

F I N A L R E P O R T

SOIL CONSERVATION LAWS JOINT SUBCOMMITTEE OF THE SENATE AND HOUSE STANDING COMMITTEES ON NATURAL RESOURCES AND ON AGRICULTURE

January, 1980

Erosion of soil from all cropland in Iowa is occurring at an estimated annual rate of 9.9 tons per acre per year, according to data compiled by the Iowa Department of Soil Conservation. This rate of topsoil loss is nearly twice that which, on the average, can be offset by regeneration of topsoil. Thus the continuation of the current estimated rate of topsoil loss by erosion, over a period of years, could ultimately be economically disastrous to Iowa agriculture.

Concern about these matters lead 33 Iowa senators to sponsor Senate Concurrent Resolution 22 of the 1979 Session, requesting an interim study by members of both houses who would be authorized to hold hearings around the state and to develop legislative proposals "to encourage soil conservation in Iowa." The Legislative Council responded by creating a combined joint interim Soil Conservation Laws Subcommittee composed of 20 members drawn from the respective Senate and House Committees on Agriculture and on Natural Resources, as follows:

Senator Forrest V. Schwengels	Representative Wendell C. Pellett
Co-chairperson	Co-chairperson
Senator Irvin L. Bergman	Representative James O. Anderson
Senator James V. Gallagher	Representative Frank Crabb
Senator Jack W. Hester	Representative Kenneth De Groot
Senator Merlin D. Hulse	Representative Rod Halvorson
Senator Alvin V. Miller	Representative Herbert E. Hinkhouse
Senator Elizabeth R. Miller	Representative Larry Kirkenslager
Senator Berle E. Priebe	Representative James O'Kane
Senator Bass Van Gilst	Representative Carroll Perkins
Senator Arne Waldstein	Representative Harold Van Maanen

At an initial meeting in Des Moines on August 27, the Soil Conservation Laws Subcommittee received information from the Department of Soil Conservation, Department of Environmental Quality, Iowa Department of Agriculture, State Conservation Commission, Iowa Energy Policy Council, and several concerned individuals, at well as completing organizational formalities. The Subcommittee then undertook a series of four public hearings in the four quadrants of the state, at Washington (September 10), Red Oak (September 18), Storm Lake (September 26), and Waverly (October 3).

Considerable effort was made to publicize the hearings in advance. Each of the hearings was well-attended, and in each case direct participation in the hearing was excellent with a high proportion of the speakers being active farmers. A list of suggestions about ways to encourage more extensive and effective

soil conservation in Iowa was prepared and circulated, and persons planning to participate in the hearings were invited to comment on these suggestions. A number of written statements were submitted by concerned individuals, county soil conservation district commissioners, and other groups before, during, and after the hearings.

The Subcommittee's hearings brought out a variety of views on both the most effective soil conservation techniques and the most promising methods of persuading more farmers and landowners to adopt these techniques. However, a consensus on the following major premises seems to exist, at least among those who appeared at the hearings and perhaps more generally among all Iowans:

1. The present average rate of topsoil loss from Iowa crop land is unacceptable, and its continuation through the rest of this century is likely to prove economically and ecologically ruinous.

2. Since preservation of the soil's fertility is a vital concern to society generally, the use of public money to help achieve this objective is justified. The present rate of public investment, in terms of state and federal cost-sharing and other financial incentives, is inadequate in that there is a backlog of applicants who are prepared to voluntarily implement soil conservation practices if public funds can be obtained to partially offset the cost of doing so.

3. Some farm operators and farm landowners apparently continue to be unaware of, or indifferent to, the need for soil conservation. While many--perhaps most--of these people can eventually be reached by peer pressure and other persuasive techniques, there are a certain number who will undertake the farming practices needed to preserve soil fertility only if they are compelled to do so, or at least are aware that compulsory procedures exist and will be used if necessary.

The Soil Conservation Laws Subcommittee has developed a rather broadly-phrased and somewhat philosophical general statement of policy, a more concrete set of goals based on this policy statement, and finally a series of specific recommendations intended to implement the goals. These are set forth in the balance of this report, and draft bills embodying legislative recommendations are attached.

General Statement of Policy

Agriculture is the foundation of Iowa's economy. That foundation is currently being undermined by critical excessive erosion of the topsoil in the state. Thus it is in the best interest of both the present and future generations to promptly control soil erosion in Iowa. Moreover, control of nonpoint source pollution (i.e., pollution attributable to runoff from large areas rather than to specific points, such as sewage treatment plants) of

the state's rivers and lakes can be largely achieved by proper soil conservation techniques. It should therefore be the policy of the state of Iowa to:

A. Provide education at all levels. Education is a vital tool in building awareness of the importance and understanding of the methods of conserving soil.

B. Provide incentives for good soil management. These incentives may include, but are not limited to, public cost-sharing, low-interest loan funds, and tax credits or tax exemptions to encourage the installation of effective soil conservation practices.

C. Provide technical assistance. Technical assistance should be provided, within budgetary limits, to develop conservation folders (i.e. compilations of information needed to draw up conservation plans) and to prepare plans for the installation of conservation measures for each farm unit in Iowa.

D. Control soil erosion by the year 2000. Erosion of topsoil from all land within the borders of the state of Iowa should be controlled by the year 2000 to the extent necessary to meet applicable soil loss limits which have been established by the respective soil conservation districts under existing law.

Goals Based on the Statement of Policy

The objective described in paragraph D of the general statement of policy may be referred to as the "Iowa Soil 2000" goal. Intermediate goals proposed by the Soil Conservation Laws Subcommittee as steps toward the achievement of the "Iowa Soil 2000" goal, beginning in the year 1980, are as follows:

A. Five-year objectives

1. To accelerate the availability of soil survey mapping data.
2. To provide each farm unit with a conservation folder by 1985.
3. To control erosion of the most fragile soils, which under present agricultural use and management will be depleted in 20 years.
4. To reduce excessive soil erosion on all agricultural lands by 40%.
5. To control nonpoint source pollution in at least twelve high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

B. Ten-year objectives

1. To require each landowner or operator to keep his or her conservation folder current with computed soil loss rates provided by the local soil conservation district.

2. To control erosion on soil which under present agricultural use and management will be depleted in 40 years.

3. To reduce excessive soil erosion on all agricultural lands by an additional 40%.

4. To control nonpoint source pollution in at least an additional twenty-four high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

C. Fifteen-year objectives

1. To control erosion on all agricultural land at a non-depleting level.

2. To control nonpoint source pollution in at least an additional fifty high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

D. Twenty-year objectives

1. To maintain a nondepleting level of soil loss on agricultural land and control sediment production on all Iowa land.

2. To continue to develop and install cost effective soil conservation practices so that soil erosion is held at a non-depleting level.

3. To control nonpoint source pollution in all watersheds, based on the agricultural nonpoint pollution plan.

Legislative Recommendations

To help achieve the "Iowa Soil 2000" goal, the Soil Conservation Laws Subcommittee submits to the 1980 Session of the Sixty-eighth General Assembly the following fifteen recommendations. (NOTE: Some of the recommendations are embodied in draft legislation prepared at the Subcommittee's direction, and are listed in the order in which the relevant sections appear in the attached draft bills. These are followed by the recommendations which have not been placed in draft form or do not require direct legislative action. Thus, the order in which the recommendations are listed does not reflect their relative importance or urgency.)

1. An interagency committee should be established by the Department of Soil Conservation to prepare plans for coordinated approaches to water management problems that are within the common jurisdiction of two or more state or local agencies, particularly

the control of water flowing into, across and from roadside ditches. The committee should consist of one representative each from the Department of Soil Conservation, the Department of Environmental Quality, the Department of Transportation, the state Department of Agriculture, the Iowa Natural Resources Council, county supervisors, county engineers and soil conservation district commissioners.

This recommendation will be implemented by section 1 of the Subcommittee's Draft Bill I, a copy of which is attached to this report.

2. At present, a landowner who receives public cost-sharing money for establishment of permanent soil conservation practices must agree to return that money if the practices are removed or downgraded within ten years after their establishment, without the consent of the State Soil Conservation Committee. The Subcommittee recommends that:

a. The ten-year limit on the obligation to maintain permanent soil conservation practices that are partially publicly funded be removed, and the obligation made one of indefinite duration.

b. The authority to consent to removal or alteration of a publicly-funded permanent practice be vested in the local soil conservation district commissioners, following State Soil Conservation Committee guidelines.

c. Recording of the agreement to maintain publicly-funded permanent practices be required, so that the obligation to maintain the practices--and the monetary penalty for failure to do so--will transfer to a new owner when title to the land involved changes.

This recommendation will be implemented by section 2 of Draft Bill I.

3. The Department of Soil Conservation, acting through local soil conservation district commissioners, should be authorized to enter into long-term agreements with landowners, for periods of up to five years, in order to encourage and facilitate completion of permanent soil conservation practices on entire farms or on adjoining groups of farms.

This recommendation will be implemented by the first new subsection being added to Code section 467A.7 by section 3 of Draft Bill I.

4. It should be a duty of soil conservation districts to encourage and assist local school districts to provide instruction in the importance of and some of the basic methods of soil conservation, pursuant to the requirements of Code section 257.25(3) and (4) that elementary and secondary schools in Iowa teach science courses "including conservation of natural resources and environmental awareness".

This recommendation will be implemented by the second new subsection being added to Code section 467A.7 by section 3 of Draft Bill I.

5. The soil conservation legislation enacted in 1971 should be amended to remove any possible doubt that state agencies, political subdivisions of the state, and agencies of such political subdivisions which have control of publicly-owned lands have the same responsibility as private landowners to control soil erosion so as to comply with the applicable local soil loss limits.

This recommendation will be implemented by section 6 of Draft Bill I.

6. Soil conservation district commissioners should be authorized to initiate an inspection of land when they have reasonable grounds to believe that excessive soil erosion is occurring on that land, without the necessity of receiving a complaint from a person whose property is being damaged by sediment due to the erosion. Also, such a person should be permitted the option of making a complaint verbally rather than in writing, provided the commissioners know and make a record of the complainants identity.

This recommendation will be implemented by subsections 1 and 2 of section 7 of Draft Bill I.

7. Chapter 467A of the Code should be amended to provide that:

a. Each farm in the state shall be furnished a "conservation folder" (a compilation of topographic, agronomic, soil loss rate and other information pertinent to soil conservation efforts) by the Department of Soil Conservation not later than January 1, 1985, or as soon thereafter as adequate funds are available.

b. It is the obligation of the owner or operator of each farm in this state to work out with the local soil conservation district commissioners a farm unit soil conservation plan for that farm, not later than January 1, 1990 or five years after the conservation folder for that farm is completed, whichever date is later.

c. It is the obligation of the owner or operator of each farm in this state to enter into a conservation agreement with the soil conservation district commissioners, binding the owner or operator to comply with the applicable soil loss limits on condition of receiving from the soil conservation district appropriate technical and financial assistance, within a reasonable time after completion of the farm unit conservation plan for that farm.

This recommendation will be implemented by section 5 and subsections 1-4 of section 8 of Draft Bill I.

8. Chapter 467A of the Code should be amended to provide that beginning January 1, 1990 (or five years after the conservation folder contemplated by paragraph a of recommendation 7 is completed for the farm in question, whichever date is later) an owner or operator of agricultural land who has received notice from local soil conservation district commissioners for three or more consecutive years that soil is eroding from that land at a rate at least twice the nondepleting level, shall be subject to an order to follow a conservation plan developed for that land. If the owner or operator has previously reached agreement with the local soil conservation district commissioners on a farm unit conservation plan, as contemplated by paragraph b of recommendation 7, the order would direct that that plan be followed; otherwise the plan would be developed by the soil conservation district commissioners on the basis of Department of Soil Conservation guidelines. This recommended provision differs from the administrative order procedure prescribed in law at present, in that it will not be necessary under the recommended provision for the soil conservation district commissioners to show that the excessive erosion from the owner or operator's land is resulting in damage to another person's property, in order to obtain an order requiring that the erosion be controlled.

This recommendation will be implemented by subsection 3 of section 7, and subsection 5 of section 8 of Draft Bill I.

9. Chapter 467A of the Code should be amended to require that a seller of agricultural land furnish to a prospective buyer:

a. A copy of the conservation folder for that land, if one has been completed as contemplated by paragraph a of recommendation 7.

b. Documents fully and accurately describing both:

(1) All existing permanent soil conservation practices which the owner of that land is obligated to maintain, as contemplated by recommendation 2; and

(2) Any additional practices likely to be required in order to comply with applicable soil loss limits, and any changes in current or recent cropping methods used on that land which will be necessary in order to establish the additional soil conservation practices.

This recommendation will be implemented by sections 9 and 10 of Draft Bill I.

10. Legislation should be enacted under which each of the 100 soil conservation districts in Iowa (each county constitutes a district except Pottawattamie County, which is divided into two districts) is designated a state agency, for the limited purpose of possible tort claim actions against the district, its officers or

any employees. The Attorney General has advised the Department of Soil Conservation that local soil conservation districts are legally "municipalities" (i.e., political subdivisions of the state, broadly comparable to counties, cities or school districts), and that therefore officers and employees of such a district are subject to tort claim actions but are theoretically entitled to be indemnified by the district if held liable. However there are in fact no funds available to a soil conservation district to indemnify a commissioner or employee in such a case, and soil conservation district commissioners--who are unpaid officers--are therefore at some risk of having a judgment placed against their personal assets should they be held liable in a tort claim action.

The Subcommittee concluded, after hearing a presentation by members of the Attorney General's staff, that the best way of resolving this situation is to make the soil conservation districts state agencies for this one limited purpose. This step appears quite appropriate since these districts are already unique among municipalities in Iowa in that they are entitled by section 467A.6 of the Code to call upon the Attorney General for legal services.

This recommendation will be implemented by Draft Bill II, a copy of which is attached to this report.

11. The Soil Conservation Laws Subcommittee endorses the concept of Senate File 501.

Senate File 501, "A Bill for An Act relating to the composition and powers of conservancy district boards of directors, providing by law for the establishment or continuation of certain public bodies within counties and conservancy districts, providing for the establishment of watershed funding districts, and authorizing the levying of a tax by watershed funding districts," was introduced May 11, 1979 and referred to the Senate Committee on Natural Resources.

12. A special 60% cost-sharing rate should be authorized for establishment of permanent soil conservation practices on agricultural land located in watersheds assigned high priority, on the basis of soil fragility, by conservancy district boards. However, this special participation rate should be available only in a priority watershed where owners of at least 65% of the land in that watershed have signed agreements to establish and maintain such practices. The special participation rate should be available in the context of long-term agreements, as contemplated by recommendation 3.

Implementation of this recommendation during the fiscal year beginning July 1, 1980 will require an amendment to Chapter 12, section 19, subsection 5, Acts of the Sixty-eighth General Assembly, 1979 Session, which appropriates state funds for soil conservation cost-sharing during the current biennium.

13. The Department of Soil Conservation should be authorized, if adequate funding is provided, to increase the number of qualified technical personnel available to help implement the "Iowa Soil 2000" goal, described in this report, by not more than 15 full-time equivalent positions per year for each of the next five fiscal years.

Implementation of this recommendation will presumably require appropriation of the necessary additional money by the 1980 Session of the Sixty-eighth General Assembly, and by its successors in office.

14. The Department of Soil Conservation should be authorized to initiate a program under which limited set-aside payments can be made to farmers on a per-acre basis, for the purposes of holding land out of production for one season or delaying planting so as to allow construction of terraces and establishment of other permanent soil conservation practices during the spring and summer months.

The Subcommittee has asked the Department of Soil Conservation to submit to the Sixty-eighth General Assembly, not later than January 14, 1980, a legislative proposal to implement this recommendation.

15. Iowa State University's Cooperative Extension Service should begin immediately to collect, assemble, publish and disseminate data available from Iowa farm operators who are currently using conservation tillage methods.

Implementation of this recommendation would not necessarily require legislative action, however the Subcommittee considers this matter to be of sufficient importance that the General Assembly should mandate such an effort if it is not otherwise initiated promptly.

Financial considerations. In the course of this study, the Soil Conservation Laws Subcommittee has considered a number of suggestions about how financial incentives might most effectively be used to expand and accelerate soil conservation efforts in Iowa. Suggestions discussed at the Subcommittee's hearings and meetings include, in addition to various forms of cost-sharing, appropriation of funds to be used to make or guarantee low-interest loans for soil conservation practices, imposition of an additional tax on land not in compliance with soil loss limits, and income tax investment credits, direct income tax credits, or property tax credits or exemptions for installation of permanent soil conservation practices or other steps to comply with soil loss limits. The Subcommittee has reached no conclusions as to the advisability of recommending any of these suggested financial incentives, but urges that appropriate committees and subcommittees of the General Assembly continue to study and evaluate them.

DRAFT BILL I

PROPOSED HOUSE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the powers and duties of soil conserva-
2 tion districts and soil conservation district commissioners,
3 and amending the statutes relating to establishment of
4 soil and water conservation practices and to duties of
5 the owners and operators of agricultural land and of
6 landowners generally with respect to conservation of soil
7 resources.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred sixty-seven A point four
2 (467A.4), subsection four (4), Code 1979, is amended by adding
3 the following new paragraph:

4 NEW PARAGRAPH. To establish and maintain an interagency
5 coordinating committee for the purpose of preparing and
6 disseminating recommendations for coordinated efforts to deal
7 with water management problems, including but not necessarily
8 limited to the flow of water into, across and from public
9 roads and roadside ditches, that are the common concern of
10 two or more of the agencies or groups represented on the
11 committee. The coordinating committee shall consist of:

12 (1) The director of the department of soil conservation
13 or the director's designee, who shall act as chairperson of
14 the coordinating committee.

15 (2) A representative of the state department of
16 agriculture, designated by the secretary of agriculture.

17 (3) A representative of the department of environmental
18 quality, designated by the executive director of that
19 department.

20 (4) A representative of the department of transportation,
21 designated by the director of that department.

22 (5) A representative of the Iowa natural resources council,
23 designated by the council's director.

24 (6) A representative of county boards of supervisors,
25 designated by the county supervisors association affiliated
26 with the Iowa state association of counties.

27 (7) A representative of county engineers, designated by
28 the county engineers association affiliated with the Iowa
29 state association of counties.

30 (8) A representative of soil conservation district
31 commissioners, designated by the Iowa association of soil
32 conservation district commissioners.

33

34 COMMENT: The effect of this section is to make the
35 establishment and maintenance of the coordinating committee

1 a duty of the Department of Soil Conservation.

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3 Sec. 2. Section four hundred sixty-seven A point seven
4 (467A.7), subsection sixteen (16), Code 1979, is amended to
5 read as follows:

6 16. The commissioners shall, as a condition for the receipt
7 of any cost share funds for permanent soil conservation
8 practices, require the landowner to covenant and record an
9 agreement that if the project is removed, altered, or modified
10 so as to lessen its effectiveness without the consent of the
11 commissioners, obtained in advance and based on guidelines
12 drawn up by the state soil conservation committee, ~~for a~~
13 ~~period of ten years after the date of receiving payment~~ the
14 landowner shall refund to the department of soil conservation
15 the public funds used for the project. Such refunds shall
16 be reallocated to the district from which they were refunded
17 to be used for conservation cost sharing. ~~It shall be the~~
18 ~~duty of the~~ The commissioners ~~to~~ shall assist the state soil
19 conservation committee in the enforcement of this subsection.

20

21 COMMENT: This section requires the recording of a landowner's
22 agreement to maintain permanent soil conservation practices
23 for which public cost-sharing has been provided, with intent
24 that the obligation to maintain the practices run with the
25 title to the land. The duration of such agreements is made
26 indefinite, rather than a flat ten years, and authority to
27 approve removal or alteration of publicly-funded practices
28 is transferred from the State Soil Conservation Committee
29 to local soil conservation district commissioners, acting
30 under State Committee guidelines.

31

32 Sec. 3. Section four hundred sixty-seven A point seven
33 (467A.7), Code 1979, is amended by adding the following new
34 subsections:

35 NEW SUBSECTION. To enter into long-term agreements with

1 landowners, for periods of time not exceeding five years,
2 providing special incentives to encourage and facilitate
3 completion of permanent soil and water conservation practices
4 on entire farm units or adjoining groups of farm units.

5 NEW SUBSECTION. To encourage local school districts to
6 provide instruction in the importance of and in some of the
7 basic methods of soil conservation, as a part of the course
8 work relating to conservation of natural resources and
9 environmental awareness required pursuant to section two
10 hundred fifty-seven point twenty-five (257.25), subsections
11 three (3) and four (4), of the Code, and to offer technical
12 assistance to schools in developing such instructional
13 programs.

14

15 COMMENT: This section adds two new subsections to Code section
16 467A.7, which sets out powers and duties of local soil
17 conservation district commissioners.

18 The first of the new subsections offers a basis for com-
19 mitments by soil conservation district commissioners to
20 participate over periods of up to five years with landowners
21 who are willing to establish or complete permanent soil
22 conservation practices on an entire farm or a group of
23 adjoining farms. This authority is intended to help speed
24 up the establishment of areawide permanent practices,
25 particularly in areas where soils are especially prone to
26 erosion, by giving interested landowners an additional
27 incentive to enlist the cooperation of their neighbors in
28 soil conservation efforts.

29 The other new subsection assigns to soil conservation
30 districts the responsibility to encourage and assist local
31 schools to provide basic instruction in the importance of
32 and means of soil conservation. The section implements
33 proposed legislative change no. 6, adopted by the Subcommittee
34 (subject to review of this draft section) on November 14.

35

1 Sec. 4. Section four hundred sixty-seven A point forty-
2 two (467A.42), unnumbered paragraph one (1), Code 1979, is
3 amended to read as follows:

4 In addition to the definitions established by section
5 467A.3, as used in sections 467A.43 to 467A.51 four hundred
6 sixty-seven A point fifty-three (467A.53) and section nine
7 (9) of this Act, unless the context otherwise requires:

8 Sec. 5. Section four hundred sixty-seven A point forty-
9 two (467A.42), Code 1979, is amended by adding the following
10 new subsections:

11 NEW SUBSECTION. "Agricultural land" has the meaning
12 assigned that term by section one hundred seventy-two C point
13 one (172C.1) of the Code.

14

15 NOTE: Section 172C.1 is part of the chapter entitled
16 "Corporate or Partnership Farming."

17

18 NEW SUBSECTION. "Farm Unit" means a single contiguous
19 tract of agricultural land, or two or more adjacent tracts
20 of agricultural land, located within a single soil conservation
21 district, upon which farming operations are being conducted
22 by a person who owns or is purchasing all of such land, or
23 by a tenant who rents all of such land. This definition does
24 not prohibit land which is within a single soil conservation
25 district and is owned or being purchased by the same person,
26 or is being rented by the same tenant, from being treated
27 as two or more farm units if the commissioners of the soil
28 conservation district deem it preferable to do so.

29 NEW SUBSECTION. "Conservation folder" means compiled
30 information concerning the topography, soil composition,
31 natural or artificial drainage characteristics and other
32 pertinent factors concerning a particular farm unit, which
33 are necessary to the preparation of a sound and equitable
34 conservation agreement for that farm unit. The specific items
35 to be contained in a conservation folder shall be prescribed

1 by administrative rules of the Department of Soil Conservation.
2 NEW SUBSECTION. "Farm unit soil conservation plan" means
3 a plan jointly developed by the owner or operator of a farm
4 unit and the commissioners of the soil conservation district
5 within which that farm unit is located, based on the
6 conservation folder for that farm unit and identifying those
7 permanent soil and water conservation practices and temporary
8 soil and water conservation practices the use of which may
9 be expected to prevent soil loss by erosion from that farm
10 unit in excess of the applicable soil loss limit or limits.
11 The plan shall if practicable identify alternative practices
12 by which this objective may be attained.

13 NEW SUBSECTION. "Conservation agreement" means a commitment
14 by the owner or operator of a farm unit to prevent erosion
15 in excess of applicable soil loss limits from any of the land
16 within the farm unit, conditioned on the furnishing by the
17 soil conservation district within which the farm unit is
18 located of such technical or planning assistance in the
19 establishment of, and cost-sharing or other financial
20 assistance for establishment and maintenance of the soil and
21 water conservation practices necessary to so limit erosion
22 from such land.

23

24 COMMENT: These new subsections add five needed definitions
25 to the soil conservation provisions added to this chapter
26 in 1971 as a part of the legislation by which the six
27 conservancy districts in Iowa were established. The new
28 definitions pertain to section 8 of this draft.

29

30 Sec. 6. Section four hundred sixty-seven A point forty-
31 three (467A.43), Code 1979, is amended to read as follows:

32 467A.43 DUTY OF PROPERTY OWNERS. To conserve the
33 fertility, general usefulness, and value of the soil and soil
34 resources of this state, and to prevent the injurious effects
35 of soil erosion, it is hereby made the duty of the owners

1 of real property in this state to establish and maintain soil
2 and water conservation practices or erosion control practices,
3 as required by the regulations of the commissioners of the
4 respective soil conservation districts. As used in this
5 section, "owners of real property in this state" includes
6 each state government agency, each political subdivision of
7 the state and each agency of such a political subdivision
8 which has under its control publicly-owned land, including
9 but not limited to agricultural land, forests, parks, the
10 grounds of state educational, penal and human service
11 institutions, public highways, roads and streets, and other
12 public rights-of-way.

13

14 COMMENT: The intent of this section is to make it clear that
15 public as well as private land is subject to the soil-loss
16 limits established by local soil conservation districts.

17

18 Sec. 7. Section four hundred sixty-seven A point forty-
19 seven (467A.47), Code 1979, is amended to read as follows:

20 467A.47 INSPECTION OF LAND ON COMPLAINT.

21 1. An owner or occupant of land being damaged by sediment
22 due to excessive soil erosion from land owned by another
23 person may submit a complaint to the commissioners of the
24 soil conservation district in which the eroding land is
25 located. The complaint may be in writing and signed by the
26 complainant, or it may be verbal provided the complainant
27 identifies himself or herself and the commissioners make a
28 record of the complainant's identity. The commissioners of
29 any soil conservation district shall inspect or cause to be
30 inspected any land within the district, upon receipt of a
31 ~~written-and-signed-complaint,-from-an-owner-or-occupant-of~~
32 ~~land-being-damaged-by-sediment,~~ complaint submitted under
33 this section, and may do so when they have other reasonable
34 grounds to believe that soil erosion is occurring thereon
35 in excess of the limits established by the district's soil

1 erosion control regulations.

2 2. If they the commissioners find that sediment damages
3 are occurring to property not owned or occupied by the person
4 ~~filing the complaint~~ same person who owns or occupies the
5 land on which the erosion causing the sedimentation is
6 occurring, and that such excess soil erosion is so occurring
7 on the land inspected, they shall issue an administrative
8 order to the landowner or landowners of record, and to the
9 occupant of the land if known to the commissioners, describing
10 said land and stating as nearly as possible the extent to
11 which soil erosion thereon exceeds the limits established
12 by the district's regulations. The order shall be delivered
13 either by personal service or by restricted certified mail
14 to each of the persons to whom it is directed, and shall:

15 1 a. In the case of erosion occurring on the site of any
16 construction project or similar undertaking involving the
17 removal of all or a major portion of the vegetation or other
18 natural or man-made cover, exposing bare soil directly to
19 water or wind, state a time not more than five days after
20 service or mailing of the notice of the order when work
21 necessary to establish or maintain erosion control practices
22 must be commenced, and a time not more than thirty days after
23 service or mailing of the notice of the order when the work
24 is to be satisfactorily completed.

25 2 b. In all other cases, state a time not more than six
26 months after service or mailing of the notice of the order,
27 by which work needed to establish or maintain the necessary
28 soil and water conservation practices or erosion control
29 measures must be commenced, and a time not more than one year
30 after the service or mailing of the notice of the order when
31 the work is to be satisfactorily completed, unless the
32 requirements of the order are superseded by the provisions
33 of section 467A.48.

34 3. If the commissioners find that soil erosion is occurring
35 on the land inspected at a rate equal to or greater than two

1 times the applicable soil loss limit, they shall send notice
2 of that finding by restricted certified mail to the landowner
3 or landowners of record, and the occupant of the land if known
4 to the commissioners. The notice required by this subsection
5 shall be in addition to and not in lieu of any other procedure
6 which the commissioners are authorized by law to follow, and
7 shall be sent regardless of whether the soil erosion referred
8 to in this subsection is resulting in damage to property owned
9 by any person other than the owner of the land on which such
10 erosion is occurring.

11

12 COMMENT: The provisions which would become subsections 1
13 and 2 of the amended section 467A.47 authorize the soil
14 conservation district commissioners to accept verbal as well
15 as written complaints regarding excessive soil erosion which
16 is damaging the complainant's property. They also empower
17 the commissioners to initiate inspections on the basis of
18 information reaching them through third parties, or on the
19 basis of their own observations. Proposed subsection 3 is
20 a potential "trigger" for the procedure contemplated by section
21 8, subsection 5 of this draft.

22

23 Sec. 8. Chapter four hundred sixty-seven A (467A), Code
24 1979, is amended by adding the following new section:

25 NEW SECTION. DUTIES OF OWNERS AND OCCUPANTS OF CERTAIN
26 LAND.

27 1. In furtherance of the duty imposed on owners of real
28 property by section four hundred sixty-seven A point forty-
29 three (467A.43) of the Code, all agricultural land in this
30 state shall be covered by a conservation agreement based upon
31 current topographic, agronomic and other relevant information,
32 designed to preserve and protect the fertility of the soil
33 and the quality of water associated with the land, to the
34 greatest extent feasible. This requirement shall be
35 implemented at the times and in the manner prescribed by

1 subsections two (2) through four (4) of this section.

2 2. Each farm unit shall be furnished a conservation folder
3 by the department of soil conservation not later than January
4 1, 1985, or as soon thereafter as adequate funding is available
5 to permit the department to complete a conservation folder
6 for every farm unit in the state. When a conservation folder
7 has been furnished for a farm unit, the folder shall be updated
8 from time to time by the department as it deems necessary.

9 3. Not later than January 1, 1990 or five years after
10 the completion of the conservation folder for a particular
11 farm unit, whichever date is later, the owner or operator
12 of that farm unit, and the commissioners of the soil
13 conservation district within which the farm unit is located
14 shall complete preparation of a farm unit soil conservation
15 plan for that particular farm unit. The plan shall be drawn
16 up and completed without expense to the owner or operator
17 of the farm unit, except that the owner or operator shall
18 not be reimbursed for the value of his or her own time devoted
19 to participation in the preparation of the plan.

20 4. Within a reasonable time after completion of a farm
21 unit soil conservation plan for a particular farm unit, the
22 owner or operator of that farm unit shall enter into a
23 conservation agreement with the commissioners of the soil
24 conservation district within which the farm unit is located.

25 5. Beginning January 1, 1990 or five years after the
26 completion of the conservation folder for a particular farm
27 unit, whichever date is later, the commissioners of the soil
28 conservation district in which that farm unit is located may
29 petition the district court for an appropriate order with
30 respect to that farm unit if its owner or occupant has been
31 sent a notice by the commissioners under section four hundred
32 sixty-seven A point forty-seven (467A.47), subsection three
33 (3), of the Code for three or more consecutive years. The
34 commissioners' petition shall seek a court order which states
35 a time not more than six months after the date of the order

1 when the owner or occupant must commence, and a time not more
2 than one year after the date of the order when he or she must
3 complete, steps necessary to:

4 a. Bring the farm unit which is the subject of the order
5 into compliance with its farm unit soil conservation plan,
6 if such a plan had been agreed upon prior to the time the
7 commissioners petitioned for the order.

8 b. Bring the farm unit which is the subject of the order
9 into compliance with a plan developed for that farm unit by
10 the commissioners, in accordance with guidelines established
11 by the department of soil conservation, and presented to the
12 court as a part of the commissioners' petition, if a farm
13 unit soil conservation plan has not previously been agreed
14 upon for that farm unit.

15

16 COMMENT: Subsections 1 through 4 utilize the additional
17 definitions added to Code Chapter 467A by section 5 of this
18 draft. Basically, subsections 1 through 4 require that (I)
19 each farm unit be furnished a conservation folder by January
20 1, 1985 or as soon after that date as appropriations to the
21 Department of Soil Conservation permit; (II) by January 1,
22 1990 or 5 years after the conservation folder for any farm
23 unit is completed, whichever date is later, the owner or
24 operator of the farm unit and the local soil conservation
25 district commissioners must mutually agree on a farm unit
26 soil conservation plan, however no specific penalty is provided
27 if an owner or operator and the commissioners fail to agree
28 on such a plan; (III) within "a reasonable time"--deliberately
29 not specifically defined--after completion of a farm unit
30 soil conservation plan for a particular farm unit, the owner
31 or operator of that unit must enter into a conservation
32 agreement with the commissioners of the local soil conservation
33 district. Note that because of the way the definition of
34 "conservation agreement" appearing in section 5 of this draft
35 is worded, the agreement only binds the farm unit owner or

1 occupant to comply with the applicable soil loss limit; it
2 does not bind him or her to follow precisely the farm unit
3 soil conservation plan drawn up for that farm (although it
4 is to be hoped that in most cases the plan would be
5 sufficiently useful that it would be in the farm owner or
6 operator's best interest to make use of it). This provision
7 is intended to maintain flexibility, as advised by a number
8 of the persons appearing at the Subcommittee's public hearings.

9

10 Subsection 5 depends on the provisions of section 7, subsection
11 3, to initiate the prescribed procedure. Any owner or operator
12 of agricultural land who, on January 1, 1990, has received
13 notice from the soil conservation district commissioners for
14 three or more consecutive years that erosion from that land
15 is occurring at a rate at least twice the nondepleting level
16 is subject to an order imposing a soil management plan
17 developed by the local district commissioners. As the proposal
18 is integrated into this draft, that plan would simply be the
19 farm unit soil conservation plan previously agreed to by the
20 owner or operator of that farm unit, if one existed; otherwise
21 the plan to be imposed would be developed by the local soil
22 conservation district commissioners on the basis of state
23 Department of Soil Conservation guidelines, and presented
24 to the court along with the petition for the order.

25

26 Sec. 9. Chapter four hundred sixty-seven A (467A), Code
27 1979, is amended by adding the following new section:

28 NEW SECTION. PROSPECTIVE BUYERS OF AGRICULTURAL LAND
29 ENTITLED TO RECEIVE CERTAIN INFORMATION.

30 1. A seller of an interest in agricultural land in this
31 state or the seller's agent shall disclose in writing to
32 persons who identify themselves as prospective purchasers,
33 the following information:

34 a. A copy of the conservation folder applicable to that
35 land and a copy of the farm unit soil conservation plan

1 covering that land, if either or both of these documents have
2 been developed pursuant to section eight (8), subsections
3 two (2) and three (3), of this Act. The seller shall be
4 entitled to obtain additional copies of either or both of
5 these documents from the department of soil conservation,
6 promptly upon request, at a fee not to exceed the actual cost
7 of reproducing them.

8 b. A full and accurate description of existing permanent
9 soil and water conservation practices which any owner of the
10 land proposed to be sold is obligated to maintain under an
11 agreement covenanted pursuant to section four hundred sixty-
12 seven A point seventy-six (467A.76), subsection sixteen (16),
13 of the Code.

14 c. A description, which shall be as full and accurate
15 as reasonably possible, of any additional or modified permanent
16 or temporary soil and water conservation practices, beyond
17 those currently in use, which appear to be necessary in order
18 to comply with the soil loss limits established under section
19 four hundred sixty-seven A point forty-four (467A.44) for
20 the land proposed to be sold, and a description of any changes
21 in crops grown or farming methods employed on that land within
22 the past four years which will be required by adoption of
23 such additional or modified permanent or temporary soil and
24 water conservation practices.

25 2. The disclosure required by this section shall be made
26 before an offer to buy by the prospective purchaser is accepted
27 by the seller or an offer to sell is made by the seller to
28 the prospective purchaser. If this disclosure is made after
29 an offer to buy is made by the prospective purchaser, the
30 prospective purchaser has the right to withdraw the offer,
31 or withdraw the offer and make a new offer. Failure to
32 disclose as provided in this section shall subject the seller
33 or the seller's agent, or both, to section seven hundred
34 fourteen point sixteen (714.16) of the Code. The remedies
35 available under section seven hundred fourteen point sixteen

1 (714.16) of the Code shall not be exclusive but shall be in
2 addition to any other remedies provided for by law.

3 3. A purchaser of agricultural land in this state shall
4 execute at least two copies of a statement acknowledging
5 receipt of the information which subsection one (1) of this
6 section requires the seller to furnish to the purchaser.
7 One copy of the purchaser's acknowledgement shall be given
8 to the seller, and one copy shall be filed by the purchaser
9 with the soil conservation district.

10

11 COMMENT: The objectives of this section are, first, to try
12 to insure that purchasers of agricultural land are aware of
13 soil conservation practices which are currently or potentially
14 required to be employed on that land and the effect these
15 practices may have on short-term prospects for deriving maximum
16 income from the land, and second, to try to preclude the
17 possibility of a purchaser claiming that he or she bought
18 agricultural land without being aware of these factors.
19 Failure to disclose as provided in the bill would be consumer
20 fraud and makes the remedies of the bill, the consumer fraud
21 section of the Code and other remedies provided by law
22 available to the purchaser.

23

24 Sec. 10. Section seven hundred fourteen point sixteen
25 (714.16), subsection two (2), Code 1979, as the section is
26 amended by Acts of the Sixty-eighth General Assembly, 1979
27 Session, chapter one hundred forty-eight (148), section one
28 (1), is amended by adding the following new paragraph:

29 NEW PARAGRAPH. e. It is unlawful for a seller of an
30 interest in real estate or a seller's agent to fail to disclose
31 the information required in section nine (9) of this Act.

32 Sec. 11. This Act is effective January first following
33 its enactment.

34

EXPLANATION

35 NOTE: Some of the information contained in the comments

1 appearing in this draft will be moved to the Explanation when
2 the bill is prepared in final form.

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DRAFT BILL II

PROPOSED SENATE FILE _____

By (PROPOSED COMMITTEE ON
AGRICULTURE BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to tort liability of soil conservation dis-
2 tricts and their officers, employees, and agents.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section twenty-five A point two (25A.2), sub-
2 section one (1), Code 1979, is amended to read as follows:

3 1. "State agency" includes all executive departments,
4 agencies, boards, bureaus, and commissions of the state of
5 Iowa, and corporations whose primary function is to act as,
6 and while acting as, instrumentalities or agencies of the
7 state of Iowa, whether or not authorized to sue and be sued
8 in their own names. This definition shall not be construed
9 to include any contractor with the state of Iowa. Soil
10 conservation districts as defined in section four hundred
11 sixty-seven A point three (467A.3), subsection one (1), of
12 the Code, are state agencies for purposes of this chapter.

13 Sec. 2. Section six hundred thirteen A point one (613A.1),
14 subsection one (1), Code 1979, is amended to read as follows:

15 1. "Municipality" means city, county, township, school
16 district, and any other unit of local government except a
17 soil conservation district as defined in section four hundred
18 sixty-seven A point three (467A.3), subsection one (1), of
19 the Code.

20 Sec. 3. This Act is effective January first following
21 its enactment.

22 EXPLANATION

23 This bill makes local soil conservation districts state
24 agencies for purposes of tort liability.

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