply to such a request. (Sec. 6101.48(C).)

¹ As used in the bill, "church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person (sec. 6101.48(B)(5)).

Maintenance assessments

Under existing law, the board of directors of a conservancy district annually, no later than September 1, may levy an assessment known as a conservancy maintenance assessment on each tract or parcel of land and each public corporation within the district for any of the following purposes and upon substantial completion of district improvements: (1) to maintain, operate, and preserve the reservoirs, ditches, drains, dams, levies, canals, sewers, pumping stations, treatment and disposal works, or other properties or improvements of the district, (2) to strengthen, repair, and restore those improvements as necessary, and (3) to defray the current expenses of the district. A maintenance assessment cannot be made with respect to works and improvements acquired or constructed for the purpose of providing a water supply for domestic, industrial, and public use within the district when the water supply can be metered or measured when furnished to persons or public corporations.

The maintenance assessment must be apportioned on the basis of the total appraisal of benefits accruing for original and subsequent construction, cannot exceed 1% of the total appraisal of benefits in any one year unless the conservancy court authorizes an assessment of a larger percentage, cannot be less than \$2, and must be certified in a specified manner to the county auditor of each county in which lands of the district are located in the conservancy assessment record. The auditor must certify the maintenance assessment to the county treasurer in a prescribed manner, and the treasurer must collect it. The maintenance assessment is in addition to any general assessment that has been or can be levied as discussed above. (Sec. 6101.53.)

The bill specifies that the board of directors of a conservancy district that has not collected a maintenance assessment prior to the bill's effective date and that subsequently proposes to collect such a maintenance assessment must not levy a maintenance assessment on land that is owned by a church or on which a church operates a camp and that is located within the district unless the governing authority of the church has specifically requested in writing that the maintenance assessment be imposed on the church's land or on the land on which the church operates a camp. If a board of directors receives such a written request from the governing authority of a church, the board must levy and collect the maintenance assessment in accordance with the procedures and requirements established in the Conservancy Districts Law. (Sec. 6101.53(B)(1).)

Prior to the levying of such a first-time maintenance assessment, the board of directors of a conservancy district may send a written notice to the governing authority of a church that is located within the district or that operates a camp in the district that explains the need for the proposed maintenance assessment and that requests the governing authority of the church to choose to voluntarily allow

the proposed maintenance assessment to be imposed on the church's land or on the land on which the church operates a camp (sec. 6101.53(B)(2)).

The governing authority of a church that has requested in writing that a maintenance assessment be imposed on the church's land or on the land on which the church operates a camp may cease paying the assessment if the governing authority specifically requests in writing to the board of directors of the conservancy district that the maintenance assessment cease to be imposed. If the board of directors of a conservancy district receives such a written request from the governing authority of a church, the board must cease levying and collecting the maintenance assessment. (Sec. 6101.53(B)(3).) A written request from the governing authority of a church to impose a maintenance assessment on the church's land or on the land on which the church operates a camp and a church's payment of such a maintenance assessment are not to be construed to abdicate, abridge, or limit the rights and privileges pertaining to a church that are established under any other state statute (sec. 6101.53(B)(4)).

The owner of land that is exempt from a maintenance assessment may specifically request in writing to the board of directors of the conservancy district that the maintenance assessment be imposed on the owner's land. The procedures applicable to churches under the bill apply to such a request. (Sec. 6101.53(C).)

Mandamus actions

Current law states that the performance of all duties prescribed in the Conservancy Districts Law concerning the organization and administration or operation of a conservancy district may be enforced against any officer of the district by mandamus at the instance of the board of directors of the district or of any person or public corporation. The bill provides that such a mandamus action may be enforced against any person that has duties prescribed in that Law rather than just against an officer of the district. (Sec. 6101.77.)

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, H. Economic Development & Environment	---

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