

Input to the WACD District Operations Committee on the subject of:

## Other States Conservation District Laws

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### Standard State Soil Conservation Districts Law

The publication *The Preparation of the Standard State Soil Conservation Districts Law* is an outstanding reference for work on revising a Conservation District Law. This document outlines the strategy behind the sections of the original standard law as described by Phillip M. Glick, who assisted with the development of the original law in 1935. It is most interesting to look at your state's district law in its current form and compare to the original. Examining the changes over the years gives you insight into where your state conservation districts program has been. The NACD diskette of State Conservation District Laws is an outstanding comparison tool.

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### Innovations

Some examples of state conservation district law with innovations from the standard law include;

- § Nebraska combined the conservation districts with several other natural resource related districts, commissions, and units of government to form Natural Resource Districts that have functions in recreation, parks, water resources, ground water, and the traditional conservation district functions. Their boundaries are based in large part on watershed boundaries.
  - § Wisconsin Land Conservation Committee Members are County Board Supervisors. The Land Conservation Committees are a statutory committee of County Boards. Employees are county government employees and they are funded through county government with a close working relationship with Cooperative Extension and county governing officials.
  - § Missouri has a major part of conservation district and cost share funding from a .1% sales tax that is shared with parks and recreation.
  - § Other conservation district laws from various states are mentioned throughout this paper.
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### District Identification

Naming a conservation district may seem to be a minor element of law until you consider the variations – Soil and Water Conservation District, Soil Conservation District, Natural Resources District, or Conservation District. The name change has been important in some states to allow for a wider program focus than soil or soil and water. This may be an element to consider in a law change, even if it is a simple revision to "Conservation District". Nebraska's Natural Resources Districts are responsible for conservation programs, ground water, parks and recreation, and a host of natural resource programs with soil and water conservation.

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### District Definition

The Conservation District Law is very clear that the Conservation District is a governmental subdivision of this state and a public body corporate and politic... This is a common and very functional definition. Alaska, Maine, and Georgia have referred to their districts as state agencies. A state agency definition can mean some additional agency requirements as a negative, but employee benefits within the state government could be a positive consideration. Connecticut is the only state that has a dual definition of government entity and non-profit organization.

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## Power to Create Districts

This element may seem unimportant to consider in revisions, but occasionally new districts are formed that are tribal districts, combinations of existing districts, or splitting of existing districts. In a few western states the formation of tribal districts has been most interesting. The most common system of creating districts is through petition by land owners, or land owners and occupiers of land, with some type of referendum and voting. A question that should be asked is if 25 owners of land being able to form a district too few people, or should this be based on a percentage of qualified voters, or some other method that requires more effort than 25 petitioners.

An important consideration is to eliminate language that limits participation in the petition, referendum and voting processes. It is important that citizens have the opportunity to participate regardless of land ownership or other limiting consideration. A review of state and federal law regarding voting participation may be an important part of your effort.

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## District Boundaries

This part of district law often goes unnoticed or unchanged for years, but it could be most important when considering funding options such as a percentage of sales tax, local improvement assessment authority, property tax, etc. This section of law covers if boundaries are established by state law, if they are coterminous with county lines, provisions for adding territory, changing boundaries, including urban areas, changes simplified, and name changes.

Cities and towns have been very active in states trying to annex into a district if they are not included so they can receive services offered by a district. The opposite is also occurring where cities and towns are trying to de-annex from their district because of district taxing or special assessment authority. The committee should review the current rulings on annexing and de-annexing of cities and towns and determine if changes in district law are needed.

Creating districts and items covered in these last two sections have potential to take huge amounts of staff time for conducting public hearings, referendums, etc if the law and procedure is not well thought out.

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## Sub-Areas

Alabama's conservation district law authorizes formation of watershed councils as sub-units of a conservation district with the ability to raise funding locally from local sources. Oregon, Idaho, and our state legislatures have either passed or have considered separate legislation (outside district law) to form watershed councils in their states. This creates a potential competitive situation with the conservation district and watershed council trying to attract the talent, money, and time within a state. The Alabama district law establishes the clear connection of a Watershed Conservancy District as a sub-district of a conservation district.

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## Governing Body Member Name

Across the nation we have Supervisors, Directors, and Commissioners as terms to describe the district board member position. Probably nothing much to consider beyond personal preference for one name or the other.

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## Discontinuance

Are 25 people who petition to discontinue a district enough representation of the public to force public hearings, a referendum, etc? In one district in New Mexico an upset County Official got more than 25 signatures to discontinue the conservation district. The district had to conduct a public campaign to not be dissolved by the referendum vote that was taken. State Conservation Agency staff was tied up for months assisting the local district with the required public hearings. We now have a 20% of the eligible voters requirement in Washington State

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## Selection & Qualification of Governing Body Members

There exist a wide variety of methods across the nation for the selection and qualification of conservation district board members. The methods include appointments by the state conservation agency, election by land occupiers, nominations from organizations, and combinations of methods.

Those states that have chosen to use the general election process have seen an increase of public awareness about district programs and an increased interest in the district board member positions. General elections also provide an opportunity for greater involvement from citizens served by the district and would resolve questions about who could run for office or vote. States that are using general elections for selecting all or part of their board members are California, Idaho, Nevada, Oregon, West Virginia, Florida, Kentucky, North Carolina, South Carolina, Virginia, Iowa, Minnesota, Wisconsin, Montana, North Dakota, South Dakota, Wyoming, and Nebraska. Minnesota has had outstanding results from the general election process in their state. Pennsylvania has a County Commissioner as a voting member on each of their conservation district boards.

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## Vacancies Filled & Eligibility to Nominate & Vote

The vast majority of conservation district board vacancies are filled with by appointment. The need in this element and the eligibility to nominate & vote is to check your current conservation district law to assure openness in the nomination, voting, eligibility, and appointment processes. States have changed eligibility requirements to allow for general eligibility for citizens of the district to nominate, vote, and serve as conservation district board member.

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## Term of Office

The term of office for conservation district board members varies from 1 year to 6 years depending on the state. A consideration is to have the term of office long enough where an individual can learn their role and responsibilities, execute them and have a meaningful contribution before their term of office is completed.

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## Governing Body Functions

Important considerations in this element of district law include organizing an electing a chair, who the district can call upon for legal services, annual audit requirements, advisory committee appointments, board member compensation, hiring of personnel, copies of materials to the state conservation agency, removal from office, surety bonding. There have been states that have been challenged by their state attorney general office on such things as having their own bank account, borrowing funds, hiring personnel (if their law is silent) and eligibility of district board members to receive cost share funding that the district controls.

## Functions

A wide variety of functions are included in district laws across the nation. Examples are the areas of soil conservation, flood prevention, drainage, irrigation, recreation, water supply, pollution control, sediment prevention. The committee may consider expanding the function of your district law especially in the water quality and water resources area if it does not already exist.

A few years ago the NACD Water Resources Committee collected and reviewed most state legislation relative to conservation district's responsibilities in water resources, then produced an excellent draft water resources and related legislation for consideration by states.

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## Powers

An even wider variation of powers and authorities exist between the versions of conservation district law in the states. This section of district law contains the most important elements of authority on which to build a district program. A summary copy of various powers and authorities throughout the nation is included in this mailing. A few items for consideration:

- § Carry out preventive and control measures: a very important power – all states
- § Conduct surveys, investigations and research: important and not well used power – all states
- § Conduct demonstrational projects: important part of district law allowing for conservation projects on both private and public lands with the consent of the owner – all states
- § Cooperate or enter into agreements: this section sets up the power of districts to furnish financial or other aid to any agency, government, or otherwise, or any owner or occupier of lands within the district – a most important power
- § Entering into contracts: a very important power included in all but Alaska's law
- § Acquiring and Disposing of property: all states but Alaska and Missouri
- § Providing Assistance: all states
- § Develop district wide plans: all states. Rhode Islands District Law has a particularly good section on powers of their districts in comprehensive planning within their boundaries.
- § Construct and maintain structures: all but Arizona
- § Cooperate with other districts and agencies: all states
- § Cooperate with districts in other states: ten states have this power
- § Acquire and administer projects: all but nine states can acquire and administer projects
- § Impose conditions for furnishing assistance: all but two states
- § Adopt Land-use regulations: 28 states have powers where districts can adopt land use regulations.
- § Carry out state/county erosion & sediment control programs: 33 states have these powers for districts. States with comprehensive erosion and sediment control laws are New Jersey, Maryland, Pennsylvania, Wisconsin, Virginia, Minnesota, and Delaware.
- § Approve erosion & sediment control plans: 37 states have these powers for districts
- § Enforcement role in erosion & sediment control program: 18 states have a role for districts in their current law for enforcing erosion and sediment control programs.
- § Receive money from county, state, U.S. Government, and income from property: All states have district's power to receive money from their state and U.S. Government. All but three have powers to receive money from county and income from property. An important note here is that many states have a clause allowing a district to receive funding from any other source which allows a maximum flexibility in funding a district operations. Kentucky has a strong tie to county funding for their district basic funding

- § Levy taxes & assessments: 24 states have power to levy taxes & assessments. Missouri has a .1% of their sales tax revenue collected for conservation and parks, our state has a special assessment authority, Nebraska with taxing authority. Wyoming and Michigan have also had great success in local assessment and taxing authorities for districts.
  - § Borrow money: Only 38 states have a district power to borrow money. This item is particularly important for districts to do large projects on a reimbursable system and for districts that want to build or purchase a district building.
  - § Issue bonds: 22 states include a power for districts to issue bonds
  - § Receive matching funds: 32 states include a power for districts to receive matching funds
  - § Receive revolving funds: 24 states include authority for districts to receive revolving funds
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## State Conservation Agency Structure

A committee looking at changes to conservation district law needs to also review the structure, functions, powers and authorities of the state conservation agency. This element of assistance and support from the state has a dramatic impact on the success of the district program. The committee could take a look at what outcomes, services, and needs should be met by the state conservation agency then evaluate different structures to provide these needs. We have examples of stand alone agencies, agencies within the state department of agriculture, or natural resources, or environment. But the worst case scenarios are from states that do not have a clearly defined state conservation agency to assist their conservation districts.

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Excerpts from NACD Paper on Conservation District Law Comparison and District Laws Comparison Research by Jason Drew while a WSU Graduate Student working for NACD