

CHAPTER 40

SOIL AND WATER CONSERVATION

SOIL AND WATER CONSERVATION DISTRICTS LAW		EXCESSIVE SOIL LOSS	
40.01	Definitions.	40.19	Definitions.
40.02	Public policy; purpose.	40.20	Soil loss ordinances.
40.03	Board of water and soil resources.	40.21	Rules, model ordinance, and periodic review.
40.035	Program plan.	40.22	Excessive soil loss prohibited.
40.036	Cost-sharing contracts for erosion control and water management.	40.23	Enforcement.
40.038	Technical and administrative assistance.	40.242	District court hearing.
40.04	Soil and water conservation districts.	40.244	Soil and water conservation assistance.
40.05	Three supervisors elected for each district.	40.246	Attorney and local government may perform duty of county.
40.06	Supervisors.	40.25	Erosion control plan for development activities.
40.07	Powers of district boards.	40.26	Cost-sharing funds.
40.071	Additional powers of a district.	40.27	Applicability.
40.072	Soil and water conservation districts; works of improvement.	40.28	Penalty.
40.073	Appeals.	CONSERVATION RESERVE PROGRAM	
40.12	Cooperation between districts and other public agencies.	40.40	Short title.
40.13	State agencies to cooperate.	40.41	Purpose and policy.
40.14	Discontinuance of districts.	40.42	Definitions.
40.15	Citation, soil and water conservation districts law.	40.43	Conservation reserve program.
		40.44	Cooperation and technical assistance; supplemental conservation payment.
		40.45	Rulemaking.

SOIL AND WATER CONSERVATION DISTRICTS LAW

40.005 [Repealed, 1977 c 304 s 25]

40.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of this chapter, shall be given the meanings ascribed to them.

Subd. 2. **Soil and water conservation district.** "Soil and water conservation district" or "district" means a governmental subdivision of this state organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

Subd. 3. **Supervisors; board.** "Supervisors," "board of supervisors," "district board," or "board" means the governing body of a district, members of which are elected or appointed in accordance with the provisions of this chapter. "Supervisor" means a member of that body. "Boards" mean a joint board as described in section 40.12.

Subd. 4. **State board or state board of water and soil resources.** "State board" or "state board of water and soil resources" means the agency created in section 110B.35.

Subd. 5. **Petition.** "Petition" means a petition filed under the provisions of section 40.04, subdivision 1, for the creation of a district.

Subd. 6. **Nominating petition.** "Nominating petition" means a petition filed under the provisions of section 40.05 to nominate candidates for the office of supervisor of a soil and water conservation district.

Subd. 7. **State.** "State" means the state of Minnesota.

Subd. 8. **Agency of this state.** "Agency of this state" or "state agency" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

Subd. 9. **United States or agencies of the United States.** "United States" or "agencies of the United States" includes the United States of America, the soil conser-

vation service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

Subd. 10. Government or governmental. "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.

Subd. 11. Land occupier or occupier of land. "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this chapter, whether as owner, lessee, renter, tenant, or otherwise.

Subd. 12. Due notice. "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a legal newspaper, and by posting at three conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to a notice, at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjourned dates.

Subd. 13. Watershed work plan. A "watershed work plan" means a plan for the installation in a watershed area of works of improvement, including structural and land treatment measures, for flood prevention or the conservation, development, utilization, and disposal of water developed by the district with or without federal assistance under the Watershed Protection and Flood Prevention Act, Public Law Number 566 as amended, or any act of Congress.

Subd. 14. Watershed project. A "watershed project" means a project which is approved and authorized to be carried out by the district in a watershed area in accordance with a watershed work plan.

Subd. 15. Appropriate agencies. "Appropriate agencies" include any local, state or federal agency which possesses expertise, involvement or authority concerning the use and development of land and water resources, but does not include any district or the state board.

History: (6932-2) 1937 c 441 s 2; 1965 c 425 s 1; 1967 c 16 s 2; 1969 c 637 s 1-3; 1975 c 271 s 3; 1976 c 149 s 59,62 subd 5a; 1977 c 304 s 1,2; 1987 c 358 s 88

40.02 PUBLIC POLICY; PURPOSE.

Improper land-use practices have caused serious wind and water erosion of the lands of this state, the runoff of polluting materials, increased costs to maintain agricultural productivity, increased energy costs and increased flood damage. Land occupiers have the responsibility to implement the practices which correct these conditions and to conserve the soil and water resources of the state.

It is the policy of the state to encourage land occupiers to conserve the soil and water resources through the implementation of practices that effectively reduce or prevent erosion, sedimentation, siltation and agriculturally related pollution in order to preserve natural resources, insure continued soil productivity, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands.

History: (6932-1) 1937 c 441 s 1; 1965 c 425 s 2; 1973 c 412 s 9; 1977 c 304 s 3

40.03 BOARD OF WATER AND SOIL RESOURCES.

Subdivision 1. [Repealed, 1987 c 358 s 132]

Subd. 1a. [Repealed, 1987 c 358 s 132]

Subd. 2. [Repealed, 1987 c 358 s 132]

Subd. 3. [Repealed, 1987 c 358 s 132]

Subd. 4. Powers and duties. In addition to the powers and duties conferred upon the board by section 110B.35, it shall have the following powers and duties:

(1) Receive and disburse any grants made available to the state by the United States Department of Agriculture under the preferred program developed under United States Code, title 16, sections 2001 to 2009;

(2) Offer any appropriate assistance to the supervisors of the districts in implementing any of their powers and programs. Any funds made available to a district for expenditures necessary for the operations of the district shall be a grant to the district to be used only for purposes authorized by the state board pursuant to law. The soil and water conservation district may designate the board of county commissioners to act as the agent of the district to receive and expend these funds at the direction and with the approval of the board of supervisors of the district. At least annually the state board shall audit, in a manner it prescribes, the expenditure of funds so granted;

(3) Keep the supervisors of each district informed of the activities and experience of all other districts and facilitate cooperation and an interchange of advice and experience among the districts;

(4) Coordinate the programs and activities of the districts with appropriate agencies by advice and consultation;

(5) Approve or disapprove the plans or programs of districts relating to the use of state funds administered by the state board;

(6) Secure the cooperation and assistance of the appropriate agencies in the work of the districts and to develop a program to advise and assist appropriate agencies in obtaining state and federal funds for erosion, sedimentation, flooding, and agriculturally related pollution control programs;

(7) Develop and implement a comprehensive public information program concerning the districts' activities and programs, the problems and preventive practices of erosion, sedimentation, agriculturally related pollution, flood prevention, and the advantages of formation of districts in areas where their organization is desirable;

(8) Subdivide and consolidate districts without a hearing or a referendum so as to confine districts within county limits, provided that no district, when feasible and practicable, shall contain less than four full or fractional congressional townships;

(9) Assist in the implementation of a statewide program for inventorying and classification of the types of soils throughout the state as determined by the Minnesota cooperative soil survey;

(10) Identify research needs and cooperate with other public agencies in research concerning the nature and extent of erosion, sedimentation, flooding and agriculturally related pollution, the amounts and sources of sediment and pollutants delivered to the waters of the state, and long-term soil productivity;

(11) Develop programs to reduce or prevent soil erosion, sedimentation, flooding and agriculturally related pollution, including but not limited to structural and land-use management practices;

(12) Develop a system of priorities within the state to identify the erosion, flooding, sediment and agriculturally related pollution problem areas that are most severely in need of control systems; and

(13) Ensure compliance with statewide programs and policies established by the state board pursuant to this section and section 40.02 by advice, consultation, and approval of grant agreements with the districts.

History: (6932-3) 1937 c 441 s 3; 1947 c 194 s 1; 1949 c 347 s 1; 1957 c 553 s 1; 1961 c 113 s 1; Ex1961 c 9 s 1,2; 1967 c 16 s 1,2; 1969 c 637 s 1; 1969 c 1129 art 3 s 1, art 10 s 2; 1971 c 661 s 1; Ex1971 c 44 s 6,7; 1973 c 35 s 16; 1973 c 492 s 14; 1974 c 570 s 1; 1975 c 271 s 3; 1975 c 420 s 1; 1976 c 84 s 1-3; 1976 c 134 s 14-16; 1976 c 149 s 59,62 subd 5a; 1977 c 304 s 4-7; 1980 c 617 s 47; 3Sp1981 c 2 art 1 s 13; 1982 c 512 s 11,12; 1983 c 66 s 1; 1983 c 293 s 59; 1983 c 305 s 12; 1985 c 67 s 1; 1Sp1985 c 10 s 47; 1986 c 444; 1987 c 358 s 34,89; 1987 c 384 art 3 s 42

40.035 PROGRAM PLAN.

Subdivision 1. Funding decisions; priority areas. The state board shall prepare, in consultation with the districts and appropriate agencies, a program plan for the accomplishment of its duties specified in section 40.03, subdivision 4. The state board shall use this program plan in decisions to allocate funds to the districts. The state board shall give immediate emphasis to the determination of priority areas within the state where erosion, sedimentation and related water quality problems appear most in need of control methods and to the development of the comprehensive public information program.

Subd. 2. Information; hearing. For the purpose of developing the program plan, the state board may request any existing pertinent information from any state agency and may conduct any hearing it deems necessary.

Subd. 3. Coordination with other plans. The plan shall be coordinated as closely as possible with other statewide resource plans, such as the statewide framework water resources plan and the statewide water quality management plan.

Subd. 4. Review. The state board shall review and revise the plan at intervals it deems appropriate.

History: 1977 c 304 s 8; 1987 c 358 s 90

40.036 COST-SHARING CONTRACTS FOR EROSION CONTROL AND WATER MANAGEMENT.

Subdivision 1. Allocation to districts. (a) Within the limits of available funds, the state board may allocate funds to districts to be used to share the cost of implementing any system or practices for erosion or sedimentation control or water quality improvement which are designed to protect and improve the state's soil and water resources. Any district board requesting funds of the state board shall submit a comprehensive plan, an annual work plan, and an application for cost-sharing funds in the form prescribed by the state board. The comprehensive and annual work plans shall be completed as provided in section 40.07, subdivision 9. After review of the district's comprehensive plan, the state board shall approve it with any necessary amendments or reject it. If the state board approves the comprehensive plan, including the most recent plan amendment, the annual work plan and the application of the district it shall determine the specific amount of funds to allocate to the district for the purpose of cost-sharing contracts. Neither the state board nor the district board shall furnish any financial aid for practices designed only for an increase in land productivity.

(b) The state board shall allocate at least 70 percent of available cost-sharing funds to areas with high priority erosion, sedimentation, or water quality problems. The areas must be selected based on the statewide priorities established by the board. The allocated funds must be used for conservation practices to address high priority problems as identified in the comprehensive and annual work plans of the districts.

(c) The remaining cost-sharing funds may be allocated by the board to districts as follows:

(1) for technical and administrative assistance not to exceed 20 percent of the available cost-sharing funds; and

(2) for conservation practices to address lower priority erosion, sedimentation, or water quality problems.

Subd. 2. Contracts by districts. Within the limits of funds available, a district board may contract on a cost share basis to furnish financial aid to a land occupier or to a state agency for the implementation of permanent systems for erosion or sedimentation control or water quality improvement which are consistent with the district's comprehensive and annual work plans completed pursuant to section 40.07, subdivision 9. The duration of the contract may be the time required to complete the planned systems. A contract may provide for cooperation or funding with United States agencies. Every contract shall specify that the land occupier is liable for monetary damages, not to exceed the amount of financial assistance received from the district,

for failure to timely complete or maintain the systems or practices as specified in the contract. A land occupier or any state agency may provide the cost-sharing portion of the contract through in-kind services.

Subd. 3. **Rules.** The state board shall adopt rules prescribing:

(1) the procedures and criteria for allocating funds to districts for cost-sharing contracts;

(2) the standards and guidelines for all cost-sharing contracts;

(3) the scope and content of comprehensive plans, plan amendments and annual work plans which local districts must submit under section 40.07, subdivision 9, to qualify for cost-sharing funds;

(4) standards and methods necessary for the planning and implementation of a priority cost-sharing program, including guidelines for identifying high priority erosion, sedimentation and water quality problems;

(5) the share of the cost of conservation practices to be paid from state cost-sharing money; and

(6) requirements for all districts to document their efforts to identify and contact land occupiers with high priority erosion problems.

Subd. 4. [Repealed, 1985 c 59 s 3]

Subd. 5. [Repealed, 1985 c 59 s 3]

Subd. 6. [Repealed, 1985 c 59 s 3]

History: 1977 c 304 s 9; 1982 c 512 s 13; 1985 c 59 s 1,2; 1986 c 444

40.038 TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

Subdivision 1. [Repealed, 1985 c 59 s 3]

Subd. 2. **Cooperation with other programs.** At the request of local districts, the agricultural extension service of the University of Minnesota, county extension committees and county extension agents in each county shall:

(a) Advise the districts in developing comprehensive plan amendments and annual work plans for the districts;

(b) In cooperation with the districts and the soil conservation service of the United States Department of Agriculture, provide technical assistance and education to land occupiers concerning soil conservation practices, including conservation tillage practices; and

(c) Participate in the training of district officials and employees in cooperation with the state board.

History: 1982 c 512 s 14

40.04 SOIL AND WATER CONSERVATION DISTRICTS.

Subdivision 1. **Petition.** Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the board of water and soil resources asking that a soil and water conservation district be organized to function in the territory described in the petition. The petition shall set forth:

(1) The proposed name of the district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivision, but shall be deemed sufficient if generally accurate;

(4) A request that the board of water and soil resources duly define the boundaries for such district; and a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the state board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the board of water and soil resources may consolidate all or any such petitions.

Subd. 2. Hearings. Within 30 days after such a petition has been filed with the board of water and soil resources, it may cause due notice to be given of a proposed hearing, to be held by the state board or its authorized agent, upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, for the creation of such district, upon the question of the appropriate boundaries to be assigned to the district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to the described territory, and all other interested parties, shall have the right to attend these hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and the further hearing held. After this hearing, if the state board shall determine, upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determination and in defining the boundaries, the state board shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits these lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other soil and water conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the public policy set forth in section 40.02. The territory to be included within these boundaries need not be contiguous. If the state board shall determine, after such hearing, after due consideration of the relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions concerning the case or substantially the same territory may be filed, as aforesaid, and new hearings held and determinations made thereon.

Subd. 3. Determination; election. After the state board has made and recorded a determination that there is a need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within these boundaries, with the powers conferred upon soil and water conservation districts in this chapter, is administratively practicable and feasible. To assist the state board in the determination of this administrative practicability and feasibility, it shall be the duty of the state board, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of the referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county (or counties) of and" and "Against creation of a soil and water conservation district of the lands below described and lying in the county (or counties) of and" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of these propositions as the voter may favor or oppose creation of the district. The

ballot shall set forth the boundaries of the proposed district as determined by the state board. All occupiers of land lying within the boundaries of the territory, as determined by the board of water and soil resources, shall be eligible to vote in the referendum. Only these land occupiers shall be eligible to vote.

Subd. 4. Supervision. The board of water and soil resources shall pay all expenses for the issuance of these notices and the conduct of the hearing and referenda, and supervise the conduct of the hearings and referenda. It shall issue appropriate rules governing the conduct of the hearings and referenda, and providing for the registration, prior to the date of the referendum, of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as herein provided and the referendum shall have been fairly conducted.

Subd. 5. Result of election; district organized. The board of water and soil resources shall publish the result of the referendum and thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the state board shall determine that the operation of the district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the state board shall determine that the operation of the district is administratively practicable and feasible, it shall record such determination and proceed with the organization of the district in the manner hereinafter provided. In making such determination the state board shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in the referendum who shall have voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors as may be relevant to such determination, having due regard to the public policy set forth in section 40.02; provided, that the state board shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of the district.

Subd. 6. Supervisors a corporation; name of district; certificate of organization. If the board of water and soil resources shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act, with the three supervisors elected as provided hereinafter, as the governing body of the district. The district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals):

(1) That a petition for the creation of a district was filed with the board of water and soil resources pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate or politic, under this chapter; and that the state board has appointed them as supervisors;

(2) The name and official residence of each supervisor, together with a certified copy of the appointment evidencing the right to office;

(3) The term of office of each supervisor;

(4) The name which is proposed for the district; and

(5) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each supervisor before an officer authorized by the laws of this state to take oaths, who shall certify upon the application personal knowledge of the supervisors, that they are the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the board of water and soil resources, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the state board did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory, and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district, and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district; that thereafter the state board did duly determine that the operation of the proposed district is administratively practicable and feasible. The statement shall set forth the boundaries of the district as they have been defined by the state board.

The secretary of state shall examine the application and statement and, on finding that the name proposed for the district is not identical with that of any other soil and water conservation district in this state, or so nearly similar as to lead to confusion or uncertainty, shall receive and file them and record them in an appropriate book of record in the secretary of state's office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, the secretary shall certify that fact to the board of water and soil resources, which shall thereupon submit to the secretary of state a new name for the district, which shall not be subject to such defects. Upon receipt of the new name, free from such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in the secretary of state's office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state. The secretary of state shall make and issue to the supervisors a certificate, under the seal of the state, of the due organization of the district and record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the board of water and soil resources, as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this chapter.

After July 1, 1972, all cities, lying within the boundaries of an existing soil and water conservation district are included within the boundaries of the district. Cities shall be included within the boundaries of any district organized after July 1, 1972. In doubtful cases, the board of water and soil resources shall determine the district within which a city shall be included.

Subd. 7. Later petitions. After six months shall have expired from the date of entry of a determination by the board of water and soil resources that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

Subd. 8. Territory annexed; procedure. (1) Petitions for including additional territory within an existing district may be filed with the board of water and soil resources, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The state board shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(2) Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the board of water and soil resources by any 25 or more occupiers of land within the district or districts affected. In such event, it shall not be necessary to obtain the consent of any fee owners of lands in any created districts before additional territory is annexed or before districts are consolidated, or before an existing district is divided, but all other proceedings herein provided for in the case of petitions to organize a district shall be followed in so far as they are applicable. The state board shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district.

(3) In the holding of the referendum for consolidation or separation, all land occupiers within the affected district or districts shall be eligible to vote. The state board shall not have authority to determine the administrative practicability or feasibility of consolidating or separating districts unless a majority of the votes cast in the referendum within each and all of the separate districts to be affected, or within each and all of the separate areas sought to be made separate districts, shall be in favor of such consolidation or separation.

(4) In the case of consolidation or separation of districts, the corporate existence and terms of office of the officers of the old district or districts shall expire upon the issuance and recording by the secretary of state of a certificate of the due organization of the consolidated district, or of the several new districts. Upon consolidation all of the rights and liabilities of the several consolidating districts shall be vested in, and assumed by the consolidated district. Upon separation, the rights and liabilities of the original district shall be vested in and assumed by the new districts in the equitable proportion to be determined by the board of water and soil resources; provided, however, that any subdividing shall not affect the term of office for which any supervisor was elected or appointed, and such supervisor shall continue to represent the district in which the supervisor resides for that full term.

Subd. 9. Certificate of organization as evidence. In any suit, action, or proceeding involving the validity of enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

Subd. 10. Change of name. The name of a soil and water conservation district may be changed with the approval of the board of water and soil resources upon the adoption of a resolution by a majority of the supervisors setting forth the new name of the district, and by filing a certified copy thereof with the secretary of state.

Subd. 11. Change of location of principal office. The location of the principal office of the supervisors of a district may be changed with the approval of the board of water and soil resources upon the adoption of a resolution by a majority of the supervisors setting forth the new location thereof, and by filing a certified copy thereof with the secretary of state.

Subd. 12. Formation of supervisor districts. The district governing body of any district, heretofore or hereafter organized, after two successive annual elections have been held shall, with the approval of the board of water and soil resources, divide a district into five supervisor districts for purposes of nomination for election and at each election thereafter one or more supervisors shall be nominated from each such district, and whenever the boundary of any district has been substantially changed after a division thereof, such district shall thereupon be divided into five supervisor districts for nomination purposes in accord with this subdivision, provided that nothing herein will be construed to disqualify a supervisor during the term for which the supervisor was elected or nominated for election. Supervisors nominated from nomination districts shall be included on the ballot for election from the entire area included in the soil and water conservation district. Any vacancy occurring in any such district by

failure to nominate a supervisor or otherwise, shall be filled by a majority of the supervisors in the manner provided in section 40.05, subdivision 4.

A certified copy of the minutes or the resolution of the supervisors establishing districts as herein authorized shall be promptly filed by the chair of the board of supervisors with the county auditor wherein the districts are located and with the board of water and soil resources.

History: (6932-4) 1937 c 441 s 4; 1943 c 274 s 1; 1945 c 95 s 1; 1947 c 194 s 2; 1949 c 347 s 2; 1951 c 340 s 1; Ex1961 c 9 s 3; 1963 c 472 s 1; 1967 c 16 s 2; 1969 c 637 s 1; Ex1971 c 44 s 1,2; 1973 c 123 art 5 s 7; 1974 c 570 s 2; 1975 c 271 s 3; 1976 c 149 s 59,62 subd 5a; 1985 c 248 s 70; 1986 c 444; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.05 THREE SUPERVISORS ELECTED FOR EACH DISTRICT.

Subdivision 1. Nominating petition; ballots; election. Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a soil and water conservation district, or such further time as the board of water and soil resources may allow, nominating petitions may be filed with the board of water and soil resources nominating legal voters as candidates for election as supervisors of such district, two for terms to expire on December 31 following the second general election after their initial election, and one for a term to expire on December 31 following the third general election after their initial election. Each petition must be subscribed by one or more legal voters of the district. If a person signs petitions nominating more than three candidates the signature shall not be counted on any petition. The state board shall give due notice of the time and place where the election of three supervisors shall be held in the district, and shall specify therein the names of all candidates and the terms for which nominated. The state board shall prepare ballots for such election with the surnames of the candidates printed thereon in alphabetical order for each term and a square before each name and a direction to insert an X mark in the square before three names with different terms to indicate the voter's choice. All legal voters shall be eligible to vote at such election. The three candidates who shall receive the highest numbers respectively of the votes cast at such election shall be the elected supervisors for the district. In case of a tie, the election shall be determined by lot, under the direction of the state board. The state board shall supervise such election, pay all the expenses thereof, prescribe the rules governing the same, determine the eligibility of voters and publish the results.

Subd. 2. Ends of particular terms; to 1976. (a) On December 31, 1972, the terms of the following two incumbent supervisors shall terminate: The two supervisors whose terms, under this chapter, as existing before Extra Session Laws 1971, chapter 44, terminate at the time of the annual town elections of 1973 and 1974. Their successors shall be elected at the general election, as defined in section 200.02, subdivision 2, held in 1972. Thereafter, except for the filling of vacancies, their successors shall be elected for six year terms.

(b) On December 31, 1974, the terms of the following two incumbent supervisors shall terminate: The two supervisors whose terms, under this chapter, as existing before Extra Session Laws 1971, chapter 44, terminate at the time of the annual town elections of 1975 and 1976. Their successors shall be elected at the general election, as defined in section 200.02, subdivision 2, held in 1974. Thereafter, except for the filling of vacancies, their successors shall be elected for six year terms.

(c) On December 31, 1976, the term of the following incumbent supervisor shall terminate: The supervisor whose term, under this chapter, as existing before Extra Session Laws 1971, chapter 44, terminates at the time of the town election of 1977. The successor shall be elected at the general election, as defined in section 200.02, subdivision 2, held in 1976. Thereafter, except for the filling of a vacancy, the successor shall be elected for a six-year term.

Subd. 3. Supervisors elected at general election. After December 31, 1972, and for the elections required by subdivision 2, all elections except that provided for the organization of the district, in subdivision 1, shall be held at the time and place of

holding the state general election, as specified in section 204D.03, subdivision 2. No primary shall be held. The names of candidates for election as supervisors of the soil and water conservation district shall be placed on the "canary ballot," as described in section 204D.11, subdivision 3. Nominating petitions conforming to the rules stated in subdivision 1 shall be filed with the secretary of the soil and water conservation district at least 60 days before the time of holding the state general election. The district secretary shall immediately submit the names of the candidates and the terms for which nominated to the appropriate county auditor. The ballots for use at the election shall be prepared by the county auditor. All laws relating to elections for county office shall govern insofar as applicable. The county auditor shall certify the result to the board of water and soil resources, and if the soil and water conservation district embraces land in more than one county the county auditor shall forthwith certify to the board of water and soil resources the vote, as shown by the report of the county canvassing board, for all candidates voted for in more than one county. In the latter case the board of water and soil resources shall certify the results of the election and publish the result.

Subd. 3a. Indian lands. In any soil conservation district where a supervisor nomination district is located entirely within lands of an American Indian tribe or band to which county election laws do not apply, a supervisor to represent the district shall be elected or appointed in the manner provided by the governing body of the tribe or band.

Subd. 4. Vacancies. If a vacancy except by reason of expiration of term shall occur in the office of an elected supervisor, more than 60 days before the next succeeding general election, the governing body of the district shall fill the vacancy by appointment; and the supervisor appointed shall hold office until December 31 following the next succeeding general election. If the term does not then expire, a successor shall be elected at the next succeeding general election following the appointment and hold office for the remainder of the term. If a vacancy except by reason of expiration of term shall occur in such office less than 60 days before the next succeeding general election, the governing body of the district shall fill the vacancy by appointment; and the supervisor shall hold office until the expiration of the term or until December 31 following the second succeeding general election, whichever is the shortest term, when a successor shall be elected and hold office for the remainder of the term.

History: (6932-5) 1937 c 441 s 5; 1943 c 274 s 2; 1945 c 95 s 2; 1949 c 347 s 3; 1953 c 370 s 1; 1957 c 553 s 2,3; 1963 c 330 s 1; 1967 c 16 s 2; 1969 c 637 s 1; 1971 c 80 s 1; Ex1971 c 44 s 3; 1974 c 570 s 3-5; 1975 c 5 s 126; 1975 c 271 s 3; 1976 c 149 s 59,62 subd 5a; 1981 c 29 art 7 s 2; 1Sp1981 c 4 art 2 s 4; 1985 c 248 s 70; 1986 c 444; 1987 c 62 s 1; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.06 SUPERVISORS.

Subdivision 1. Members; election, appointment. The governing body of the district shall consist of five supervisors, elected or appointed as herein provided. All supervisors shall be legal voters residing within the district. The two supervisors appointed by the state board upon the creation of the district as hereinbefore provided shall serve for terms ending on December 31 following the next succeeding general election after their appointment, and thereafter their successors shall be elected for terms of six years.

Subd. 2. Tenure; vacancies; quorum; compensation. A supervisor shall hold office until a successor has been elected or appointed and has qualified. Vacancies in the office of supervisor appointed by the state board, for an entire term or an unexpired term, shall be filled by the state board. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination except as otherwise expressly provided. A supervisor shall receive such compensation for services as the state board may determine, and shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of duties. A supervisor shall receive as reimbursement for the use of the supervisor's own automobile in the performance of duties, the rate per mile prescribed for state officers and employees.

Subd. 3. Officers; employees; information to state board. The supervisors shall elect or appoint officers for the district and the board of supervisors as follows: A chair elected from their own members and a secretary and a treasurer appointed or selected from within or without such membership, all to serve at the pleasure of the supervisors. Such officers shall have the powers and duties incident to their respective offices, and such other powers and duties as may be expressly prescribed by law or directed by the supervisors for any such purpose. The supervisors may employ technical experts and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The county attorney of the county in which the major portion of the district is located or one who may be otherwise employed by the board shall be the attorney for the district and the supervisors thereof, and the supervisors may call upon the county attorney for the necessary legal counsel and advice and service. The supervisors may delegate to their chair or other officer, to one or more supervisors, or to one or more agents or employees such powers and duties as they may deem proper. The supervisors shall furnish to the board of water and soil resources, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or use, and such other information concerning their activities as the state board may require in the performance of its duties under this chapter.

Subd. 4. Employee bonds; audit; removal of supervisor. The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted 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; the state auditor shall annually audit the books of said soil and water conservation district and its supervisors, or, at the request of the board of supervisors, the state auditor may contract for an annual audit by a certified public accountant. The state auditor may determine that an annual audit of a soil and water conservation district is not necessary, in which case the audit shall be conducted at least every four years. Any supervisor may be removed by the board of water and soil resources upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

Subd. 5. Advisory assistance. The supervisors may invite the legislative body of any municipality or county located within the district 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 or county.

History: (6932-6) 1937 c 441 s 6; 1943 c 274 s 3; 1945 c 95 s 3; 1947 c 194 s 3; 1949 c 347 s 4; 1951 c 340 s 2; 1957 c 553 s 4; 1967 c 16 s 2; 1969 c 637 s 1,4,5; 1971 c 661 s 2; Ex1971 c 44 s 4,5; 1973 c 492 s 14; 1975 c 271 s 3; 1976 c 84 s 4; 1976 c 149 s 59,62 subd 5a; 1983 c 79 s 1; 1986 c 444; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.07 POWERS OF DISTRICT BOARDS.

Subdivision 1. Status of district. A soil and water conservation district shall constitute a governmental and political subdivision of this state, and a public body, corporate and politic, and shall have the following powers in addition to those otherwise prescribed by law.

Subd. 2. Research. A district may conduct surveys, investigations, and research to identify the problems and preventive practices specified in section 40.02. In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with a state agency or an agency of the United States. A district may publish its comprehensive plan and the results of its surveys, investigations, and research and may disseminate information to the public concerning any of its activities.

Subd. 3. Demonstration projects. A district may conduct demonstration projects within the district on lands owned or administered by a state agency, with the cooperation of the administering agency, and on any other lands with the consent of the land occupier, in order to demonstrate by example the practices which implement the state policy specified in section 40.02.

Subd. 4. Building; planting; land changes. A district may implement any necessary practices within the district, including but not limited to structural measures and works of improvement for any purpose specified in section 40.02, methods of cultivation, the use of vegetation, and changes in use of land, on lands acquired by the district, and on other lands owned or administered by a state agency, with the cooperation of the administering agency, and on any other lands, with the consent of the land occupier.

Subd. 5. Cooperation agreements. A district may cooperate or enter into agreements with and, within the limits of available appropriations furnish financial or other aid to any land occupier or appropriate agency, to implement the policy specified in section 40.02 within the district, subject to conditions the supervisors deem necessary.

Subd. 6. Acquiring rights; interest in property. A district may acquire any rights or interests in real or personal property by option, purchase, exchange, lease, gift, grant, bequest, devise, or otherwise. It may maintain, operate, administer, and improve any properties acquired, may receive income from the properties and expend the income in implementing the provisions of this chapter, and may sell, lease, or otherwise dispose of any of its property or interests.

Subd. 7. Providing materials; equipment. A district may make available, on terms it shall prescribe, to land occupiers within the district, any agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment which will assist land occupiers to implement upon their lands the practices specified in section 40.02.

Subd. 8. Construction. A district may construct, install, improve, maintain, and operate any structures and works necessary or convenient for the performance of any of the operations authorized in this chapter.

Subd. 9. Planning. A district may develop and revise a comprehensive plan, specifying the practices to implement the state policy specified in section 40.02, including, without limitation, the construction, maintenance, and operation of structural measures, methods of cultivation, the use of vegetation, cropping programs, mechanical practices, and changes in use of land and technical standards and specifications related thereto. The plan shall include a classification of the soil types within the district as determined by the Minnesota cooperative soil survey and the areas within the district where erosion, sedimentation and related water quality problems appear most in need of control methods. The plan shall be consistent with the statewide framework water resources plan, the statewide water quality management plan, and the state board's soil and water program plan, and shall be prepared in the manner required by the rules of the state board.

By August 1 of each even-numbered year, beginning in 1984, each district which applies for cost-sharing funds under section 40.036 shall submit to the state board an amendment of its comprehensive plan which identifies high priority erosion, sedimentation and water quality problems within the district in the manner required by the rules of the state board.

By August 1 of each year, beginning in 1984, each district which applies for cost-sharing funds under section 40.036 shall submit to the state board an annual work plan for responding to the high priority erosion, sedimentation and water quality problems in the district. The work plan shall be prepared in the manner required by the rules of the state board. In preparing the annual work plan, the district shall actively identify and seek out land occupiers with high priority erosion problems who have not participated in cost-sharing contracts and encourage their participation in programs to control their erosion problems.

Subd. 10. Taking over projects; gifts. A district may take over by purchase, lease, or otherwise, and may improve, maintain, operate and administer any soil or water conservation, erosion-control, erosion-prevention, watershed protection, flood prevention or flood control project located within its boundaries undertaken by the United States or by a state agency, may accept donations, gifts, grants, or contributions in money, services, materials, or otherwise from the United States, any state agency or any other source, in order to accomplish the authorization in this section. A board may

enter into any contract or agreement necessary or appropriate to accomplish the transfer, and may use or expend any moneys, services, materials, or other things to accomplish any authorized purpose.

Subd. 11. Suits; contracts; rulemaking. A district may sue and be sued in the name of the district, have perpetual succession unless terminated as hereinafter provided, make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and make, amend, or repeal rules and regulations not inconsistent with this chapter.

Subd. 12. Requiring compensation. As a condition to the extending of any benefits for the performance of work upon any lands not owned or administered by a state agency or the district, the supervisors may require compensation or contributions in money, services, materials, or otherwise commensurate with the cost or reasonable value of the operations or work conferring the benefits.

Subd. 13. [Repealed, 1977 c 304 s 25]

Subd. 14. Federal funds. A district may submit any application and enter into any agreement or contract with the secretary of agriculture or other designated authority for the purpose of obtaining or using federal assistance under the provisions of Public Law 566 or any other law providing for federal assistance for any authorized purpose of the district. A district may acquire without cost to the federal government any land, easements, or rights-of-way needed in connection with works of improvement installed with federal assistance; may assume the proportionate share of the cost of installing any works of improvement involving federal assistance determined by the secretary or other designated authority to be equitable in consideration of anticipated benefits from the improvements; may make arrangements satisfactory to the secretary or other authority for defraying costs of operating and maintaining the works of improvement in accordance with prescribed regulations; may acquire or provide assurance that land occupiers have acquired the water rights and other rights, pursuant to state law, needed in the installation, maintenance, and operation of the works of improvement; may obtain agreements to carry out recommended soil and water conservation measures and prepare farm plans for owners of not less than 50 percent or other required percentage of the lands situated in any drainage area above any retention reservoir which may be installed with federal assistance, all as prescribed in said Public Law Number 566 or applicable federal law, and may do any other acts necessary to secure and use federal aid.

Subd. 15. Budget. The district board of supervisors annually shall present a budget consisting of an itemized statement of district expenses for the ensuing calendar year to the board of county commissioners or boards of county commissioners of the county or counties in which the district is located. The county board or boards may levy an annual tax on all taxable real property in the district for such amount as the board or boards determine to be necessary to meet the requirements and obligations of the district. The amount levied shall be collected and distributed to the district in like manner as prescribed by chapter 276. This amount may be spent by the district board for any district purpose authorized by law.

Subd. 16. Membership in relevant association. A district may appropriate necessary funds to provide membership in state and national associations which have as their purpose the betterment and improvement of soil and water conservation district operations. A district is also authorized to participate through duly designated representatives in the meetings and activities of such associations, and is authorized to appropriate necessary funds to defray the actual and necessary expenses of such representatives in connection therewith, which expenses may be paid only upon the presentation and allowance of a properly verified itemized claim.

History: (6932-7) 1937 c 441 s 7; 1955 c 553 s 1; 1967 c 16 s 2; 1969 c 637 s 6; 1973 c 583 s 6; 1974 c 502 s 1; 1977 c 304 s 10-22; 1982 c 512 s 15

40.071 ADDITIONAL POWERS OF A DISTRICT.

In addition to powers and duties otherwise provided by law, a soil and water conservation district may procure liability insurance as provided in section 466.06, automobile insurance on personal cars while used on official business, insurance on the contents of district offices, and workers' compensation insurance, or may require the county or counties in which the district is located to include the district in the county's or counties' insurance coverage for these purposes.

History: 1967 c 39 s 1; 1969 c 637 s 1; 1981 c 356 s 269; 1Sp1981 c 4 art 1 s 41; 1987 c 396 art 11 s 14

40.072 SOIL AND WATER CONSERVATION DISTRICTS; WORKS OF IMPROVEMENT.

Subdivision 1. Authority. In addition to all other powers prescribed by law and without limiting the same, the board of supervisors of a soil and water conservation district may, when directed by resolution of the board of county commissioners or boards of commissioners from the county or counties in which the district is located undertake, construct, install, maintain, and operate in the name of the district as provided in this section works of improvement for any district purpose specified or referred to in this chapter, and acts amendatory thereof. For the purposes of any such works the board may use the proceeds of tax levies, assessments, and any other available funds, may acquire necessary real or personal property by purchase or gift, and may contract, survey, plan, construct, install, maintain and operate such works, and exercise any other powers vested in it by law, so far as appropriate, subject to the further provisions hereof.

Subd. 2. Initiation of program. A program for such works of improvement in any area within the district or districts if the project is in more than one district may be initiated upon written request submitted to the board or boards by one or more of the owners of land in the affected area. The request shall include a general description of the area proposed for inclusion in an improvement work unit, with a proposed name or number therefor, a description of the affected land owned by signer or signers, and a statement of the objectives of the proposed works in furtherance of the authorized purposes, the grounds upon which the same will be of public benefit and utility and will promote the public health, safety, and welfare, and the special benefits to property which will result therefrom, if any. As soon as practicable after receipt of such a request the board or boards shall make or cause to be made such preliminary surveys and studies as it deems necessary for action thereon, and if the board or boards thereupon determine that the works proposed thereby are feasible and will be of public utility and benefit, will promote the public health, safety, and welfare, and will be in furtherance of the authorized purposes and best interests of the district or districts, the board or boards may thereupon, in its discretion, by resolution recommend the establishment of an improvement work unit and a program for works of improvement therein to the board or boards of county commissioners of the counties in which the affected land is located for further action as hereinafter provided. By such resolution the board or boards shall give the unit an appropriate name or number, which may be the same as or different from the one proposed in the initiatory request, and shall recommend definite boundaries for the improvement work unit, which may be the same as proposed in the request or may be modified as the board or boards deem advisable. By such resolution the board or boards may also enlarge, reduce, or otherwise modify the proposed objectives of the program, but not so as to make a substantial change in the main purposes thereof as stated in the initiatory request unless consented to in writing by the signer or signers. At any time before further action is taken on the project as provided in subdivision 4 the district board or boards may amend the resolution, subject to the foregoing limitations.

Subd. 3. Preliminary program plans; application for federal or other aid; cooperation with other agencies; report and recommendations to the county board; adoption of improvement work plan. After adoption of the resolution recommending the improve-

ment work unit and program as provided in subdivision 2, with amendments thereto, if any, the board or boards, when the board or boards of county commissioners by resolution so directs, may make or cause to be made such further surveys and studies as may be necessary and thereupon make or cause to be made a preliminary general plan for carrying out the program for the improvement work unit as set forth in the resolution or any part thereof, with cost estimates therefor. The board or boards, at the direction of the county board or boards, may make application for federal aid, state aid, or aid available from any other source for the works embraced in the program or any part thereof under Public Law Number 566 or any act amendatory thereof or supplementary thereto or any other applicable federal or state law, and may take all steps necessary to determine whether such aid will be available and the amount thereof. The board may consider how the cost of the works of improvement or any part thereof above prospective federal or other aid may be met from the funds of the district or from the proceeds of assessments on benefited property or otherwise, and make estimates therefor. If the cooperation or joint action of any adjacent soil and water conservation district or any other public agency is desirable for any purpose under the program or in connection therewith, the board, at the direction of the county board or boards, may negotiate with the authorities concerned for such cooperation or joint action as authorized in this chapter, and acts amendatory thereof, or as otherwise provided by law. Upon completion of the foregoing steps as far as necessary, the board or boards may make and file a report, summarizing its findings thereon and its recommendations for further action on the program or any part thereof. The board or boards shall make the plan together with the preliminary general plan for the improvement work unit available to the county board or boards and to all other public agencies and persons concerned, and may give such publicity thereto as the district board deems advisable. The report shall contain substantially the same engineering information required by section 112.49, subdivisions 1 and 2. The board or boards shall transmit a copy of the report and preliminary plan to any regional development agency created by Minnesota law for the region in which each project is located, and in those cases where the plan involves a project for which a permit is required from the commissioner of natural resources under chapter 105, or for which proceedings will be instituted under sections 106A.005 to 106A.811, to the commissioner of natural resources and to the board of water and soil resources. The board of water and soil resources shall review the report and plan and, if it concludes that the plan is inconsistent with systematic administration of state water policy, shall report its conclusion to the board or boards and the commissioner of natural resources within 60 days after receiving the report and plan. Thereafter the board or boards may modify and retransmit the report and preliminary plan to the board of water and soil resources, or may request a hearing on the report and plan before the board of water and soil resources. The board of water and soil resources shall hear the matter in the same manner, and follow the same procedures, as provided in sections 105.76 to 105.79, for the hearing of cases where it consents to intervention proceedings. Except where the board of water and soil resources concludes that the report and plan are inconsistent with state water policy, the district board or boards, with the approval of the county board or boards, may adopt and sponsor the improvement work unit and a program of work for the unit.

Subd. 4. Action on work project pursuant to report; petition and hearing. The county board or boards, acting jointly under section 471.59, may take action on a project within the improvement work unit for construction or installation of works of improvement or part thereof pursuant to the recommendations in the report only upon a petition for a project signed by at least 25 percent of the owners of the land over which the proposed improvement work passes or upon which it is located, or by the owners of at least 30 percent of the area of such land, describing such land and requesting the county board or joint county board to hold a hearing on the practicability and desirability of carrying out the project in accordance with the preliminary plan and the recommendations in the report of the district board or boards. If the report specifies that any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, one or more of the petitioners, upon the filing of the petition and

before any action is taken thereon, shall file a bond to the county or counties acting jointly conditioned as provided by section 106A.205 in the case of a county drainage system, to be approved by the chair of the board. The county board or joint county board shall set a time and place for the hearing on the petition, and cause notice thereof to be given as provided in section 106A.261, subdivision 1. If upon the hearing the county board or joint county board finds that the carrying out of the project as requested in the petition will be feasible, in accordance with the recommendations of the report, and in furtherance of the objectives and purposes therein set forth, and that the estimated cost will not exceed the funds which may reasonably be expected to be available for payment thereof, the county board or joint county board may adopt a resolution so determining and directing further action on the project as hereinafter provided. By such resolution the county board or joint county board shall determine the amount to be paid from the respective sources of available or potentially available funds, including federal aid, district funds, assessments on benefited property, and other funds, if any. The amount payable from district funds may be commensurate with but shall not exceed the value of the general public benefit of the project to the district as determined by the board or boards.

Subd. 5. Action on project without assessments. If no part of the project cost is to be paid from assessments on benefited property, the county board or joint county board may proceed with complete surveys and detailed plans and specifications and make its order establishing the project. The order shall contain findings substantially conforming to those required by section 106A.341, subdivision 2. Notice summarizing the findings and order shall be served upon those persons entitled to receive notice of a county drainage project pursuant to section 106A.325, in the manner therein provided unless such notice is waived in writing by each person entitled to receive such notice. The waiver of notice shall be filed with the county auditor. Unless an appeal is taken within 30 days after the notice is given, the county board or joint county board may proceed to acquire necessary rights or property, procure materials, let contracts, and take any other steps appropriate to complete the project. The county board or joint county board may delegate its duties and powers under this subdivision to the district board or joint district board provided that the district board or joint district board shall not exercise the power of eminent domain.

Subd. 6. Action on project with assessments. If any part of the cost of the project is to be paid from the proceeds of assessments on benefited property, viewers shall be appointed as provided in section 106A.305, and shall report as required by sections 106A.311, 106A.315, and 106A.321. The board or joint board of county commissioners shall direct the petitioners or, with its consent, the board or joint board of supervisors, to provide such engineering services as may be necessary to produce final plans adequate for the construction of the proposed improvement. The county board or joint county board shall then give notice of and conduct a final hearing substantially in accordance with sections 106A.325 to 106A.341 inclusive, as in the case of a county drainage proceeding, so far as these sections are consistent with this chapter, and acts amendatory thereof. If it is determined that the total benefits to property are not as much as the amount payable from the proceeds of assessments as specified in the report of the board or boards under subdivision 3, the petition shall be dismissed and further action on the project discontinued except as hereinafter provided, unless the county board or joint county board shall determine that the deficiency may be met by increasing the amount payable from district funds or other funds, subject to the limitations hereinbefore prescribed, in which case further action for completion of the project may be taken as herein provided. If it is determined that the total benefits to property are as much as or more than the amount payable from the proceeds of assessments as specified in the report and that the other applicable requirements of law have been complied with, the county board or joint county board shall by order containing such findings establish the project as reported or amended and adopt and confirm the viewers' report as made or amended. If the total amount of benefits to be assessed upon property pursuant to the viewers' report as so adopted and confirmed is greater than the amount specified as payable from such assessments in the report of

the board or boards under subdivision 3, the county board or joint county board may reduce the amounts payable from other sources of funds accordingly in such proportions as it may determine. Further action shall be taken thereon as provided in sections 106A.005 to 106A.811, so far as appropriate, except that each tract of land affected shall be assessed for the full amount of benefits, less damages, if any, as shown by the viewers' report as adopted and confirmed, unless the total amount of such benefits, less damages, exceeds the total actual cost of the project to be paid from the proceeds of assessments, in which case such cost shall be prorated for assessment purposes as provided in section 106A.601. Upon filing of the viewers' report as provided in this section the county board of each county affected shall provide funds to meet its proportionate share of the total cost of the improvement, as shown by the report and order of the county board or joint county board, and for such purposes is authorized to issue bonds of the county in such amount as may be necessary in the manner provided in section 106A.635.

The provision of section 106A.635 requiring the county board to let a contract for construction before issuing bonds shall not be applicable to bonds issued to provide the funds required to be furnished by this section.

The county board or joint county board, pursuant to agreement with the district board or boards, may by resolution direct the district to undertake, construct, install, maintain, and operate the work of improvement upon terms mutually agreed upon. However, if it is necessary to acquire property by eminent domain, the county, or the counties acting jointly, shall exercise the power of eminent domain and shall convey the property to the district or districts pursuant to the agreement.

If, pursuant to an agreement, the responsibility for a work of improvement is vested in a district or districts, the respective county treasurers shall transmit the proceeds of all related assessments or bond issues, when collected, to the treasurer of the district, who shall credit the same to the proper funds under the direction of the district board.

Subd. 7. Project bonds. The county board may pledge the proceeds of any assessments on property made for the purposes of a project as hereinbefore provided, any revenues derived from such a project, and the proceeds of tax levies or funds from other sources to the payment of any bonds issued for the purposes of the project.

Subd. 8. Reinstatement of discontinued project. If a project is discontinued by reason of dismissal of the proceedings or otherwise at any time after action thereon has been commenced under subdivision 4, the project shall have the same status as if no such action had been commenced. The report of the district board thereon shall continue to be subject to amendment as hereinbefore provided, a new petition for further action may be made at any time as provided in subdivision 4, and further proceedings had as hereinbefore provided.

Subd. 9. Repair. The term "repair" used in this section means restoring the project works of improvement or any part thereof as nearly as practicable to the same condition as when originally constructed or subsequently improved.

After the construction of a project has been completed and accepted by the board of the county or district having authority over the project, the board shall maintain the same or such part thereof as lies within its jurisdiction and provide the repairs required to render it efficient to answer its purpose. This board shall have, exercise, and perform the powers and duties of the drainage authority under sections 106A.701 to 106A.745, except as follows. If this board is a board of a soil and water conservation district, the financing of repairs which require assessments and bond issues shall be the responsibility of the county board or joint county board in a manner similar to that provided for the financing of the cost of original construction of the project and as provided in sections 106A.701 to 106A.745, so far as appropriate.

History: 1969 c 637 s 8; 1978 c 674 s 8; 1985 c 172 s 93-97; 1986 c 444; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.073 APPEALS.

Any person aggrieved by an order of the board or joint board of county commissioners in any proceedings undertaken pursuant to section 40.072, subdivision 5 or 6, may appeal to the district court upon the grounds and in the manner provided by sections 106A.091 and 106A.095, for a county drainage proceeding. Notices required by sections 106A.091 and 106A.095, to be filed with the county auditor shall also be filed with the board or joint board of supervisors. No appeal shall be permitted from an order of the board or joint board of county commissioners or the board or joint board of supervisors made pursuant to section 40.072, subdivision 5 or 6 which dismisses a petition or refuses to establish a project.

History: 1969 c 637 s 9; 1985 c 172 s 98

40.075 [Repealed, 1982 c 512 s 18]

40.08 [Repealed, 1955 c 553 s 2]

40.09 [Repealed, 1955 c 553 s 2]

40.10 [Repealed, 1955 c 553 s 2]

40.11 [Repealed, 1955 c 553 s 2]

40.12 COOPERATION BETWEEN DISTRICTS AND OTHER PUBLIC AGENCIES.

The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another or with any other public agency in the exercise of any or all powers conferred in this chapter. The district board may enter into contracts or other arrangements with the United States government, or any department thereof, with persons, or corporations, with public corporations and the state government of this state or other states. In furtherance of any authorized purpose, a soil and water conservation district may join or cooperate by agreement as provided in section 471.59, or any act amendatory thereof or supplementary thereto, with any other such district or any watershed district, or any governmental unit as defined in said section 471.59 or with any combination thereof in any operation or project for any authorized purpose in which the soil and water conservation district and the other contracting party or parties have a common interest. For all such purposes soil and water conservation districts and watershed districts shall be deemed to be governmental units under the provisions of section 471.59 and acts amendatory thereof or supplementary thereto.

Where the improvement work unit covers two districts, a joint board made up of three supervisors from each of the district boards will preside. Where the improvement work unit covers three or more districts, a joint board made up of two supervisors from each of the district boards will preside. The individual boards will appoint the supervisors who will represent them on the joint board.

The joint board will have the responsibility and authority to accept and approve initiatory requests for improvement work units, direct the preparation of preliminary surveys and studies, establish improvement work units, and, at the direction of the boards of county commissioners, adopt programs and reports, award contracts, supervise construction, and accept completed construction work.

History: (6932-12) 1937 c 441 s 12; 1969 c 637 s 7

40.13 STATE AGENCIES TO COOPERATE.

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of this 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 organized hereunder, shall cooperate 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.

History: (6932-13) 1937 c 441 s 13; 1957 c 553 s 5

40.14 DISCONTINUANCE OF DISTRICTS.

At any time after five years after the organization of a district under the provisions of this chapter, 25 occupiers of land lying within the boundaries of the district may file a petition with the board of water and soil resources praying that the operations of the district be terminated and the existence of the district discontinued. The state board may conduct such public meetings and public hearings upon the petition as may be necessary to assist in the consideration thereof. Within 60 days after the petition has been received by the state board, it shall give due notice of the holding of a referendum, supervise the referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots, upon which the words "For terminating the existence of the (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the (name of the soil and water conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of these propositions as the voter may favor or oppose discontinuance of the district. All occupiers of lands lying within the boundaries of the districts shall be eligible to vote in the referendum. Only these land occupiers shall be eligible to vote. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum, or the result thereof, if notice thereof shall have been given substantially as herein provided and the referendum shall have been fairly conducted.

The state board shall publish the result of the referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the state board shall determine that the continued operation of the district is administratively practicable and feasible, it shall record such determination and deny the petition. If the state board shall determine that the continued operation of the district is not administratively practicable and feasible, it shall record such determination and certify such determination to the supervisors of the district. In making such determination the state board shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in the referendum who shall have voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors as may be relevant to such determination, having due regard to the declaration of public policy set forth in section 40.02. The state board shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of the district.

Upon receipt from the board of water and soil resources of a certification that the board has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and pay over the proceeds of the sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district, and transmit with the application the certificate of the board of water and soil resources setting forth the determination of the board that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and set forth a full accounting of these properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and record the certificate in an appropriate book of record in the secretary of state's office.

Upon issuance of a certificate of dissolution under the provisions of this section,

all ordinances and regulations theretofore adopted and in force within these districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in the contracts. The board of water and soil resources shall be substituted for the district or supervisors as party to the contracts. The board shall be entitled to all benefits and subject to all liabilities under the contracts, and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent, or otherwise, as the supervisors of the district would have had. The dissolution shall not affect the lien of any judgment entered under the provisions of section 40.11, nor the pendency of any action instituted under the provisions of section 40.11, and the board shall succeed to all the rights and obligations of the district or supervisors as to these liens and actions.

The board of water and soil resources shall not entertain petitions for the discontinuance of any district nor conduct referenda upon the petitions, nor make determinations pursuant to the petitions in accordance with the provisions of this chapter, more often than once in two years.

History: (6932-14) 1937 c 441 s 14; 1967 c 16 s 2; 1969 c 637 s 1; 1975 c 271 s 3; 1976 c 149 s 59,62 subd 5a; 1986 c 444; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.15 CITATION, SOIL AND WATER CONSERVATION DISTRICTS LAW.

This chapter may be known and cited as the Minnesota soil and water conservation districts law.

History: (6932-16) 1937 c 441 s 16; 1969 c 637 s 1

EXCESSIVE SOIL LOSS

40.19 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to Laws 1985, chapter 256, sections 1 to 22 and sections 40.19 to 40.28.

Subd. 2. [Renumbered subdivision 7a]

Subd. 2a. **Conservation plan.** "Conservation plan" means a set of practices that will decrease soil erosion to the soil loss limits on a particular parcel of land.

Subd. 3. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 4. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 5. **Conservation practices.** "Conservation practices" means practices and standards containing a definition, purpose, and conditions that the practice applies including design requirements, and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards. A conservation practice may be a permanent or temporary, vegetative or structural, measure that will aid the control of wind and water erosion. Permanent practices are those that have effective life greater than ten years and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip-cropping, and other permanent practices approved by the board of water and soil resources. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board of water and soil resources.

Subd. 6. **Development activity.** "Development activity" means a physical disturbance of the land, that may result in sedimentation of adjacent lands or waters, associated with activities that include clearing, grading, excavating, transporting, and filling lands. Road construction by federal, state, county, and municipal governments designed according to department of transportation standard specifications for construction are not development activities.

Subd. 7. **Erosion.** "Erosion" means any process that removes soil away from the surface of the land by the action of water, wind, or gravity.

Subd. 7a. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limits. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or in a body of water.

Subd. 8. [Renumbered subdivision 9a]

Subd. 9. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to, or is in possession of any lands, as owner, lessee, or otherwise. "Land occupier" includes both the owner and the occupier of the land if they are not the same.

Subd. 9a. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include soil and water conservation districts, water management organizations, joint powers boards, watershed districts, and other governmental entities responsible for resource management within the local government's jurisdiction.

Subd. 10. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 11. **Sediment.** "Sediment" means solid mineral or organic material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity, or ice, and has been deposited at another location.

Subd. 11a. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as natural medium for the growth of land plants.

Subd. 12. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 13. **Soil loss limit.** "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil.

Subd. 14. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 15. [Repealed, 1985 c 256 s 25; 1Sp1985 c 13 s 376]

Subd. 16. **Technical guide.** "Technical guide" means the guide developed by USDA Soil Conservation Service adopted by soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices.

History: 1984 c 569 s 2; 1985 c 256 s 1-11; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.20 SOIL LOSS ORDINANCES.

Each statutory or home rule charter city, town, or county that has planning and zoning authority under sections 366.10 to 366.19, 394.21 to 394.37, or 462.351 to 462.365 is encouraged to adopt a soil loss ordinance. The soil loss ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine the soil loss limits but the soil loss limits must be attainable by the best practicable soil conservation practice. A local government that adopts a soil loss ordinance may enter an agreement with its agent allowing the agent to administer the functions and perform the duties of the local government as provided by Laws 1985, chapter 256, sections 12 to 22. Ordinances adopted by local governments within the metropolitan area defined in section 473.121 must be consistent with local water management plans adopted under section 473.879.

History: 1984 c 569 s 3; 1985 c 256 s 12

40.21 RULES, MODEL ORDINANCE, AND PERIODIC REVIEW.

Subdivision 1. **Rules and model ordinance as guide.** The board of water and soil resources, in consultation with counties, soil and water conservation districts, and other appropriate agencies, shall adopt a model ordinance and rules that serve as a guide for local governments to carry out the provisions of Laws 1985, chapter 256, sections 12 to 22 and sections 40.20 to 40.26, and provide administrative procedures for the board for Laws 1985, chapter 256, sections 12 to 21 and sections 40.20 to 40.26.

Subd. 2. **Model ordinance.** The model ordinance must specify the technical and administrative procedures required to control soil loss and erosion. The model ordinance is the minimum regulation to be adopted. The model ordinance must use the soil loss tolerance for each soil series described in the United States Soil Conservation Service Field Office Technical Guide to determine soil loss limits, but the soil loss limits must be attainable by the best practicable soil conservation practice.

Subd. 3. **Periodic review.** At least once every five years the board shall review the rules and model ordinance in cooperation with counties, soil and water conservation districts, and appropriate agencies to ensure their continued applicability and relevance.

History: 1984 c 569 s 4; 1985 c 256 s 13; 1987 c 358 s 91,92

40.22 EXCESSIVE SOIL LOSS PROHIBITED.

Subdivision 1. **Prohibited activities.** A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

Subd. 2. **Agricultural land.** A land occupier of agricultural land is not violating subdivision 1 if the occupier is farming by methods that implement the best practicable conservation practices.

Subd. 3. **Woodland.** A land occupier who uses wooded land for pasture must ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths.

History: 1984 c 569 s 5; 1985 c 256 s 14,15

40.23 ENFORCEMENT.

Subdivision 1. **Complaint.** (a) An adversely affected landowner, an elected or appointed official of the local government, or a soil and water conservation district board member may submit a written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land that affects another tract of land or body of water. The written complaint must contain:

- (1) the name and address of the landowner;
- (2) the location of the tract of land with the excessive soil loss;
- (3) land or water that is affected by the excessive soil loss; and
- (4) a description of the nature of the excessive soil loss and resulting sedimentation.

(b) The local government shall submit the complaint to the soil and water conservation district for soil loss determination.

Subd. 2. **District determination of soil loss.** (a) The soil and water conservation district shall determine the average soil loss in tons per acre per year of the tract of land cited in the complaint.

(b) The soil and water conservation district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. The landowners must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

(c) The soil and water conservation district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and whether the soil loss is excessive under the applicable soil loss limits. If the soil loss is excessive the report must include identification of existing management practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss to the most practicable extent.

Subd. 3. **Mediation.** (a) If the soil and water conservation district report shows that soil loss from the tract of land is excessive and alternative practices are available to reduce the soil loss, the local government shall request the allegedly offending landowner to participate in mediation with the local government.

(b) The local government may appoint the planning and zoning director, a plan-

ning commissioner, or other county official to act as a mediator. The local government may also contract with a mediation center to provide mediation services.

(c) The landowner, and the local government or its agent must attempt to agree on conservation practices and times to implement the practice that will reduce soil loss to the local soil loss limits.

(d) A mediated settlement must be in writing, and filed with the local government.

(e) If the local government and the landowner do not agree to a mediated settlement, or if the landowner refuses to participate in mediation, the local government shall forward the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a hearing under section 40.242.

Subd. 4. Application for cost-sharing funds. The landowner has 90 days after a mediated settlement is filed to apply for state cost-sharing funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent cost share will be provided if the application is not made within 90 days after the settlement is filed. The landowner must apply for 50 percent cost share within 270 days after the mediated settlement is filed.

Subd. 5. Penalty. A landowner that does not comply with the provisions of the mediated settlement is subject to a civil penalty up to \$500. Soil conservation practices that are made in good faith and substantial compliance are a complete defense.

History: 1984 c 569 s 6; 1985 c 256 s 16

40.24 [Repealed, 1985 c 256 s 25]

40.242 DISTRICT COURT HEARING.

Subdivision 1. Determination of proper conservation plan. If the landowner and the local government do not agree to a mediated settlement or if the landowner has refused mediation, the county attorney may petition the district court for a hearing. The landowner shall have the opportunity to present the landowner's conservation plan and time schedule as an alternative to the local government conservation plan and time schedule. The court shall order the landowner to implement the conservation plan and time schedule that is the least burdensome to the landowner and will reduce soil loss to at least the soil loss limit. The court may amend the local government's or landowner's conservation plan and time schedule, or develop a new conservation plan and time schedule. The court shall set times to implement, make satisfactory progress, and complete the conservation plan.

Subd. 2. Cost-sharing funds. (a) If the court orders implementation of the landowner's conservation plan and time schedule, or amends the conservation plan and time schedule, or if the court develops a new conservation plan and time schedule, the landowner is eligible to apply for 75 percent cost-share funds for permanent conservation practices. The landowner must apply for the cost share within 90 days after the court order. If the landowner does not apply within 90 days for the cost-sharing funds the cost share is reduced to 50 percent. The court shall establish a time when the landowner is not eligible for cost-sharing funds if an application is not made.

(b) If the court orders a plan and time schedule developed by the district in its report, the landowner is eligible for 50 percent cost share if the landowner applies within 90 days after the court order.

History: 1985 c 256 s 17

40.244 SOIL AND WATER CONSERVATION ASSISTANCE.

A landowner who has filed a mediated settlement under section 40.23 or who has received a court order under section 40.242 may request the soil and water conservation district to assist in the planning, design, and application of practices necessary to reduce soil loss to the applicable soil loss limit amounts or to the greatest practical extent. The soil and water conservation district must give the landowner a high priority for technical and cost-sharing assistance.

History: 1985 c 256 s 18

40.246 ATTORNEY AND LOCAL GOVERNMENT MAY PERFORM DUTY OF COUNTY.

The city attorney or town attorney may perform the duties of a county attorney. A city or town may perform the duties of a local government only if the city or town adopts a soil loss ordinance and the land in the complaint is located within the city or town.

History: 1985 c 256 s 19

40.25 EROSION CONTROL PLAN FOR DEVELOPMENT ACTIVITIES.

Subdivision 1. Sedimentation control plan. (a) A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government having jurisdiction over the land before the development activity is to begin.

(b) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other property during the construction will be minimized, including the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, and other measures to prevent erosion and sediment damage. The time schedule must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

Subd. 2. Permit required. The local government may appoint the zoning and planning director, building inspector, county engineer, or the soil and water conservation district to review the plan and time schedule. If the sedimentation control plan and time schedule will prevent excessive soil loss to the most practicable extent, the local government must issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.

Subd. 3. Penalty. A person engaged in a development activity who does not obtain a sedimentation control plan permit or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty. Soil conservation practices made in good faith and substantial compliance are a defense.

Subd. 4. Application. For counties, the provisions of this section apply only to county jurisdiction over unincorporated areas.

History: 1984 c 569 s 8; 1985 c 256 s 20

40.26 COST-SHARING FUNDS.

Subdivision 1. Cost-share required. Except for a development activity, a land occupier may not be required to establish soil conservation practices unless state cost-sharing funds have been specifically approved for that land and have been made available to the land occupier under sections 40.23 and 40.242, equal to at least 75 percent of the cost of the permanent conservation practices on a voluntary basis, or a 50 percent cost-share if an application for cost-share is not made within 90 days after the board approves a mediated written agreement or within 90 days after the court orders implementation of a plan and time schedule prepared by the landowner or the court. For mediated settlements, a court order that implements the landowner's alternatives or the court's alternatives must state the time schedule for application for 50 percent cost-share. If the court orders implementation of the district's plan and time schedule, a landowner is only eligible for 50 percent cost-share.

Subd. 2. Review of requirements. The board of water and soil resources shall review these requirements at least once each year, and may authorize a district to provide a higher percentage of cost-sharing than is required by this section. To aid in this determination, the state board may consider the location of the affected area in relation to the priority areas as established in the soil and water conservation district annual and long-range plans.

Subd. 3. Recording. The permanent conservation practices must be recorded with the county recorder on the tracts where they occur if the cost-sharing funds are issued to the landowner.

History: 1984 c 569 s 9; 1985 c 256 s 21; 1986 c 398 art 7 s 1; 1987 c 358 s 34; 1987 c 384 art 3 s 42

40.27 APPLICABILITY.

The provisions of sections 40.22 to 40.26 are not applicable without the adoption of an ordinance by the county or local government unit.

History: 1984 c 569 s 10

40.28 PENALTY.

A person who violates section 40.22, subdivision 1, is subject to a civil penalty up to \$500.

History: 1984 c 569 s 11; 1985 c 256 s 22

CONSERVATION RESERVE PROGRAM**40.40 SHORT TITLE.**

Laws 1986, chapter 383 sections 2 to 15 may be cited as the "reinvest in Minnesota resources act of 1986."

History: 1986 c 383 s 1

40.41 PURPOSE AND POLICY.

It is the purposes of sections 40.41 to 40.45 to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat. It is state policy to encourage the retirement of marginal, highly erodible land, particularly land adjacent to public waters and drainage systems, from crop production and to reestablish a cover of perennial vegetation.

History: 1986 c 383 s 2; 1987 c 357 s 1

40.42 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 40.42 to 40.45.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subd. 3. **Conservation easement.** "Conservation easement" means a conservation easement as defined in section 84C.01.

Subd. 4. **Conservation reserve program.** "Conservation reserve program" means the program established under section 40.43.

Subd. 5. **Landowner.** "Landowner" means individuals, family farms, family farm corporations as defined under section 500.24, subdivision 2, paragraph (c), and authorized farm corporations as defined under section 500.24, subdivision 2, paragraph (d), which either own eligible land or are purchasing eligible land under a contract for deed.

Subd. 6. **Marginal agricultural land.** "Marginal agricultural land" means land that is: (1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or (2) similar to land described under (1) and identified under a land classification system selected by the commissioner.

Subd. 7. **Wetland.** "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions.

Subd. 8. **Windbreak.** "Windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway.

History: 1986 c 383 s 3; 1987 c 357 s 2-4

40.43 CONSERVATION RESERVE PROGRAM.

Subdivision 1. **Establishment of program.** The commissioner of agriculture, in

consultation with the commissioner of natural resources, shall establish and administer a conservation reserve program. The commissioner of agriculture shall contract with the board of water and soil resources to implement sections 40.40 to 40.44. Selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality.

Subd. 2. Eligible land. Land may be placed in the conservation reserve program if the land:

(1) is marginal agricultural land, or is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description, or consists of a drained wetland, or is land that with a windbreak would be beneficial to resource protection. Cropland adjacent to the restored wetland may also be enrolled to the extent of up to four acres of cropland for each acre of wetland restored;

(2) was owned by the landowner on January 1, 1985, or was owned by the landowner, or a parent or other blood relative of the landowner, for at least three years before the date of application;

(3) is at least five acres in size, except for a windbreak, or is a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

(4) is not set aside, enrolled or diverted under another federal or state government program; and

(5) was in agricultural crop production for at least two years during the period 1981 to 1985.

The enrolled land of a landowner may not exceed 20 percent of the landowner's total agricultural land acreage in the state, if the landowner owns at least 200 acres of agricultural land as defined by section 500.24, subdivision 2. If a landowner owns less than 200 acres of agricultural land the amount that may be enrolled in the conservation reserve is:

(a) all agricultural land owned, if 20 acres or less; or

(b) if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the balance of the agricultural land.

In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 40.41.

Subd. 3. Conservation easements. The commissioner may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapter 16B.

Subd. 4. Nature of property rights acquired. (a) A conservation easement must prohibit:

(1) alteration of wildlife habitat and other natural features, unless specifically approved by the commissioner;

(2) agricultural crop production, unless specifically approved by the commissioner for wildlife management purposes;

(3) grazing of livestock unless approved by the commissioner after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12.29; and

(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement.

Subd. 5. Agreements by landowner. The commissioner may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

(1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the commissioner; or to plant trees or carry out other long-term capital improvements approved by the commissioner for soil and water conservation or wildlife management;

(3) to restore any drained wetland and to convey to the state a permanent easement for the wetland;

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture;

(5) to the enforcement of the terms of the easement and agreements in this subdivision by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner under subdivision 6, with interest from the date of each default under the agreement; and

(6) that the easement duration may be lengthened through mutual agreement with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

Subd. 6. Payments for conservation easements and establishment of cover. The commissioner must make the following payments to the landowner for the conservation easement and agreement:

(1) to establish the perennial cover or other improvements required by the agreement, up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements;

(2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements;

(3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application;

(4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application; or

(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the commissioner.

The commissioner may not pay more than \$50,000 to a landowner for all the landowner's conservation easements and agreements.

Subd. 7. Easement renewal. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the commissioner and the landowner, under the terms of this section. The commissioner may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

Subd. 8. Correction of conservation easement boundary lines. To correct errors in legal descriptions for easements obtained that affect the ownership interests in the state and adjacent landowners, the commissioner may, in the name of the state, with

the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

History: 1986 c 383 s 4; 1987 c 357 s 5-9; 1987 c 358 s 93; 1988 c 610 s 1

40.44 COOPERATION AND TECHNICAL ASSISTANCE; SUPPLEMENTAL CONSERVATION PAYMENT.

Subdivision 1. Cooperation. In implementing sections 40.41 to 40.44 the commissioner must share information and cooperate with the department of natural resources, the pollution control agency, the United States Fish and Wildlife Service, the Agricultural Stabilization and Conservation Service and Soil Conservation Service of the United States Department of Agriculture, the Minnesota extension service, the University of Minnesota, county boards, and interested private organizations and individuals.

Subd. 2. Technical assistance. The commissioners of agriculture and natural resources must provide necessary technical assistance to landowners enrolled in the conservation reserve program. The commissioner of natural resources must provide technical advice and assistance to the commissioner on (1) the form and content of the conservation easement and agreement; (2) forestry and agronomic practices; and (3) hydrologic and hydraulic design relating to the establishment and maintenance of permanent cover, or other conservation improvements. The commissioner of transportation must provide technical advice and assistance to the commissioners of agriculture and natural resources on the planting of windbreaks adjacent to highways. The commissioners of agriculture and natural resources shall jointly prepare an informational booklet on the conservation reserve program and other state and federal programs for land acquisition, conservation, and retirement to be made available to eligible landowners and the general public.

Subd. 3. Supplemental conservation payments. The commissioner may supplement payments made under federal land retirement programs to the extent of available appropriations other than bond proceeds. The supplemental payments must be used to establish perennial cover on land enrolled or increase payments for land enrollment in programs approved by the commissioner, including the federal conservation reserve program and federal and state waterbank program.

History: 1986 c 383 s 5; 1987 c 357 s 10,11

40.45 RULEMAKING.

The commissioner may adopt emergency rules to implement Laws 1987, chapter 357. The emergency rules adopted on August 27, 1986, shall remain in effect until December 31, 1987, or until amended or replaced by emergency or permanent rules. The rules must include standards for tree planting so that planting does not conflict with existing electrical lines, telephone lines, rights-of-way, or drainage ditches.

History: 1986 c 383 s 6; 1987 c 357 s 12