

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 51

S. P. 68

In Senate, January 15, 1941.

Referred to Committee on Legal Affairs and 500 copies ordered printed.
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Findlen of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

**AN ACT Relating to the Conservation of Soil and Soil Resources and the
Prevention and the Control of Soil Erosion.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

Sec. 2. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District or "soil conservation district" means an agency of the state, and a body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act.

(3) "Committee", "state soil conservation committee" or "state committee" means the agency created in section 3 of this act.

(4) "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 act, whether as owner, lessee, renter, tenant or otherwise.

(5) "Due notice means notice published at least twice, with an interval of 6 days in a newspaper or other publication of general circulation within the appropriate area, or by posting at a reasonable number of conspicuous places within the appropriate area. At any hearing held pursuant to such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

Sec. 3. State soil conservation committee. A. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this act, the state soil conservation committee, which shall consist of the following 5 members: the director of the state agricultural extension service and the director of the state agricultural experiment station, who shall serve *ex officio*; and 3 farmers who shall be appointed by the governor with the advice and consent of the council in the following manner: one from a list of 3 names submitted by the executive committee of the state grange, one from a list of 3 names submitted by the executive committee of the state farm bureau federation, and one from a list of 3 names submitted by the state commissioner of agriculture. The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the above mentioned members as an advisory member of the committee. The committee shall keep an accurate record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The committee may call upon the attorney-general of the state for such legal services as it may require. It may employ an administrative officer and such other employees as it may require. It shall have authority to delegate to any of its members, or to any agent or employee, such powers and duties as it may deem proper.

C. The committee shall elect one of its members to be chairman, and may, from time to time, change such designation. An *ex officio* member of the committee shall hold office so long as he shall hold the office by virtue of which he may be serving on the committee. The farmer members

of the committee shall serve for a term of 3 years from the date of their appointment, except that of the members first appointed, the member recommended by the commissioner of agriculture shall serve for one year, the member recommended by the executive committee of the state farm bureau federation, for 2 years, and the member recommended by the executive committee of the state grange, for 3 years. An appointed member of the committee shall serve until his successor has been appointed and qualified. Upon the expiration of the term of office of, or in case of a vacancy in, the office of an appointed member, his successor shall be appointed by the governor with the advice and consent of the council in the same manner as the retiring member was appointed. A vacancy shall be filled for the unexpired term in the same manner as the original appointment. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, if and when funds are available. The committee shall provide for the execution of surety bonds for any officers who shall be entrusted with funds or property; shall provide for the keeping of an accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the districts organized hereunder, and to encourage

the formation of such districts in areas where their organization is desirable.

Sec. 4. Creation of soil conservation districts. A. 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 state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district;
- (2) That there is need, in the interest of the public health, safety, and welfare, for a district to function in the territory described in the petition;
- (3) A description of the territory proposed to be organized as a district;
- (4) A request that the committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the committee may consolidate all or any such petitions.

B. Within 30 days after such a petition has been filed with the committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, 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 such described territory, and all other interested parties, shall have the right to attend such 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 such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such 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 conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area consid-

ered and of the state, the composition of soils in the proposed district, 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 such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other districts already organized under the provisions of this act, and such other physical, geographical, and economic factors as are relevant. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory, or any part thereof, considered at the hearing, it shall make and record such determination and shall deny the petition. After 6 months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed, new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need 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 such boundaries is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district, cause due notice of a referendum to be given, and hold such referendum within the proposed district. The question shall be submitted by ballots. The usual polling places available for regular elections within the district shall be available for the purpose of such referenda, and city and town officials are hereby directed to assist in the carrying out of such referenda.

All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation committee, and only such land occupiers, shall be eligible to vote in such referendum.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda. No informalities in the conduct thereof shall invalidate said referendum.

E. The committee shall publish the result of such referendum in a newspaper of general circulation in the territory affected and shall thereafter again consider and determine whether the operation of the district is

administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitude of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination; provided, however, that the committee shall not have authority to determine that the operation of the proposed 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 creation of such district.

F. If the committee shall determine that the operation of the proposed district is administratively practicable and feasible, it shall appoint 2 supervisors to act, with the 3 supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be an agency of the state and a public body corporate and politic, upon the taking of the following proceedings:

The 2 appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth: (1) that a petition for the creation of the district was filed with the state soil conservation committee, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district. The application shall be subscribed and sworn to by each of the said supervisors. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need for a soil conservation district to function in the proposed territory and it did define the boundaries thereof; that notice was given and a referendum held

on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall file the application and statement and shall record them in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, the district shall constitute an agency of the state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the state, of the due organization of the said district, and shall record a copy of such certificate with the application and statement.

G. After 6 months shall have expired from the date of entry of a determination by the committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition, subsequent petitions may be filed and action taken by the committee.

H. Petitions for including additional territory within an existing district may be filed with the committee, 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. 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 hearing or 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.

Sec. 5. Election of 3 supervisors for each district. Within 30 days after the date of issuance of a certificate of organization of a district, nominating petitions may be filed with the committee to nominate candidates for supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee, unless it shall be subscribed by 25 or more occupiers of lands lying within the boundaries of such district. Land occupiers may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of and hold an election for the election of 3 supervisors for the district. All occupiers of lands lying within the district and only such land occupiers shall be eligible to vote in such election. The 3 candidates

who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct of, shall prescribe regulations governing the conduct of such election, and shall publish the results thereof in some newspaper of general circulation in the area.

Sec. 6. Appointment, qualifications and tenure of supervisors. The governing body of the district shall consist of 5 supervisors, elected or appointed. The 2 supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the services which will be required of them in the performance of their duties.

The supervisors shall elect one of their members to be chairman and may, from time to time, change such designation. The term of office of each supervisor shall be 3 years, except that the supervisors who are first appointed shall be appointed to serve for terms of 1 and 2 years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, shall be made in the same manner in which the retiring supervisors shall, respectively, have been selected. 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. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties, if and when funds are available.

The supervisors may employ a secretary, and such other employees as they may require, if and when funds are available. The supervisors may call upon the attorney-general of the state for such legal services as they may require. The supervisors may delegate to one or more supervisors, or to any agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, upon request, any information concerning their activities as it may require in the performance of its duties under this act.

The supervisors shall require the execution of surety bonds by all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of an accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

Sec. 7. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute an agency of the state and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(2) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, after consultation with town, city and county officials; all such property shall be exempt from taxation by the state or any subdivisions or agency thereof; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its real and personal property or interests therein in furtherance of the purposes and provisions of this act;

(4) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, and such other equipment or material, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or

desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(7) To act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, or erosion-control project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

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

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

(10) To cooperate with any other district organized under the provisions of this act in the exercise of any or all powers conferred in this act.

(11) Provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall not be applicable to a district organized hereunder unless the legislature shall specifically so state.

Sec. 8. State agencies to cooperate. Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors. Public lands used for research purposes shall comply with this section only to the extent that it does not interfere with existing research work.

Sec. 9. Discontinuance of districts. At any time after 5 years after the organization of a district under the provisions of this act, any 25 occupiers of land lying within the boundaries of such district may file a petition with the state soil conservation committee requesting that the operations of the district be terminated and the existence of the district discontinued. Upon receipt of the petition for the discontinuance of a district, the committee shall conduct such public hearings and referenda as may be necessary to assist it in the consideration thereof. In conducting such hearings and referenda, the committee shall adhere substantially to the same procedures and give weight to each of the considerations set forth in section 5 of this act, as were followed in the organization of such districts; provided, however, that the committee may not 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 such district.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this act, more often than once in 5 years.

Sec. 10. Allocation of funds. A. Unless otherwise provided by law, all moneys which may from time to time be available to pay the administrative and other expenses of soil conservation districts organized under the provisions of this act shall be allocated by the state soil conservation committee among the districts already organized or to be organized during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said committee shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by such district.

B. Seventy-five per cent of all moneys which may be appropriated to pay the administrative and other expenses of soil conservation districts shall be allocated by the committee among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining 25% of said moneys shall be allocated by the state committee among the districts on such basis of allocation as shall be fair, reasonable and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special

difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making such allocations of such moneys, the committee shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

Sec. 11. Separability clause. If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 12. Inconsistency with other acts. Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

Sec. 13. Short title. This act may be known and cited as the soil conservation districts law.