

Senate Finance Committee
Testimony on HB 64
June 10, 2015

Mr. Chairman, members of the Senate Finance Committee, I am Kris Swartz, Wood SWCD Supervisor and President of the Ohio Federation of Soil and Water Conservation Districts. I am pleased to provide written testimony on behalf of Ohio's 88 Soil and Water Conservation Districts in regards to House Bill 64, the State Budget Bill.

Ohio's 88 SWCDs are what we call "locally led" -- in that each locally elected SWCD board and their staff works with the citizens of its community to address the conservation needs of that area. So in turn, our SWCDs are very diverse networks, working with local agencies, partnered with state and federal agencies, and also with private individuals and organizations to promote responsible land and water use decisions. We are dedicated to the conservation, protection, and improvement of soil and water resources by providing information, technical guidance, and cost-share assistance. And, our goal is to coordinate and focus assistance from all available sources—public and private, local, state and federal—in an effort to develop locally-driven, cost efficient solutions to natural resource concerns. As a result of this support and dedicated staff and supervisors, we have an outstanding history of accomplishments.

My testimony today will focus on two areas: transfer language contained in the bill to move portions of the current Division of Soil and Water Resources to the Ohio Department of Agriculture, OEPA and ODNR Division of Forestry; and the need for a 1:1 match in terms of state to local funding for Ohio's SWCDs.

First, the transfer. Late last year, there was discussion on a potential transfer of certain agriculture components of the Division of Soil and Water to the Ohio Department of Agriculture to better align with the ag. pollution abatement program. Rumors then began that it would be more of the division to further streamline services. While the OFSWCD has been aware of this discussion – we were not involved or included in the development of the transfer language or able to provide much needed guidance on this subject until we were provided the amendment the last week of May. So in our quick review, there are definitely flaws in the language that must be addressed to ensure that this transfer is done correctly and that the successful programs we have in place are not compromised.

For a vast number of years, Ohio's SWCDs have been strengthened through the support provided by ODNR and the Division of Soil and Water Resources. HB 64, as proposed by the Senate, definitely changes this support through the transfer of parts of the division to three different agencies in an effort to streamline programs. Specifically, the Ohio Department of Agriculture will receive the biggest portion of the division in terms of a more rural focus – containing the agriculture pollution abatement component. The Ohio Environmental Protection Agency will gain the urban sediment pollution component. And, the ODNR Division of Forestry will gain the Timber management or silviculture pollution component. While we are not opposed to changes – we have concerns that this transfer will specifically impact the delivery of the urban sediment program that will now be coordinated through the OEPA.

While we have worked well with OEPA throughout the years and believe the 88 county SWCDs can assist the agency in terms of for customer outreach and compliance, the changes in the bill strike numerous provisions that could result in the reduction of current standards in place today. Currently these standards are provided in the form of the Rainwater and Land Development manual. The nature of the ORC changes reduce the legitimacy and important technical guidance for stormwater related best management practices

as this section is being transferred from the Division of Soil and Water Resources to the Ohio Environmental Protection Agency.

It is critical that SWCDs do not lose the locally-led focus and diversity necessary to address the resources challenges that Ohio's communities are experiencing. Ohio is focused on water quality and nutrient management issues, and we know that the agriculture community is not the only source of the problem. Therefore, we ask that you consider the attached changes we propose to ensure that while we continue our focus on improving water quality regulations for the agriculture community, we do not minimize requirements required by urban communities. We all know that Ohio's "urban areas" are growing -- and with that, there is truly a need for conservation assistance as the lands are developed for the protection of our soil and water resources.

In terms of funding for Ohio's SWCDs, we receive funding from four sources on the state level: General Revenue Funds (\$2.9 million), a \$.25 per ton fee on Construction and Demolition Debris (approximately \$1.2 million), a \$.25 per ton fee on Municipal Solid Waste (approximately \$3.3 million), and a \$.50 per tire Scrap Tire Fee (approximately \$3.5 million per year) for a total of \$10.9 million. We are very thankful for the support both the Administration and the General Assembly have provided to our efforts throughout the years. Ohio's SWCDs have been fiscally responsible, efficient and effective in order to make the most of these financial resources entrusted to our operation.

While we are grateful for this consistent funding, we have not experienced an increase in state match throughout the past 4-6 years, yet the natural resources challenges have increased. With the Governor's and legislature's focus to tackle the water quality issues, our SWCDs have more responsibilities and greater demands that must be achieved as a result of passage of both Senate Bill 150 last session and Senate Bill 1, earlier this year. Districts ALL throughout Ohio are focused on making a positive difference by working with landowners in rural and urban settings to address these resource challenges, however, we are stretched thin in many areas and truly need to see an increase in funding to ensure we are able to meet the demands and expectations. We truly need to get back to a 1:1 match to allow our districts to receive the proper training, to hire the right staff members, and to increase our outreach efforts in order to accomplish the new regulations. While we appreciate that the House added an additional \$500,000 per year for the Western Lake Erie Basin SWCDs to complete work associated with SB 1, the remainder of Ohio's SWCDs need additional support to increase the level of trained staff and to proactively address water quality, resources challenges. For SWCDs to attain a true 1:1 match, State funding would need to be raised by approximately \$2.5 million per year. State funding, as highlighted earlier, is currently \$10.9 million or at 80% percent. Local funding is roughly \$12.6 million.

Ohio's SWCDs are also critical in delivering the conservation programs contained within the federal Farm Bill. Our partner, the USDA NRCS has experienced serious staffing declines over the past few years. During the last budget, NRCS testified that SWCDs deliver approximately 60% of the workload in Ohio. This hasn't changed. Cost-share program for landowners have increased and in order to get these programs implemented, SWCD technicians are necessary. And federal program dollars coming into Ohio continue to grow in an effort to address water quality issues both involving the Lake Erie Basin, as well as the Ohio River (with drainage into the Mississippi River Basin). In addition to the current conservation program workload, Ohio was awarded with 3 new initiatives through the newly created RCPP: Regional Conservation Partnership Program: Tri-State Western Lake Erie Basin Phosphorus Reduction Initiative (involving 22 SWCDs in NW Ohio), Promoting BMPs for Phosphorus Reduction in central Ohio (involving 4 SWCDs) and the East Fork Nutrient Reduction Grant (involving Clermont and several additional SWCDs in SW Ohio).

Without strong SWCDs, we will be unable to assist the USDA and as a result, Ohio's federal funding will go elsewhere. Undelivered program dollars are moved to other states. In fact, Ohio, with its strong SWCD track record of delivering service, has benefitted from other states inability to service customers. Therefore, we have been able to gain millions throughout the years of additional cost share dollars for Ohio producers to protect our land and water and we cannot lose these opportunities throughout the future.

Ohio's SWCDs are diverse. In addition to the agriculture related efforts, we have a growing number of Districts delivering the storm water/ Phase 2 NPDES regulatory program throughout communities all throughout the state. Ohio also leads the nation in water quality trading programs designed to help businesses meet Clean Water standards through conservation efforts, which SWCDs are the key partner due to the working relationship it has developed with the landowner. Additionally, Districts handle ditch maintenance, floodplain management, CAUV, pipeline standards and many more additional responsibilities in varying areas. Ohio is blessed with a vast array of natural resources and these resources need our "boots on the ground" to ensure stewardship efforts are achieved.

Ohio benefits tremendously from the economic gains resulting from a strong agriculture industry and a healthy environment. And for over 78 years, Ohio's SWCDs have stepped up and delivered. As I conclude with my testimony, Ohio's 88 SWCDs thank you for believing and supporting our conservation efforts on the state level. We want to ensure the delivery of services are done right and as effective as possible to ensure Best Management Practices are fully in place all throughout our diverse state. If you aren't as familiar with your county SWCD, I encourage you to spend a morning or an afternoon with these folks, tour some of the things they are doing with the constituents of your district, or just listen to the things they are doing on a daily basis to enhance our economy, natural resources, and quality of life. Thank you for your attention and I would gladly answer any questions.

**Attached: Amendments to HB 64*

Changes and/or questions to be considered to transfer amendment for HB 64

General Items:

- Page 40, Section 939.01 (A): The definition of Agriculture Pollution is not the exact same as the definition on page 64/65, that will become 940.01 (now 1515.01).
- Page 43, Section 939.02 (E): “~~amend or rescind~~” rules is removed in 1213. Should this be re-inserted to ensure the director has the authority to amend or rescind rules too?

Urban Amendments Requested:

****The next series of changes pertain to the Urban Program. Overall the effect of this change reduces the strength and focus of the existing technical standards. The Rainwater and Land Development Manual is currently used by public and private engineers as the standards of design for Best Management Practices used during development. The manual currently provides technical guidance for designing erosion, sediment and stormwater practices with appropriate criteria, methodology, materials and more. Soil and Water Conservation Districts in coordination with the state, have been promoting adoption of stormwater practices that meet or exceed the minimum requirements, and the rain water land development handbook has been a tool for this. Additionally many communities do not have the resources to develop their own stormwater design manuals, the rain water and land development handbook should help fill this need.**

The new language lowers appears to shift focus to minimum compliance with permits rather than the duty to provide guidance on BMPs that urban standards implies. The distinction is critical since many common errors in stormwater design and recurrent erosion and pollution problems are found in poor engineering 1practice or design methodology that are not specifically addressed in permits but are addressed in the Rainwater and Land Development manual’s provision of BMPs. **We do not want to reduce or erode standards that are in place now!**

- ****Update urban sediment control language/references throughout the code be updated to include stormwater runoff**
- Page 43, Section 939.02 (E)(2), restore language under the director’s authority and add “stormwater runoff.” This section may need updated too to comply with existing code sections. The language struck and highlighted actually needs updated with current EPA code or refer to EPA Code.
(2) Shall establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment, **stormwater runoff or other pollutants associated in conjunction with land grading, excavating, filling, or other soil-disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, and establish criteria for determination of the acceptability of such management and conservation practices. The standards shall be designed to implement applicable area wide waste treatment management plans prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816 (1972), 33 U.S.C.A. 1288, as amended.** The standards and criteria shall not apply in any municipal corporation or county that adopts ordinances or rules pertaining to sediment control **and stormwater runoff**, nor to lands being used in a strip mine operation as defined in section 1513.01 of the Revised Code, nor to lands being used in a surface mining operation as defined in section 1514.01 of the Revised Code.

- Page 44, Section 939.02 (E)(3), Restore the nonfarm language under the director's authority that was removed and add "stormwater runoff." The change in acreage conforms the OEPA's permit limits. (Current EPA NPDES Construction General Permits apply to 1 acre or more).

(3) **May recommend criteria and procedures for the approval of urban sediment pollution abatement plans and stormwater runoff and issuance of permits prior to any grading, excavating, filling, or other whole or partial disturbance of one five or more contiguous acres of land owned by one person or operated as one development unit and require implementation of such a plan. Areas of less than ~~five~~one contiguous acres are not exempt from compliance with other provisions of this chapter and rules adopted under them.**
- Page 44, Section 939.02 (E)(4), Restore the nonfarm language under the director's authority that was removed and add "stormwater runoff."

(4) ~~Shall establish~~ Establish procedures for administration of rules for agricultural pollution abatement and urban sediment pollution **and stormwater runoff** abatement and for enforcement of those rules ~~for agricultural pollution abatement;~~
- Page 45, Section 939.02 (E)(7), Restore the nonfarm language under the director's authority that was removed and add "stormwater runoff."

(7) **Shall establish procedures for administering grants to soil and water conservation districts for urban sediment pollution and stormwater runoff abatement programs, specify the types of projects eligible for grants, establish limits on the availability of grants, and establish requirements governing the execution of projects to encourage the reduction of erosion and sedimentation associated with soil-disturbing activities;**
- Page 47, Section 939.02, (E)(11) Lines 1322-1331: Restore this section and add/emphasize the ability for Districts to serve as the political subdivision of which the Board of County Commissioners can delegate administration of the rules adopted through ORC 307.79.

(11) **Insofar as the rules relate to urban sediment pollution and stormwater runoff, shall not be applicable in the municipal corporation or county that adopts ordinances or rules for urban sediment control or stormwater runoff, except that a municipal corporation or county that adopts such ordinances or rules may utilize the assistance soil and water conservation districts and or receive moneys for urban sediment control or stormwater runoff that are disbursed by the board of supervisors of the applicable soil and water conservation district under division (N) of section 1515.08 of the Revised Code. The rules shall not exempt any person from compliance with municipal ordinances pursuant to Section 3 of Article XVIII, Ohio Constitution. *(*This reference per the amendment is now (M) of section 940.08).***
- Page 52, Section 939.05, Lines 1494-1498 which speaks to the pollution abatement program and states "the director or designee may apply for a search warrant with a common pleas judge as necessary to achieve the purpose of this chapter" raises concerns. **We would like to see this removed or changed if possible so it doesn't create landowners unwilling to work with SWCDs to get conservation practices installed or issues resolved in a voluntary manner.**
- Page 53, Section 939.05, lines 1476-1485:** Restore the nonfarm language under the director's authority that was removed and add "stormwater runoff."

~~The chief of the division of soil and water resources~~ director of agriculture, subject to approval of the terms of the agreement by the Ohio Soil and Water Conservation Commission, shall enter into cooperative agreements with the board of supervisors of any soil and water conservation district desiring to enter into those such agreements pursuant to section ~~1515.08~~ 940.06 of the Revised Code. The agreements shall be entered into to obtain compliance with rules and orders of the ~~of the chief~~ director pertaining to agricultural

pollution abatement or support programs and objectives of the director of environmental protection pertaining to and urban sediment pollution abatement and stormwater runoff.

- Page 67-70, Section 940.02, Recommends changes to increase acknowledgement of urban SWCD work. We believe language to ensure SWCD's continue to be a bridge between urban and agricultural conservation opportunities and water runoff pollution concerns at the federal, state and local level while being housed under the department of agriculture.
(F) Recommend to the director s of agriculture, environmental protection agency and department of natural resources, governor and general assembly, programs and legislation with respect to the operation of soil and water conservation districts that will encourage proper soil, water and other natural resource management for rural, suburban and urbanized lands and promote the economic and social development of the state.
(G) Recommend to the director of agriculture a procedure for coordination of a program of agricultural pollution abatement. Implementation of such a program shall be based on air and water quality standards adopted pursuant to sections 3704.03 and 6111.041 of the Revised Code, respectively. The director of agriculture, through the division of soil and water conservation, shall coordinate the efforts of federal, state and local governmental agencies to meet the minimum state air and water quality standards relating to agricultural pollutants. The director of environmental protection shall utilize the division of soil and water conservation in the department of agriculture and soil and water conservation districts in encouraging landowner abatement of agricultural pollution.
(H) Recommend to the director of environmental protection agency a procedure for coordination of a program of sediment pollution abatement and stormwater runoff. The director of agriculture, through the division of soil and water conservation, shall coordinate the effort of federal, state and local government agencies to meet minimum state air and water quality standards relating to sediment pollution and stormwater management. The director of environmental protection shall utilize the division of soil and water conservation in the department of agriculture and soil and water conservation districts in encouraging abatement of sediment pollution and stormwater management.
- Page 72-79 --- We would like to have language added to ensure that SWCD Supervisors have the authority to enter into other agreements with local, state and federal agencies for any work necessary that falls within the SWCD scope of work – like things we do now – Wildlife specialists, floodplain management assistance, forestry components, etc.
- Page 75, Section 940.06 (I), We suggest restoring this deleted section under (M) so that SWCDs can access staff moved to OEPA. We also request keeping the language that provides for urban funding -- although it hasn't been used for some time – so that in the future, should there be the ability for such opportunity.
(N) (M) To enter into contracts or agreements, seek technical assistance, or funding support from the chief of division of soil and water resources to implement and administer a program for director of environmental protection in furtherance of actions to abate to achieve a level of management and conservation practices for urban erosion, sediment pollution abatement and stormwater runoff and to receive and expend monies provided by the chief of that purpose
- Page 75, Section 940.06 (K) Restore language pertaining to urban sediment pollution abatement and include stormwater runoff.
- Page 247, Section 6111.03 (T) At the end of line 7212, add "in collaboration with soil and water conservation districts