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Bill Analysis
Legislative Service Commission

S.B. 170

127th General Assembly
(As Introduced)

Sen. Amstutz

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 seven members.
- Requires the board of directors of such a conservancy district, rather than the court that incorporated the district, to establish rates of compensation for the board of directors and the board of appraisers of the district.
- 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.
- Specifies that on and after the effective date of the bill, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy a general assessment for any new work or improvement that is not in the current version of the district's official plan until the board has amended the district's official plan to provide for the new work or improvement and completed an appraisal of benefits of and damages from the new work or improvement.
- Specifies that on and after the effective date of the bill, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy a maintenance assessment until after the

works or improvements are substantially completed and also cannot levy a maintenance assessment for the maintenance of or improvements to projects that were not previously constructed under the district's official plan.

- Also precludes the board of directors of a conservancy district that is composed of all or parts of more than 16 counties from levying a general or maintenance assessment, on and after the bill's effective date, on property that is exempt from taxation unless the property owner has specifically requested in writing that the general or maintenance assessment be imposed.
- Authorizes a person to appeal a general or maintenance assessment levied by the board of directors of a conservancy district that is composed of all or parts of more than 16 counties to the court of common pleas of the county in which the affected property is located.

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 seven 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 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 two additional persons as members of the existing board of directors of the conservancy district. The terms of office of the resulting seven-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 two existing members, and five years for 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. 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 two additional members to the



existing board of directors of an existing conservancy district under the bill, the board of directors of the conservancy district that was appointed prior to the effective date of the bill must terminate, and 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.)

Compensation

Under current law, each member of the board of directors of a conservancy district and each member of the board of appraisers of a conservancy district must receive a sum established by the court that incorporated the district and necessary expenses for the time actually employed in performing official duties. The compensation and expenses must be paid only upon itemized statements submitted and certified to by the individual member. With respect to conservancy districts composed of all or parts of more than 16 counties, the bill requires such compensation amounts to be determined by the board of directors of the district. (Sec. 6101.67.)

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
6101.05	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

Revised Code section	Function
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
6101.35	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
Division (C) of 6101.48*	Appeal of an assessment levied by the board of directors of a conservancy district that is composed of more than 16 counties to the court of common pleas of the county in which the person owns real property that is subject to the assessment (see below)
Division (C) of 6101.53*	Appeal of a maintenance assessment levied by the board of directors of a conservancy district that is composed of more than 16 counties to the court of common pleas of the county in which the person owns real property that is subject to the maintenance assessment (see below)
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

* *The bill incorrectly refers to division (D) of the section.*

Revised Code section	Function
	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
6101.68	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, including such functions as approval of the district plan and appointment of the board of appraisers.

The bill states that notwithstanding any provision of the Conservancy Districts Law to the contrary, a person or public corporation that is within the territorial boundaries of a district that is composed of all or parts of more than 16 counties that considers itself injured in any manner by any act performed by the board of directors performing the functions of the conservancy court as required by the bill may file an action in the court of common pleas of the county in which the person or public corporation is located (sec. 6101.101(C)).

Conservancy district assessments

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 real 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 on and after its effective date, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy an assessment for any new work or improvement that is not in the current version of the district's official plan until the board has done both of the following:

(1) Amended, in a sufficiently detailed manner, the district's official plan in accordance with the Conservancy Districts Law to provide for the new work or improvement; and

(2) Completed an appraisal of benefits of and damages from the new work or improvement in accordance with the Conservancy Districts Law and filed the conservancy appraisal record in accordance with that Law (sec. 6101.48(B)(1)). Further, the bill provides that on and after its effective date, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy an assessment on real property that is exempt from taxation unless the owner of the property has specifically requested in writing that the assessment be imposed on the exempt real property. If a board of directors receives such a written request from the owner of real property that is exempt from taxation, 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)(2).)

The bill authorizes a person to appeal an assessment levied by the board of directors of a conservancy district that is composed of all or parts of more than 16 counties to the court of common pleas of the county in which the person owns real property that is subject to the assessment (sec. 6101.48(C)).

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. The 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. (Sec. 6101.53.)

The conservancy 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 conservancy maintenance assessment to the

county treasurer in a prescribed manner, and the treasurer must demand and collect the maintenance assessment. The maintenance assessment is in addition to any general assessment that has been or can be levied. (Sec. 6101.53.)

The bill specifies that on and after the bill's effective date, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy a maintenance assessment until after the works or improvements are substantially completed as required in the Conservancy Districts Law. In addition, the board cannot levy a maintenance assessment for the maintenance of or improvements to projects that were not previously constructed under the district's official plan. (Sec. 6101.53(B)(1).) Further, the bill provides that on and after its effective date, the board of directors of a conservancy district that is composed of all or parts of more than 16 counties cannot levy a maintenance assessment on real property that is exempt from taxation unless the owner of the property has specifically requested in writing that the maintenance assessment be imposed on the exempt real property. If a board of directors receives such a written request from the owner of real property that is exempt from taxation, the board must levy and collect the assessment in accordance with the procedures and requirements established in the Conservancy Districts Law. (Sec. 6101.53(B)(2).)

The bill authorizes a person to appeal a maintenance assessment levied by the board of directors of a conservancy district that is composed of all or parts of more than 16 counties to the court of common pleas of the county in which the person owns real property that is subject to the maintenance assessment (sec. 6101.53(C)).

HISTORY

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