Soil Conservation: Proposed Legislation in the 1985 Congress

by

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SOIL CONSERVATION: PROPOSED LEGISLATION IN THE 1985 CONGRESS

The historical background and problems against which current soil conservation proposals have arisen, and are now being considered in Congress, have been presented in the preceding articles. It is difficult to predict specific changes that proposed congressional bills may bring about. It is, however, possible to discern and discuss the general themes and ideas which recur throughout the various proposals. This article examines these various themes as they relate to each other and discusses the problems and efforts common to the legislative scheme in general.

Little of what is currently proposed is entirely new. Some proposals would modify programs now in effect. Other bills would revive programs tried in the past and subsequently either discontinued or reduced in scope. Still others reintroduce ideas proposed in the last session to general acclaim, but which did not become law.

In general terms, there are six significant approaches to soil conservation advanced in the various 1985 congressional bills. These are (1) acreage set aside provisions, (2) tax incentives and disincentives, (3) the sod-buster and swamp-buster provisions, (4) conservation reserve contracts, (5) conservation easements, and (6) administrative changes.

ACREAGE SET ASIDE PROVISIONS

The acreage set aside provisions are primarily intended to limit production, but they also contain significant secondary soil conservation purposes.[1] These programs reward producers for idling acres previously devoted to certain commodities.[2] The central concern is to limit supplies, and thereby to raise prices.[3] The producer who wishes to participate in certain agricultural programs, however, must usually agree to perform soil conservation-related measures upon the land removed from production.[4] A typical bill contains conservation requirements in its wheat, feed grains, upland cotton, rice, peanuts, and miscellaneous titles.[5]

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1. S. 1041, 99th Cong., 1st Sess. §§ 301, 401, 503, 601 and 802 (1985); H.R. 2100, 99th Cong., 1st Sess. §§ 301, 401, 501, 601 and 1009 (1985) (as introduced April 17) [hereinafter cited as H.R. 2100-A]; H.R. 2100, 99th Cong., 1st Sess. § 601 (1985) (as reported to the Committee of the Whole House on the State of the Union on Sept. 18, 1985, and subsequently passed by the House of Representatives) [hereinafter cited as H.R. 2100-B]. These particular bills, and bills cited throughout these notes, generally are offered only as examples and do not constitute a complete list.

2. The payment may be either in cash or in commodities, frequently as determined to be appropriate by the Secretary of Agriculture. A typical provision is contained in H.R. 2100-B, *supra* note 1, at § 601.

3. H.R. 2100-B, *supra* note 1, at § 601.

4. *Id.*

5. H.R. 2100-A, *supra* note 1.

TAX INCENTIVES AND DISINCENTIVES

A number of proposed congressional bills would encourage soil conservation through modification of the tax code.[6] Some bills would amend Section 46 of the I.R.C. to provide an additional investment tax credit for certain expenditures for soil or water conservation measures.[7] The amount of the credit varies from bill to bill, as do the particular expenditures which would qualify for the credit.[8]

Another tax approach involves disincentives. One bill would repeal section 182 of the I.R.C., which now provides for treating the costs of clearing land as a deductible expense.[9] This proposed repeal would remove incentives for beginning farming on all new lands.[10] The combination of this denial of expense treatment with sodbuster type denial of benefits for farming commenced on marginal, unsuitable, and highly erodible land, however, would especially inhibit the most abusive farming practices.[11]

THE SODBUSTER AND SWAMPBUSTER PROVISIONS

The sodbuster and swampbuster bills are also designed to limit the further conversion of fragile lands into production.[12] Such bills would prevent operators who bring "highly erodible land" into production after enactment of such a law from receiving benefits from the programs which subsidize the production of commodities.[13] The definition of "highly erodible land" varies from bill to bill.[14] For example, H.R.2100-A section 1201(5) defined "highly erodible land" to mean:

> land classified by the Soil Conservation Service of the Department of Agriculture as class IVe, VIe, VII, or VIII land under the land capability classification . . ., or any other land in a State that the Soil Conservation Service determines would have an erosion rate, if that land is used to produce an agricultural commodity, that is equal to or greater than the average erosion rate in the same State on any of the foregoing classes

6. H.R. 533, 99th Cong., 1st Sess. (1985); H.R. 2425, 99th Cong., 1st Sess. §§ 6-7 (1985); S. 454, 99th Cong., 1st Sess. (1985); S. 1119, 99th Cong., 1st Sess. § 210 (1985).

7. H.R. 533, *supra* note 6, at § 1; H.R. 2425, *supra* note 6, at § 7; S. 454, *supra* note 6, at § 1.

8. *Id.*

9. H.R. 2425, *supra* note 6, at § 6.

10. *Id.*

11. There are also less direct antierosion proposals. S. 1119, *supra* note 6, at § 210 would create a conservation fund through an optional $5.00 checkoff on tax returns. H.R. 1000, 99th Cong., 1st Sess. § 4 (1985) and S. 626, 99th Cong., 1st Sess. § 4 (1985) would exempt debts forgiven under the conservation easements discussed *infra* from treatment as income. H.R. 1000 and S. 626 are identical bills.

12. H.R. REP. NO. 271(I), 99th Cong., 1st Sess. 84-89 (1985).

13. H.R. 2100-B, *supra* note 1, at § 1202. Some discussion of the House Committee on Agriculture would indicate that the Sodbuster (though not the Swampbuster) would be applied retroactively in some cases. H.R. REP. NO. 271, *supra* note 12, at 416. A reading of H.R. 2100-B, *supra* note 1, at § 1203 does not support an interpretation of retroactive application. The sodbuster and swampbuster bills could, however, deprive the operator who brings new lands in the described categories into production of benefits related to commodity's produced on all land worked by that operator, and not just new "highly erodible land" or "wetlands".

14. H.R. 2100-A, *supra* note 1, at § 1201(5); H.R. 2100-B, *supra* note 1, at § 1201(6); S. 1000, 99th Cong., 1st Sess. § 103(8); S. 1119, *supra* note 6, at § 204(b).

of land.[15]

By comparison, H.R. 2100-B section 1201, passed by the House, defines "highly erodible land" as land

> (A) that is classified . . . as class IVe, VI, VII, or VIII . . .; or
> (B) that, if used to produce an agricultural commodity, would have an excessive average annual rate of erosion in relation to the soil loss tolerance level, as established by the Secretary, and as determined by the Secretary through application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope.[16]

On the Senate side of Congress, S. 1119 section 204(b) defines "highly erodible land" to mean "class IVe, VIe, VII, or VIII land under the land capability classification system in effect on the date of the enactment of this act."[17]

Most such bills make similar provision for wetlands, but some do not.[18] Irrespective of what lands are covered by interpretation of the definitions, however, local authority is to have power to make local determinations with regards to local soils and geography.[19]

CONSERVATION RESERVE CONTRACTS

Another of the prominent soil conservation proposals would provide contracts with owners and operators to divert "erosion prone land", or "highly erodible land" currently in production to conservation usages.[20] This idea is not new. The general concept can be traced to programs going back to the New Deal era.[21] Indeed, most of the evolving refinements can probably be attributed to congressional efforts to meet many of the criticisms that have been leveled at earlier contractual acreage set aside programs.[22]

The details, again, vary from bill to bill.[23] Generally, however, these bills provide for contracts to be negotiated between the operators of farmland and

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15. H.R. 2100-A, *supra* note 1, at § 1201(5).

16. H.R. 2100-B, *supra* note 1, at § 1201(6).

17. S. 1119, *supra* note 6, at § 204(b).

18. S. 1119, *supra* note 6 and H.R. 2100-A, *supra* note 1, for instance, contain no separate wetland provisions. S. 1035, 99th Cong., 1st Sess. §§ 201-04 (1985) contains a separate title devoted to wetlands. H.R. 2100-B, *supra* note 1, at §§ 1201-1206, merges highly erodible land and wetlands into a single subtitle.

19. H.R. REP. No. 271, *supra* note 12, at 416, 419; H.R. 2100-A, *supra* note 1, at § 1201(3), (5).

20. The definition of "erosion prone" generally includes slighly more sand than "highly erodible." "Erosion prone" is a requirement for most Conservation Reserve Contract provisions. A determination of "highly erodible" in the corresponding sodbuster provisions could trigger a denial of benefits. The differences are further confused by the provision that land once enrolled under conservation reserve contracts becomes subject to sodbuster provisions upon expiration or termination of those contracts although it could be "erosion prone," but not "highly erodible." H.R. 2100-B, *supra* note 1, at § 1201, avoids this confusion by adopting one "highly erodible" definition for all these related purposes.

21. Williams, *Soil Conservation and Water Pollution Control: Department of Agriculture*, 7 B.C. Envtl. Affairs L. Rev. 365, 371-73 (1978-79).

22. H.R. REP. No. 271, *supra* note 12, at 283-86, 418-19; AMERICAN FARMLAND TRUST, *Soil Conservation in America* 99-101 (1984).

23. S. 1000, *supra* note 14; S. 1119, *supra* note 6; H.R. 2100-A, *supra* note 1, at §§ 1201-14; H.R. 2318, 99th Cong., 1st Sess. § 405 (1985).

the Secretary of Agriculture, whereby farmers would idle up to a thirty million acres of "erosion prone" or "highly erodible" cropland, and adopt and follow conservation plans thereon.[24] These contracts would run from five to twenty years, and at the end of the contractual period, the land would remain in non-cropland status without further payments.[25] Any reconversion in violation of contracts, even after expiration of the contract, would be treated as a conversion of previously untilled land to cropland under the sodbuster provisions.[26]

The general obligations on the parties run roughly as follows: the operator must forego production of commodities.[27] Furthermore, the farmer must establish vegetative cover, and perhaps other soil, water and forest conserving measures, in accordance with a plan to be negotiated between the operator and the Secretary of Agriculture.[28]

The government, through the Department of Agriculture, would have these general obligations.[29] First, the Soil Conservation Service (SCS) must continue to provide technical assistance.[30] Second, the Secretary must pay part of the costs of establishing necessary cover, or other initial conservation measures.[31] Finally, the Secretary must make annual rent payments to the

24. S. 1000, *supra* note 14, at § 201(b)(1) and S. 1119, *supra* note 6, at § 208(a) would provide for contracts on up to 30 million acres. Neither H.R. 2100-A, *supra* note 1, at §§ 1201-14, nor H.R. 2318, *supra* note 23, at § 405 (1985) provides a maximum for its reserve acreage. H.R. 2100-B, *supra* note 1, at § 1205(b)(1), provides for a conservation reserve acreage of up to 20 million acres, and for an additional five million acres to be paid for with surplus commodities unless the Secretary determines that payment in commodities would have a depressing effect on the market in § 1205(b)(2).

25. S. 1000, *supra* note 14, at § 201(c), provides for 10 to 20 year contracts. S. 1119, *supra* note 6, at § 208(b), and H.R. 2100-A, *supra* note 1, at § 1207(a), specify 7 to 15 year contracts. H.R. 2318, *supra* note 23, at § 405, provides for a 10 year term. H.R. 2100-B, *supra* note 1, at § 1205(b)(1), states contracts would be "not less than ten years in duration," but § 1205(b)(2), provides that contracts on the additional five million acres would be "of up to 10 years in duration".

26. H.R. 2100-B, *supra* note 1, at § 1205(c), employs optional language, "The plan, . . . may provide for the permanent retirement of any existing cropland base and allotment history for the land." *See also, id.* at § 1205(d)(1)(A)(III), (l), (m). The report to accompany the bill, H.R. REP. NO. 271, *supra* note 12, at 287-88, however, contains mandatory language:

> It is apparent that there are long-term implications to the farmer or rancher who enters into a conservation reserve contract. Important among them is the fact that, upon expiration or termination of the contract, highly erodible land that was subject to the contract will be subject to the bill's "sodbuster" provisions. Therefore, a producer who breaks out the land previously entered in the conservation reserve would be subject to losing the benefit of Federal programs on all his land unless the highly erodible land is cultivated under an approved conservation plan.
>
> In these circumstances, it is the position of the Committee that prospective participants in the conservation reserve program should receive full disclosure of their possible future obligations and liabilities with respect to land placed in the conservation reserve. Therefore, the Committee expects the Secretary to provide program applicants, in writing, a statement that also appears in the contract and explicitly brings to their attention the fact that the "sodbuster" provisions will apply to highly erodible land covered by the conservation reserve contract when the contract expires or is terminated.

27. H.R. 2100-B, *supra* note 1, at § 1205(b)(1)(A), (D), (E).

28. *Id.* There are also other requirements pertaining to breach, assignment, and a catch all provision, § 1204(b)(1)(F), at 293-94 states: "(S)uch additional provisions as the Secretary determines are desirable and are included in the contract to effectuate the purposes of the program or to facilitate the practical administration thereof."

29. H.R. 2100-B, *supra* note 1, at § 1205(d)(1)(A).

30. *Id.* at § 1205(d)(1)(A)(i).

31. *Id.* at § 1205(d)(1)(A)(ii).

owners and operators in the negotiated amounts for the period of the contracts.[32]

The Secretary is authorized to consider several criteria for purposes of contract negotiation.[33] The list generally includes such items as the historical yields of the land to be diverted, the prevailing rates of cash rentals in the area, the amount of incentives required to obtain producer agreement, the tendency of the diverted land to erode, pollution and other offsite costs of erosion, whether public recreation or wildlife sanctuary is to be established and other considerations determined to be locally significant.[34] The diverted land is not necessarily to be rendered completely unproductive.[35] Depending upon the quality of the land and other criteria determined relevant by the Secretary, tree crops or grazing might, for instance, conform to the contract and yet provide the farmers with a marketable product or with emergency forage.[36]

The negotiating parties are to be bound, however, by a list of statutory limitations upon their contracting powers.[37] The list varies from bill to bill again,[38] but generally, the following rules apply. First, no one producer would receive more than $50,000 per year in annual rents.[39] Second, contractual limits would be assigned not only per producer, but per area.[40] This would protect local and regional economies from the effects of withdrawing too much land from crop production at one time.[41] Third, tenants and sharecroppers would receive administrative protection.[42] Finally, unlike the sodbuster provisions, where the discouraged act would bring disincentives reaching beyond the land immediately injured, remedies for breach of the conservation reserve contracts would be similar to private contractual remedies.[43] The bills do not use the words "substantial compliance", "material", "mitigation", or "com-

32. *Id.* at § 1205(d)(1)(A)(iii).

33. *Id.* at § 1205(f), (o); S. 1000, *supra* note 14, at § 203(a)(3), (4); S. 1119, *supra* note 6, at § 208(e), (f).

34. H.R. 2100-B, *supra* note 1 at § 1205(o), makes specific provision for "those lands that are not highly erodible lands but that pose an off-farm environmental threat or, if permitted to remain in production, pose a threat of continued degredation of productivity due to soil salinity." In H.R. Rep. No. 271, *supra* note 12, at 414-15, the author of the amendment that became H.R. 2100-B, *supra* note 1, at § 1205(o), stated that its purpose

> was to ask the Secretary to study the possibility of a solution to a situation such as that recently encountered in the Kesterson Wildlife Refuge in California, by allowing the affected farmland to be put into a conservation reserve, thereby avoiding the catastropic financial situation that could result if farmers were simply required to take the land out of production for any use. In the course of discussion of the amendment, it was pointed out that the toxic chemical involved in the California situation referred to by Mr. Brown is a naturally occurring material—selenium.

35. Great differences exist in the exact amount of use that may be permitted, and the circumstances under which it might be permitted. H.R. 2318, *supra* note 23, at § 405, would have much more than would H.R. 2100-B, *supra* note 1, at § 1205(b)(1)(D), (E).

36. H.R. 2100-B, *supra* note 1, at § 1205(b)(1)(D), (E).

37. *Id.* at § 1205.

38. *Id.*; S. 1000, *supra* note 14, at § 203(4), (5); S. 1119, *supra* note 6, at § 208.

39. H.R. 2100-B, *supra* note 1, at § 1205(d)(3).

40. *Id.* at § 1205(a).

41. H.R. REP. NO. 271, *supra* note 12, at 414.

42. H.R. 2100-B, *supra* note 1, at § 1205(j).

43. *Id.*, at § 1209(b)(1)(B). There is an exception when termination or expiration would trigger the sodbuster provisions. *See supra* note 26 and accompanying text.

pensation", but the language discussing reduction of payments or refunds "as the Secretary may deem appropriate," and termination only "if the Secretary . . . determines that the violation is of such a nature to warrant termination," recalls ordinary contractual language, albeit administratively determined.[44]

CONSERVATION EASEMENTS

The acreage set aside provisions, tax incentives, sodbuster bills, and conservation reserve contracts do not exhaust the congressional imagination with respect to soil conservation legislation.[45] Two creative bills would authorize the Secretary of Agriculture to accept conservation easements in "wetlands, upland, or highly erodible land" as partial payment of principal and interest on delinquent loans made under FmHA programs.[46]

These conservation easements would differ from the acreage reserve contracts in three important respects. First, the Secretary would not be obliged to negotiate with the owners and operators, but could take the easements, impose the corresponding obligations and be limited only by statutory and regulatory guidelines.[47] Second, the compensation to the owners would come in the form of forgiveness of debt instead of a cash rent.[48] The amount of loan forgiveness in proportion to the aggregate amount of the borrower's outstanding FmHA loan would equal the ratio of the acreage of the land upon which the easement was taken to the total acreage of the real property securing such loan.[49] Third, any easements so acquired would be encumbrances on real property.[50] They would run with the land for a period of not less than fifty years, irrespective of the future owners and even if the United States were subsequently to acquire and later reconvey the property.[51]

ADMINISTRATIVE CHANGE

The general outline of the primary substantive provisions of most of the 1985 congressional bills bearing on soil conservation are discussed above. So many of the consequences of substantive provisions depend upon local determinations that program administration becomes nearly as important. Some bills would authorize significant transfers of programs within the Department of Agriculture. H.R. 2803, for instance, would transfer many Farmers Home Administration programs to the SCS and split the FmHA's remaining functions between two henceforth separate agencies.[52]

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44. *Id.*
45. H.R. REP. NO. 271, *supra* note 12, at 420-21.
46. H.R. 1000, *supra* note 11, at § 2(b); S. 626, *supra* note 11, at § 2(b).
47. H.R. 1000, *supra* note 11, at § 2(b).
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*, see also 7 U.S.C. § 1985 (1982).
52. H.R. 2803, 99th Cong., 1st Sess. (1985) states in its introduction:

A Bill

To transfer the administration of certain conservation programs from the Farmers Home Administration to the Soil Conservation Service, to establish the Rural Development Admin-

Other proposed shifts relate to an apparent power struggle between the administration and the local committees of the Agricultural Stabilization and Conservation Service (ASCS).[53] Participation at a local level is required, however, if conservation measures and programs are to be carried out.[54] The emphasis of many bills relies upon the county and local committees, the technical assistance of the SCS, the soil conservation districts, and in some instances the Commodity Credit Corporation, the FmHA, the Forest Service, the Fish and Wildlife Service, and state and local officials in their various capacities.[55]

The practical benefits of on the spot administration are increased by the procedural changes that some version of the 1985 farm bill seems likely to bring. The bill passed by the House of Representatives, for instance, so increases the determinations, negotiations, appeals, modifications (of both contracts and field boundaries), bids, and reports to be made, conducted, heard, written, or otherwise processed that local responsibility for such matters is augmented by pragmatic necessity.[56] Discussion among the sponsors of this legislation affirms that Congress intends the Department of Agriculture to increase the use of local bodies as the chief instruments for the implementation policy.[57] Further, this discussion leaves no doubt but that at least the House of Representatives Committee on Agriculture intends its bill to be administered liberally, with a view to equity as can only be rendered by those familiar with local conditions.

ANALYSIS

Soil erosion problems generally do not lend themselves to complete or

istration within the Department of Agriculture, to transfer the administration of rural housing programs from the Farmers Home Administration to the Rural Development Administration, to provide that the Farmers Home Administration shall be known as the Farm Administration, and for other purposes.

53. *Operations of the Agricultural Stabilization and Conservation Committee System, 1984: Hearing on H.R. 3746, H.R. 3845, and S. 1643 Before the Subcomm. on Department Operations, Research, and Foreign Agriculture of the House of Representatives Committee on Agriculture*, 98th Cong., 2d Sess. 19-23, 38-40, 82-86 (1984) [hereinafter cited as *Operations of Committee System*], includes a discussion by the sponsers of H.R. 3746, 98th Cong., 2d Sess. (1984) and H.R. 3845, 98th Cong., 2d Sess. (1984) and of H.R. 542, 99th Cong., 1st Sess. (1985). The Honorable Mr. Strangeland, sponsor of H.R. 3845 and H.R. 542 stated that the common goal was the "strengthening the ASCS Committee System, as well as streamlining and improving the efficiency of the ASCS Committee Election Process." *Operations of Committee System, supra* note 53, at 82. Mr. Strangeland's bills, however, would not go nearly as far towards strengthening the committee system as would the alternative bills introduced by the Honorable Mr. Rose, and, in the Senate, by the Honorable Mr. Zorinsky. All these bills would increase the terms of community committee members from one to three years. Last year's H.R. 3746 and S. 1643, and this year's S. 355 make provision to pay community committee members, and to otherwise encourage diligence which have no counterparts in the Strangeland bills. The views of those legislators supporting the stronger bills were well presented by the Honorable Mr. Rose. *Operations of Committee System, supra* note 53, at 19-23, and 38-39.

54. *Operations of Committee System, supra* note 53, at 19-28 (testimony of Hon. Charles Rose and supporting results of nationwide survey of ASCS Committeemen); AMERICAN FARMLAND TRUST, *supra* note 22, at 106.

55. H.R. 2100-B, *supra* note 1, at §§ 1203(a)(7), 1205(b), 1206(b), 1205(n); H.R. 1000, 99th Cong., 1st Sess. § 2 (1985).

56. *See generally* H.R. 2100-B, *supra* note 1, especially §§ 1201(5)(B), 1201(6)(B), 1203(a)(4)(A), 1203(a)(7), 1205(f), 1206.

57. H.R. REP. NO. 271, *supra*, note 12, at 413-19.

once and forever solutions.[58] The literature concerned with the topic recognizes this fact.[59] The Report of the Committee on Agriculture to accompany H.R. 2100, for example, states that, "[i]t is not likely the soil erosion problem will ever be 'solved' . . . . So long as American farmers are expected to cultivate hundreds of millions of acres in order to feed hundreds of millions of people, soil conservation must be a continuous, day-to-day, year-to-year concern of both farmers and government."[60] It is, however, fair to examine the present bills with respect to criticisms leveled against past programs and with respect to the potential of reducing erosion to tolerable limits.

The most telling criticisms of past legislation have included, first, that the various programs were and are not well coordinated, but rather encourage abuses.[61] The commodity price support programs, to take a well known example, combine with the tax laws to encourage production on unsuitable land.[62] The sodbuster and swampbuster provisions and the denial of expense treatment for the costs of clearing "highly erodible" land would work to reduce, but not to eliminate this particular conflict.[63]

Second, when the primarily commodity-oriented programs have paid farmers to undertake conservation practices, they have done so on an annual basis.[64] Multi-year planning is impossible under such a system.[65] Certain conservation measures cannot be undertaken at all, while others can be used only with increased costs and less than optimal results.[66] The contracts and the conservation easements alike would prevent these problems to the extent of the acreage administered under those programs.[67]

Third, and very significantly, forerunners of the conservation reserve programs made no provisions to assure that erodible soils would be reserved, or to compel farmers to participate, no matter how fragile their topsoil.[68] It is difficult to appreciate the significance of this difficulty until one examines the data as to just how much of the erosion occurs on a reasonably small percentage of American farmland.[69] The conservation reserve provisions would improve upon their predecessors in that only "erosion prone" or "highly erodible" soils

58. *Id.*

59. AMERICAN FARMLAND TRUST, *supra* note 22, at xv.

60. H.R. REP. NO. 271, *supra* note 12, at 78.

61. AMERICAN FARMLAND TRUST, *supra* note 22, at xvi, 64, 78, 98; S. Baite, *Policies, Institutions, and Incentives for Soil Conservation* (1982), *reprinted in* K. MEYER, D. PEDERSON, N. THOMSON, & J. DAVIDSON, AGRICULTURAL LAW 772-76 (1985).

62. H.R. REP. NO. 271, *supra* note 12, at 86, 89.

63. *Id.*

64. AMERICAN FARMLAND TRUST, *supra* note 22, at 98-101. H.R. 2100-B, *supra* note 1, at § 1020 would provide for some multi-year set aside contracts under the commodity programs.

65. AMERICAN FARMLAND TRUST, *supra* note 22, at 98-101.

66. *Id.*

67. *Id.*

68. *Id.* at 99-100. H.R. REP. NO. 271, *supra* note 12, at 418-19.

69. SOIL CONSERVATION SERVICE, U.S. DEP'T. OF AGRIC., 1977 *National Resource Inventories, reprinted in part in* U.S. DEP'T. OF AGRIC., *A National Program for Soil and Water Conservation: 1982 Final Program Report and Environmental Impact Statement* 9-10; AMERICAN FARMLAND TRUST, *supra* note 22, at 25-28, 123-32.

could be put under contract.[70] Stable land could no longer be reserved. Badly eroding soils, however, could not be required to be enrolled either.[71] The conservation easements taken in return for forgiveness of delinquent FmHA loans would avoid this second defect too, at least in some instances.[72] No bill, however, would force a solvent operator to cease row crop commodity production on the most delicate of fields, or, indeed, to adopt any conservation practices in connection with that production.

Fourth, programs which have sought to induce operators to conserve soil while leaving land in production through cost sharing and tax credits have often ended in subsidizing not conservation, but production.[73] Conservation has often suffered, rather than gained, from these efforts. It is difficult to police this kind of program, because the same measure that decreases erosion, when used properly, often aggravates the problem when misused to increase income.[74] Definitional or regulatory refinements may limit these abuses somewhat. The real necessity, if such programs are to work, is better, closer administration.

Fifth, earlier multi-year land set aside contracts contained many general flaws which are addressed specifically. Non-crop usage such as haying or grazing were not allowed, irrespective of the ability of the particular acreage to bear the use without damage.[75] Area economies suffered when too much land in certain vicinities was retired.[76] When the contracts did expire, the financial incentives often weighed in favor of resuming commodity production.[77] The authors of the proposed legislation took pains to avoid these pitfalls when they drafted the current bills. They provided for each of the above listed difficulties, and others as well.[78] A major question remains, however, as to just how effectively this, if any, soil conservation legislation can be carried out.

CONCLUSION

No matter the legislation to finally emerge from the 99th Congress this much, at least, can be ascertained: whatever programs emerge they will not compel adoption of conservation practices. They will contain administrative difficulties. They will not solve the problem of soil erosion. They may, however, deal more effectively with the continuing problem than the laws they will replace.

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70. H.R. 2100-B, *supra* note 1, at §§ 1201(6) (7), 1205(b)(1), (2).
71. H.R. REP. NO. 271, *supra* note 12, at 84.
72. *Id.* at 420-21; H.R. 1000, *supra* note 11, at § 2; 7 U.S.C. § 1985 (1982).
73. AMERICAN FARMLAND TRUST, *supra* note 22, at xvi, 64 and 98; *See also* note 61 and accompanying text.
74. AMERICAN FARMLAND TRUST, *supra* note 22, at 60.
75. *Id.* at 100.
76. H.R. REP. NO. 271, *supra* note 12, at 414. *See also* H.R. 2100-B, *supra* note 1, at § 1205(a)(1).
77. H.R. REP. NO. 271, *supra* note 12, at 86.
78. *Id.* at 283-86.